

I. INTRODUCTION

Almost 150 years after the ratification of the Thirteenth Amendment, the redemption of the nation from chattel slavery has become important—and for many conservatives, central—to the understanding of American politics. Slavery itself may be a thing of the past, but the purported political and constitutional lessons of its initial acceptance and subsequent eradication—once a preoccupation primarily of the liberal/left —

ration of Independence, which are held to be the Constitution's beating heart and unshakable foundation.

In this Article, I argue that contemporary conservative Declarationism offers a dramatic and morally compelling story about the long trajectory of American constitutional development, and serves: (1) as an ideological means of morally rehabilitating and redeeming southern conservatism in the wake of its longtime, but now morally disce-

the conditions of “a changing and growing social order.”⁷ The reading of the Declaration of Independence into the core of the Constitution was also a crucial, if not the central, component of the political thought of both President Abraham Lincoln and the abolitionist orator Frederick Douglass.⁸ Indeed, for many on the contemporary right, Lincoln, Thomas Jefferson, and Martin Luther King, Jr., have been joined in a Declarationist Triptych that serves—particularly in moments of moral and political crisis—to evoke awe and reverence for the eternal return of the American republic to its grounding in the principles of the Declaration.

In his debates with Abraham Lincoln during their 1858 campaign for the U.S. Senate, U.S. Senator Stephen A. Douglas’s position on the vexing question of slavery’s status in the newly admitted states and territories was that each state should resolve the issue itself through the democratic (and constitutional) principle of popular sovereignty.⁹ In response to invocations by those committed to banning slavery in the territories of the Declaration’s provision that “all men are created equal” and “endowed by their creator with certain inalienable rights,” Douglas replied that these provisions could only be understood in light of the practices of the 1770s, when the Declaa-

As he made clear in his debates with Senator Douglas, Lincoln came to the question from a very different place. Crucial to Lincoln's position was his grounding in the Declaration.

dom.³³ This center is devoted to propagating the principles of American freedom such as the teachings of Abraham Lincoln and Martin Luther King, Jr.³⁴ Mississippi's Declaration of Independence Center is one of a growing number of university centers founded and run by staunch conservatives committed to (amongst other things) the reinforcement of Declarationism as a constitutional creed.

The iconography of Ole Miss's Declaration of Independence Center³⁵ is, not coincidentally, the same as that used by the Princeton, New Jersey-based Witherspoon Institute, an off-campus, Christian Right research center created by conservative Catholic natural law philosopher and Princeton politics professor Robert P. George.³⁶

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institutions.³⁹ As such, constitutions live legally and practically in law and in the standard operating procedures and rules of government (and even private) institutions. Additionally, scholars have observed that constitutions also live politically outside formal institutions, where they are appealed to as parts of campaigns to form political identities, underwrite social and political movements, forge political parties, and motivate an electorate. Part of my purpose here is to underline the relevance of this political—as opposed to purely legal—understanding of constitutions to our understanding of major currents of contemporary politics.⁴⁰

In describing the uses of Declarationism within the modern conservative movement, I also seek to refute the overly simplistic historical accounts of contemporary conservatism, such as those advanced by

rowly interpreted the implications of the war and the resulting constitutional changes.⁴⁶ However, those we would later recognize as libertarian conservatives—pro-market, pro-business, pro-property rights economic conservatives, like Supreme Court Justice Stephen J. Field, read the Civil War as having worked a revolution in the constitutional order.⁴⁷

B. Mel Bradford & Lincoln

As we move forward to the time in which modern ideological categories became political realities in the post-New Deal era—our main focus here—we can clearly discern a strain of the modern conservative movement that prominently adhered to the narrow understanding of the war's meaning, with all the attendant constitutional and political implications of that position. Melvin E. ("M. E." or "Mel") Bradford was a leading theorist and thinker of this current of thought—sometimes dubbed "neoConfederate"—in post-War Amer

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position he advanced and defended from an explicitly southern point of view.⁵⁴

In the mid-twentieth century, many conservatives, such as Russell Kirk, left Lincoln off the maps they were drawing of the history of conservative thought.⁵⁵ By contrast, Lincoln was very much on Bradford's map as his frequent and perhaps predominant target.⁵⁶ Indeed, when President Ronald Reagan nominated Bradford to head the National Endowment for the Humanities, it was Bradford's long paper trail of attacks on Lincoln, and Lincoln's constitutionalism, which ultimately doomed the appointment.⁵⁷ Under a barrage of objections from within the conservative coalition by New York neoconservatives such as Irving Kristol, Norman Podhoretz, and others, Reagan was forced to withdraw the nomination, naming the Brooklyn-born, neoconservative Catholic moralist William J. Bennett in Bradford's place.⁵⁸

