



## Should We Break Up with the Founders?

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**[00:00:00] Jeffery Rosen:** Hello friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center. and welcome to We the People, a weekly show of Constitutional debate. The National Constitution Center is a non-partisan non-profit chartered by Congress to increase awareness and understanding of the Constitution among the American people.

**[00:00:20] Jeffery Rosen:** Earlier this year, The National Constitution Center convened in Miami for a Constitutional ideas festival that was a meaningful series of conversations about the Constitution with speakers of diverse perspectives. One of our conversations was on a provocative topic, should we break up with the founders?

**[00:00:40] Jeffery Rosen:** The five scholars you'll hear to discuss and debate this provocative question are Akhil Reed Amar of Yale Law School, Caroline Fredrickson of Georgetown Law, Kermit Roosevelt of Penn Law, Jamelle Bouey of the *New York Times*, and Charles Cook of the *National Review*. It was an honor to host the conversation and I'm so glad to share it with you now.

**[00:01:05] Jeffery Rosen:** Welcome to our evening debate, Should We Break Up With The Founders? The title for this panel comes from a *New York Times* account of Heidi Schreck, who is the woman who put on the show What the Constitution Means to Me. and as the *Times* reported, Heidi Schreck decided in the middle of the run of the show to arrive at the National Constitution Center, show up in Signers Hall, and break up with the founders. She said, "I've had it with you founders. I'm breaking up with you."

**[00:01:37] Jeffery Rosen:** Now, the founders didn't respond. It appears that she was ghosted by James Madison. But, we thought it was an intriguing enough formulation that we would set it for a debate. Because the remarkable scholars before you have each taken very different positions on the important and complicated question, should we break up with the founders?

**[00:02:00] Jeffery Rosen:** Was the original Constitution, uh, a flawed but meaningful attempt to realize the ideals of the Declaration of Independence, an attempt that was, uh, made more perfect by reconstruction? or was the original Constitution so fatally flawed by the original sin of slavery that it does not deserve our respect, and it really took reconstruction and the Civil War as our historian said last night to vindicate the Declaration's promise. That's the broad topic.

**[00:02:29] Jeffery Rosen:** We just had a dream team of debaters and we're going to begin. Professor Kim Roosevelt has written a new book called *A Nation That Never Was*, and it seeks to replace the standard founding-centric story of American history with a story that's focused on reconstruction. Kim Roosevelt.

**[00:02:46] Kermit Roosevelt:** Thank you. So, this is a great question and I like the way that you framed it. And, initially I was going to lean in to the romantic comedy element of it.

**[00:02:55] Jeffery Rosen:** [laughs].

**[00:02:56] Kermit Roosevelt:** And I was gonna give you arguments for breaking up with the framers in the rom-com genre and it was gonna be, "You can't change him. He's not that in to you and you can do better."

**[00:03:06] Kermit Roosevelt:** Um, and, and maybe I'll come back and explain that later because there's something behind each one of those and it sounds like maybe people are interested. But, I want to jump ahead a little bit to two things. So one, if I did say, "We should break up with the founders," and that's actually not quite the position I have. Because I, I think Akhil is gonna say the founders are very different. Um, and I don't really want us to break up with them so much as view them in a different light.

**[00:03:33] Kermit Roosevelt:** But, if I did say, "We should break up with the founders," what would you think? What would people think? My assumption is people would think this is saying that America's bad. This is not patriotic. This is saying America's not a great nation. Right? Our founders aren't so great. We should understand that.

**[00:03:49] Kermit Roosevelt:** So the first point I want to make is that's not it at all. The way that I present this, the story that I try to tell, I'm telling you, America is better than you think. Our America, the America that I believe in is not born in a slaveholders rebellion. It's born in the war that ended slavery. And our foundational document that states our ideals doesn't complain that our enemies are emancipating the people that we enslaved, it promises that we will free the people our enemies enslave.

**[00:04:21] Kermit Roosevelt:** And the America that I believe in, that I describe in the book, is the America of Brown, and Loving, and the Voting Rights Act, and federal anti-discrimination laws and that's a great country that we can believe in and be proud of. But it's not founding America. So this is reconstruction America.

