Americans love their Constitution. At least they tell pollsters they do. The founding documents are the sacred writ of freedom. Abraham Lincoln described the Declaration of Independence – our first and foremost founding document – as the “immortal emblem” of man’s humanity and the father of all moral principle.1 Today the Declaration is treated more as a rhetorical flourish than a standard, but Americans claim to “know their rights.” Unless you ask them to cite actual passages of the Bill of Rights. Then you are more likely to get riffs from the Communist Manifesto. And perhaps that is not surprising when one of the longest serving members of the Supreme Court sneers at the paltry “negative” rights of the Constitution. During an interview with Al Hayat TV in Egypt, Ruth Bader Ginsburg told the audience: “I would not look to the U.S. Constitution if I were drafting a constitution in the year 2012.” The justice named several she liked better, including South Africa’s, Canada’s, and the European Convention on Human Rights, praising those documents for being more generous in protecting “human rights.” Justice Ginsburg’s comments raised little concern in intellectual circles in this country because most of the enlightened elite agreed with her.
THE ROAD TO THE PRESENT

It was not always so. Indeed, the American Constitution was greeted with approbation by most of the civilized world. The Declaration’s stirring words that “all men are created equal” and that the only just government was “government by consent” was heralded around the world. The Founders themselves were enormously proud of their achievement. John Adams said he always considered “the settlement of America with reverence and wonder as the opening of a grand scene and design in providence for the illumination of the ignorant and the emancipation of the slavish part of mankind all over the earth.”

How did the founding documents go from being the very exemplar of freedom to being viewed as the threadbare repository of a wholly inadequate set of political rights? What changed? Philosophy. Samuel Taylor Coleridge, in “Essays on His Own Times,” theorizes that the “spirit of the age” (the philosophy of any particular time) invariably shapes the legislation, the morals, even the religion of the era. And that is true even if the majority of people have no very clear idea of that governing philosophy. In Coleridge’s words: “Nor is this the less true, because the great majority of men live like bats, but in twilight, and know and feel the philosophy of their age only by its reflections and refractions.”

The American founding involved an explicit attempt to implement a very particular political theory. That theory was grounded on an understanding of natural rights that supported a strictly limited government and emphasized free men, free markets, and freedom of conscience in the classical liberal tradition. Thus, the Declaration contained what was, according to Leszek Kolakowski, “probably the most famous single sentence ever written in the Western Hemisphere: ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness.’” But, as Kolakowski goes on to say, “what seemed self-evident [at the Founding] would appear either patently false or meaningless and superstitious to most of the great men who keep shaping our political imagination.”

DECLARING THEIR VALUES

Jefferson described the Declaration of Independence as reflecting “the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in [the writings of] Aristotle, Cicero, Locke” and other thinkers within the Aristotelian tradition. The Declaration was not designed to “find out new principles, or new arguments . . . [or] say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent.” In other words, the laws of nature rendered God-given rights and consent-based government “self-evident” truths.

Alexander Hamilton explains this beautifully, saying “the sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sunbeam, in the whole volume of human nature.” As a practical matter this meant no man was fit to rule others against their will; no man was destined to be a slave; liberty is a condition of human happiness and thus a right; and any legitimate government is obliged to secure to its citizens the title to property they have earned through their...
labor. Equality for the founding generation meant equality of natural rights. As Thomas West explains, there was “no room in the founders’ political theory for an ‘organic’ society whose authority takes the place of the free choice of individuals.” Indeed, the “rights of society begin from, and are guided and limited by, the rights of individuals.”

The Founding explicitly affirmed not only the existence of objective truth, but the legitimacy of its pursuit through all the scientific disciplines. George Washington’s June 1783 Circular Letter to the States expresses his gratitude that “the foundation of our Empire was not laid in the gloomy Age of ignorance and superstition, but at an Epocha when the rights of Mankind were better understood and more clearly defined... [and] may be happily applied in the establishment of our forms of Government [because]...the pure and benign light of Revelation [has] had a meliorating influence on Mankind and [...] increased the blessings of Society.”

