

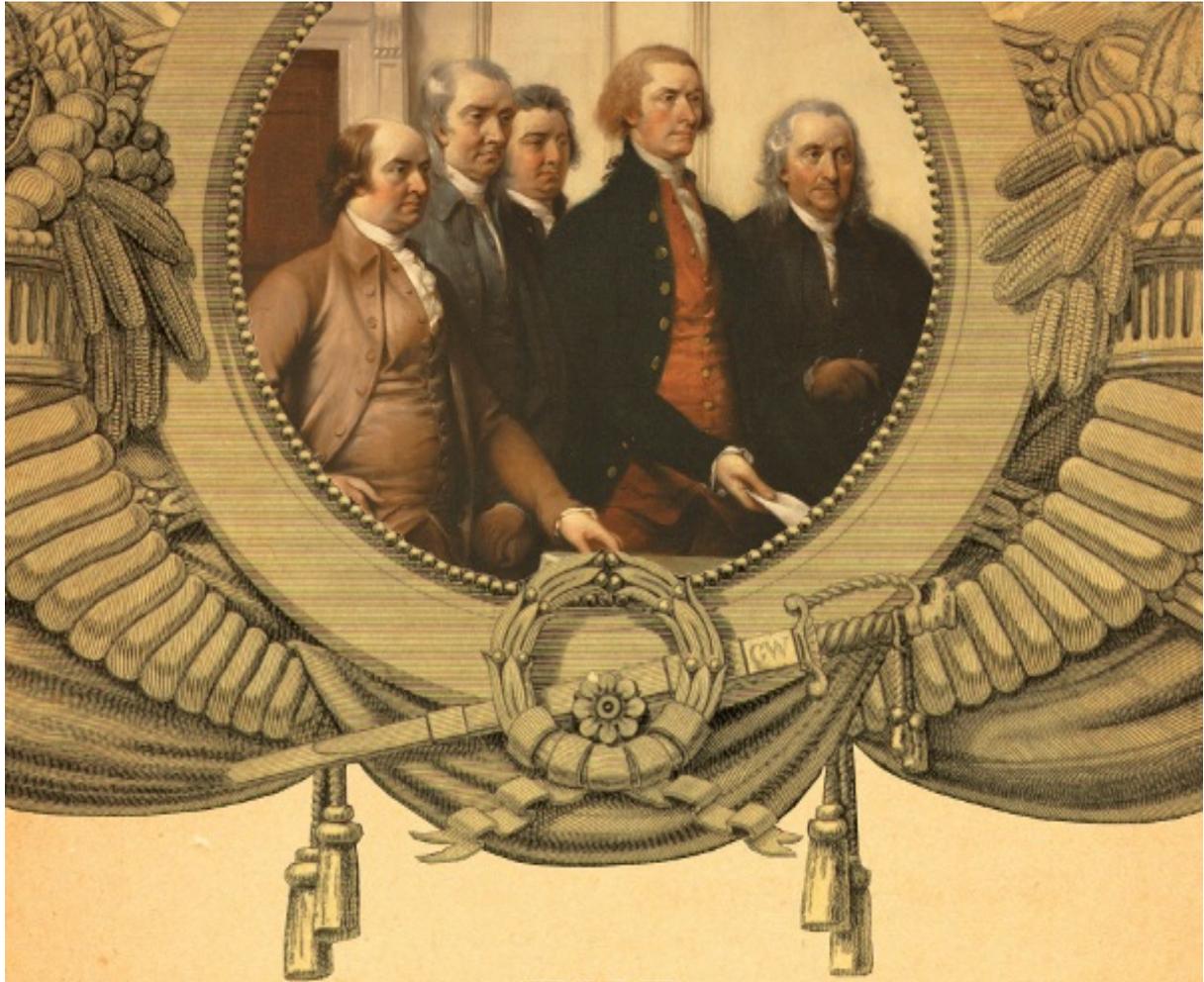


THE FOUNDERS' KEY

The Divine and Natural Connection Between
the Declaration and the Constitution
and What We Risk by Losing It



LARRY P. ARNN



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NASHVILLE DALLAS MEXICO CITY RIO DE JANEIRO

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Library of Congress Cataloging-in-Publication Data

Arnn, Larry P., 1952-

The founders' key : the divine and natural connection between the Declaration and the Constitution and what we risk by losing it / Larry P. Arnn.

p. cm.

