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# *M.E. Bradford's Constitutional Theory: A Southern Conservative's Affirmation of The Rule of Law*

*A Better Guide Than Reason: Studies in the American Revolution.* (La Salle, IL: Sherwood Sugden & Company Publishers, 1979). Cited in the text as *Guide*.

*Remembering Who We Are: Observations of a 'Southern Conservative.* (Athens, GA: The University of Georgia Press, 1985). Cited in the text as *Remembering*.

*A Worthy Company: The Dramatic Story of the Men Who Founded Our Country.* (Westchester, IL: Crossway Books, 1988).

*The Reactionary Imperative: Essays Literary & Political.* (Peru, IL: Sherwood Sugden & Company Publishers, 1990). Cited in the text as *Reactionary*.

*Against The Barbarians and Other Reflections on Familiar Themes.* (Columbia, MO: University of Missouri Press, 1992). Cited in the text as *Barbarians*.

*Original Intentions On The Making Of The United States Constitution.* (Athens, GA: The University of Georgia Press, 1993). Cited in the text as *Intentions*.

**M**E. Bradford's constitutional theory is firmly grounded in the original intent of the Framers. His scholarly links to original intent are twofold; original intent is the only way to legitimately apply the U.S. Constitution to contemporary politics and it is better than any alternative at procuring good government. Due to the emphasis placed on original intent as the appropriate standard for constitutional interpretation and the rejection of public policies that deviate from it, his scholarship has an inherently reactionary thrust, to the

extent that Bradford's constitutionalism is reactive against what is increasingly an unmitigated national supremacy.' Turning the clock back to a viable federal paradigm would reestablish the States as sovereigns regarding many of the currently nationalized high conflict and high salient issues, such as school prayer, abortion, criminal justice,, and commerce policies, and many others. This does not mean that Bradford's scholarship is by design a vehicle for advocating specific policy outcomes on these and other issues. He certainly had his policy preferences, but his scholarship focuses on the constitutionality of the processes utilized in the formation of past, present, and future public policies, inevitably leading him to confront the constitutional legitimacy of pervasive national public policy supremacy. Obviously, this makes Bradford controversial and provocative, especially in light of his Southern roots and the extension of those roots to the Southern States' 19th Century unsuccessful resistance to national supremacy. For some academicians the Southernness of Bradford's scholarship is, indeed, problematical, as is evidenced by the academic ostracism imposed on him due to his Southern states' rights brand of conservatism. Garry Wills' recent reference to Bradford as a "suicidally frank" conservative is an accurate observation that reveals as much about the ideologically charged prevailing, academic climate as it does about Bradford.<sup>2</sup> Such biases notwithstanding, M.E. Bradford's scholarship does merit the attention of constitutional scholars, not merely as a curiosity but as a significant answer to constitutional theorists who rationalize a model of national supremacy not only inconsistent with an original intent model of American federalism, but with the rule of law itself. The goal of this essay is to convey the relevance of M.E. Bradford's scholarship to American constitutional theory and, more importantly, to the rule of law in these united States. The reward for these efforts will be a much deeper appreciation of what was, is, and possibly will be the nature of the U.S. constitutional order.

## I

In this age of specialization, M.E. Bradford's research methodology runs counter to the norm; most academicians are specialists with

defined areas of research and teaching, so much so that beginning with our graduate school training we obtain (and subsequently sustain) a built-in reluctance to engage in interdisciplinary approaches to our chosen fields of study. Not Bradford, who utilized an eclectically inductive methodology, drawing from topically organized textual, biographical, literal, historical, political, and theoretical analyses. As a result, his constitutional scholarship lacks the focus which most legal scholars are accustomed. In Bradford's case this is a strength, because it enhances his constitutional theory with a breadth and depth of knowledge that specialization by definition excludes. Moreover, due to his refusal to construct his scholarship with abstractive building blocks, he relied on real life experiences and events (manifested in biographies, literature, history, and politics) as the materials for his theoretical construct. Thus, one should not expect to find among his writings purely theoretical treatises on constitutional theory *per se*, detached from real life and designed to serve as the underpinnings of an instrumental state. The essence of Bradford's scholarship precludes such methods; as a matter of fact, he would have fallen upon his own scholarly sword had he utilized philosophical abstractions in defense of a particular vision of the utopian constitutional order. Following the intellectual *modus operandi* of George Washington, John Dickinson, Patrick Henry, William Henry Drayton, and most of the other founders, Bradford was convinced that experience is a better guide to understanding and formulating politics than are philosophical models detached from reality. He was not hostile to political philosophy as an explanatory tool; for example he did commend the work of contemporaries such as Eric Voegelin, Gerhart Niemeyer, and Michael Oakeshott (*Remembering*, 49), but he opposed attempts to restructure society either in part or totally to bring it into compliance with some philosophically constructed model of politics (as exemplified by the French Revolution, Marxism-Leninism, and radical egalitarianism in this Country). For Bradford, Utopia is exactly that, nowhere, and to pursue it leads not to political, economic, and social justice, but to confusion and error.

Bradford's reliance on experience for a correct understanding of

American politics is consistent with the vast majority of 18th Century revolutionaries, who would be the first to maintain that their actions were, the products of and based upon experience. In fact, they consistently maintained that the Revolution was in reaction to English innovations, whereas they were the defenders of the traditional (Le., experienced) rule of law in the colonies.<sup>4</sup>

Thus, in his attempt to discern the course of constitutional developments, Bradford's methodological realism is consistent with his 18th Century counterparts, both were reactions to innovations (theoretical and political) on the traditional rule of law. For example, his rejection of fellow Southerner Richard Weaver's call for the Southern equivalent of Aquinas or Hegel, in order to provide a "metaphysical foundation" for Southern principles, reveals the extent to which Bradford sought to avoid a reliance on abstract reasoning. Bradford maintained that

Weaver, who was himself a rigorous and principled conservative, speaks here as a man of systems, an admirer of Plato and a devotee of the argument from definition-but not as a representative of any Southern conservatism that we can recognize. For to follow his idealist recommendation and perfect a model of its archetypal self, the South would have to cease from being Southern and become instead "another country" more like New England than what it has been for the last three hundred years.... But a culture which fosters *a priori* demonstrations of why it is "right" finally in its intellectual practice, social institutions, and ultimate objectives is not a conservative society of the variety achieved in the American South (*Reactionary*, 116).

It is difficult to articulate the theoretical core of scholarship that avoids "*a priori* demonstrations" and a "metaphysical foundation." Bradford acknowledged this dilemma in regard to his collective writings: "Considered separately, both my materials and their treatment may appear only remotely connected. But a confirmed resistance to the besetting delusions of our time links these writings....I reject all merely circumstantial explanations of my handiwork.

Instead, I prefer to believe that I have returned to established concerns out of a kind of principle-though not as *philosophes* use that term: I do so because my early impressions of which disputes are intellectually important have been confirmed and reinforced." A primary early impression was skepticism towards "attempts to renovate society through the application of natural rights theory by a vigorous national:power"(Barbarians, 2). Natural rights may be part and parcel of tradition, or something anathema to it. The compatibility of, natural rights based national "renovations" with tradition can best be discerned by an inductive methodology that gathers evidence of the renovations' impact on communities as manifested in the literature, history, and politics of the Nation generally and the South specifically.<sup>5</sup> What Bradford wrote about Burke and Calhoun is also true about him: "For conservative regimes of a certain kind may, when confronted, produce a Burke or Calhoun-an answer to their critics which becomes, incidentally, a defense of their settled presumptions" (*Reactionary*, 116). Thus, the rationale behind the "settled presumptions" may be *incognitus*, while the presumptions themselves are not articulated until challenged, as may be the case when attempts are made to renovate society through the application of natural rights theory by a vigorous national power (*Barbarians*, 2). The corpus of Bradford's scholarship is the constitutional articulation of settled presumptions under attack by just such a power.

Accordingly, Bradford was a theorist, not a philospey and his methodological realism can be most accurately characterized as political theory, as opposed to political philosophy. The distinction is an important one. If by political philosophy one means the critical pursuit of truth, in which even the most fundamental axioms are subject to analysis, possible rejection, and innovative changes, then his writings cannot accurately be denoted as philosophical. This does not mean that his scholarship is devoid of philosophical components. The philosophical components of his scholarship can be best described as inherited and accepted. This does not detract from the quality or rigor of his scholarship. He was an American theoretician to the extent that his scholarship is descriptive, explana-

tory; systematically logical, empirically supported, and has a transcendence that makes it useful to theoreticians and philosophers of other cultures and eras. Significantly, his political theory is also distinguishable from ideology, which is "political thinking that is only in the service of a particular interest at a particular time."

Bradford's political theory was not a simplistic argument against what might be deemed progressive public policies; rather, it maintained that legitimate public policy must be the result of established constitutional procedures. With a firm grounding in experience (defined as "recorded history, both written and remembered" [*Remembering*, 24]), Bradford's "political credo" consists of ground rules: (in contradistinction to *a priori* principles) for formulating public policy: (a) Tradition provides the best practical guide for arranging the social order. (b) To replace tradition with an ideologically contrived social order, such as 'constructivist; rationalism, results in despotism and misery. (c) Contingencies; will occasionally arise that require modification of the traditional social order. (d) Such modifications should not be *a priori* goal generated, but generated by a republican process that procedurally addresses the public policy contingencies as they arise. (e) In the American compound republic, constitutional constraints, electoral processes included, oblige officials to respect the settled presumptions of their constituents in making adjustments to the traditional social order. And (f) participants in the process should adhere to a political ethic that promotes "good rhetorical manners", such as "avoiding the use of *the diabole* (making a devil of our opponent) and the *oraculum* (speaking for the gods); taking care to eschew thee pideictic note; the air of authority, where it is out of place; renouncing, the favorite fallacies of the Left, such as the false dilemma and argument *post hoc, propter hoc*-disguising legitimate choices, or distorting causal connections" (*Remembering*, 16). Bradford's political credo is not an ideology. It does not construct models of government and society out of abstractions. Rather, his credo is a formula for conducting political discourse, the public policy consequences of which are to be determined by the participants constrained by an established constitutional framework. The theorist, however, can coincidentally or by

design function as the rhetor. For example, Bradford's scholarship could affect the course of political developments by instructing and admonishing his readers to adhere to the wisdom of the Framers.<sup>7</sup> In fact, this is what he attempts to do by taking us back to the critical periods of American constitutional development, thereby presenting the traditional case for the rule of law and serving as intellectual guide along, as he put it, the perilous way.