Bradford proudly described himself as "an impenitent conservative Southerner."⁵⁹ In his many essays on the subject, Bradford described Lincoln as a moral zealot who, in the spirit of Oliver Cromwell, the French Revolutionary Jacobins, and the continental Revolutionaries of 1848, sought to impose his moral vision on the United States through the power of an unconstitutionally unrestrained central state.⁶⁰ In an article taking its title from Thomas Jefferson's declared alarm at the Compromise of 1820, Bradford traced the history of the North's centralizing efforts, inflamed by "chiliastic

54. Marshall L. DeRosa, M. E. Bradford's Constitutional Theory: A Southern Reactionary's Affirmation of the Rule of Law, *A DEFENDER OF SOUTHERN CONSERVATISM*, *supra* note 53, at 92-93 ("The Southernness of Bradford's scholarship was professionally problematical, as is evidenced by the academic ostracism imposed on him due to his Southern, states-rights brand of conservatism.").

55. RUSSELL KIRK, *THE CONSERVATIVE MIND* (1953).

56. McClellan, *A DEFENDER OF SOUTHERN CONSERVATISM*, *supra* note 53, at 35, 46-47.

57. See David Gordon, Southern Cross: The Meaning of the Mel Bradford Moment, *THE CONSERVATIVE*, Apr. 2010, at 34, 34.

58. See *id.* at 34 (noting that Bradford's support for George Wallace's 1972 Democratic presidential campaign was another problem for the nomination); Benjamin B. Alexander, The Man of Letters and the Faithful Heart, *A DEFENDER OF SOUTHERN CONSERVATISM*, *supra* note 53, at 17, 31.

59. M. E. Bradford, *A Fire Bell in the Night: The Southern Conservative*, *THE MODERN AGE* 9, 9 (1973) [hereinafter Bradford, *Fire Bell*].

60. See, e.g.

moral imperatives,” to lay waste to the terms of the original constitutional compact.⁶¹

Bradford characterized Lincoln's touchstone, the Declaration of Independence, as the nation's “one serious flirtation with the millennial thing.”⁶² Its legacy was made all the more damaging, he explained, through the influence of those who would read it by the light of “Jacobin ‘translations.’”⁶³ Abraham Lincoln was Exhibit A in this regard, by dint of his “misunderstanding of the Declaration as [conferring] a ‘deferred promise’ of equality,” and the Civil War struggle as having culminated in what amounts to a “second founding.”⁶⁴ This understanding, Bradford explained, was “fraught with peril and carries with it the prospect of an endless series of turmoils and revolutions, all dedicated to the freshly discovered meanings of equality as a ‘proposition’—a juggernaut . . . powerful enough to arm and enthroner any selfmade Caesar we might imagine.”⁶⁵ Bradford asserted that Lincoln, who was “very early, touched by a Bonapartist sense of destiny,” imagined himself in precisely such a role.⁶⁶

The danger of Lincoln's outsized sense of destiny was heightened by his religiosity, Bradford warned, since men who see themselves as “authorized from on High to reform the world into an imitation of themselves—and to lecture and dragoon all who might object” are frighteningly zealous.⁶⁷ “[They] receive regular intimations of the Divine Will through prophets who arise from time to time to recall them to their holy mission.”⁶⁸ The biblical element in Lincoln's rhetoric grew stronger as his political career progressed, Bradford observed.⁶⁹

61. Bradford, *Fire Bells* supra note 59, at 9–10. For an earlier articulation of the view of Lincoln as a centralizing despot who had flagrantly violated the terms of the constitutional compact, see ALEXANDER H. STEPHENS, *A CONSTITUTIONAL VIEW OF THE LATE WAR BETWEEN THE STATES: ITS CAUSES, CHARACTER, CONDUCT AND RESULTS, PRESENTED IN A SERIES OF COLLOQUIES AT LIBERTY HALL, VOLUME 2*, 34 (1868), available at <http://www.archive.org/details/constitutionalview02steprich> (“Mr. Lincoln came into power on the 4th of March, 1861. He held that the Federal Government did possess the

Lincoln's characteristic and, in Bradford's view, disingenuous method as a moralizer was to demonize his enemies while ~~not~~ grudgingly deigning to recognize their constitutional rights.⁷⁰ The political implications of this method over the long-term were dire because "should slavery be gone, some new infamy was bound to be discovered by the stern examiners whose power depends upon a regularity in such 'crusades.'⁷¹