**[00:04:41] Kermit Roosevelt:** And the main argument of the book, I would say, is reconstruction America is better than founding America, and we should identify with reconstruction America. And having said that breaking up with the founders doesn't mean I don't like America, I hope that I prepared you for what otherwise might be a frightening revelation, which is we already did it. We already broke up with the founders. And this is what we need to

see and accept. We need to accept how radical a transformation reconstruction was. And we need to accept sort of the unconventional way in which it was accomplished.

**[00:05:16] Kermit Roosevelt:** So, just to do this briefly, I don't want to take too much time, but, imagine that you take the reconstruction amendments, the 13th, the 14th, the 15th amendment and present them to the Constitutional convention in 1787. How much buy-in are you going to get? So, we're gonna make Black people citizens, right? We're gonna tell states that they can't decide who their citizens are. We're gonna have the federal government intervene in the relationship between states and their citizens, we're gonna require that black men are allowed to vote. Um, I don't think you get a lot of buy in even for the 13th amendment in the 1787 Constitutional Convention.

**[00:05:54] Kermit Roosevelt:** Um, founding America doesn't want reconstruction. And how do we know that? We know that because it took a Civil War and the deaths of three-fourths of a million Americans even to get the 13th amendment. And then the 14th amendment was proposed to founding America, and founding America said, no. And this is part of reconstruction that I think we don't teach very well, because I didn't learn this in high school. A lot of people are surprised by this.

**[00:06:18] Kermit Roosevelt:** But 10 of the former Confederate states reject the 14th amendment. So does Maryland. So does Delaware. New Jersey and Ohio later tried to rescind their ratifications. And the way that the 14th amendment gets through is Congress dissolves the governments of 10 states, and creates new ones. And those are the states that ratify the 14th amendment. And this is what I say is the creation of a new nation, and it's a better nation, and it's our nation.

**[00:06:45] Jeffery Rosen:** Charlie Cook, you have written a piece about how America's founding ideal changed human history forever. Should we break up with the founders?

**[00:06:55] Charlie Cook:** No. We shouldn't break up with the founders. Although I think there's actually a great deal of agreement here, but there's perhaps a difference of opinion on how to interpret the same data. I see continuity. I see a nation that improves enormously in its second founding, that improves enormously with the reconstruction amendments. That then backslides as it did before the Civil War, but that over time, bit by bit, lives up to its promise.

**[00:07:28] Charlie Cook:** Why I think you can't break up with the founders is that the promise is the north star around which all of this revolves. Now, if the question is, were the founders perfect? No. If the question is, was it better to be in America in 1787 than in, uh, 1865 than in 2010? No. But I see a line that runs through.

**[00:07:58] Charlie Cook:** The reconstruction amendments improve the Constitution enormously and extend it to people who had been systematically excluded. Uh, at least in theory at first and eventually in practice. Uh, some of the most beautiful rights, uh, and liberties and form of

governments ... I say governments because the states matter that have ever existed in the world. But, much of the Constitution prevails.

**[00:08:28] Charlie Cook:** The 14th amendment incorporates, eventually, the individual rights in the Bill of Rights. and it ensure eventually, uh, that the promises that are made apply to everyone. But the structural parts of Constitution, uh, are there constantly throughout. Uh, the, uh, separation of powers are in the original Constitution. That matters, uh, a great deal. The federalist structure is altered by reconstruction, um, but it is not destroyed by it.

**[00:09:05] Charlie Cook:** Um, I have a romantic vision of this in part because I moved from somewhere else, and I chose to take an oath to this Constitutional order. Um, I believe it is a work of great genius. I believe it is, uh, probably the Constitutional structure that understands and anticipates the, uh, persistence and continuity of human nature more than any other.

**[00:09:33] Charlie Cook:** So, I don't, I don't see one portion of American history as being, uh, distinct from or separated from the rest. I see, uh, a story of improvement that is based upon an idea. Now, where I do sometimes differ from others who evaluate the American story is that I think that the ideals that were set in motion at the founding were glorious. I just think that they were often ignored. I think that there was an enormous amount of backsliding.

**[00:10:09] Charlie Cook:** If you look at Abraham Lincoln in the 1850s, uh, if you look at his letter to Henry Pierce, if you look at his speech at Cooper Union, he's not saying that Thomas Jefferson's Declaration of Independence is a lie. He's saying that it is being subverted. Uh, I think he was right.