THE FOUNDERS TO COOLIDGE

It is possible to go on and on quoting the Constitution’s framers in this vein. Indeed, the Constitution’s commitment to natural rights and natural law was forthrightly acknowledged for more than 150 years. On the eve of the Civil War, when President Lincoln lamented that we might “nobly save, or meanly lose, the last best hope of earth,” he was speaking of the American notion of human liberty. But, why would this be so? In Lincoln’s view, constitutional principles — “conceived in liberty, and dedicated to the proposition that all men are created equal” — were a sacrosanct inheritance we were obligated to preserve.

Calvin Coolidge echoed those sentiments in a wonderful speech given in 1926 to celebrate the 150th anniversary of the Declaration of Independence. He lamented that most of those who clamor for reform are sincere but ill-informed. Were they more knowledgeable, Coolidge believed Americans would realize America’s foundation was spiritual, not material, and the founders were people influenced by “a great spiritual development” who acquired “a great moral power.”

“To Coolidge, only the exercise of God’s providence seemed adequate to explain the Declaration of Independence. He concludes:

“It is often asserted that the world has made a great deal of progress since 1776, that we have had new thoughts and new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something more modern. But that reasoning can not be applied to [the Declaration]. If all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just power from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions. If anyone wishes to deny their truth
and their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people. Those who wish to proceed in that direction can not lay claim to progress. They are reactionary.

Today Coolidge’s insight seems counterintuitive. Less than a decade after Coolidge uttered these stirring words, they seemed to have been forgotten. Franklin Roosevelt began the reign of political government, substituting the expertise of social planners and technocrats for the will of the people, inventing preference politics and fostering the growth of the administrative and the welfare state.

**THE SOCIALIST MYSTIQUE**

Speaking to a conference of Ninth Circuit judges in San Francisco in 1946, Harold McKinnon identified a central problem with the socialist mystique. He understood the threat of the essentially antidemocratic and totalitarian political and legal philosophies gaining ground in American universities. Such teachings, McKinnon believed, denied the essential elements of a regime devoted to the preservation of natural rights.

“[This teaching] denies that there is a moral law which is inherent in human nature and which is therefore immutable and to which all man-made laws to be valid must conform. It denies that by virtue of this law man possesses certain rights which are inherent and inalienable and therefore superior to the authority of the state. It denies that the purpose of government is to secure these inherent and inalienable rights.”

McKinnon correctly concluded that adherence to natural law is the essential
element of the American birthright.

“For if there is no higher law, there is no basis for saying that any man-made law is unjust . . . and, in such case, the ultimate reason for things, as Justice Holmes himself conceded, is force. If there is no natural law, there are no natural rights; and if there are no natural rights, the Bill of Rights is a delusion, and everything which a man possesses — his life, his liberty and his property — are held by sufferance of government, and in that case it is inevitable that government will some day find it expedient to take away what is held by a title such as that. And if there are no eternal truths, if everything changes, everything, then we may not complain when the standard of citizenship changes from freedom to servility and when democracy relapses into tyranny.”

McKinnon’s speech shows some vestiges of the older understanding of the American constitutional order remained extant — even in the 9th Circuit — until after the end of World War II.

Nevertheless, the proponents of the New Deal, the victors in the Revolution of 1937, openly acknowledged the break with Madisonian constitutionalism. They were the beneficiaries of a dramatic shift in American political thought and they agreed with the critics of the American Founding that the Constitution’s design was cumbersome, inefficient, and outdated.

FORGETTING THOSE WHO PAID

In her book recounting the history of the Great Depression, author Amity Shlaes tells the story of The Forgotten Man of her book’s title. She traces the phrase back to a lecture by Yale philosopher William Graham Sumner. Sumner’s classroom lecture eventually became an essay entitled “The Forgotten Man” in which Sumner outlined the perceived moral defect of the progressive project. He noted: “As soon as A observes something which seems to him to be wrong, from which X is suffering, A talks it over with B, and A and B then propose to get a law passed to remedy the evil and help X. Their law always proposes to determine . . . what A, B, and C shall do for X.”

But Shlaes asks: “[W]hat about C? There [is] nothing wrong with A and B helping X. What [is] wrong [is] . . . the indenturing of C to the cause. C was the forgotten man, the man who paid,” in Sumner’s parable, “the man who never is thought of.”