Bradford contended that there was, in truth, "no worship of the law whatsoever" in Lincoln's political thought, "but instead devotion to perpetually exciting goals, always just beyond our re02dee6.(u)24y93-y[3.62 ()Tj 0 Tc C

according to [Lincoln's] political eschatology [as set out in his ad-

Bradford lamented that, in the Civil War's aftermath, the nation might have committed itself to a "second founding" that was "digestible—suited under certain circumstances to accommodation with the first."⁸⁵ "Emancipation appeared to have changed nothing substantial in the basic confederal framework," he concluded. "Neither did it attempt any multiracial miracles . . ."⁸⁶ Unfortunately however, for some, "the connection between blacks and American millennialism [only] intensified," in the post-bellum United States, and "Equality (capital 'E')" was placed at the center of their political understandings.⁸⁷ With the arrival of the rights revolution in the mid-twentieth century, the Civil War moment at last became "the Trojan Horse of our homegrown Jacobinism."⁸⁸

Rights Revolution egalitarianism was founded upon an uncompromising denial of localism, "a hatred of plenitude . . . a denial of the variety of Creation, 'abolishing the constitution of being, with its origin in divine, transcendent being, and replacing it with a world-immanent order of being, the perfection of which lies in the realm of human action [and proceeds from a human dream].'"⁸⁹ "Pure millennialism of the gnostic sort," Bradford warned, "is . . . ever restless, never satisfied. . . [It] entails the fracturing of hard won communal bonds in the implementation of someone's private version of the su-

American Political Science Association ("APSA") to this day. The EVS is a discursive community that is highly critical of the menace of the sort of "progressivism" that Voegelin had limned in *The New Science of Politics*. They are, that is, conservative. The EVS, in other words, has become the institutional sponsor of conservative panels (fifteen at the 2010 meeting) at the preeminent meeting for contemporary political scientists. ERIC VOEGELIN INSTITUTE, <http://www.lsu.edu/artsci/groups/voegelin/society/2010%20Papers/> (last visited July 10, 2011). The large number of panels is likely due to the fact that the group attends these panels in large numbers, packing the rooms. The allotment of panels at APSA meetings is derived from the attendance of a sponsor's panels at the previous annual meeting. See American Political Science Association, Memorandum: 2006 Panel Allocations for Program Committee Divisions and Related Groups, available at <http://www.apsanet.org/imgtest/2006%20M%20E%20M%20O%20R%20A%20N%20D%20U%20M.pdf> (describing the APSA annual meeting panel allocation process).

85. Bradford, *Fire Bells* supra note 59, at 10.

86. *Id.* See also *id.*

pernal good; and in a pluralistic society, implementation of such visions is usually perceived as moralistic aggression . . .⁹⁰

“As the South has always recognized,” Bradford explained, “patronizing, ‘for -the-Negro’ millennialism has had its primary meaning and ultimate promise exposed in those other species of utopian hope for which it broke trail. . . . [I]t has been a stalking horse for objectives never able to command national assent—never except as they hid behind or within the . . . one ‘sacred’ cause.”⁹¹ When these are achieved, diversity, culture, and, ultimately, freedom are lost.

C. Mel Bradford’s Jaffa

Bradford’s most immediate targets in setting out these understandings were not left-liberals (who almost certainly would not be listening to him), but fellow movement conservatives. His chief conservative antagonist was the Straussian political philosopher Harry Jaffa, a passionate admirer of Lincoln and a tireless proponent of the view (shared with his hero) that the Declaration of Independence serves as the lodestar of the American constitutional tradition.⁹²

Jaffa’s insistence on the centrality to the American constitutional tradition of “Equality, with the capital ‘E,’” Bradford thundered, “is the antonym of every legitimate conservative principle.”⁹³ “[T]here is no man equal to any other,” he insisted, “except perhaps in the special, and politically untranslatable, understanding of the Deity. Not intellectually or physically or economically or even morally. Such is, of course, the genuinely self-evident proposition.”⁹⁴

commitment to equality, Bradford warned, will lead ineluctably to a demand for the equality of condition, as advanced by an increasingly all-

rean.”¹⁰⁵ They treat the Founding and the Constitution the same way.¹⁰⁶ But “the Declaration is not implicit in the Constitution except as it made possible free ratification by the independent states. In truth, many rights are secured under the Constitution that are not present in the Declaration, however it be construed.”¹⁰⁷