**[00:10:30] Charlie Cook:** I think it was being subverted. I think it matters enormously that the second founding was developed by people who had enormous respect for the first founding. Uh, who in most cases drew on that first founding and appealed, uh, to its ideals. And I don't think that the, uh, the failure to respect and uphold the values that were declared in the late 18th century in the first founding are diminished by those who ignored them. In the same ways I don't think that the great values that were declared during the early reconstruction period were diminished or rendered hollow by the fact that reconstruction was crushed.

**[00:11:18] Charlie Cook:** And reconstruction didn't fail, it was actively crushed. But eventually, uh, it prevailed. And the reason that it prevailed is that the core philosophy was good. Um, so, I, I wouldn't want to break up with the founders. Uh, I would want to cherish and admire them, and understand that they were the first mover, and many others came afterwards. Uh, and I don't think that you can get that narrative line if you get rid of its architects.

**[00:11:49] Jeffery Rosen:** Jamelle Bouie, A difference I hear between Kim Roosevelt and Charlie Cook is whether the story from the Declaration to the Constitution to reconstruction is one of continuity or discontinuity. Was the founding of flawed but earnest effort to achieve the ideals of the Declaration, one that was only made more perfect by reconstruction? Or was the

founding such a betrayal of the ideals of the Declaration that we need to look to reconstruction to give our allegiance. What are your thoughts?

**[00:12:22] Jamelle Bouie:** So, I don't think it's either. Um, I think that part of the trouble with how we talk about it and how we think about the founding is that we talk about and think about it in these very abstract ways. In terms of ideals. In terms of, um, sort of principles.

**[00:12:41] Jamelle Bouie:** But I'm much more interested in the founding in 1787 and 1788, because ratification matters too, as exercises in practical politics. As responses to particular contingent events that happen, uh, that force a set of political elites into difficult choices about what to do next, given their commitment to republican form of government. And I think that ... I don't want to break up with the founders in that we should toss them into the ash bin of history.

**[00:13:11] Jamelle Bouie:** But I do want to break up with the notion that we should think of the founders as something other than a set of practical politicians. Some of them quite gifted, some of them quite insightful. Um, but at the foundation, practical politicians doing practical political work. And it's always funny to me that we, we often ignore this. Because they themselves didn't, right?

**[00:13:32] Jamelle Bouie:** Like you, when you read their own arguments and justifications for the things they did, very often, and my favorite example of this is in the Federalist Papers when Madison is trying to explain equal representation in the senate, a thing that he did not like. He simply says, "Listen, we had to come to an agreement. And this is what we came to." Uh, and that's the extent of it. There's no higher justification for this, it's just the thing that happened to be able to get us through the door to get this thing written.

**[00:14:01] Jamelle Bouie:** The reason I think it's important to think about the founders as practical politicians first and foremost, and to sort of downplay, ah, maybe not completely jettison, jettison, but um, put on the back burner, talk of ideals and principles. Because I think we do have a quite, there's still quite a bit to learn just from the particular steps, and the reasoning, and the way they went about crafting a political solution. I think that stuff is valuable.

**[00:14:31] Jamelle Bouie:** It's valuable for the same reason that we study an political thinkers from hundreds of years past, right? Um, uh, it offers insights into how we might tackle similar difficult political questions. I think the other thing that it can help us do is maybe separate ourselves a little bit from the particular compromises they make. Again, when we think of the Constitution and we think of the founders in elevated terms, we sort of lose sight of the fact that the document that we have is a set of practical compromises to bring together an attempt at sort of an extent, at an extended republic.

**[00:15:10] Jamelle Bouie:** And although we may still be committed to that extended republic, to the union, although we may be committed to a form of democratic life that involves a strong kind of federalism, we don't necessarily need to be committed to the exact and specific compromises these people made to come to that decision. That part of the, uh, the beauty of democracy, the

beauty of representative government, of popular sovereignty, is that we might come to our own set of compromises and decisions about how we want to organize this democracy.