## II

The facts that the U.S. Constitution was contentiously drafted, barely ratified, and occasionally the subject of divisive interpretations, make evident that instituting and maintaining the constitutional rule of law was and is serious work. The Framers realized the seriousness and complexity of their undertakings as they crafted a constitutional system respectful of securing the public good, private rights, and the spirit and form of popular government; through the rule of law.<sup>8</sup> Bradford's appreciation of the Framers' constitutional craftsmanship: sustained his interest in the "original" constitutional federal arrangement, through which the States had meaningful public policy roles vis-à-vis the national government. He was convinced that the original U.S. Constitution has been substantively altered via judicial activism. To make his case, Bradford contrasted the *original* from the concocted Constitution. The concocted Constitution was incrementally constructed to legitimize ideological agendas that in its original form the U.S. Constitution would not sanction. By explicating the Framers' intentions, Bradford distinguishes the constitutional rule of law from national; supremacy guided by a national elite (what in earlier times was known as oligarchy or plutocracy);~ national supremacy that has only the appearance of legitimacy, due to being sanctioned by activist Supreme Court decisions, but in reality is unconstitutional. Reinstating the constitutional rule of law would require the undoing a good portion of 20th Century constitutional law, especially as it gives life and sustenance to national supremacy. Nevertheless, "hidden from us in our day by the inventions and concoctions of judicial distortion [the original constitution is] subject to recovery even *now*" (*Inten-*

tions, 16). Whether or not a recovery occurs depends upon the uncertainties of political circumstance, such as electoral results, legislators' policy preferences, and most importantly Supreme Court justices with the inclination and opportunities to undo five decades of precedent setting national supremacy activism. Elucidating the "inventions and concoctions of judicial distortion" for what they are (an important first step), is the responsibility of scholarship, one taken seriously by Bradford.

At the core of Bradford's constitutional theory is a nomocratic, in contradistinction to teleocratic, national constitution. The distinction between nomocratic and teleocratic constitutions is concisely explained by Forrest McDonald in the forward to Bradford's last book: The nomocratic view "is that the Constitution was designed to bring government under the rule of law, as opposed to achieving any specific purposes.... [T]he Constitution is primarily a structural and procedural document, specifying who is to exercise what powers and how. It is a body of law, designed to govern, not the people, but government itself; and it is written in language intelligible to all, that all might know whether it is being obeyed. The alternative, teleocratic view, is one that has come into fashion the last few decades and has all but destroyed the original Constitution. This is the notion that the design of the Constitution was to achieve a certain kind of society, one based upon abstract principles of natural rights or justice or equality or democracy or all of the above. It holds that the specific provisions of the document are of secondary importance or none at all; what counts are the 'principles' it supposedly embodies, usually principles based upon the Declaration of Independence or Lincoln's Gettysburg Address, neither of which has any standing in law" (*Intentions*, xi-xii). Indeed, the nomocratic Constitution has been significantly altered by teleocratic perspectives;<sup>9</sup> the seeds of the alterations were sown by Abraham Lincoln, to be subsequently nurtured and harvested by latter-day teleocratic reformers. But we are getting ahead of ourselves. Why is the issue of nomocratic versus teleocratic significant and what evidence does Bradford present to support his claim that the original Constitution was nomocratic?

Whether the Constitution is predominantly nomocratic or



teleocratic is a significant question because the two forms are not equally conducive to the rule of law. If the Constitution is essentially nomocratic, then the federal courts would enforce constitutionally established rules of engagement through which interest groups competed against one another in the attempt to have their respective interests prevail in the public policymaking process, whether those interests are economic, social, cultural, religious, economic, regional, whatever. Judicial review would be invoked when the "rules" are allegedly breached, with the courts being responsible for upholding the constitutional integrity of the political process. Under this model political questions are nonjusticiable. This does not mean that the Constitution fails to place limits on nomocratic procedures for making public policy. It certainly does (see Art. I, sections nine and ten and the Bill of Rights). Moreover, through the amendment process (Article NO States may collectively alter the rules of engagement by expanding or contracting what is constitutionally permissible political behavior. Thus, the nomocratic U.S. Constitution does not preclude teleocratic principles from the political process. Teleocratic principles may be embodied in state constitutions, state statutes, national statutes, and even in the U.S. Constitution itself, which is built upon the teleocratic commitment to "a Republican Form of Government" (Article IV, § 4). But for the Supreme Court to utilize judicial review as a vehicle to implement their teleocratic preferences over the objections of a State or States, on the basis that there are laws higher than the Constitution and the U.S. Courts decide what those laws are, is inconsistent with the nomocratic basis of the Constitution and raises questions of constitutional legitimacy and political obligation. If the U.S. Constitution is construed to be a teleocratic *a priori* embodiment of truth, justice, and righteousness, with U.S Supreme Court justices serving as its privileged interpreters, then popular, control over important areas of public policy becomes precarious and subject to the domination of exclusive interests which at any particular moment of constitutional development may exercise control over the policymaking process through the institutional' Supreme Court. Such interest group domination over judicial review is inconsistent with the rule of law,

because the constitutional constraints of the rule of law become putty in the hands of the dominating interest groups, which in effect is the negation of the rule of law. It was for this reason that the Framers emerged from Philadelphia with nomocratic institutional separation of powers, electoral processes, and a federal as opposed to an unitary system of public policymaking. Under the Framers' federal model, factious domination over the broad apparatus of policymaking is much less probable, than is the case under a unitary alternative.

Bradford provides us with ample evidence to support the Constitution's overriding nomocratic nature and the Framers' rationale for it. The title *Original Intentions on the Making and Ratification of the United States Constitution* (published posthumously by The University of Georgia Press) indicates a plurality of intentions behind the U.S. Constitution, such as the intentions of the participants attending the Philadelphia Convention and the intentions of state voters (as represented by their delegates) at the respective state ratifying conventions. This obvious but too often neglected historical fact is important. When discerning the "intent of the Framers" it is important to factor in the States, not only their intentions during the ratification process, but also their respective state constitutions. The U.S. Constitution cannot stand alone; state constitutions are integral parts of American constitutionalism. In this sense the U.S. Constitution is, indeed, a living document, alive with actively viable States pursuing their distinct public policy interests within the context of constitutionally recognized national interests. This was certainly the political landscape with which the Framers were familiar and it is critical to our contemporary understanding of the American version of the rule of law.

The American rule of law has a continuity that predates the drafting of the Constitution and can be traced to colonial America. It is important to remember that the Philadelphia Convention was a political event and that the delegates were politicians, not philosophers acting independently of political realities. This self-evident fact merits reinforcement, particularly due to the misunderstanding that the convention was the next logical step in the implementation

of 1776 declaratory principles. Bradford considered this to be an "important impediment to our understanding of the original American politics. There is a myth industriously cultivated by statist, sentimental egalitarians, high-ranking Washington bureaucrats, and latter-day radicals of the New Left variety that the fifty members of the Great Convention in Philadelphia were Framers who 'invented' the polity we now struggle to preserve; not public men; lawyers and rhetoricians, but philosophers who wrote the Constitution to embody a paradigm derived a priori from the modern 'science of politics'....Only those with special training in history are likely to know better" (*Remembering*, 22-23). What history reveals is an American Revolution that was not a radical transformation of the existing political system (as the French Revolution was); furthermore, the U.S. Constitution was hammered out by delegates determined to complement their respective state governments, not to obliterate them. Even if a few delegates were determined to play the role of philosophe, such as forthrightly establishing a unitary system of government the sovereignty of the States notwithstanding, their efforts would have been politically rejected. There are examples. Bradford describes as "comic" the behavior of a few leading delegates, who in the excitement of the moment occasionally deviated too far from the constraints of practical politics. One such delegate was James Madison, the reputed father of the Constitution. Madison was not politically naive; he realized the political nature of the process and acted accordingly, as is evidenced by his manipulation of the agenda and strategically appointing capable and politically acceptable delegates (such as Edmund Randolph) to present his resolutions. But by focusing attention on someone as politically capable as Madison, Bradford makes evident the extent to which politics dominated the drafting process, as opposed to apolitical philosophizing about "self-evident" truths. According to Bradford,

[T]here is no place in a healthy political atmosphere for domination by the *idee fixe*-a warning against system, ideology, and abstraction, even of the modest sort. The making of the Constitution was a limited, political, non-philosophical act, reflecting a consensus about the nation's future hopes and

present character, performed by men whose agreements with one another grew in the process of hammering out certain differences of opinion about the common good in relation to the particular good of their own communities (*Intentions*, 12).

Bradford characterized apolitical behavior as comical," because it ran counter to the political realities, was ineffective and/or risked wrecking the Convention. This was the case during the debates on state representation in the Senate and Madison's apolitical attachment to the Virginia Plan. What motivated Madison to risk success for abstraction? "[H]e was either self-deceived or else cared less for union than for the abstract purity of his plan, which is the attitude of the doctrinaire and the ideologue, not the statesman" (*Intentions*, 8). In the words of John Dickinson of Delaware, on this issue Madison simply "pushed things too far" (*Intentions*, 7).