Includes bibliographical references.

ISBN 978-1-59555-472-7

1. United States—Politics and government. 2. Natural law—Religious aspects. 3. United States. Declaration of Independence. 4. United States. Constitution. 5. Constitutional law—United States—Religious aspects. I. Title.

JK31.A76 2012

320.101—dc23

2011041283

Printed in the United States of America

12 13 14 15 QGF 6 5 4 3 2 1

*To Penny and our children,
Katy, Henry, Alice, and Tony*

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PART I:
THE ARGUMENT

ONE

ETERNAL, YET NEW

The second day of July, 1776, will be the most memorable epoch in the history of America. I am apt to believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be commemorated as the day of deliverance, by solemn acts of devotion to God Almighty. It ought to be solemnized with pomp and parade, with shows, games, sports, guns, bells, bonfires, and illuminations, from one end of this continent to the other, from this time forward forever more.

*—John Adams writing to his wife on July 3, 1776,
the day after the Declaration of Independence
was adopted by the Continental Congress*

IT IS NOT SO COMMON FOR NATIONS TO HAVE BIRTHDAYS. What is the birthday of England, for example? When did there begin to be a France or a China or an India? Old and wonderful places, their beginnings are lost in the mists of time. What they are today is connected to their past in ways we can hardly guess.

In the United States we have a birthday, the Fourth of July. This birthday is unusual simply for the fact of its existence, but also for another reason. On the one hand, it is a specific day, marked in memory of specific things done by specific people in a specific place. On the other hand, it is a day for the ages and for everywhere. What these people did, they did in the name of something universal and transcendent. In the combination of these two qualities, our birthday is unprecedented.

The story of our great nation has unfolded under the influence of this combination. Our great controversies and struggles have hinged on our allegiance to it. Our survival has sometimes hung by a thread of attachment to it. It does so right now. Our form of government, I will argue, was established in our Constitution to institute and to guard this combination.

The Declaration of Independence and the Constitution are commanding things for Americans because of this combination of features. On the one hand, they are ours, made by our own fathers. They provided the pattern according to which we have settled a continent and become a great nation, significant to all peoples. Our children, like our fathers and mothers, learn (even if not well) of the Declaration of Independence and the Constitution as they grow up. The way we talk, the way we stand, the way we dance or sing—all are influenced by the laws of our land and the principles behind them, and our laws and principles spring from these two documents.

On the other hand, the document adopted on our birthday speaks with a voice far beyond our fathers and their particular situation, even though that situation was urgent to the point of life and death. Its language is so elevated that its meaning cannot be confined to the situation of its own time and place, to the situation of our own time and place, or to the situation of any time and place. This at least is what it says. If it is wrong about this, then it is wrong about the most important thing.

This universal feature of our birthday reinforces the strength of its calling. If your

father gives you an instruction from your upbringing, and then he repeats that instruction in his will, this is powerful. If he himself has risked all that he has to sustain this instruction, and if he has lived his entire life in support of it, this is more powerful. If in addition this instruction claims that it is the right instruction, not just for his life and for yours, but for all lives and for all time, that is most powerful. And yet you cannot base your allegiance to the principle solely on the testimony of your ancestors. You must base your allegiance on the merits of the claim. You must adopt it because it seems sensible, and if it does not, you must discard it—and with it your birthright.