The sort of unreconstructed neo-confederatism that Nancy MacLean has argued serves as the grounding for postWar American conservatism is certainly evident—albeit in a distinctive guise—in the thought of M. E. Bradford. Bradford’s rejection of the opening lines of the Declaration of Independence as constitutional touchstones, and of Lincoln as a constitutional vindicator and savior, along with his insistence on narrowly interpreting the meaning of the Civil War as having effectuated no sharp break with the “confederal” antebellum constitutional order, place him squarely within this old conservative tradition. Even so, his insistence on characterizing Lincoln as a slave to the utopian, “uniformitarian,” and, ultimately, totalitarian millennial abstractions allegedly characteristic of twentieth century progressives, demonstrates his decidedly modern concerns. The neoconfederate Bradford, however, was locked in a raging intellectual battle for the soul of the post-War conservative movement with Harry Jaffa—who stands about as far from neoconfederatism as imaginable—as a fervent proponent of both Lincoln and the centrality of the Declaration to the American constitutional tradition. Unlike Bradford, Jaffa was a man of ascending prominence on the postWar American right.

III. THE BIRTH OF CONTEMPORARY DECLARATIONIST CONSTITUTIONAL THEORY

A. Harry Jaffa’s (Straussian) Lincoln

M. E. Bradford’s truculently localist, pro-southern, neo-confederate conservatism, whatever its virtues as a species of political thought, was not likely to have much of a political future in the immediate post-civil rights era, when the states-rights position was tied so closely to the lost causes of racism and segregation. President Reagan’s withdrawal of Bradford’s nomination to head the National Endowment for the Humanities was a clear indication that, whatever the

105. Id.

106. Id.

107. Id. at 68. See also WILLMOORE KENDALL & GEORGE W. CAREY, *THE BASIC SYMBOLS OF THE AMERICAN POLITICAL TRADITION* 89–90 (1970) (arguing that it was the Constitution and not the Declaration of Independence that started our nation, and that the Declaration instead “e

standing of such views within the precincts of the out-of-power Old Guard, this vision would not serve within a right that now controlled the national government, and had realistic, long-term hopes of retaining that power. By contrast, Harry Jaffa's star was clearly rising.¹⁰⁸

By the 1980s, Jaffa was hardly a new figure on the intellectual right. Credited with penning the most famous line of Barry Goldwater's speech accepting the Republican nomination for president in 1964,¹⁰⁹ Jaffa first propounded his constitutional theory through his magisterial interpretation of the Lincoln-Douglas debates in *Crisis of the House Divided*, a theory he subsequently reiterated, even evangelized for in countless articles, lectures, and reviews. As law school constitutional theorists became more influential, and conservative academics found their foothold in this new world by hawking their own trademarked theory of textual interpretation—"originalism"—the political scientist Jaffa later recast his views in the prevailing "originalist" idiom.¹¹⁰

The pre-originalist Jaffa was no uncritical worshipper of the American Founding. His writings emphasized its incompleteness, the sad failing arising out of the compromises the Founders had made with chattel slavery.¹¹¹ These compromises, Jaffa argued, represented

principles of the Declaration, as vindicated by Lincoln) fixed, eternal standards of equality, justice, and truth.¹¹⁸

This epic conflict and choice was publicly argued in its most dramatic and sophisticated form in the Lincoln-Douglas debates, which Jaffa pronounced the world's greatest political and philosophic text. There, Lincoln and Douglas did no less than debate "the universal meaning of the Declaration."¹¹⁹ "No political contest in history was more exclusively or passionately concerned with the character of the beliefs in which the souls of men were to abide," Jaffa dramatically claimed.¹²⁰ He added:

Neither the differences which divided the Moslem and Christian at the time of the Crusades, nor the differences which divided Protestant and Catholic in sixteenth-century Europe, nor those which arrayed the crowned heads of Europe against the regicides of Revolutionary France were believed by the warring advocates to be more important to their salvation, individually and collectively.¹²¹

Jaffa found a direct parallel between the position Lincoln took in those debates and the conception of classical natural right propounded by Jaffa's teacher Leo Strauss in *Natural Right and History*.¹²²

20th century,"¹²³ Strauss "proved" that by attempting to replace faith with reason, modern (as opposed to classical) philosophy "laid the foundation of modern atheistic totalitarianism, the most terrible form of tyranny in human experience."¹²⁴ While studying Plato's Republic under the tutelage of the master at the University of Chicago, Jaffa "discovered . . . that the issue between Lincoln and Douglas was in substance, and very nearly in form, identical with the issue between Socrates and Thrasymachus."¹²⁵ Douglas's defense of "the golden calf of popular sovereignty" was in essence the position that might makes right—that the majority not only does rule, but should without any objective standard of wrong and right to serve as its compass.¹²⁶ Lincoln, however, insisted that the case for popular government depended upon a standard of right and wrong independent of mere opinion and one which was not justified merely by the counting of heads.¹²⁷ "Hence," Jaffa concluded, "the Lincolnian case for government of the people and by the people always implied that being for the people meant being for a moral purpose that informs the people's being."¹²⁸