It was not Bradford's contention that the Philadelphia Convention was devoid of doctrinaire nationalists. Rather, their influences were politically kept in check, the most important check being the continued integrity of the thirteen states. Each State had distinct identities (*vis-à-vis* other states) in pursuit of distinct interests that more or less converged whenever the Convention collectively reached agreement:

Because they had for raw material subject to their shaping hands a going, functional, social, economic, and political order instead of some philosophical *tabula rasa*, the eventually successful Framers worked outward from that given reality. They assumed responsibility for the preservation of that order; a structure in which the states were the most important ingredients of continuity, elements that defined what kind of polity Americans would accept as a legitimate consequence of their Revolution (*Intentions*, 9).

As his analyses of the ratification processes in Massachusetts, South Carolina, and North Carolina (*Intentions*, 42-86) make clear, the States viewed the proposed Constitution "according to their own

needs and purposes-out of their distinctive histories and political dispositions" (*Intentions*, 42), and when those political dispositions coincided (such as interstate commerce, national security, raising national revenue, the importation of Africans, and a stable currency) consensus was reached and constitutional provisions agreed to. What initially tied the States together was not an ideological commitment to an abstract Union, but the "natural fellow-feeling" generated by fighting and defeating a common enemy (*Intentions*, 35-36), which explains why General Washington's mere presence at the Convention was crucial to holding it together." In other words, it was experience in contradistinction to abstractions about nationhood that made the Union possible in the first place. The Framers who eventually prevailed were those who either learned or knew not to sacrifice political objectives on the altar of ideological purity. There were ample opportunities for ideological politics within each State, especially during elections, while at the national constitutional convention the political realities of the drafting and ratification processes significantly curtailed ideological impulses. This is consistent with Madison's rationale for an extended republic model of federalism. Because of the multiplicity of interests and their natural distrust of one another, the impact of ideology is diminished at the national level, whereas at the state and local levels dominant interest groups, whether religious, ideological, or economic, have freer reign.<sup>12</sup> Madison was voicing a truism that his own political experiences confirmed.

Emphasizing political realism in contradistinction to teleocratic idealism, Bradford confirms that "[t]he purpose of our [national] form of government is embodied in the procedures for dealing with one another politically that are its primary regulations." He dismisses the contention that the Constitution mandates that the courts *securea priori* rights or establish the just society (*Intentions*, 12-13). Peoples' national rights and the best possible national society would result from the political equivalent of Adam Smith's invisible hand. From 1787-1791, the States would have it no other way; they would not relinquish their own police powers to what was a distant, unknown and potentially liberty threatening national government.

Implicit in the States' retaining their respective police powers is mutual recognition among the States of their respective corporate rights, that is, their' public policy prerogatives to maintain their respective social, economic, and political orderings in the absence of teleologically driven national interference. The Constitution "is not an instrumental, substantive document drawn up to foster the favorite capital-letter abstractions of the millenarians. It is more concerned with what government will not do for each of us than with the positive description of acceptable conduct, which is left to local and idiosyncratic definition-to society, local custom, and tested ways. Most important, it is not about enforcing the abstract rights of man or some theory of perfect justice and aboriginal equality, not even with the Bill of Rights added to it" (*Intentions*, 13) The terms corporate rights and state rights are closely related, with the former lacking the negative anti-civil rights connotations. But whether the nomenclature is corporate rights or state rights the constitutional principle is the same: Unless precluded by some specific constitutional provision, the States were responsible for their respective citizens' health; safety, morals, and welfare, which included the prerogative of continued state membership in the Union. For those who consider the States to be the backwaters of democratic government, and others who correctly see the States as obstacles to their self-interested national public policy objectives, Bradford's commitment to the States is a frightening prospect. Nevertheless, it must be admitted on all sides that, as both Federalists and Antifederalists agreed, popular control over public policy is more viable at the state than at the national level, provided the channels of participation are consistent with a "Republican Form of Government" (Article IV, sec. 4), which is not necessarily synonymous with universal suffrage.

The ' rationale behind and' the effect of this model of state/corporate rights is exemplified by the balance of power between the national and state governments regarding religion, an area of some concern for Bradford.

### III

Few areas are as susceptible to and instructive about. national

teleocratic politics than the national judicial policy towards religion. Religion, as a system of beliefs and behavior, could be either instrumental or problematical in achieving national teleocratic policy goals. If placed within the domain of national public policy prerogatives religion could promote national standards, or, if part of the States' police power prerogatives to promote the *morals* of the respective state populations, religion could clash with national policy objectives.. Suppose that the dominant religious beliefs of a State resulted in public policy that recognized only monogamous heterosexual marriages, whereas the U.S. Supreme Court supported teleocratic interpretations of privacy, due process and equal protection of the law that sanction all consensual conjugal unions, whether they be of the same gender, same family; whatever. In the final analysis, the only way around the State's policy preference for a Christian model of marriage would be to displace the role of religion at the state level with national standards. This is exactly what a teleocratic U.S. Constitution facilitates, substituting state public policies premised upon the religious beliefs of state citizens with national standards based upon the values of dominant elites.

Bradford presents solid evidence to support his position that a teleocratic Constitution that trumps the role of religion in formulating state public policy is, in most instances, the illegitimate product of judicial concoctions and inventions. From the vantage point of original intent, the biographical evidence reveals that approximately ninety-five percent of the Framers were "members in good standing of the various Christian communions found in early America" (*Intentions*, 88-89). About five percent were deists and secularists." Which influence dominated the, drafting and ratification processes, the Christian, deists or secularists? According to Bradford, "The assumption that this majority was likely to agree to totally secular institutional arrangements in the very structure of American politics contradicts almost everything we know about human nature, as well as the most self-evident components of Christian teaching concerning the relation of the magistrate to the ultimate source of his authority in God" (*Intentions*, 89). Nevertheless, secularization of public policy is precisely what the Supreme Court requires through

its "concocted" Lemon Test, which requires that every state statute must, first, "have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion...; finally, the statute must not foster an excessive government entanglement with religion'...." <sup>14</sup>

It is impossible to appreciate the Supreme Court's deviation from the original constitutional arrangement regarding religion without factoring in American federalism. Post-WWII Supreme Court decisions to the contrary notwithstanding, the Framers, did not agree to secularize national and state institutions. As a matter of historical fact, Christianity predated the politics of the period, especially at the state level. The Framers were not irrational men; they would neither attempt the ratification of a national constitution that negated state policies towards religion, policies that varied from state to state and regionally, nor attempt to nationalize religious policies that would result in conflict between the national and state 'governments." The historical evidence "is more than enough to demonstrate that, a neutrality tending to become a hostility toward religion—an instrument for secularizing the public life—was not the purpose of any participant in the process of lawgiving" (*Intentions*, 93). The Supreme Court's First Amendment "wall of separation" is ahistorical and ideologically inspired (*Intentions*,; 97-100).<sup>15</sup> For the objective analyst the intent of the Framers' policy towards church and state is, Bradford maintained, readily discernible; those who claim otherwise are "both intellectually dishonest and absurd" (*Intentions*, 98).

Indeed, the original intent behind the First Amendment is readily discernible. Article Six ("no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States") and the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof") are restrictions on the national government, not the States. "The truth about the limits marked off by the Establishment Clause and the exclusion of religious tests for officeholders in Article 6 is that they raise no wall of separation, only a check upon sectarian passions" (*Barbarians*, 77). As Bradford points out, the



national community did not confuse "freedom of religion with freedom from religion" (*Intentions*, 100). The Framers, "would not wish to live in a society that in no way identifies itself as a Christian community, which in its impious political character would invite the wrath of God. Neither did they wish to put their descendants in a situation where they cannot profess their Christianity in and through their work" (*Intentions*, 101). Thus, military chaplains; U.S. authorized missions to "civilize the Indians," "In God. We Trust" inscribed on currency, tax exempt status for churches, Sunday closing laws, Government sponsored days of prayer and thanksgiving, prayers in public schools, and state subsidies for religion are all consistent with constitutionally sanctioned quasi-establishment, through which the States were free to utilize public policy to nurture religious values, and religious values to formulate public policy, while the national government acquiesced and to some extent supported those policies.

Analysis of First Amendment jurisprudence regarding church and state not only reveals that post-WII constitutional law has deviated from original intent, but also the method and extent to which the nomocratic elements of the Constitution that were designed to secure popular control have been displaced to make room for teleocratic politics.<sup>17</sup> Having liberated themselves from the restraints of original intent, the Court then proceeded *ultra vires* to impose their teleocratic/ideological preferences on the States. In other words, the nomocratic Constitution established rules of engagement for political combat between factions, religious factions included; by ignoring original intent the Supreme Court declared victory for: proponents of secularization by judicial decree. Of course the activist Court will utilize the Constitution in order to claim legitimacy, with some justices (due to legal training and intellectual incompetency) unaware that the precedent they rely on is incompatible with the original Constitution. Nevertheless, the end result is the same. The role of the States in public policymaking has been significantly diminished. Because it clears the constitutional decks for the Supreme Court to substitute its teleocratic natural rights vision of justice for the more traditional biblical view,

we can expect ongoing policy innovations promoting the former at the expense of the latter. But, of course, this is only one part of the larger edifice of nation-building that moves us closer and closer to a unitary system of government. Other important parts of the structure include nationalistic interpretations of Congressional commerce powers and more variations of Fourteenth' Amendment selective incorporation theories.