This is the nature of the Declaration of Independence and of the Constitution written pursuant to it. They are our birthright. We Americans owe them a debt. They make a series of demanding claims. Although they leave plenty of room for adaptation to transient things, their core meaning is said to be absolute and fixed. To believe them is to take on the obligation to obey them, and then one must live in a certain way.

One can see how we might come to resent this burden. It is heavy. Its obligations come from more than one source, and therefore they command in more than one way. They command by blood, and they command by principle. They command with the authority of family, and they speak with the awesome force of nature and the God who presides over it. Who would blame us to ask why we should be trapped in this way? Our fathers were revolutionaries. Should we not be the same?

Moreover, we have made so very much progress from the time of the Revolution, from the time of the horse and buggy and the powdered wig. We face new challenges, but also we have all the new tools of modern science. Could we not come up with better principles than our fathers, just as we can now build taller and more momentous structures?¹

* * * * *

In relation to our beginning, our history has moved in two modes. Sometimes we have endeavored to embrace—and sometimes we have endeavored to escape—the laws of nature and of nature’s God. They have been the source of our liberation, and they have seemed the source of our confining. Sometimes we would enjoy their blessings, but other times we would shrug them off as a curse.

Many of us today reject the universal and timeless claims of the Declaration, and therefore also we reject the forms of government established in the Constitution. We follow the notion, born among academics, that no such claim can be true and no such forms can abide. This belief is very strong among Americans now, and it has made vast achievements in changing our government. Because of this, we are near a moment of choice. This book aims to make clear the terms of that choice. The reader will not be surprised to learn that the author favors the keeping of the birthright, for its beauty and consistency, and for the failings of the alternative. Admitting this sharpens the obligation both of reader and of author to think as clearly, as truthfully, and as fairly as can be. We must do our best.

This book will explore the connection between the Declaration of Independence and the Constitution of the United States. It will state the case for them made by those who

wrote and adopted them. It will compare this case to the one made by their contemporary enemies. These are the points that we must consider before we make the choice that is fast upon us.

Two

DIVIDE AND CONQUER

ON OCTOBER 22, 2009, A REPORTER ASKED SPEAKER OF THE House Nancy Pelosi, “Where specifically does the Constitution grant Congress the authority to enact an individual health insurance mandate?” She replied, “Are you serious? Are you serious?”¹

Just a few months later, on March 21, 2010, the House of Representatives passed the Patient Protection and Affordable Care Act, which establishes that individual mandate in law. An hour before the vote, Speaker Pelosi spoke “with great pride and great humility.” She said that by passing the act, the House would “honor the vows of our Founders, who, in the Declaration of Independence, said that we are endowed by our Creator with certain inalienable rights and among these are life, liberty, and the pursuit of happiness.”²

It seems that Speaker Pelosi likes one of the two great pillars of our Founding, but not the other. The Declaration is a thing to be honored with pride and humility, but only by means that have no reference to the Constitution. The two great documents are disconnected in her mind. They are the two sides of a house divided, straining to pull it apart.

Nor is her reverence for the Declaration quite what it seems. No one who wrote that document defined the term right to mean free health care or to justify a law requiring all with money to purchase medical insurance so that those with none may have it for free.³ Just as the Speaker abandons the Constitution, so she alters the meaning of the Declaration. Nor is she alone. She stands in a long line of statesmen and academics who regard both documents in a very different light from those who wrote them. We Americans have today very mixed views about the meaning and merit of our major Founding documents. We may like the one or the other, but few of us are devoted to them both in the sense in which they are written.

Consider the Declaration. Nearly anyone has to admit that there is something to be said for it. Universal in scope and divine in elevation, it is written in tones of majesty. It celebrates blessings that come directly from God and are known through the reason with which He created us. It proclaims the inclusion of every human being—past, present, and future—in its reach. No nation is left out. No era is excluded. People in the streets of Cairo or Havana, protesting the modern military despots who rule over them, may call upon it for justification. The Hungarians of 1956, crushed by Soviet tanks, uttered its phrases with their last gasps of freedom. The helots under the Spartan lash, the slave-rowers squandering their substance in the Roman galleys, are wrapped in its embracing principles.