**[00:15:46] Jamelle Bouie:** And so the value of the founders is that we can look to them, and to other founders, right? I think the part of the value of de-mistifying this one set is that we can also recognize that there are other sets of founders, the reconstruction founders, um, people like Frederick Douglas. We can recognize other sets of individuals in American history who have also been engaged in this project. And look to them for guidance, for maybe a little wisdom, or for at least a model of how to go about the kinds of deliberation and compromise-making that is necessary to not just sustain democratic life, but to reinvigorate it time after time.

**[00:16:22] Jamelle Bouie:** So I'm of the treat, treat the founders like a beloved ex-girlfriend, right? Someone you're still cool with, right? You're still, you still catch up. Know, you know what's happening with their kids. Um, but you don't have the stars in your eyes anymore.

**[00:16:44] Jeffery Rosen:** These, these are ex-girlfriends that you find on dating apps, that swipe left and right, presumably.

**[00:16:48] Jamelle Bouie:** I'm pre-app. So, I don't, I don't know what that's about.

**[00:16:53] Jeffery Rosen:** Um, this is a, a great debate. But um, a nuanced one. And we are going to vote at the end, about whether we should break up with the founders. So I'll ask you, Caroline Fredrickson, you've written great pieces, including how the Constitution is defined more by its amendments than by the original provisions. Would, would you like to make a strong yes or no case, or not?

**[00:17:13] Caroline Fredrickson:** I think I have to say I'm with Jamelle in the sense of, um, and I was going to use a similar line.

**[00:17:21] Jeffery Rosen:** [laughs]

**[00:17:21] Caroline Fredrickson:** So, stole it from me. But I would just say, well, you didn't steal it from me. But you know, we're thinking along the same lines.

**[00:17:27] Caroline Fredrickson:** I think we do have to break up with them, but let's stay friends. You know, it's, it's such, you know, we revere them, and rightly so. I mean, it was an incredible thing that happened. To create this new nation, to create a democracy, um, that provided for the time, um, a really enhanced set of, um, rules for participation. Um, of engagement. Of the public as they defined it at the time.

**[00:18:01] Caroline Fredrickson:** That was able to participate. That was legally able to participate. And I think that is something we absolutely have to have deep respect and friendship for. But just like when you fall out of love, you know, love is blind, they say. Um, and you are

head-over-heels. Well, I think we need to be a little bit more rational about now. What is ... What they achieved was phenomenal, but it was flawed. There were a number of things about the Constitution that we absolutely had to fix. We had a civil war to fix them.

**[00:18:36] Caroline Fredrickson:** Um, and there are other provisions that remain highly flawed. I personally think the fact that we have at, that we didn't follow, as Jamelle wrote in a wonderful piece in today's *Times*, about Madison's views, on the senate. And the idea that we have equal representation for the states there is a problem. The electoral college. Article five, it is a problem our Constitution is way too hard to amend.

**[00:19:00] Caroline Fredrickson:** Now, these aren't things they couldn't have anticipated, necessarily, at the time. But indeed, the embedding of so many provisions around slavery, um, in the Constitution originally. The fact that they didn't anticipate faction, right? We all know that, right? That's an, something we all have read about in law school, we teach in law school. Um, the rise in the party system that, uh, well, you can't really deal with this. The problem of dealing with polarization and partisanship that is very hard under the structure that we have.

**[00:19:33] Caroline Fredrickson:** Um, and I would say that we also have had some, you know, flaws in terms of separation of powers. And not to say that the impeachment process of the last president should have come out one way or the other, but I think we can all recognize that it's not a system that really works. When you have ... You could have a president who has committed something that the, you know, very many, a large number of, of, of the American public might think is impeachable.

**[00:20:04] Caroline Fredrickson:** But because of polarization and partisanship, you're never going to, the impeachment process just clearly can not function, right? So that is not a system that works in terms of checks and balances. The polarization and partisanship in congress is to great. That the whole idea that, um, ambition counters ambition, that the, each branch of government has its own, um, uh, institutional loyalties. Well, that's clearly not true. Um, that partisan and polarized loyalties are much more, um, uh, important at this point.

**[00:20:39] Caroline Fredrickson:** So I think we have a lot of issues to contend with. And I would also say that just, you know, as important as the second founding was, I think the third founding is something that we need to remember. That the ideals of reconstruction, the goals of reconstruction, took almost a century to even become close to being fulfilled. That it required a civil rights movement, it required mobilization of a large group of Americans to actually make those ideals embedded in the reconstruction amendments into any kind of reality, and we're still fighting that fight.