Most of this nation-building at the expense of the States would have been neither politically nor constitutionally feasible had it not been for the actions and rhetoric of Abraham Lincoln, the primary effect of which has been to merge the Constitution with a teleocratic interpretation of the Declaration of Independence. Lincoln is at center stage of these developments:

#### IV

Indisputable legitimacy for teleocratic based judicial activism (both the conservative and liberal varieties) must hinge on an explicit constitutional provision and/or a teleocratic mandate sanctioning constitutional' amendment by the federal judiciary. The Constitution lacks language that could be construed in either way; in fact, Article V establishes procedures for amending.. the Constitution, thereby implicitly precluding constitutional amendments by an activist Supreme Court. Nevertheless, a way has been found to circumvent the restrictive language of the Constitution; by commingling the Constitution with the Declaration of Independence the rhetorical language of Declaration has substantially enhanced the role' of the federal judiciary. Under this commingling model the Supreme, Court is the guarantor fore the self-evident "Truths" of equality and unalienable rights. This qualification alters the democratic nature of the Constitution by providing the requisite vague language to accommodate the policy preferences of judicial activists.<sup>18</sup> Has American constitutional development experienced such *a coup de theatre*, and if so, by what means? To answer these questions Bradford directs our attention to Abraham Lincoln, sardonically identified as "Father Abraham."

Bradford's historical analysis makes clear that a series of events,

with Lincoln at the center, made such a *coup* possible. Lincoln's importance stems not simply from his rhetoric, but from a convergence of his rhetoric, role as commander-in-chief, the Northern military victory, and his assassination. Within the context of American political mythology, the assassination facilitated the martyrdom of Lincoln, elevated his political rhetoric to the status of holy writ, and justified the Northern cause on messianic terms.<sup>20</sup> The significance of the military victory is saliently noted by considering the unthinkable, a Confederate victory. There is nothing like success to confirm the righteousness of the victors' cause and the methods used to achieve it. But it is Lincoln's rhetoric that is most interesting and important, because it laid the theoretical tracks for the subsequent derailment of the original constitutional order.<sup>21</sup>

In the wake (and political security) of a major military victory, President Lincoln outlined his political eschatology in the Gettysburg Address. This Periclean address is a masterpiece of American political rhetoric and marks a watershed of U.S. constitutional development, legitimizing the view that the Declaration has constitutional status. It postulates as settled significant questions that were anything but settled, or even worse, settled in the opposite direction. Questions such as, did the Declaration establish a new nation, or was it simply the unanimous declaration of thirteen sovereign States? Were these sovereign States (or nation) "conceived in Liberty" and destined to grow into a nation "dedicated to the proposition that all men are created equal," and if so in what manner and to what extent? What is the status of this "proposition" vis-à-vis the Constitution and the federalism that it was designed to secure? Does the "new birth of freedom" made possible by a Northern military victory justify the carnage of "a great civil war," past and forthcoming? And specifically, what did Lincoln mean by "to be dedicated to the unfinished work" and "the great task that remains before us"? Presumably he was not simply referring to achieving an end to the war, as is indicated by the wording "that *that* nation might live" as opposed to "*that this* nation might live." The nation Lincoln had in mind was yet to be established (the "new birth of freedom"), but once established the fulfillment of the "proposition" to which he was dedicated was

assured. Bradford designates Lincoln's proposition and its implementation as the "heresy of equality."

Because it runs counter to myths that shield Lincoln the politician from public scrutiny, which in turn protects the teleocratic agenda, Bradford's view of Lincoln is disputatiously revisionist. Nevertheless, Bradford was steadfast in his analysis of Lincoln the politician, stressing Lincoln's break with the original Constitution and the consequential innovations on and departures from the traditional constitutional order. According to Bradford, Lincoln changed the "character of our country":

Of course, nothing that we can identify as part of Lincoln's legacy belongs to him alone. In some respects the Emancipator was carried along with the tides. Yet a measure of his importance is that he was at the heart of the major political events of his era. Therefore what signifies in a final evaluation of this melancholy man is that many of these changes in the country would never had come to pass had Lincoln not pushed them forward. Or at least not come so quickly, or with such dreadful violence. I will emphasize only the events that he most certainly shaped according to his relentless will, alterations in the character of our country for which he was clearly responsible....The major charges advanced here, if proved, are sufficient to impeach the most famous and respected of public men (*Remembering*, 143-144).

The significance of Bradford's attempt to expose as a political fraud the leading prophet of the teleocratic Constitution should not be overlooked. By discrediting Lincoln, he questions the legitimacy of the increasingly dominant national supremacy.

Bradford's indictment of Lincoln is threefold: First, Lincoln's commitment to the abolitionist movement was primarily a partisan tactic to destroy the ' Democratic Party *in* the North, with the northern based Republican Party being catapulted into national prominence, thereby enhancing prospects of electing the first Republican (and sectional) president. Lincoln's "assertion that the equality clause of the Declaration of Independence was *the father*

*of all moral principles among us*" and its contrived application to the enslaved African-Americans provided the constitutional and moral legitimacy he needed to effectively drive a partisan wedge between the Northeast, South, and to a lesser extent the *West* (*Remembering*, 145). Lincoln's personal opinions about and his actual public policies towards African-Americans are evidence, according to Bradford, that partisan politics were behind Lincoln's high-sounding rhetoric; *in other words*, there was a wide divide between his rhetoric and his *policy* agenda that cannot be simplistically explained away by rationalizing Lincoln as a man ahead of his , time and constrained by insurmountable political, and social obstacles. His claim that a nation half free and half slave cannot endure in spite of an historical record to the contrary, the Black Codes of his home state Illinois, the racist policies of his northern electoral base, his support for recolonization of African-Americans to Liberia, the selective emancipation, and the plight of freedmen overall (Lincoln, at the Hampton Roads Conference in 1865, is quoted as saying they can "root, hog, or die") give an empty ring to his rhetoric of universal human rights. As Bradford poignantly remarked, that For the sake Of such vapid distinctions he urged his countrymen to wade through seas of blood" (*Remembering*, 144-145). Although destroying the northern wing of the national Democratic Party was a shrewd and successful campaigning tactic, what about the ethical ramifications of his shrewd political maneuvers? Lincoln was well aware that northern and southern Democratic partisan ties were instrumental in keeping the Union intact, but yet methodically cut away; at those ties for Republican partisan , gains, pushing the country incrementally closer to the bloody experience of war.

Second, in light of his alleged demagoguery, can one reasonably assume that Lincoln was zealously obsessed with the pursuit of power for a just cause and the "seas of blood" that flowed during his tenure were justifiable consequences of the "new birth of freedom" he alluded to in the Gettysburg Address? Or, was there a more mundane motive behind Lincoln's policies with the ensuing war unexpectedly getting *out of hand*?<sup>22</sup> There can be little question that Lincoln and his Republican supporters had a mundane public policy

agenda that overshadowed the rhetoric and legacy of their tenure in power. That agenda was Hamiltonian, insofar as it required a substantial transfusion of power from the States to the national government, in order for the latter to more effectively promote the pace of development towards a commercial empire and the corresponding opportunities for personal and national gains that such rapid commercial development entailed. The politically contentious issues of internal improvements, the national bank, and protectionism made giant strides on behalf of national supremacy during the Lincoln Administration. In fact, the Gilded Age can be traced to the political economy of those Republicans who controlled the national government in the early 1860s:

It is customary to deplore the Gilded Age, the era of the Great Barbecue. It is true that many of the corruptions of the Republican Era came to a head after Lincoln lay at rest in Springfield. But it is a matter of fact that they began either under his direction or with his sponsorship. Military necessity, the "War for the Union," provided an excuse, an umbrella of sanction, under which the essential nature of the changes made in the relation of government to commerce could be concealed (*Remembering*, 146).

Lincoln's rhetoric in the Gettysburg Address reveals the importance of a Republican Party committed to the fulfillment of Hamilton's dream, of a commercial empire. The emergence of the commercial empire within the conceptual framework of Lincoln's incorporation of the Declaration into the Constitution (or vice versa), would result in the political millennium he alludes to in the Gettysburg Address. And Lincoln had good reason to be optimistic. During the Republican Party's bellum and postbellum dominance, the use of government as a means towards commercial expansion and personal aggrandizement was shifted into overdrive.

And third, Lincoln's expansive interpretation of presidential powers made him the most imperial president in American history, thereby setting a dangerous precedent for predisposed successors. The incarceration of approximately twenty thousand political pris-

oners, the closing of over three hundred newspapers, the interruptions of state legislatures, the blockade of the South, the unilateral suspension of habeas corpus, explicit and implicit defiance of the Supreme Court, the sanctioning of the creation of West Virginia, the property seizures, and the electioneering/voting irregularities have all been rationalized as necessary war measures. However, his administration's rationalization would ring even more hollow if the stated purpose was partisan aggrandizement. Bradford believes that there is ample evidence against Lincoln to support this charge. Consider Bradford's claim that Lincoln's partisan manipulation of commanders in the fields of battle was motivated by partisan politics. The evidence indicates that "In this role the image of Lincoln grows to be very dark-indeed, almost sinister....Thousands of Northern boys lost their lives in order that the Republican Party might experience rejuvenation, to serve its partisan goals" (*Remembering*, 150-151).<sup>23</sup>

Bradford's scrutiny of Lincoln must be distinguished from the issue of race. His censure of Lincoln is not that he necessarily went too far in adjusting the plight of African-Americans, but that his rhetoric was that of the demagogue, using a subject class for expedient political gain, bypassing the nomocratic constitutional process that, perhaps, could have more effectively dealt with the peculiar institution and its longterm aftermath. The country as a whole, African-Americans included, would have been better served had the South been permitted to resolve on its own terms the political, social, economic, and religious dimensions associated with the slavery issue.<sup>24</sup> But an incremental approach to the peculiar institution was not conducive to the Republican Party's interests in splitting the Democratic Party along sectional lines, thereby incorporating the Northern remnants into their own Republican ranks. In other words, Lincoln and his co-Republicans were disingenuous on the slavery issue in order to achieve implementation of their economic (as opposed to social) public policy agenda:

But the point is that Lincoln's commitment was precisely of the sort that the North was ready to make-while passing legisla-

tion to restrict the *flow* of Negroes into its own territories, elaborating its own system of segregation by race, and exploiting black labor through its representatives in a conquered South. Lincoln's double talk left part of the country with a durable heritage of pious self-congratulation....Left it with the habit of concealing its larger objectives behind a facade of racial generosity, of using the Negro as a reason for policies and laws which make only minimal alterations in his condition; and also with the habit of seeming to offer a great deal more than it is truly willing to give (*Remembering*, 145-146).