Lincoln, for Jaffa, is the world-historical figure who stood fast when the great nation he led was most "tempted to abandon its 'ancient faith.'" ¹²⁹ Through close readings of a number of Lincoln's speeches presented in the form of "Teachings" concerning foundational principles of politics, Jaffa gives Stephen Douglas his due. Jaffa insists that Douglas recognized and acknowledged that chattel slavery was morally wrong, notwithstanding his support for popular sovereignty.¹³⁰ As a matter of politics, however, Douglas committed himself to value neutrality.¹³¹ He believed that the substantive issues involving slavery were constitutionally consigned to the state and territorial governments, and as such slavery was best apprehended constitutionally as "a jurisdictional question."¹³²

123. Harry V. Jaffa, *Faith and Reason* (N.Y. TIMES, F

continues to express)¹⁴⁰ profound concern about whether contemporary Americans have the faith to avail themselves of their rich constitutional heritage. The great Leo Strauss asked what Jaffa described as perhaps the most momentous questions facing the country: “Does this nation in its maturity still cherish the faith in which it was conceived and raised? Does it still hold those ‘truths to be self-evident?’”¹⁴¹ “Strauss believed those questions ought to have been answered in the affirmative,” Jaffa tells us.¹⁴² “Until they could be so answered, [Strauss] did not believe this nation, or the West, could recover its moral health or political vigor.”¹⁴³ It was the mission of conservative Americans—and, especially, the students of Strauss—to fight for the triumph of this ancient faith.¹⁴⁴

B. John Courtney Murray’s (Thomist) Declaration

Jaffa’s reading of the Declaration of Independence as positing a unified supreme Good, with the nature of rights—as with all else—to be understood in light of this Good, harmonized well with Thomist Roman Catholic theology.¹⁴⁵ On this, M. E. Bradford critically observed that Jaffa was attempting to understand America through the lenses of systematic philosophy—treating the country as standing for a philosophical “proposition” from which all else followed logically, philosophically, and theologically.¹⁴⁶ Jaffa, however, made the connection himself. Drawing a parallel between the American Founders and seminal Catholic thinkers, Jaffa noted early on that “whatever their differences,” Thomas Aquinas¹⁴⁷ and Thomas Jefferson “shared a belief concerning the relationship of political philosophy to political authority that neither shared with the last ten presidents of the American Political Science Association. It seemed to me that both believed it was the task of political philosophy to articulate the principles of po-

140. See, e.g., Harry V. Jaffa, *Faith and Reason*, N.Y. TIMES, July 3, 2011, at BR 16 (reviewing ROBERT C. BARTLETT, *ARISTOTLE’S NICOMACHEAN ETHICS* (2011)).

141. STRAUSS, *supra* note 118, at 1.

142. Jaffa, *Another Look at the Declaration*, *supra* note 135, at 840.

143. *Id.*

144. See *id.* (defending Strauss).

145. Jaffa’s first book, which immediately preceded *Crisis of the House Divided*, is a study of Thomas. HARRY V. JAFFA, *THOMAS AND ARISTOTELIANISM: A STUDY OF THE COMMENTARY BY THOMAS AQUINAS ON THE NICOMACHEAN ETHICS* (1952).

146. See text accompanying *supra* notes 92–107 (describing Bradford’s critiques of Jaffa).

147. Thomas Aquinas was a Dominican priest who lived in the eleventh century. His most renowned work, *Summa Theologiae*, has been heavily influential in Western philosophy and helped Aquinas earn the title Doctor of the Church. Aquinas was canonized in 1323.

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We know that people are virtuous only when they are inwardly governed by the recognized imperatives of the universal moral law.¹⁷³

This, of course, affects the way that rights are to be understood within the American constitutional tradition. It is a fact that “[t]he American Bill of Rights . . . [is] the product of Christian history.”¹⁷⁴ “The ‘man’ whose rights are guaranteed in the face of law and government is, whether he knows it or not, the Christian man, who had learned to know his own personal dignity in the school of Christian faith.”¹⁷⁵ As such, the content of those rights can only be defined and understood in light of the nature of the supreme Good, as set out in universal natural law. This places natural law philosophy at the center of the inquiry into the nature and proper application of the Bill of Rights.