One of Roosevelt’s speechwriters appropriated the phrase, and Roosevelt, in his first major speech, promised, if elected, to act in the name of the forgotten man, the man “at the bottom of the economic pyramid.” As Shlaes notes, “Whereas C had been Sumner’s forgotten man, the New Deal made X the forgotten man — the poor man, the old man, labor, or any other recipient of government help.”

Roosevelt was not slow to turn his political rhetoric into reality. He continued to refine the definition of the Forgotten Man, linking it first to an admonition in the Episcopalian Book of Common
Prayer to “[r]emember in pity such as are this day destitute, homeless, or forgotten of their fellow-men,” and finally morphing it from a “general personality” into a proxy for the specific groups of voters that would win Roosevelt reelection.\textsuperscript{15} This redefinition of the Forgotten Man and the government’s responsibility toward him was the end of limited government and the beginning of a new tradition. Whereas the American Revolution was a taxpayer revolt that emphasized individual liberty and protection of private property, the Roosevelt revolution cultivated dependent constituencies and class warfare. The fruit of the former was free men and free markets; of the latter — the forgotten taxpayer and the indentured servitude of future generations.

**THE SECOND BILL OF RIGHTS**

Roosevelt was not the only president forced to cope with an economic depression. His response ensured his fame because he adroitly exploited the crisis to implement the progressive agenda. In the process, he invented modern politics. Even on the campaign trail in 1932, Roosevelt called on Americans to reappraise their values because, he said, the earlier constitutional values must be adapted to suit the conditions of the day.\textsuperscript{16} The New Deal was designed to remold, through experimentation if necessary, economic policies and institutions to deal with changing social and economic needs. As Richard Pipes put it, “[i]nspired by profound skepticism about the future of capitalism, Roosevelt and his advisors encouraged a fundamental and long-lasting change in attitude toward private property.”\textsuperscript{17} President Roosevelt made an early appeal for the creation of the welfare state in his address to Congress in January 1941. Among the four freedoms he identified were “freedom from want” and “freedom from fear.” In Pipes’s words, “[s]etting aside the nebulous and rather meaningless slogan ‘freedom from fear,’ ‘freedom from want’ meant really not a freedom but a right—the right to the necessities of life at public expense.”\textsuperscript{18}
seemingly innocuous phrase, “freedom from want” really heralded the end of freedom. It meant a shift from negative rights (rights which shielded people from arbitrary interference by government) to positive rights (government as a sword to ensure entitlements); a shift from limited to unlimited (indeed limitless) government; a massive shift of power from the people to the government.

Roosevelt amplified this message in his 1944 State of the Union, where he proposed a Second Bill of Rights. In a recent article citing language from that speech, Cass Sunstein explains that Roosevelt’s shift to positive rights was explicit. According to Sunstein:

“Roosevelt looked back, and not entirely approvingly, to the framing of the Constitution. At its inception, the nation had grown ‘under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, [and] freedom from unreasonable searches and seizures.’ But over time, [thought Roosevelt] these rights had proved inadequate.”

And thus, as Sunstein writes, Roosevelt’s generation:

“[u]nlike the Constitution’s framers, ‘ha[d] come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence . . . . In our day these economic truths have become accepted as self-evident. We have accepted so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.”

Under Roosevelt, the state became both the source of rights and the bulwark of freedom. “Imperceptibly, but with enormous consequences for property and liberty, social welfare legislation progressed from insurance to assurance: from insurance against calamity to assurance of what Franklin Roosevelt called ‘a comfortable living.’” Although Roosevelt’s second bill of rights has not been fully enacted in this country, welfare programs that bear its imprint have transformed modern democratic government into a formidable machine for the redistribution of private assets.

ABOLISHING THE FOUNDING

The premise of this accelerating process of redistribution is, as Pipes notes, that government has “the duty not only to alleviate the lot of the poor but to ‘abolish’ poverty itself.” Once the elimination of poverty becomes a state objective, the state can no longer “treat property . . . as a fundamental right, which...is its supreme obligation to protect”; instead, private property becomes “an obstacle to social justice.” Property is demoted from a natural right to a social institution that society is entitled to regulate — not just to prevent harm but to confer positive benefits. Thus, “by a sleight of hand,” says Pipes, “the fact that the state protects private property is construed to mean that the state holds ultimate title to it.”