The rationale behind Republican policies towards African-Americans, North, South, and West, becomes discernible, if, and only if, we are willing to discard our "mass hypocrisy" towards Negroes. "Or to put matters another way, it would be well if we learned to say no more than we meant. For the alternative is to produce in the targets of our beneficence the kind of anger that comes with the receipt of a promissory note that contains, as one of its terms, the condition that it need never be paid. Better than this would be a little honest dealing, whatever its kind" (*Remembering*, 146). Current difficulties with race in America have many of their roots in the politics of Lincoln, and if we are to formulate effective remedies for these difficulties we must begin with the historical, as opposed to the mythological, politics of Lincoln and his co-Republicans.

## V ..

Lincoln's nationalism legacy is most discernible in constitutional law, especially the as manifested in the judicial phenomenon of selectively incorporating provisions of the Bill of Rights into the Fourteenth Amendment. Because Fourteenth Amendment due process and equal protection standards apply to all the states equally ("no State shall..."), whatever the Supreme Court decides is a Fourteenth Amendment protection automatically standardizes the policies of all the States in regard to that protection, thereby displacing with national standards what could otherwise be State and regional diversity. Thus, the uniformity of public policy that



results from selective incorporation is one answer to Lincoln's "house divided against itself" dilemma, insofar as state diversity is supplanted with national standards. The virtually unrestrained power of Congress to regulate the economy literally overwhelms state economic prerogatives.<sup>25</sup> However, in the absence of Congressional "necessary and proper" and "regulate interstate commerce" (Article I, section 8) powers, state police power prerogatives have been somewhat more resistant to judicial nationalization, until, that is, the Twentieth Century judicial distortions about the Fourteenth Amendment's historical meaning.

The "hue and cry over equality of opportunity and equal rights leads, *a fortiori*, to a final demand for equality of condition" (*Guide*, 30), and only the national government has the jurisdictional range and means to logistically pursue and implement equal opportunity, equal rights, and equality of condition. So once the constitutionality of these national goals is secured, the national government can proceed to run roughshod over the reserved police powers of the States. This is not to say that Bradford challenged the historical Fourteenth Amendment due process and equal protection of the law guarantees;<sup>6</sup> but he did challenge the constitutionality and prudence of an "equality" based national public policy agenda. When Publius wrote in *The Federalist* #10 that protecting "the diversity in the faculties of men..! is the first object of government," he was expressing a truism about which Bradford concurred. The national government was not constitutionally designed to be instrumental in an attempt to achieve equality; such attempts are destined to failure because people are naturally diverse and unequal in their faculties. The only remotely obtainable equality is that of condition, because, as Bradford points out, you cannot have equal opportunity between unequals; those with different types and degrees of talents do not and can not have equal opportunities. Equal opportunity is only possible among equals:

Let us have no foolishness indeed. Equality as a moral or political imperative, pursued as an end in itself—Equality, with the capital "E"—is the antonym of every legitimate

conservative principle. Contrary to most Liberals, new and old,<sup>27</sup> it is nothing less than sophistry to distinguish between equality of opportunity (equal starts in the "race of life") and equality of condition (equal results). For only those who are *equal* can take advantage of a given circumstance. And there is no man equal to any other, except perhaps in the special, and politically untranslatable, understanding of the Deity. *Not intellectually or physically or economically or even morally. Not equal!* (*Guide*, 29).

Lincoln's rhetorical commitment to "Equality" and the corresponding necessity of a strengthened Union was espoused in a 4 July 1861 speech that epitomizes his usefulness to contemporary egalitarians. As quoted by Jaffa, "Lincoln defined the cause of the Union...to maintain in the world that form, and substance of government, *whose leading object is*, to elevate the condition of men—to lift artificial weights from all shoulders—to clear the paths of laudable pursuit for all—to afford all, an unfettered start, and a fair chance, in the race of life."<sup>28</sup> Lincoln's rhetoric provides much needed umbrage for those who want the force and might of the national government to be put into motion in the quest for equality, such as contemporary egalitarians. To appreciate Bradford's consternation with and egalitarians' praise for Lincoln, one needs only to consider how these "artificial weights from all shoulders" are to be lifted. The mere attempt would require an instrumental national government of elites, functioning as Platonic guardians at war with the original federal constitutional arrangement that was not designed to accommodate social engineering by national elites. Moreover, if Bradford is correct and equal opportunity is one step removed from equality of condition, then the cause of Lincoln's Union is a far cry from Publius' "first object of government" to "protect the diversity of faculties in men", "from which the rights of property originate"<sup>29</sup> (*The Federalist*, #10).

Bradford's understanding of the American commitment to equality is, once again, grounded in historical facts and not abstractions. He cautioned against taking the Declaration's "all men are

created equal" phrase out of its historical and textual contexts. The former makes evident the nomocratic origins of the Declaration, through which everything in the "sequence appeals to the *consensus gentium* of sensible men (common reasonableness but not philosophy) and to English law" (*Guide*, 37). Americans were pressing for their rights as English subjects and wanted to be treated on an *equal* basis with their English counterparts. In essence, the American Revolution was a political response to a constitutional crisis within the English Common Law tradition. The textual context of the Declaration makes clear that the Americans perceived King George III as the innovator at war with tradition. Thus, "these commonwealths must file an official bill of divorcement, designed to the pattern of a countersuit *in* an action already initiated on the other side" (*Guide*, 39). The same holds true for the South's 1860-65 reaction to Lincoln's "cause of the Union"; the Southern States' secession documents were consistent with this common law tradition.

However, if Lincoln and his latter-day disciples, have their way in asserting that the Declaration has constitutional status, and that its all men are created equal" phrase is a constitutional mandate for the national government to ameliorate circumstantial inequality which presumably obstructs equal opportunity, at that point the constitutional order will enter into a full-blown teleocratic paradigm. All nomocratically generated policies would have to be judicially tested in the crucible of the "Cult of Equality," a standard that makes a nomocratic constitutional order virtually impossible. As we have been instructed, Americans do not involve themselves in the political process; in the pursuit of equality, because of the connections subsisting between their passions, opinions, and self love,<sup>30</sup> If Publius is correct, then Lincoln and Jaffa must be erroneous in their assertions; that equality is the central principle of our political culture. By raising these issues Bradford calls into question the motivations behind the Republicans' 1861-1865 war policies, judicially sponsored *sub rosa* egalitarianism, and the pivotal role of Fourteenth Amendment judicial activism, all of which are instrumental in overturning the original federal model premised upon

states' rights. The issue of constitutional federalism aside, the establishment of a unitary system of government "dedicated to the proposition that all men are created equal" raises an important collateral issue: Can a distorted version of the Declaration's equality proposition be realized? Bradford thinks not: "Trying to preserve property, secure tranquility, and promote equal rights, all at the same time, insures that none of these purposes will be accomplished. And insures also a terrible, unremitting tension, both among those in power and among those whose hopes are falsely raised" (*Guide*, 53).

According to Bradford, the "unremitting tensions", are just now beginning to intensify. Even though, as the nomenclature suggests, Reconstruction involved the antebellum regime and its postbellum replacement, the task of identifying an approximate date and the individuals responsible for the new regime is much more elusive and not necessarily proximate to the latter half of the Nineteenth Century: Bradford concluded that for fifty years judicial interpretations of the postbellum Amendments and civil rights laws were, in their cumulative effect, consistent with the "old antebellum Constitution....Despite the alteration that they made in the balance of American federalism, the Reconstruction-amendments and early civil rights laws did not change the Constitution of the United States into a teleocratic instrument: a law with endlessly unfolding implications in the area of personal rights" (*Intentions*, 104). Some radical Republicans made rhetorical overtures about converting the U.S. Constitution into a "teleocratic instrument," but were "successfully resisted by individuals who doubted that such proposals could be reconciled to the American tradition of limited constitutional government" (*Intentions*, 106). Substantial change to the American tradition of limited constitutional government was to come later, when Reconstruction was reconstructed with "inventions and concoctions of the High Court" (*Intentions*, 105). It is the ongoing judicially orchestrated reconstruction that relies so much on Lincoln's teleocratic rhetoric for its constitutional legitimacy.