While there is nothing inherently Catholic about natural law, Murray explains that the natural law tradition and, hence, the American constitutional tradition, finds its “intellectual home within the Catholic Church.”¹⁷⁶ “Catholic participation in the American consensus,” Murray observes proudly, “has been full and free, unreserved and unembarrassed, because the contents of that consensus—the ethical and political principles drawn from the tradition of natural law—approve themselves to the Catholic intelligence and conscience.”¹⁷⁷ While mainline Protestantism may have moved away from the old English and American tradition in this regard, its foundations are “native” to Catholics. Och0.242 Tw -32(nd)2(at)3((e)-2(r)-4(i)-55()11b)-7(e)-2(c)2(a)th

These understandings have evinced a special attraction for the contemporary Catholic right.¹⁸¹ As we have seen, they also harmonize extensively with Straussianism, which has a considerable influence in conservative intellectual and public policy circles, including magazine and book publishing, television (Fox News), and the Internet.

To many on the right, the situation is grave indeed, not just for America, but for the entire world. As the right-wing priest Father

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Johnson's "fuller story" is a strange mashup of old lost-cause history, arguments retrieved from antebellum pro-slavery tracts, cherry-picked facts (transmogrified into half-truths), and widely-noted accounts of northern racism and failures on the slavery question that the book's conservative readers are told (incorrectly) have been hidden from history by elitist scholars and politicians.

In this vein, part of Johnson's fuller story is that southern blacks in the Old South were slave owners and Confederates, just like southern whites.¹⁹³ Not only did southern men of both races own slaves, and sign up to protect the Confederacy against northern aggression, but they treated their slaves much better than northern slave owners.¹⁹⁴ Johnson asserts that the northern novelist Harriet Beecher Stowe got the nature of the southern masterslave relationship all wrong. *Uncle Tom's Cabin* after all, was written by a woman who "had never been to the South and had never even seen a plantation and how they were run."¹⁹⁵

Using the three-fifths clause as evidence, Johnson sets out to correct the historical record by showing how "Northerners considered slaves to be property with no more rights than [animals] while Southerners insisted slaves were human beings."¹⁹⁶ "At several points during the debate [during the Philadelphia Constitutional Convention], a Southern delegate would try to appeal for full representation of the slaves as human beings," Johnson reminds his readers, "but each time the suggesE1h3(e)-2(3(at)1(hu)2(m)-1(an)3(at)-0.004(l)-8(d-7(hns)7(to)-10o)-10.)-5n."

Church.²²⁷ He describes Pope Pius IX's longstanding friendship with

flecting Pool. He asked if the audience noticed—and was willing to acknowledge—that the Washington Monument’s marble changed color part way up. This, he explained, is because the builders had stopped constructing the monument during the Civil War, and then, at its conclusion, set themselves again to completing their task. When, after recommitting themselves to begin anew, their work was finally complete, they put an inscription on the top of the obelisk facing east, reading “Laus Deo”—“praise be to God.”²⁴⁸

Turning his attention to the memorial on whose steps he stood, Beck called Lincoln “a giant of an American casting a shadow on all of us.”²⁴⁹ “We look to a giant for answers,” he told the crowd.²⁵⁰ Then Beck recounted how, the previous week, he had brought his children to the memorial, and read to them aloud both Lincoln’s Gettysburg Address and his Second Inaugural from the inscriptions on the monument’s walls. Moreover, he had hoisted each of them upwards to have them touch the very words themselves.²⁵¹ These great documents of American history, Beck insisted, are as “alive today just as any other scripture is. It speaks to us from the past.”²⁵² As he stood in Washington, D.C.—itself once a battlefield “filled with warriors on each side,” Beck then read to the crowd the Gettysburg Address in its entirety.²⁵³ “[We are] at a crossroads,” he explained. He said the country must decide whether Lincoln’s words still have “relevance or meaning for us today.”²⁵⁴ In his Second Inaugural

248. *Id.* In her speech at the rally, Sarah Palin praised Lincoln as the “Great Emancipator” who “freed those whose captivity was our greatest shame.” Sarah Palin, Address at the Restoring Honor Rally (Aug. 28, 2010) (transcript and video available at The Sarah Palin Blog, <http://www.thesarahpalinblog.com/2010/08/video-and-transcript-of-restoring-honor.html>). “[W]e feel the spirit of Dr. Martin Luther King, Jr.,” she told the crowd. *Id.* Quoting from the Declaration of Independence, Palin announced that the assembled crowd was meeting to honor of “these giants, who were linked by a solid rock foundation of faith in the one true God of justice.” *Id.* It was a meeting to “restore America and restore her honor.” *Id.* “[H]ere together, at the crossroads of our history, may this day be the change point,” Palin said. *Id.* “Look around you. You’re not alone. You are Americans! You have the same steel spine and the moral courage of Washington and Lincoln and Martin Luther King. It is in you. It will sustain you as it sustained them.” *Id.* The crowd responded with a wave of chants of “USA! USA! USA!” *Id.* (see video).