**[00:21:13] Caroline Fredrickson:** So there is so much work still to be done. Again, I think we need to remain good friends with the founders. They are absolutely merit our deep respect, our admiration. They accomplished something that was, had never been accomplished before. Um, but we need to recognize, they're not gods. Um, they were flawed. And they couldn't anticipate everything that was going to come. And some of the things that they did try and anchor in the Constitution are things we deeply disagree with now.

**[00:21:44] Caroline Fredrickson:** So, um, let's stay friends. But break up, perhaps.

**[00:21:53] Jeffery Rosen:** Akhil, your next book, *The Words That Made Us Equal* argues, and I was so excited to learn this from you, that the words of the Declaration would put, were put into state Constitutions. Not by Jefferson, but by other founders like Adams and Franklin. Should we break up with Jefferson, but not Adams and Franklin? And more broadly you've heard, I hear through, three voices for some kind of breakup, even if on friendly terms. And only Charlie saying we should not break up. Should we or not?

**[00:22:24] Akhil Reed Amar:** Yeah, they break up with each other. So, distinctions. And, and such an honor and a special privilege, I just have to say, as a teacher to have two of my very best students over on my right and on my left. So, um, I'm feeling very proud at this moment.

**[00:22:39] Akhil Reed Amar:** So, distinctions. Um, there are the documents, the Declaration of Independence, the original Constitution, the amended Constitution, and then there are people. And the people are not, uh, an it. They're a they. Um, and so, and, and it is not Jefferson's declaration at all. It is a, uh, uh, uh, a result of, um, Adams and Franklin and others. So, um, yes. Uh, I have really soured on Jefferson. He, he was a liar. Um, and hypocrite. Um, and he enslaved his own children. Um, and we didn't know that 20 years ago.

**[00:23:24] Akhil Reed Amar:** And wow, that's going to have to cause us to rethink some things. And um, Jefferson, and Madison is joined with him at the hip. So, they broke up with each other, you need to understand. George Washington, in the last three years of his life, refuses to even send a letter to Jefferson or Madison. That's an interesting fact, it's in my last book. I didn't know it before. You can find, you can confirm this in 30 seconds. Online, the National Archive's, um, *Founders Online* project.

**[00:23:58] Akhil Reed Amar:** Um and he, and he did so because they're liars. And they lied to him, and they lied to others, and they got worse and worse on slavery. Um, now it's not Jefferson's declaration, as I said. It's, it's a, it's a pro ... And it's not a perfect document. It, it's a, it's, it's up, it's about, um, sort of slavery. Um, um, and the three-fifths clause is a real big problem in the original Constitution. And we have to talk about, um, that.

**[00:24:23] Akhil Reed Amar:** I do think with Charlie that the reconstruction actually, um, is, uh, an uh, provided for by the original Constitution. And, and we have institutional continuity of President, house, senate and, and, and so. It, it, it was, as a result of a war, cataclysmic war. But procedurally, it did build on, um, the um, earlier episodes.

**[00:24:46] Akhil Reed Amar:** But we're going to have to choose, you see. Because actually, um, you can choose Washington who frees his slaves, or um, and cuts off all connection with Jefferson and Madison, or you can choose Jefferson and Madison. So here's the, what we do have to do. We have to understand, maybe this is therapy or something. We need to, to just know a lot more about these documents, but also the people. And we need to because much of what we know, much of what I was taught, Jeff, is false.



**[00:25:18] Akhil Reed Amar:** So here, just like five false things that probably most of your, and you're a pretty sophisticated audience. You think James Madison's the father of the Constitution, that's ridiculous. Not remotely close, it's George Washington. And it matters for reasons that I've identified. You think the *Federalist 10* is some significant document, no one reads 10 at all. And they do read the early *Federalists*, including, um, two through eight. Um, especially eight.

**[00:25:44] Akhil Reed Amar:** Um, you think, some of you, um, the critics, that it's, it's people meeting behind closed doors, it's a kind of coup d'etat. You don't know, most of you, that people were allowed on the thing than had ever been allowed to vote on anything before in human history, because Charles Beard knew that fact and didn't tell it to you. My friend Mike Klarmin does not know that fact. And an 800-page book, you know, called *The Framers' Coup. Founder's Coup*, excuse me. Um, so, um, uh, um, I'm not sure, yes, that people know that, that much of the Declaration is not really Jefferson's, and that the state Constitutions are, are, um, really important.