Bradford substantiates his understanding of what can be called protracted Reconstruction by analyzing events as a sequence, an order in time as well as causality; (*Intentions*, 108). As manifested in their constitutional amendments, statutory enactments, and Supreme Court decisions, the mainstream Reconstruction Republicans who dominated American politics did not have to resort to teleocratic justifications to pursue and implement their public policy agenda; due to the fact that they controlled the government, nomocratic processes effectively served their public policy agenda. The XIII, XIV, and XV Amendments were tactical instruments in the Republican Party's strategic arsenal to maintain national political hegemony. The historical evidence is irrefutable that section one of the Fourteenth Amendment was originally designed to protect the 1866 Civil Rights Act from judicial nullification and congressional repeal. The act stipulates that "inhabitants of every race shall have the same right to make and enforce contracts, to sue, to be parties and give evidence, to inherit, purchase, lease, sell, hold and convey personal property, and to full and equal benefit of all laws and proceedings for the security of persons and property" (*Intentions*, 124): The amendment was not ratified as a conduit of rights to be tapped into at the Court's discretion in order to overturn American federalism; its ratification was simply the attempt to secure the extension of existing rights to a recently recognized class of citizens. Not even the touchstone of judicial activism, the Fourteenth Amendment, confers the right to vote to the freedman. It merely reduces the basis of representation in proportion to the number of freedmen whose voting rights were being abridged (Indians not taxed and ex-Confederates excluded). The amendments were not the products of teleocratic aspirations for unspecified abstract rights of man, through which the U.S. Bill of Rights were to be made applicable to the States, but rather designed to protect blacks from the type of discrimination that precluded them from enjoying existing constitutional guarantees and being loyal Republicans. Nevertheless, 20th Century Fourteenth Amendment selective incorporation theory rejects the obvious for the ideologically expedient, in order to make way for teleologically based constructions: "The modern rejection of

the Court's 1875-1925 position on personal rights and equal protection has been the cutting edge in the transformation of the United States Constitution into an ostensibly teleocratic fundamental law. These readings have become the models for other distortions dealing with things beyond the freedman and his descendants" (*Intentions*, 129-130).

The "things beyond" that Bradford had in mind are manifested by the scenario of constitutional federalism being trumped by the application of the Lincolnian equality proposition and contemporary Fourteenth Amendment jurisprudence. The examples are legion. Simply consider state policies on religion; pornography, firearms, criminal justice, privacy, and elections; all of which have felt the impact of judicial distortions about what is constitutionally national and state public policy prerogatives. Bradford's concern over the power shift from the states to the national government is not trivial. At issue is the very essence of self-government constrained by the rule of law. Lincoln's teleocratic rhetoric provides much needed aid and comfort for liberal reformers impatient with an essentially conservative nomocratic constitutional arrangement premised upon popular control and popular consent within the respective States. As was the case in Lincoln's day, nomocratic constitutionalism has its deepest roots in Southern soil, therefore, it is to the South that we must turn if we are to understand the course of constitutional developments and whether a recovery of the original Constitution is feasible and, for that matter, wise.

## VII

Bradford spoke eloquently for the South,<sup>31</sup> not to the hostile exclusion of the rest of the nation, but on the behalf of Southern and national interests. He was convinced that the best hope for an enduring South and a constitutional national republic hinged on the survival of Southern constitutional principles.<sup>32</sup> Bradford's Southern conservatism is neither atavistic nor nostalgic; it is the product of thoughtful analysis grounded in experience. Consider his remarks about the Vanderbilt Agrarians' analyses of political, social, economic, and cultural events as they pertained to the South specifically

and the nation generally.<sup>33</sup> On the occasion of the fiftieth anniversary of *I'll Take My Stand*,<sup>34</sup> Bradford wrote:

What, then, shall be our testimony? It is obvious that fifty years of policy and practice contrary to the Agrarian injunction has proven the impossibility of culture "poured in from the top," And though modern American education is as helpless in the role of guardian for civilized values as John Gould Fletcher<sup>34</sup> and his friends, foresaw, recent scholarship has provided a rhetoric, a historical and dialectical basis for the analysis that in the, original manifesto often rested on custom, instinct, and acute conjecture. The American civil theology is now revealed as the absurdity which once only the South knew it to be. The politics of ends as opposed, to means has led to riot and ruin. Megalopolitan industrial centers are clearly on their way to being moribund; nor is it impossible for us to imagine our entire commercial system as the sort of elaborate concrete desert envisaged in Walker Percy's *Love in the Ruins*. Neither can we believe that any new display of what our fathers called "energetic government," performed in the name of some abstract theory of individual human rights, is ever likely to give to the spirit of man the kind of guarantee secured by the old corporate identity of the South as extended family....I have borrowed from Michael Oakeshott the distinction between the nomocratic regime and the teleocratic. Ours is of the former kind; at whatever costs, we must be determined to keep it so. For the alternative is barbarism, though called by some other high-sounding euphemistic names.'

Bradford was convinced that the South's nomocratic method of formulating public policy was being undermined by teleocratic principles poured in from the top by an activist Supreme Court, and that the consequences of that judicial activism have been disastrous. If the Court is allowed to continue unimpeded the South, as the locus of conservatism, would soon cease to exist, with the end result being the triumph of barbarism over the entire nation, i.e., the arbitrary rule of men over the rule of established law. His clarion call

to keep the South's conservative nomocratic constitutionalism intact transcended the South; it was a non-ideological summons to protect the Republic from the sort of centralization that historically results in oligarchy or tyranny (the personification of barbarism), both of which are anathema to constitutional federalism. For Americans, the means for avoiding tyranny is compliance with the nomocratic Constitution which was designed to procedurally curtail the governing opportunities of national elites, or, to be more precise, would-be tyrants.

Because it inherently adheres to established customs and laws, in contradistinction to teleocratic commitments in which the ends justify unconstitutional means, Southern conservatism provides a useful benchmark in measuring the course of American constitutional development. Consider a historical example, the unwillingness of Southern states to plan, finance, and construct the internal improvements that Northern States were busily pursuing. Even when the series of antebellum Southern commercial conventions made the solid case that internal improvements were in the best 'economic' interest of the region, Southerners by and large were uninterested. A commitment to empire building presupposes a teleocratic vision of society and government's role in fulfilling that vision. Southerners had a vision of society and government's role, but both were grounded in the practical as opposed to the unfamiliar *ought*.<sup>36</sup> Thus, their tolerance for modifying the Constitution in order to accommodate government planned and financed economic projects was constrained by their commitment to the society with which they were familiar and devoted, and their conservative reluctance to expand the powers of government. The most effective way to secure society as they knew it was to limit the powers of the national government through a federal system that deferred to the policy preferences of the respective States, in contradistinction to an elitist unitary model through which policy innovations could be pushed forward by a strong centralized national government, the policy preferences of the States notwithstanding. Southerners were realists about human nature and political power, and trusting neither they were very cautious about



combining the two in such a way that potentially placed their regional political, economic, social, and cultural arrangements at risk.

From outside the region this may appear to be a teleocratic component to Southern constitutional principles, insofar as the commitment to an established way of life is an overriding concern. But the South's commitment was not the product of ideology; it was patrimonial, handed down from generation to generation. Perhaps this does, in most instances, result in a *conservatism* that is inclined to sustain the *status quo*, but not necessarily. For example, the pro-slavery "positive good" rhetoric of Hammond, Bledsoe, Fitzhugh, and others, appears to be teleocratic. However, these arguments were reactions to teleocratic challenges by Northerners. Southern pro-slavery arguments were responses in kind, responses that would never had been articulated had Northerners not forced the issue. But even the pro-slavery arguments were shielded behind the assumption that slavery was good for Southern society, the African-Americans included. Slavery was a legal, social, and cultural reality in the Antebellum South, and continued to be de facto so for many generations after Appomattox, circumstances that confirm Southern conservatism. But one should not automatically assume that Southerners were incapable of resolving the slavery issue on their own terms, through their own nomocratic governing processes. Not only were there strong currents in favor of institutional slavery's continuation, but for manumission too. This is evidenced by the facts that the G.S. Constitution (1861-1865) allowed each state to resolve the slavery issue on their own terms, allowed admission to the Confederacy of free States, and sanctioned C.S.A. legislation that granted freedom to slaves as compensation for service in the C.S.A. military. Could Southerners have unilaterally, at their own pace, and without the devastation of the war ended slavery and still be conservative? Bradford did acknowledge Southern conservatism's "various incarnations and the fact that there are many durable features of the Southern configuration which are not persistently conservative in their impact on the region's behavior-features such as populism, a warlike disposition, a love of leisure, etc" (*Reactionary*, 116). The

answer would have to be a qualified yes, based upon the circumstances and pace of such a fundamental change (as is evidenced by New Orleans, where freedmen had incrementally tied into the the commercialism of the region to such an extent that many of them were prosperous slave owners). As Bradford's political credo stipulates, *supra*, contingencies arise that require modification of the traditional social order. Southerners confronting the peculiar institution on their own terms could have been one such contingency eventually resulting in fundamental changes in regard to this specific area of public policy, without an abandonment of their overriding commitment to tradition. It was outside Northern interference that toughened their resolve on the slavery issue and interrupted what might have been a nomocratic, albeit protracted, Southern solution to a national problem.

The same could be said about the long term impact of Supreme Court teleocratic activism. Bradford attributed past and present Southern resistance to outside interference to their commitment to corporate liberty, acknowledged as the most fundamental *component* of Southern culture and defined as a community's prerogative to govern itself according to what it perceives to be in its best interest, in contradistinction to forced submission from external interests. Corporate liberty has deep roots in American politics. It was the foundation from which colonial Americans viewed the 1776 *Unanimous Declaration of the Thirteen United States of America* and Southerners four score and four years later when they opted for secession. The commitment to corporate liberty emanates from the presupposition "that man is a social being, fulfilled only in the natural associations built upon common experience, upon the ties of blood and friendship, common enterprises, resistance to common enemies, and a common faith" (*Reactionary*, 140), the very definition of *societas*. Government exists for the sake of *societas*, not to remake it according to some ideological blueprint. As Bradford insightfully reminds us, minimal government interference into the established relations of *societas* is not the equivalent of minimal checks on social interaction in which people are free to brutalize and oppress one another. Religion, specifically Protestantism, is the

dominant force that keeps anti-social (i.e., un-Christian) behavior in check. The "presence of a powerful (if pluralistic) Protestant establishment" in the South provides the parameters of acceptable behavior. To a significant extent Southern churches functioned as the socializing agents. One merely has to consider the role of churches in black and white southern communities to realize their significance. Moreover, public policies that are not sanctioned by the Southern brand of Protestantism have serious de facto implementation difficulties in the region, as gay rights, abortion, and gun control controversies make clear.