tized and gave the Second Inaugural. He looked to God and set men free. America awakens again.²⁶⁵

That very same story of slumber and awakening, of blindness and sight, of sin and redemption, is the same throughout history, as "it has [been] since the burning bush," Beck asserted.²⁶⁶ We wander until we remember that "God is the answer."

tics. The preachers were the first to say that “all men are created equal . . . that right comes from God,” he explained.²⁶⁵ But “[w]e have fallen asleep as a nation,” he lamented. “For 240 years [the preachers] have been absent from the American landscape. The Blackd. “>(e)-2(TcRe)14(e)()Tj 0.261 0 7.161.554 0 iBuir653(hat)38 to11(nn l)- f (s15(s-25.

heart of the American constitutional order, Balkin offers his argument as a species of originalism—a commitment to the proposition that the original constitutional understandings of We the People continue to govern us, actually and rightly, today.²⁷³ This is a very different vision from standard legal academy accounts of originalism, including the “constitution-in-exile version,” which emphasize restoration not redemption.²⁷⁴

The Declarationism of the modern American right is probably the most currently influential and vibrant form of redemptive constitutionalism. I have argued here that we can go beyond the claim that a redemptive conservative Declarationism in the second half of the twentieth century, on into the first half of the twenty-first, has served as a vehicle for the mobilization of constitutional politics on the right. It has also served as a vehicle for unifying the diverse strands of the Religious Right, and of re-integrating the post-civil rights South into the nation as the nation’s (purportedly) rock-solid moral core.²⁷⁵

273. See generally (providing an overview of Balkin’s central arguments); Jack M. Balkin, Original Meaning and Constitutional Redemption, 24 CONST. COMMENT. 427 (2007) (same).

274. See generally RANDY E. BARNETT, RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF ORIGINAL MEANING (2004).

Declarationists are certainly originalists of a sort. But unlike the caricature of conservatives proffered by many on the liberal/left (including historians like Nancy MacLean, who dub them neo-confederates),²⁷⁶ no one is more self-conscious about the failures of the Founding, and the evil of the institution of chattel slavery, than conservative Declarationists. Like the Yale Law School constitutional theorists—most notably Akhil Reed Amar and Bruce Ackerman—Declarationists offer a regime account of American constitutional development.

We might usefully consider the most prominent of those models, Bruce Ackerman's, as set out in his ongoing *We the People* project,²⁷⁷ which shares the redemptionist presuppositions with contemporary Declarationism. While Ackerman's tripartite model of American constitutional regimes is structured around three (ostensibly) highly participatory "constitutional moments"—the Founding, Reconstruction, and the New Deal²⁷⁸—contemporary Declarationism is centered on selected aspects of the political thought of the three "Great Men" who constitute its Triptych: Jefferson, Lincoln, and King.²⁷⁹ The lives of Jefferson and Lincoln, of course, are temporally parallel to the first two of Ackerman's constitutional moments (the Founding and Reconstruction), whereas contemporary Declarationists in effect substitute the civil rights movement of the 1950s and 1960s for Ackerman's focus on the New Deal of the 1930s.²⁸⁰ The Declarationist substitution of Great Men for Constitutional Moments, it is worth noting, avoids much of the messiness that Ackerman must deal with in discerning the values of the sovereign people as a whole during a "moment"—or a time period in which there are many political actors, movements, interest groups, acts, pieces of legislation, bureaucratic decisions, etc. In their constitutional theory, Declarationists choose a single "Representative Man"—grounded in a time of stark moral choice by an unyielding commitment to "first things"—who is deemed to embody the

276. Nancy MacLean, *Neo-Confederacy versus the New Deal: The Regional Utopia of the Modern American Right* in *THE MYTH OF SOUTHERN EXCEPTIONALISM* 318–19 (Matthew D. Lassiter & Joseph Crespino eds., 2010).