**[00:26:22] Akhil Reed Amar:** So we need ... Most of you think that this Philadelphia convention was secret. Yeah. But on the last day, the ban of secrecy lapsed, and most of you don't know that, and they leaked like sieves. Um, Kim and I just yesterday read that letter to Pierce. Um, interestingly, so that you mention it. It's a brilliant letter, I mean, she says all on it in Jefferson. But oh, there are all sorts of things going on in this very politically sophisticated letter, trying to sort of steal from the other party and all the rest.

**[00:26:51] Akhil Reed Amar:** But no, not all honor to Jefferson. We're going to have to actually, I'm going to need your stock market advice here. Sell, he's still overpriced. Madison is way overpriced. They're joined at the hip, they start out anti-slavery. So utopian ambitious. Um, prohibiting slavery in the west, that's Jefferson's idea.

**[00:27:14] Akhil Reed Amar:** They end up opposing the Missouri Compromise. Madison even saying, they first say, no slave in the west. Then at the end of life they say, yes slavery in the west. Diffusion. And Madison actually says, oh, Mad, a Missouri Compromise is unconstitutional. Which is going to, which is preposterous. And this is is going to be Roger Tawny's position. So if Madison were alive today, Jefferson, unfortunately, they'd be much closer to Kevin McCarthy than to Liz Cheney. Because they become party people.

**[00:27:47] Akhil Reed Amar:** And, and, but we need to know a lot more about them than we do. We need to know facts.

**[00:27:54] Jeffery Rosen:** Kim, you, uh, you've heard the arguments. And, and you've had some support from several of your colleagues. When Heidi Schreck talked about breaking up with the founders, it was primarily over slavery. And she suggested that, to the degree that the founders were enslavers, uh, including not only Jefferson but also Washington, and Franklin at times, and, and, and Madison, and James Wilson. Uh, the, the, they're not entitled to our respect at all.

**[00:28:26] Jeffery Rosen:** Is, is that your position? And how strongly would you urge kids today not to learn about the founders because they were enslavers?

**[00:28:34] Kermit Roosevelt:** Um, I would certainly not urge kids not to learn about the founders because they were enslavers. I think it's important to learn that they were enslavers. I think it's important to learn an accurate history of our country.

**[00:28:46] Kermit Roosevelt:** Um, and then I would say I think it's important to understand what people thought then, and what they were trying to do in the context in which they acted, and other things they said, and what the surrounding circumstances mean. Because I think, if you take all of that, you'll get a very different view of the Declaration of Independence. So another theme of my book is that we massively over-read the phrase all men are created equal in The Declaration of Independence.

**[00:29:13] Kermit Roosevelt:** Um, and maybe an easy way to put this is, one, you can read the Declaration of Independence and see how it's making an argument for independence based, really, on John Locke's treatises on government. Um, and that doesn't require any principle that the government should treat outsiders equally, or that the government shouldn't enslave outsiders, or particular ideas about how society should be organized. It's a very clean, tight argument for independence.

**[00:29:44] Kermit Roosevelt:** Um, and then the question is, well, was Jefferson or the other authors, um, were they also putting in some novel, deep moral principle that condemns slavery? It seems very unlikely. Um, because it would have been counterproductive to announce an anti-slavery principle when, of course, the colonists are enslaving people. Um, it would have been unnecessary to the argument that they're making.

**[00:30:09] Kermit Roosevelt:** And we also know what the Continental Congress did with a passage that seemed to criticize slavery, because there was this passage that criticized King George for the International Slave Trade, and that got taken out. So my argument is, we over-read all men are created equal. We accept a reading that was imposed on it from the outside, not by the founding fathers, not by Continental Congress, not by sort of the political elite of founding America. But by the centers.

**[00:30:44] Kermit Roosevelt:** So our intellectual and ideological ancestors are more the abolitionists who started reading this document differently than Jefferson. And even, I would say Franklin and Adams. Although I, I take Akhil's point about differentiating between different people who had different authorship.