On the other hand, there seems to be something implausible and restricting about the Declaration. Its chief author, Thomas Jefferson, might have sided in principle with the helot slaves, but in practice he was a slaveholder like their Spartan masters. And

why should he not be a slaveholder, some think, as he was founding a regime that vaunts self-interest and worships in the church of taking care of oneself? That is the trouble with America, according to this view: its people thrive too much at the expense of their neighbors. Is their Founding even good? And who are these Founders, anyway, to lecture us about right and wrong? Who are they to say that there is one truth for every age and time, one set of principles to command us today? We live in an age so modern as to make their quill pens and their bowing absurd. These absolute phrases seemed liberating then but seem constraining today. We have done so much more than those men in their powdered wigs. Why should they tell us the rules under which we must live?

These sentiments go back as far as the time before the Civil War and continue to the present day. The proslavery statesman John Calhoun, offended by its proclamation of equality, called the Declaration “the most false and dangerous of all political errors.”⁴ Modern thinkers believe it—for all its pretensions of eternal scope—not to transcend but to reflect the time in which it was written. Woodrow Wilson said that it was obsolete, written for an age that believed in the theories of Isaac Newton and regarded government as a mechanism. That age, Wilson believed, was now superseded by Darwin and the theory of evolution, which allows us to see that government is a living organism, one that must change over time.⁵ Colonel House, a close advisor to Wilson, wrote a novel in which the hero says, “Our Constitution and our laws served us well for the first hundred years of our existence, but under the condition of today they are not only obsolete, but even grotesque.”⁶ For John Dewey, the Constitution’s view of liberty was “relative to the forces that at a given time and place are increasingly felt to be oppressive.”⁷ For Frank Goodnow, founder of the American Political Science Association, its claims were the “result of the then existing social conditions.”⁸

This means that the perspective of the Founders is worse, in an important respect, than the typical relic of the past. The Spartan masters could justify their tyranny over the helot slaves by the dictates of their own gods, by the authority of their own valor, or by the love of their own families and interests. Their example is therefore less likely to spread, and it makes fewer claims on other places and times. The Declaration of Independence has larger pretensions, and if it is wrong, it is therefore more wrong, and more likely to constrain and interfere with the evolving standards of right that must come later. The idea of the “Laws of Nature and of Nature’s God” would then be not a universal but a parochial idea, distinguished only because it is aggressive. It spreads like a virus and resists treatment with the same stubbornness.

.....

Consider the US Constitution. It, too, must be regarded with a measure of respect. It is the longest surviving written constitution in all of history. For more than two centuries, it has provided a stable and free government for a nation that has increased manyfold in territory and population. It has grown across a continent and welcomed new states and new citizens upon an equal footing with the original. Its dominion has extended across the plains and the mountains to a distant ocean never seen by its Framers. It has welcomed and naturalized immigrants on a scale unknown to any other nation.

It has survived a great Civil War, still our nation's costliest war, during which its larger purpose of freedom was vindicated against the three compromises in its original text with human slavery. It has succeeded when our nation was remote from the great powers. It has succeeded through the great world wars and across a long era in which our power has been felt in every corner of the globe.

It has succeeded in an agrarian society. It has succeeded through the Industrial Revolution, through the jet age, and into the information age. It has survived, impaired but intact, through more than a century of organized opposition to its procedures and limits. Still today it commands the hearts of most Americans, and still today it places inconveniences in the way of those who would overcome it. In the making of fundamental law, there has been nothing like it. To ascribe its achievements to accident would be a failure of sense and of inquisitiveness.