For individuals the degree and intensity of social feelings among the different levels of corporate life vary, ranging from the family, the neighborhood, city, county, state, nation, and international alliances. Social feelings would be the strongest at the family level and weakest at the more remote international level. Each level is tied to the others, but those ties are consensual and not coercive. The neighborhood is a community of families, the city is a community of neighborhoods, the county is a community of neighborhoods and cities, the state is a community of counties, the nation is a community of states, and international alliances are communities of nations. The ties that bind the different levels together are not commitments to abstractions, such as Lincoln's *the Union at all cost*. Rather, the ties are grounded in acknowledged common interests that are sustained as the best practical way to promote the welfare of the interconnected communities. This is why Southerners consistently adhered to states' rights and secession and why the Confederacy left the slavery issue to the States. States' rights allowed a State to avoid a coercive national will, with secession providing States with a way out of a national association that proved to be counterproductive to its interests. Not even the republican method of uniting communities together was supported in the South because of its appeal as an abstraction. According to Bradford, the South continued to be republican "undogmatically, coincidentally republican, according to some notion of what is good for the regime, useful in protecting its cohesive force-but not abstractly republican, according to the authority of a principle to be honored, regardless of consequences"

(*Reactionary*, 127). The same was true for the South's commitment to the Union; when continued membership in the Union was perceived to be counterproductive, Southerners did what for them was logical and constitutional, they dissolved the association through secession.

A clearly identifiable Southern version of *societas* began to take shape circa 1800; prior to that time the North and South shared common experiences. However, in the 1800s the rapid growth in Evangelical denominations "had sealed off the South from the influence of Yankee dialectics, values understood apart from their embodiment in a specific order" (*Reactionary*, 126). "Yankee dialectics" led Northern politics in one direction, while evangelism anchored Southern politics to a somewhat static biblical tradition. For churches to play such a major role in the lives of Southerners is perfectly consistent with Southern conservatism. First, a Southerner's religion *is* by and large inherited. Second, it is not the product of abstraction, but grounded in divine revelation. And third, it is not coercively binding; one may, if you will, secede from one church to another or to the privacy of one's home with or without patrimonial bible and tradition in hand. For Southerners the First Amendment guarantees of separation and free exercise were necessary, not to make the national government hostile to the influences of religion on state public policies, but for preventing the type of national denominational dominance that the Church of England exercised in Great Britain and her former colonies. The historical First Amendment arrangement between church and state precluded government from taking over the role of denominational religion; not to mention governmentally endorsed secular-humanism, both of which are anathema to Southern conservatism's opposition to innovation, abstraction, and coercion. To reiterate, nothing strikes at the core of Southern corporate liberty and the *societas* from which it emanates as does the Supreme Court's contemporary policy of separation of church and state, a policy that more than any other "judicial concoction" will facilitate remaking the South in the image of Twentieth Century "Yankee dialectics."

## VIII

In conclusion, Professor Bradford's constitutional theory is, indeed, reactionary to the extent that the original Constitution is axiomatic to his scholarship. Because the original intent of the Framers can be discerned by studying the drafting and ratification processes of the U.S. and state constitutions, he walks us through those events. Thus, with the skill of the ablest scholar and rhetorician, he draws from literature, history, and politics elements of America's constitutional tradition, a tradition premised upon "the determination to live free and to secure that freedom to an always vulnerable society" (*Intentions*, 3). If his analysis is sound, then the eventual impact of teleocratic jurisprudence will have a profound negative impact on traditional American constitutionalism and the freedom it was designed to secure. In his own words, "there is an organized campaign set in motion by the highest levels of political leadership, by the courts, the media and universities to swallow up the Constitution in a simplistic reading of the Declaration, to conflate the two documents, confuse their purposes, and employ the combination to transform the meaning of Union into something instrumental in its promotion, through the agencies of government, a wide variety of causes which seem, for the moment, worthy: the most cunning formula for political tyranny ever devised by the mind of man" (*Intentions*, 220). In other words, under the guise of expanding the application of fundamental rights, the prerogatives of popular control and consent within the context of American federalism are being undercut by national elites, who in the process violate not only the rule of law, but also the right of Americans to be self-governing.

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## NOTES

1. This is not an overstatement. Even Justice Powell acknowledged that "A unique feature of the United States is the *federal* system of government guaranteed by the Constitution and implicit in the very

name of our country. Despite some genuflecting in the Court's opinion to the concept of federalism, today's decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause" (*Garcia v. San Antonio Metropolitan Transit Authority* 469 U.S. 559 (1985)); according to Justice O'Connor, "Because virtually every state activity of a private individual, arguably 'affects' interstate commerce, Congress can now supplant the States from the significant sphere of activities envisioned for them by the Framers" (*ibid.*, 585). And there is also the impact of "selective incorporation," to be discussed *infra*.

2. Garry Wills, "The Words That Remade America," *The Atlantic Monthly*, June 1992, p. 68.

3. Bradford was an authority on such matters, as is evidenced by his co-authored multivolume *Jonathan 'Elliot's Debates In The Several State Conventions On The Adoption Of The Federal Constitution*, James McClellan & M.E. Bradford, eds. (Richmond, VA: James River Press) and his *A Worthy Company: The Dramatic Story of the Men Who Founded Our Country*.

4. Bradford denotes the luminations of Robert R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800*, 2 vols. (Princeton University Press, 1959, 1964), Bernard Bailyn, *The Ideological Origins of the American Revolution* (Harvard University Press, 1967), and Henry Steele Commager, *The Empire of Reason: How Europe Imagined and America Realized the Enlightenment* (Anchor, 1977) as "radical versions of the original American politics, with their emphasis on equality and liberty in the abstract (and their presumption of a great break with our European past) follow from an excessive concentration upon the enthusiasms of a few articulate philosophers of the closet, upon offhand remarks and peripheral figures, thus ignoring the fact that things assumed in a given era or community are not often defended in print. There is no credit to be had from stating the obvious—unless the obvious is in real danger of being misunderstood, or is under serious attack. These gentlemen are greatly confused concerning the truth about our early history. And their confusion

threatens what remains intact from an originally wholesome political inheritance" (*Remembering*, 39).

5. One merely has to look at the table of contents of Bradford's books to appreciate the magnitude and range of his penetrating analysis.

6. For an excellent treatment of American political inquiry, see Donald S. Lutz, *A Preface To American Political Theory* (Lawrence, Kansas: University Press of Kansas; 1992); especially Chapter One. As Lutz points out, political theory may be used for ideological purposes, but ideology is not political theory (*ibid.*, 13).

7. This is the Aristotelian notion of forensic rhetoric, understood by Bradford to be dealing "with the merits or demerits of a course of action already pursued to its conclusion. It aims to judge after the fact and to assign praise or blame" (M .E. Bradford, "A Firebell in the Night: The Southern Conservative View," *Modern Age* [Winter 1973], p. 14, endnote 7).

8. See *The Federalist Papers*, #10.

9. For doubters I recommend Ronald Dworkin's *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (New York: Alfred A. Knopf, 1993). Dworkin also acknowledges two distinct constitutions, a constitution of principle (*i.e.*, teleocratic) and a constitution of detail (*i.e.*, nomocratic). Dworkin does not hesitate in applauding those justices who adhere to the constitution of principle, referring to supporters of the constitution of detail (Justices Scalia, Rehnquist, and Thomas) as unintelligent and unimaginative revisionists (see *ibid.*, chapter five, 118-147).

10. Bradford used the word "comic" in the sense that Madison should have known better, especially when the intended or unintended effects of his actions could have been disastrous; for an explanation the word's meaning; see H.W. Fowler, *A Dictionary of Modern English Usage*, 2nd ed. (New York: Oxford University Press, 1965) p. 96.

11. See Glenn A. Phelps, *George Washington and American Constitutionalism* (Lawrence, KS: University Press of Kansas, 1993), chapter 4. ,

12. See *The Federalist Papers*, #10.

13. The range of Bradford's scholarship on the lives of the Framers is second to none; based upon his erudite analysis, I am convinced that his numbers are reliable. See *his A Worthy Company* (Westchester, IL: Crossway Books, 1982).

14. *Lemon v. Kurtzman*, 403 U.S. 602, 613.

15. Quoting James McClellan, Bradford refers to *this* arrangement as quasi-establishment: "[I]t would appear there were basically three patterns of church-state relations in late eighteenth-century America: quasi-establishment of a specific Protestant sect, as seen in most of New England; quasi-establishment of the Protestant religion, as seen throughout the nation; and the disestablishment of all religion, as seen in Rhode Island and Virginia" (96). Quasi-establishment usually took the form of financial support for churches without the required "credal acquiescence to the faith" (95-96).

16. The "wall of separation" was elevated to constitutional status in *Everson v. Board of Education of Ewing Township*, 330 U.S. 1 (1947).

17. It is significant that the Supreme Court does consider secular-humanism to be a religion without belief in the existence of God; see *Torcaso v. Watkins*, 367 U.S. 488 (1961).