**[00:31:05] Kermit Roosevelt:** Um, and then I want to say, anyway, get rid of the Declaration of Independence. We don't need it anymore, we've got the Gettysburg Address. Because I do think that there are problems with locating our identity, and tying ourselves to the Declaration of Independence. I think if you read the Declaration of Independence and you focus on all men are created equal, and you think it means what we understand it to mean now, then you're like, yes,

we have noble ideals. But we can't realize them now for everyone because it's too difficult and impractical, and you know, I insist on my rights now.

**[00:31:38] Kermit Roosevelt:** But other people will have to wait. You turn into sort of a white moderate. So Martin Luther King, letter from the Birmingham Jail says it's, uh, even a greater problem, maybe, than the Klan. The people who are like, yes, I agree with your goals, but you have to be patient. Because America's essence is a quality, and we'll work ourselves pure. That's one bad thing from the Declaration.

**[00:31:59] Kermit Roosevelt:** Another bad thing is, it can turn you into a January Sixth insurrectionist, if you focus on the idea that if the government is oppressing me, and I will judge when I'm being oppressed, then it's my right to take up arms in my defense. And you know, if you look online for pictures of revolutionary flags, you'll see the Gadsden flag, you'll see the pine tree Appeal to Heaven flag. And then if you look at pictures of the January Sixth insurrection, you will see both of those flags flying. Um, and it's not crazy, right? It's not a coincidence. These people understand that ideology's there, and they're flying a confederate flag too. Because the other thing that the Declaration of Independence supports, I believe, is southern secession.

**[00:32:39] Kermit Roosevelt:** Um, Gettysburg Address, much better.

**[00:32:45] Jeffery Rosen:** Charlie, uh, in this round we're helpfully focused not on whether we should break up with the framers of the Constitution, but whether we should break up with Jefferson in the Declaration. And you've heard Kim's case against Declarationism. Can you make the case for it, which might begin with the idea that the language about all men being created equal came from classical sources, from Locke, and from the Scottish Enlightenment. And all of whom, uh, believed that its universal values did uh, apply to all people, and condemned slavery.

**[00:33:15] Jeffery Rosen:** That all the founders themselves, including Jefferson, recognized that the ideals of the Declaration were inconsistent with slavery, and that the Declaration was invoked by abolitionists starting with Prince Hall in 1777, all the way up to the Civil War, black and white, to condemn slavery.

**[00:33:29] Charlie Cook:** Yeah, I've never understood until this evening, the phrase that immigrants do the jobs Americans won't, until I'm safe on this panel trying to defend the Declaration of Independence.

**[00:33:40] Charlie Cook:** I mean, look. The, I, I think, um, Akhil made a fair point when he said, "Lincoln writes in that letter, all honor to Jefferson." But I, I don't care about the Jefferson work. I agree with you that he was deeply flawed. I care about what he is implying, which is all honor to the Declaration.

**[00:33:59] Charlie Cook:** He goes on to say that in the course of a, I can't forget the exact language, but essentially he says that they sat down to write the Declaration of Independence,

they wanted to break from the mother country. It was a document of separation. But they instilled in that document, certain ideals. And I'm of the view that if you compare those ideals to what was being written, and believed, and promulgated in the rest of the world at that time, they're extraordinary.

**[00:34:36] Charlie Cook:** Now, were they hypocrites? Yes, they absolutely were. But on one level, it doesn't matter. First off, it doesn't matter because after that, you do get an explosion of abolitionist sentiment. You get the founding of abolitionist societies in three, four, five states. You get states abolishing slavery, you get court decision in Massachusetts. You have the state of Pennsylvania that, by 1780, abolishes slavery.

**[00:35:07] Charlie Cook:** You get Vermont that joins in 1777, and in its Constitution abolishes slavery. You get a hardening in the south, and of course, that's why you need the second founding. But those ideals, even if some of the people who signed on to them were hypocrites, those ideals have an effect.

**[00:35:28] Charlie Cook:** And even today they have an effect. You look around the world. My wife was born in Hong Kong. Hong Kong was a very different place when she was born in 1989 than it is now. She follows Hong Kong politics in and off, on and off.