Yet there seems to be something very annoying about the Constitution. It reads too much like a law, and this is made worse by the fact that it is a law. It is full of things you have to do and other things you may not do. It relates these things without the poetry of the Declaration. The language of "the Laws of Nature and of Nature's God" stirs the heart and persists in the memory. The constitutional language requiring that the yeas and nays be recorded in the House of Representatives is not put so nobly, and that is because it is not so noble a thing. If it were only a detail, perhaps we could abide it better. Alas, the details in the Constitution are not only details, but also rules, rules that are especially awkward to change. They feel an awful lot like fetters.

Its being so bossy and its not being so inspiring, the Constitution has often been the object of controversy. The convention that drafted it was fractious for months. The debates through which it was ratified took years to reach agreement. Its fundamental arrangements were contested in the Civil War. All of this was before modern times, when the opposition has become serious.

Our modern elites in the academy, in journalism, and in politics regard the Constitution as a relic. They say every kind of negative against its meaning, its goodness, its relevance, its scope, its legality, its advisability, its comprehensibility, its connection or harmony with the rest of the Founding and especially with the Declaration of Independence. This practice has now persisted so long as to become tradition, nearly half as old as the Constitution itself.

In the end the modern opposition to the Declaration and the Constitution stems from the same source. The Founders understood the documents to be connected, to supply together the principles and the details of government, to be a persuasive and durable unity. The early leaders of the Progressive movement—Wilson, Dewey, Goodnow, and their friends—were opponents of them both. This proved a poor strategy politically. The words of the Declaration have a way of continuing to ring across the ages. The arrangements of the Constitution have a way of organizing our actions so as to produce certain results, and they have done this more reliably than any governing instrument in the history of man. Connect these arrangements to the beauty of the Declaration, and one has something inspiring *and* commanding. The Declaration acquires a practical form and operation that do not seem to come from it alone. The Constitution soars to the elevation of the natural law, and its arrangements are reinforced with that strength.

Franklin Roosevelt, one of the most important of our presidents, found a way to overcome the obstacle presented by the combination of our Founding documents. He divorced them. He embraced the Declaration, and thereby he brought liberalism back to the vocabulary, if not to the meaning, of the American Founding. To Roosevelt, the Declaration of Independence contains, sure enough, eternal truths, and the business of government is, sure enough, to protect rights. But, continues Roosevelt, “the task of statesmanship has always been the redefinition of these rights in terms of the changing and growing social order.”⁹ Rights are eternal, but we define them anew in each generation. And if rights change, the steps required for their protection change too. In the result, the Declaration of Independence retains its place of honor and authority (however altered our understanding of it), but the Constitution is demoted. Its structure is too inflexible to accommodate the changing needs of government and the people it will manage. Either it must go, or its structure must be regarded as elastic.

.

The innovations of Dewey, Goodnow, and Wilson, amended by Franklin Roosevelt, are now the established order in the academy and much of politics. One can measure this in the reaction to the opening of Congress in January 2011. The Republicans had won a majority in the House of Representatives. They were benefited by the influence of a movement harkening back even in its name to the American Revolution: the Tea Party. This recalling of the American Revolution extended right down to the opening of a debate all across the land about the meaning of the Constitution. This was no happy development to people like Speaker Pelosi, who think the question of the constitutionality of the health care law not to be a serious question.

The new majority was elected by many who wished it to be a serious question. They noticed that service in the Congress requires that one take an oath to uphold the Constitution. They noticed that the president, all the judges, every senior federal official, and for that matter every member of the United States military are required to take such an oath. They thought, *Why do we not begin the session by reading the Constitution aloud? This will remind us of the object of our oath.*

It was a commonsense idea. But to many, it was infuriating.

