Introduction

“We 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. –

“That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”

Introduction

As the dark clouds of division threatened to pull the United States apart limb by limb, Abraham Lincoln dared to speak of America’s great vocation. In a speech given during his ill-fated senatorial race in 1858, Lincoln attacked the Supreme Court’s cramped understanding of the Declaration of Independence as it had been expressed in the infamous *Dred Scott* case. Where the Court saw a document of political expediency that claimed rights mainly for the British colonials who had suffered under King George’s tyranny and few others, Lincoln saw universal possibilities in the Declaration’s understanding that all persons “are created equal” and have unalienable rights. He said, “I think the authors of that notable instrument intended to include all … They did not mean to assert the obvious untruth, that all were then actually enjoying equality … They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit.”

To Lincoln, the Declaration and its principles were a gift to be shared with the world: “They meant to set up a standard maxim for free society, which should 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.”

Every generation must take ownership of these principles. In the aftermath of the bloody battle at Gettysburg, President Lincoln called his generation to create “a new birth of freedom” so that “this nation under God” and its “government of the people, by the people, for the people shall not perish from the earth.” More recently, another public figure opined that “the continuing success of American democracy depends on the degree to which each new generation, native-born and immigrant, makes its own the moral truths on which the Founding Fathers staked the future of [the] Republic. Their commitment to build a free society with liberty and justice for all must be constantly renewed if the United States is to fulfill the destiny to which the Founders pledged their ‘lives … fortunes … and sacred honor.’”

Every generation in every democracy since Aristotle has faced the moral question he posed: “how ought we to live together?” How to live together and flourish in a pluralistic society in which agreement on the source and fact of “self-evident truth” can no longer be assumed, presents an even trickier question. This is the great challenge facing the United States today. More specifically, for our purposes, how can “law” be used as a tool to facilitate our ongoing experiment in representative self-governance in [such a culture]?

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1 Abraham Lincoln, Speech at Springfield, Ill. (June 26, 1858), in II The Collected Works of Abraham Lincoln 398, 405-406 (Rutgers 1953).
2 Id. at 406.

3 Abraham Lincoln, Gettysburg Address (November 19, 1863), in 7 The Collected Works of Abraham Lincoln 23 (Rutgers 1953).