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principles and spirit of the moment, which is considered to be dem

They had acted popularly, as a newly constituted people. But they had yet to understand that, in a true democracy, the people are subservient to the commands of the natural law.²⁹⁴

“We would now observe,” Jaffa continued, in detailing the thought of the man who redeemed America’s Founding, “that Lincoln’s political thought is cast almost wholly in the metaphor of a double perspective, in which the function of his statesmanship is seen either on the analogy of the salvation of Israel from Egypt or the salvation of the world by the Messiah.”²⁹⁵ Through his speeches, it is apparent that “Lincoln’s whole conception of political salvation and of the role of statesmanship . . . necessarily agree[s] in its higher reaches with the purposes and methods of the divine teacher.”²⁹⁶ The “great central tenet” of the “all men are created equal” clause of the Declaration, Jaffa noted, was constantly referred to by Lincoln as an “ancient faith.”²⁹⁷ “The truth which, in the Declaration, gave each man, as an individual, the right to judge the extent of his obligations to any community,” Lincoln made clear in his Gettysburg Address, “also imposes an overriding obligation to maintain the integrity, moral and physical, of that community which is the bearer of the truth.”²⁹⁸ “The sacrifices both engendered and required by that truth—

anticlerical and an opponent of “revealed theology.”³⁰¹ “The preamble to the Declaration of Independence” issuing from the pen of Jefferson “invokes not the God of Israel or the persons of the Trinity but the God of Nature and is wholly a document of the rationalistic tradition. This God reveals himself, not in thunder from Sinai, nor

C. The Declarationist Narrative

The Declarationist narrative I have described here represents one strain of the constitutional nationalism forged by the contemporary conservative movement, with the aim of forming movement identities and allegiances, and distinguishing friends from enemies. It positions contemporary conservatives—and the Republican Party—as the true heirs and guardians of the legacy of the American Founders, Abraham Lincoln, and Martin Luther King, Jr. Far from signaling a (wholly) reactionary return to pre-civil rights movement neo-Confederatism, contemporary conservative Declarationism—with sometimes millennialist overtones—looks to the present, and, especially, the future. It emphasizes sin, and redemption, with a very modern focus on the sin of racism. It explains to conservatives the ways in which, through their rock-solid commitment to the first principles of the Declaration, they are the legatees of the Great Men who founded the Great Nation, and then redeemed it from the evil of chattel slavery, and from the sin of racial segregation.

Contemporary conservative ideologists are well aware that many historical misconceptions are taught in school (through alleged misinformation spread by academic elites), and that it was liberals and progressives who opposed slavery and fought against racism and for civil rights. But conservative Declarationists explain that, as legal positivists, secularists, se sero2(o)mo2(o)-53ioldrs-4(v)-5(i)-4(st)4(s,-)2(se)-1()-2(h1(s)]5(h)-7(ns)-e)-1

Conservative Declarationists are committed to reminding as many Americans as they can—thereby expanding their political base—that there is another American tradition that predates the (presumptively malignant) invention of positivist, secular, relativist progressivism, a tradition set out by Jefferson in the Declaration and redeemed by Lincoln and King: the tradition of natural rights and natural law—the real American constitutional tradition with which we as a nation were providentially “endowed by our Creator.”³⁰⁹ Although this tradition is all but dead in the precincts of the nation’s elites, in its universities, its mainstream media, and on its (north)eastern and west coasts, conservative Declarationists repeatedly remind us, it is being kept alive by the nation’s devout Christians—conservative Catholics, conservative evangelical Protestants, and conservative Mormons—and remains predominant in the nation’s most consistently religious region, the South. Its institutional home, should it not betray its roots, is the contemporary Republican Party.

The polity’s drift away from the bedrock commitment to the principles of the Declaration, conservative Declarationists emphasize, is rooted in the political philosophy of progressivism—an alien and enemy force. Its impetus (and effect) is nothing less than discrimination against Christians, whose views are inherent in the nation’s founding documents, properly construed—and a persistent assault on their liberty of conscience, an assault that would have appalled the giants/patriarchs/prophets of the American Constitutional tradition: the Founders, Lincoln, and King.³¹⁰

The restoration of the Declaration of Independence to its rightful place as the foundation of the nation’s constitutional politics, far from amounting to any breach of the ostensible “wall” of separation between church and state, Declarationists posit, amounts to a

Newport, R.I., April 2010); Ryan Lizza, Leap of Faith: The Making of a Republican Front Runner, *NEW YORKER*, Aug. 15, 2011, at 54. See also Daniel L. Dreisbach, Lecture for the Family Research Council: The Bible and the Founding Fathers (May 13, 2010), available at <http://www.frc.org/events/the-bible-and-the-founding-fathers>.

309. Conservative Declarationists all but ignore highly significant distinctions between natural rights philosophy, in the Enlightenment tradition, and (Catholic) natural law. Theirs is, at base, a symbolic and emotional gambit, and an exercise in distinguishing themselves from progressive and liberal opponents, enemies, and traitors. What counts is that both start with the Creator, upon whom they depend, in contradistinction to positivist, secular liberals and progressives.

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