To columnist and public intellectual Michael Lind, the Tea Party is an extension of the Confederacy:

Now that the Republican Party, founded as a northern party opposed to the extension of slavery, is disproportionately a party of white Southern reactionaries, dominated by the political heirs of the Confederates and the segregationist Dixiecrats, the denunciation of many exercises of federal authority as illegitimate would have been predictable, even if the president were not a black Yankee from Abraham Lincoln’s Illinois.¹⁰

To columnist E. J. Dionne, the Tea Party and the Republicans are going to stimulate much-needed debate, and in that debate they will be proved wrong. He quotes scholar Gordon Wood: we “can recognize the extraordinary character of the Founding Fathers while also knowing that those 18th-century political leaders were not outside history. . . . They were as enmeshed in historical circumstances as we are, they had no special divine insight into politics.”¹¹

This is on the surface a mild criticism, but would be devastating to our Constitution

if true. The central claim of the Founders is that they were acting on principles that transcend time and place. They committed treason in the name of those principles. They killed and were killed for them. To say that they were simply creatures of their time is to take from them the rock upon which they built, to deprive them of the reason upon which they based all. Moreover, Dionne and Wood expose themselves to a certain objection. If everyone is trapped by his time and place in history, what about *them*? What about Dionne and Wood? How do they know that their statements about the Founders are valid unless they are able to stand “outside history”? How do they know, as an objective proposition, that the Founders were trapped inside their time?

A superior example of this line of thought is provided by a 2010 Constitution Day speech given by Harvard law professor Michael Klarman.¹² He gave the speech to help Johns Hopkins University achieve its mandatory annual commemoration of the Constitution, which is required by federal law of all colleges and universities that receive federal aid. In the US Code, this requirement comes under the rubric of “Patriotic Observances.”¹³ If by *patriotic* we mean love and loyalty for the things of our fathers, most such occasions do not much serve the purpose. But universities hold the celebrations anyway, as large sums are at stake. Neither this kind of regulation nor the money that comes with it has any precedent before the late 1950s in the United States, and so their constitutionality is controversial. Indeed Professor Klarman believes them unconstitutional, and he says so in this very speech. He thinks the regulations should continue anyway. This makes a nice irony at the foundation of these celebrations. The irony deepens the more one observes.

Professor Klarman’s Constitution Day speech is an extended condemnation of “constitutional idolatry.” By that, he does not mean worshipping the Constitution as a god, but respecting it as a good. Under four headings, he argues that it is not good:

1. The Constitution represents “values” we should abhor. Here he refers especially to the three places in which the Constitution protects the institution of slavery. He has a point here, even if he destroys the ground upon which the point can stand. We shall have a lot to say about the practice of slavery among the Founders later.
2. It imposes upon us practices that we “would never freely choose” and that are “impossible to defend based on contemporary values.” Here he means the features of the Constitution that are not purely democratic or that do not assign the same weight to each vote, such as the Electoral College, two senators per state without regard to state population, and (for some reason) the requirement that one be a native-born citizen to serve as president.
3. It is “irrelevant to the current political design of our nation.” Here in a most telling point he describes the modern administrative state, which he says flatly is unconstitutional and yet superior.
4. It does not protect our rights very much and not as well as our own “political and social mores.”

Following Franklin Roosevelt, Professor Klarman denounces the Constitution in the name of the rights it was formed to protect. He does this in the name of the people,

arguing that they deserve a government that is closer to them and that provides each individual an equal voice. The “Framers,” he says, “were trying to create a powerful national government that was as distant from popular control as possible.”

The heart of the matter is in point three, concerning the new administrative state with which the Constitution is incompatible. According to Klarman, the administrative state is at once a “vitaly important fourth branch” and “almost certainly unconstitutional in multiple ways according to the original design of the Framers.” He does not say in so many words that he likes this new fourth branch, but clearly he does. Otherwise, he would complain of its existence rather than criticize the Constitution for not authorizing it. If bigamy is illegal, but everyone has two wives, you might complain about the law, or you might complain about the two wives. Which you choose is revealing.