This wholesale destruction of the premise of American Constitutionalism was possible because the philosophy of natural rights was supplanted by Progressivism. When Social Darwinism
and philosophical pragmatism were politicized, the result was Progressivism and it ushered in a new order of the ages. As Bradley Watson explains, these new ideas regarding the nature of government and constitutional government mean: (1) no fixed or eternal principles; (2) the state and its constituents are organic, always growing and changing; (3) no limits on our ability to experiment with and change our institutions, and no limits on the State; (4) everything is historically contingent; (5) some individuals, an enlightened elite, stand outside this historical process and must periodically adjust the ship of state in the river of history; thus, politics demands an elite class; and (6) the moral political truth or rightness of an action is always relative to its moment in history.27

Arguably, the whole history of the Western world has been the attempt to escape the hive mind and be fully aware of the difference between good and evil, fully responsible for our choices, and thus fully human. The utopian vision and the tribal temptation constantly reappear because they serve man’s lust for power. But the people eagerly accept the vision of the anointed only when courage fails. These projects never bring forth the new man; they bring forth the old one, a servile creature, vicious, filled with envy and superstition, cringing before an irrational god of his own invention. The arc of the moral universe urges us onward and upward. Most of human politics has tugged us backward and downward. One lesson history does teach is that it is a grave mistake to expect too much of politics.

**DIMMING THE CITY ON THE HILL**

That brings us to the America of the early twenty-first century. The light of that City on a Hill has noticeably dimmed. The courage of men has failed. But not the courage of all men. Or all women. The dark wind blowing from the future carries a hint of frost, of finality. No matter. We have started over before. Knowing entropy is inevitable is no reason to despair. Knowing the battle never ends only means we must redefine winning. J.R.R. Tolkien speaks of the old courage of Norse mythology. It is a theory of courage that removes all easy hope. Knowing that “good is obtained only at vast expense while evil recuperates almost at will” is not enough to make a hero change sides.28 Fighting well and bravely only earns the chance to fight again.

Conservatism has always been the defense of the permanent things against the demands of eager ideology. The battle is unending and the victories heartbreakingly few. But, in the words of T. S. Eliot: “If we take the widest and wisest view of a Cause, there is no such thing as a Lost Cause, because there is no such thing as a Gained Cause. We fight for lost causes because we know that our defeat and dismay may be the preface to our successors’ victory, though that victory itself will be temporary; we fight rather to keep

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Calvin Coolidge, 1925

“ABOUT THE DECLARATION THERE IS A FINALITY THAT IS EXCEEDINGLY RESTFUL. IT IS OFTEN ASSERTED THAT THE WORLD HAS MADE A GREAT DEAL OF PROGRESS SINCE 1776... BUT THAT REASONING CAN NOT BE APPLIED TO THIS GREAT CHARTER. IF ALL MEN ARE CREATED EQUAL, THAT IS FINAL. IF THEY ARE ENDOWED WITH INALIENABLE RIGHTS, THAT IS FINAL. IF GOVERNMENTS DERIVE THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED, THAT IS FINAL.”

Calvin Coolidge, 1925
something alive than in the expectation that anything will triumph.”

Joseph Conrad, one of a cadre of early twentieth-century writers who saw the malevolence of collectivism clearly, tells us baldly: “even if man has taken to flying . . . He doesn’t fly like an eagle; he flies like a beetle.” What the original Constitution acknowledged was the right of free moral beings to be free from coercion. It sought to preserve our right to make our own choices. Thus, “we few, we happy few” can refuse to join the dung beetles. Choosing to fly like eagles and continuing to commit “our Lives, our Fortunes and our sacred Honor” to the constitution of liberty, will help the longing for freedom to seep again into the hearts of men. And so will faith. And reason. And courage.

3 *Id.*
5 *Id.*
9 *Id.*
11 *Id.* at p. 16.
13 *Id.*
14 *Id.*
15 *Id.* at 141, 249.