18. The success of this transformation depends not only on the development of Supreme Court constitutional law, but also, and perhaps more importantly, through the status of the Declaration in our political culture. Regarding the latter, great gains have been made. Consider the 1991 edition of *The Constitution of the United States and The Declaration of Independence*, published by the Commission on the Bicentennial of the United States Constitution. In its foreward, former Chief Justice Warren Burger maintains that "This Constitution was not perfect; it is not perfect today even with amendments, but it has continued longer than any other written form of government. It sought to fulfill the promises of the Declaration of Independence of 1776, which expressed peoples' yearning to be free and to develop the talents given them by their Creator." In other words, the Declaration is the touchstone from which the Constitution is moved closer to perfection.



19. Bradford's reference to "Father Abraham" is not new. Perceived as their American Moses leading them out of slavery into the promised land of freedom, emancipated African-Americans initially made the biblical connection. But Bradford's meaning goes beyond that particular event to the realm of the theoretical, where an apotheosized Lincoln leads his followers from the nomocratic constitutional paradigm into a teleocratic one.

20. See the writings of Harry V. Jaffa, a devoted disciple of an apotheosized Lincoln, especially *Crisis of the House Divided* (Chicago, IL: University of Chicago Press, 1982) and *How to Think About the American Revolution* (Durham, NC: Carolina Academic Press, 1978).

21. The metaphor is applicable to Chapter V, "The Declaration of Independence: A Derailment," in Willmoore Kendall and George W. Carey's *Basic Symbols of the American Political Tradition* (Baton Rouge, LA: LSU Press, 1970). Regarding the authors' thesis, Bradford admitted that "Though I agree with Kendall/Carey that there is a distance between the Declaration and the Constitution of 1787, and that silence on equality in the latter reflects a conscious choice, I agree also with Professor Jaffa that the two are not in conflict" (*Guide*, 41). Nevertheless, Bradford is in agreement with Kendall and Carey that Lincoln, by distorting the meanings of and relation between the two documents, was instrumental in the derailment of the American political tradition.

22. Bradford agreed with historian Charles W. Ramsdell that Lincoln hoped for a military conflict, due to all the associated political and economic opportunities; however, the scale and extent of the conflict that ensued is another matter (*see Remembering*, 153-155).

23. Bradford attributed the loss of approximately one hundred thousand lives to Lincoln's partisan rejection of peace in 1864; the rejection was the result of partisan plans to sustain the Republican Party's political hegemony. (*Remembering*, 151)

24. Commenting on Robert W. Fogel's and Stanley L. Engerman's *Time On The Cross: The Economics of Negro Slavery* (Boston, MA: Little, Brown and Co., [1974]), Bradford wrote: "But the ability,

character, and acquired skills displayed by the slave in helping produce a prosperous and stable South are, his condition aside, a more durable inheritance than a hundred abortive rebellions or a thousand damaged mules. And, along with the evidence of slave family life, these qualities are not only a reason for ordinate pride but also an augury of good prospects yet awaiting him in the culture he helped to build" (*National Review*, "Time On The Cross: Debate," March 28, 1975, p. 341). See my *The Confederate Constitution of 1861: An Inquiry Into American Constitutionalism* (Columbia, MO: The University of Missouri Press, 1991) for a discussion about the constitutional issues at stake and the South's understanding of the principles of 1776 and 1789, an understanding which also could be interpreted as "an augury of good prospects" for African-Americans absent the War between the States. We will never know, and to maintain the contrary with absolutism is nothing more than intellectual arrogance. According to Bradford, "Blacks are sometimes Southern conservatives-even though they call it something else. But race, of course, continues to matter among Southerners, white, black and brown. We all know that Charles Roland of the University of Kentucky told us the truth about our world when he argued a few years ago that the color line still exists-though not in a way easily accessible to correction by statute or, exhortation" (*Reactionary*, 130).

25. See *National Labor Relations Board v. Jones & Laughlin Steel Corporation* 301 U.S. 1 (1937) for an important development in precedent that granted the Congress approximate plenary power to regulate interstate commerce.

26. Bradford agreed with Raoul Berger's conclusions in *The Fourteenth Amendment and the Bill of Rights* (Norman, OK: University of Oklahoma Press, ' 1989) regarding the historical account of the Fourteenth Amendment's due process and equal protection guarantees.

27. This chapter was in response to an old liberal, the neoconservative Professor Harry Jaffa; specifically his "Equality as a Conservative Principle," in *Loyola of Los Angeles Law Review*, VIII (June 1975), 471-505, subsequently included as chapter two in *How*

*to Think About the American Revolution* (Durham, North Carolina: Carolina Academic Press, 1978), 13-48. Professor Jaffa did not mince his words:

The idea of equality, as expressed in the Declaration, is the key to the morality of the laws of nature and of nature's God." It is this natural law which the Constitution-and the regime of which the Constitution is a feature-is designed to implement. The abandonment of the idea of Equality is perforce an abandonment of that morality and that constitutionalism. It is perforce the abandonment of the "ought" for the "is." It would be the abandonment of that higher law tradition which is the heart of that civility and that Conservatism-which judges men and nations by permanent standards. As we propose to demonstrate, the commitment to Equality in the American political tradition is synonymous with the commitment to those permanent standards. Whoever rejects the one, of necessity rejects the other, and in that rejection opens the way to the relativism and historicism that is the theoretical ground of modern totalitarian regimes ; (*ibid.* , 19).

Obviously, Jaffa applauds Lincoln's role in raising, then and now, the "Cult of Equality" consciousness.

28. *Ibid.*, 34 (emphasis not in the original).

29. Jaffa painted a veneer over the incompatibility between Lincoln's contrived "leading object" for the national government and Publius' "first object of government." He wrote: "[w]e saw that Madison reflected the doctrine of Equality, when he attributed the need for constitutional government, and constitutional morality, to the difference between men and angels. But he reflected no less when, in the tenth *Federalist*, he put as the "first object of government, the protection "of different *andunequal* faculties of acquiring property" (*ibid.*, 45). Jaffa's attempted reconciliation between Lincoln's and Publius' versions of the national government's primary responsibility is far from convincing.

30. See *The Federalist* #10.

31. One must be circumspect when referring to the South. The

South *is* not necessarily "solid" in all respects. There always has been and with increasing rapidity continues to be political, social, and economic diversity within the South. Nevertheless, the term does resonate with a solidarity that is not exclusively tied to the race question. Actually, the latter may be as much a product of what makes the South unique than vice versa, as is evidenced by the fact that Southern African-Americans are Southerners too. And according to Bradford's reading of Richard Beale Davis's *Intellectual Life in the Colonial South, 1585-1763*, 3 vols. (Knoxville, TN: University of Tennessee Press, 1978), "The South thought and acted in its own way before the peculiar institution was much developed within its boundaries" (*Imperative*, 118). For our purposes references to the South include those states of the former Confederacy that had the common experience of resisting what they perceived to be hegemonic national policies designed to subject them to Northern industrial, fiscal, and social interests; this states' rights political/constitutional mindset epitomizes Southern States' determination to be self-governing (see *The Confederate Constitution of 1861*, inter alia). As was the case with slavery in the antebellum South and civil rights thereafter, their common Confederate experience was a consequence and not the cause of the Southern political identity, although it certainly solidified that identity from perspectives inside and outside the region. Nevertheless, sectional disagreements over tariffs, internal improvements, western lands, slavery, commerce, civil rights, religion, abortion, and firearms have incrementally hardened Southern sectional identity, both within and outside of the South. But Bradford was aware that Southern identity is waning, due in part to the institutionalized national Leviathan, the demographic shifts of a highly mobile society organized along *Gesellschaft* principles as opposed to *Gemeinschaft*, the mega entertainment industry through which Madison Avenue values are consumed in Southern living rooms, and the transformation of the Southern economy at the expense of its former agrarian base. All of these compete with Southern Protestantism and patrimonial culture as socializing ties that bind Southerners together within and between their respective communities. To the extent that anti-Southern influences dominate

the socialization of Southerners, to that extent the South will lose its sectional identity.

32. For some such a position is political heresy, because they equate the South with racist and corrupt politics. Obviously, Bradford was not only aware of such charges but was also personally targeted by his adversaries. A case in point, Bradford was President Reagan's initial nominee to chair the NEH, until neoconservatives in and at the door of the Reagan administration smeared Bradford as a racist in order to place one of their own, William Bennett, in his stead. See Samuel F. Francis' *Beautiful Losers: Essays on the Failure of American Conservatism* (Columbia, MO: University of Missouri Press, 1993).

33. *I'll Take My Stand: The South and the Agrarian Tradition* (Baton Rouge, LA: LSU Press, 1983), 13-15, 176.

34. In 1930 John Gould Fletcher wrote the following about public-school education: "For our knowledge of history teaches us this much: that the object of public education in the American Colonies and the later states up to 1865, was to produce good men. The system may have been imperfect in detail, but its aim was correct. Today the object of American education is to turn out graduates-whether good, bad, or indifferent we neither know nor care. Formerly, quantity had to give place to quality; today it is the reverse. Formerly we followed Goethe's maxim, to the effect that everything that frees man's soul, but does not give him command over himself, is evil. Today we are out to withdraw the command of men, over themselves, and to free, to no purpose, their souls" ("Education, Past and Present," in *I'll Take My Stand*, pp. 95-96).

35; Clyde N. Wilson, ed., *Why the South Will Survive: Fifteen Southerners Look at Their Region a Half Century after "I'll Take My Stand,"* (Athens, GA: The University of Georgia Press, 1981), 220.

36. Jaffa refers to this as "perforce the abandonment of the 'ought' for the 'is'" (see *supra*, note 26); a conservative Southerner would respond that the *is* and the *ought* are, for the most part, synonymous.