Where, one wonders, is the legitimacy for this fourth branch? Professor Klarman mentions that the courts have upheld it. But the courts get their authority from the Constitution, and each judge is required in the Constitution to swear to uphold the Constitution. The Constitution gets its authority, in turn, from ratifying conventions held in each state to which delegates were popularly elected. If a judge defies the Constitution, then he breaks his oath, and he overcomes an expression of the popular will. In that case, the acts of judges become rather like the Senate that Professor Klarman criticizes: they are not responsive to the will of the people, at least as that will is measured by legal acts taken by the people.

The same points apply to the other two branches. Congress created the administrative agencies by laws. Congress gets its authority from the Constitution, and its members swear to uphold the Constitution. The president signed these laws creating these agencies (except in the cases where his veto was overridden). The president gets his authority from the same place, and takes the same oath, as the members of Congress. Why then is it a good thing that the Constitution is violated by people who are sworn to uphold it?

The answer seems to be that this fourth branch conforms to our “political and social mores,” which Professor Klarman identifies as the surest protection of our rights. The trouble with this is that these political and social mores do not always prevail. They did not prevail in the Confederacy, for example. There slave owners whipped their slaves if they ran away and worked many of them to death if they did not. Political and social mores vary widely about the world even today, and in many places the trend is not good for the mores that Professor Klarman favors. Is there security in this standard? In the excellent play *A Man for All Seasons*, which chronicles Thomas More’s last years, More says to his impetuous son-in-law that the wind would blow very hard if all the laws were cut down.¹⁴ The same might be said for the Constitution.

What, one wonders, does Professor Klarman like about the character of this new fourth branch? After all, he complains that government under the Constitution is not directly or equally representative in the cases of the Senate and the Electoral College. Yet these new administrative agencies are infamously unrepresentative, and notoriously they break the society down into parts and treat different parts of it differently. Those that regulate business are often captured by and favor the particular firms that lead their industries. Those that regulate people have their favorites: some

ethnic groups get protected, some do not; some regions get protected, some do not; women, in the majority, are grouped with minorities for protection and therefore form part of a large majority—but we call it a minority anyway.

Moreover, the powers of these agencies are both sweeping and sealed off from accountability to the people. Many agencies combine all three powers of government in the hands of their senior administrators. They make the regulations, which have the force of law. They enforce them on companies and individuals, states and local governments. They fine and bring charges that can lead to imprisonment. And then, when the poor souls who are burdened, fined, and accused wish to appeal, they go before the agency into whose clutches they have already fallen. For years, the South Coast Air Quality Management District in Southern California had about 10 percent of its staff doing public relations. It built a wonderful complex atop a hill in Southern California for its accommodation. Its staff grew to a vast size. All this was funded from fees and fines that it levied on the groups that it regulated, and so naturally they became cowed, afraid to say anything bad about the agency in the newspaper.

In his speech Professor Klarman remarks with pride that a man may call the president a socialist without fear of punishment. Use that latitude, if you dare, before a regulator and see what you get. Or consider the attitude toward freedom of speech by the regulatory “czar,” if you can believe we have such an official in the United States, one Cass Sunstein (another law professor), who holds that the government should allocate the right to speak to make sure everyone gets a fair chance.¹⁵

The Consumer Financial Protection Bureau, launched in July 2011, was designed by a colleague of Professor Klarman on the Harvard faculty. Its budget does not come from congressional appropriation; therefore there is no ability in principle for elected branches to tailor its cost to overall public priorities. Instead it gets its funds from a percentage of the revenues of the Federal Reserve, which are themselves locked in a dark box that Congress has been trying to crack open for years.

Such agencies exemplify the administrative state. As that state was conceived in elitism, so now it proceeds in privilege and mere credentialing. The classes of its elevated minions are now tenured and expensive—and still they feel martyred. The whole system is arbitrary, complex, and shrouded in mystery. To plead before it requires lawyers and lobbyists who command vast salaries, and so they are available not to the ordinary but to the well heeled and entrenched. Or else they are provided at subsidized rates to selected constituencies, who then become wards or partial wards of those who manage the subsidies. Taxpayers foot the bill and are blamed for their selfishness at the same time.