*John Winthrop’s own City on a Hill was the Massachusetts Bay Colony, established upon landing of the Pilgrims in 1620. (Image courtesy of the Library of Congress.)*
JUDGE JANICE ROGERS BROWN was appointed to the United States Court of Appeals for the D.C. Circuit in June 2005 and served until her retirement in 2017. She earned her J.D. from the University of California, Los Angeles School of Law and received a master of laws from the University of Virginia School of Law.

Judge Brown served as a deputy in the Office of Legislative Counsel for the State of California, as a deputy attorney general in the California Attorney General’s Office, and as Deputy Secretary and General Counsel for California’s Business, Transportation and Housing Agency. After a short stint in private practice as a senior associate at the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, Judge Brown returned to government service in 1991 as the Legal Affairs Secretary to California Governor Pete Wilson. From 1994 to 1996, she served as an associate justice of the California Court of Appeal, Third Appellate District, and from 1996 to 2005, as an associate justice of the California Supreme Court.

18 Id. at 243.
20 Id.
21 Pipes, 228.
22 Sunstein & Barnett, 209.
23 Charles A. Reich, The New Property, 73 Yale Law Journal, 733, 733 (1964)
24 Pipes, supra note 17, at 229.
25 Id.
26 Id.
31 William Shakespeare, Henry V 291 (Bloomsbury 1995)
32 The Declaration of Independence (U.S. 1776)
Dear Coolidge Friend,

Many Americans long for a community that honors the traditional values of individual rights, limited government, civility, and federalism. As Judge Janice Rogers Brown makes clear in this issue of the Quarterly, these were the values of our nation’s founders. They were also the values of President Coolidge. A few years ago, the Coolidge Foundation set out to provide a home to such a community. As the wonderful student comments on this page make clear, the Coolidge community is indeed taking shape. As you plan your year-end philanthropy, we hope you will consider supporting this community.

Our main draw is the Coolidge Scholarship — a full-ride, four-year award to any college in America. This was an ambitious undertaking, but one that bore fruit. Indeed, five years in, the Scholarship has already become an institution. Although only a handful of students win the full-ride award, thousands apply each year. All candidates are required to read Coolidge’s Autobiography and write two essays on Coolidge values. Last year that meant 6,800 Coolidge essays to read! To date we have selected 14 Coolidge Scholars who stand out for their intellect, certainly, but also for their reflection of Coolidge principles.

Beyond the winners, the top 100 scholarship candidates earn the distinction of Coolidge Senator. The Senators participate in high-level seminars on Coolidge topics, and, importantly, meet with entrepreneurs who serve as a reminder of the high place of commerce in America. We fully expect that the Coolidge Senators will take the lead in further building the Coolidge community in years to come.

Getting to know Coolidge yet more deeply requires a trip to Coolidge’s birthplace, Plymouth Notch, Vermont. We hope you will join us at the Notch in 2020 for our many exciting events, including the Coolidge Cup National Debate Championship and our annual Fourth of July celebrations. We are also pleased to be officially opening Coolidge House in Washington, which will serve as a gathering place for the growing Coolidge community. Please mark January 22, 2020 on your calendar to join us in Washington for the official opening.

As you think about America’s future, we hope you will deepen your ties to the Coolidge community and expand your support. Make 2020 more than an election year, make it a Coolidge Year.

With gratitude,

Amity Shlaes, Chairman

P.S. When you make a gift of $100 or more by year’s end, a book in the library of Coolidge House will be dedicated in your honor. Thank you!

“Getting to know the Coolidge senators and their passions ... I was tremendously reassured of our future. It was the Coolidge Foundation, of course, that brought us young people together to receive inspiration from each other.”
— Tiana Luo, Coolidge Senator, Class of 2019

“I consider the Coolidge Scholars and the broader Coolidge community to be one of the most important communities in my life. My conversations with the remarkable group of academics, businesspeople, policymakers, journalists, and others have given me a type of knowledge that I cannot gain in school.”
— Joshua Moriarty, Coolidge Scholar, Class of 2016
SUPPORT COOLIDGE’S LIBRARY

When you make a gift of $100 or more to the Coolidge Foundation’s annual fund, we will dedicate a book in the Coolidge House library in your honor.

Details inside