Why should a man such as Professor Klarman favor such a thing? He is a man of liberal sentiment. He acts without doubt from good motives and possesses enormous gifts of intellect and character. Why would he favor the modern bureaucracy over the Constitution of the United States? Why should he regard the Constitution as odious in principle, an albatross when it is effective, and for the most part happily irrelevant? Thinking these things, why should he make the Constitution his chosen field of study?

The answer has to do with a change in our understanding of rights and what it takes to protect them. These regulatory agencies are designed to accommodate an evolutionary standard of rights favored in the academic world for generations now. In

this understanding, the Constitution is severed from the Declaration, and both are compromised. The Declaration proclaims rights that are inadequate, and the standards by which it proclaims them are obsolete. This being so, the Constitution is simply destroyed. Its arrangements are outmoded and rightly ignored. Its purposes are rejected, and we are left with nothing except the tide of history (characterized by supporters of the administrative state as “progress”) to guide us. In modern America this tide has all the force of bureaucracy behind it.

Before we give in to that tide completely, it is worth asking, Did the Declaration of Independence and the Constitution of the United States ever have much to do with each other? Do they partake of the strength of each other? Are they in fact intended to be what Abraham Lincoln called them, an apple of gold in a frame of silver?¹⁶ Are they made of precious metal or of dross?

THREE

DIVORCE: THE DECLARATION AND THE CONSTITUTION ESTRANGED?

EVEN AMONG HISTORIANS WHO ADMIRE BOTH THE Declaration and the Constitution, the divorce between them has long since been accepted as fact. Popular historian Joseph Ellis, who has done good writing about the Founding, presents a moderate and balanced version of it:

A corollary triumph [of the Revolutionary generation] that merits mention is the ability to reconcile two competing and, in several respects, contradictory political impulses. There were really two founding moments: the first in 1776, which declared American independence, and the second in 1787–88, which declared American nationhood. The Declaration of Independence is the seminal document in the first instance, the Constitution in the second. The former is a radical document that locates sovereignty in the individual and depicts government as an alien force, making rebellion against it a natural act. The latter is a conservative document that locates sovereignty in that collective called “the people,” makes government an essential protector of liberty rather than its enemy, and values social balance over personal liberation. It is extremely rare for the same political elite to straddle both occasions. Or, to put it differently, it is uncommon for the same men who make a revolution also to secure it.¹

Now, this is a handsome passage, and one cannot help but admire Professor Ellis’s friendliness toward the Declaration, the Constitution, and the Founders who wrote them.

To Professor Ellis, the Constitution is conservative, and the Declaration is liberal. To him, the Declaration and the Constitution are nearly, if not fully, incompatible.² They are oil and water, and he likes them both, just as anyone may like both oil and water. But they are very different things.

There is something to this on the surface. Obviously the purpose of the Declaration is different from that of the Constitution. One throws off a government; the other builds one. One liberates; the other regulates. One defies rules; the other imposes them. One is bold and universal; the other is specific and restrained. One was written mainly by Jefferson, airy of manner as he was elevated of height. The other was written mainly by Madison, logical and precise, his reasoning as compact as his tiny figure. Like its author, the Declaration shows imagination and eloquence. Like its author, the Constitution shows order and balance.

But are they really so different? There is the problem that their authors did not think so. It happens that Jefferson and Madison were the deepest of friends, both personal and political, for nearly all of their adult lives. They cooperated closely in building the nation, including the political party that would govern it for two generations and elect each of them president, one after the other. They had differences, true enough, but no two men of such stature ever made a better or more enduring partnership or shared so many purposes and principles high and commanding.

If the men were reconciled so profoundly, it is likely the documents they produced were also reconciled. Read the Declaration for a minute, and one sees certain problems with the way Professor Ellis characterizes it. The professor writes, for example, that