**[00:35:42] Charlie Cook:** There are people, was it last year or the year before, during those protests, standing there with the Declaration of Independence in their hands, with the Gadsden flag, that we're supposed to believe leads to January Sixth riots. Maybe it does in that case. You won't find a person on the right who is more critical of January sixth and the entire 2020 election lie than myself. But the fact that those idiots carried that flag does not undermine what's in the Declaration of Independence. That was important. And Martin Luther King himself cited it. It was the promissory note.

**[00:36:23] Charlie Cook:** I think that matters. I think ideas matter. I'm not going to sit and defend Thomas Jefferson as a man. I would be more inclined to defend some of the founders as human beings; Alexander Hamilton, George Washington, these people bucked the trend. It doesn't matter. What matters is that those ideas informed and breathed life into this, uh, extraordinary, uh, nation.

**[00:36:54] Charlie Cook:** Uh, and as Christopher Hitchens put it, we're very much for export. Uh, and from the perspective I have as someone who came from abroad, from a good, safe, peaceful country. Not from a warzone, uh, I was inspired by them. Goodness knows what it must feel like to look at those words from a tyranny.

**[00:37:20] Jeffery Rosen:** Jamelle, you, you're, you're hearing a debate between whether we should, uh, reject the Declaration as a cramped and flawed expression of an ideal of equality, that was meaningfully vindicated until after the Civil War, or whether it was an inspiring expression of enlightenment, faith. That although imperfectly realized initially, provided a touchstone for advocates for equality throughout American history. What is, what is your view?

[00:37:47] **Caroline Fredrickson:** [laughs]

[00:37:48] **Jamelle Bouie:** What do I think? Um, what do I think? What do I think?

[00:37:55] **Jamelle Bouie:** Um, I think that I am somewhat allergic to uh, attributing agency to ideas.

[00:38:08] **Jeffery Rosen:** Hmm.

[00:38:09] **Jamelle Bouie:** I think that, and this sort of gets to what I said earlier. Um, I agree with Charlie that the Declaration of Independence does have this powerful ret, rhetorical power. That is, is undeniable. But I choose to see that not as something necessarily embedded in the words. Because you can imagine a counter-history and alternative history where, uh, those words are thoroughly associated with some of the slaveholders who were a part of that, um, independence movement, right? And that the people who are looking for something to anchor their push for freedom in the country, project that. It's not hard to imagine that alternative world.

[00:38:58] **Jamelle Bouie:** Um, what happened though, is that those words were taken and used, um, affirmatively, actively, through conscious choice, not because of the words themselves, but because a set of actors saw and realized that, oh, I can use these to my own advantage. I can use these for, uh, the liberation of myself, of my people, for ... I can use these to attack an institution that is a stain, uh, on the country.

[00:39:30] **Jamelle Bouie:** Um, and so I guess my, my perspective here is, I want people to focus less on ideas emanating out of something, and more on the people doing the thing. More on the choices made by people who are making contingent choices, that didn't have to make those choices. Could have done other things. But for a variety of reasons, chose to do, do the things that they did, and try to understand those choices.

[00:39:56] **Jamelle Bouie:** I think we often get so caught up in talk of ideals, uh, which matter, that we miss that the, the thing that you know, we often say um, uh, eventually America realized its ideals. It's like a load-bearing eventually, right? That eventually carries a lot of weight. Um, and it obscures the extent to which, no, what's happening is, is human agency and people making active choices.

[00:40:25] **Jamelle Bouie:** Uh, uh, and, and people using the materials at-hand in the culture they live in to accomplish their goals. Uh, and in the world, in our, in our, in Earth Prime, assuming that we're the main earth, how could we know? Um, in Earth Prime, those words were the Declaration. Which, it's entirely possible that, on some other earth, in some other world, that they weren't.

[00:40:48] **Jamelle Bouie:** Um, and so the important thing, it's not so much the words, but the things motivating, the forces motivating people to see something like the Declaration and decide, I can use this to accomplish my ends. That's, I think, the important thing.

**[00:41:07] Jeffery Rosen:** Caroline, you helpfully answered yes to the direct question, should we break up with the framers of the Constitution. Should we break up with the drafters of the Declaration?

**[00:41:17] Caroline Fredrickson:** So that, that's not the question I thought you were going to ask me. Um, uh. I thought you were going to ask me...

**[00:41:21] Jeffery Rosen:** Well then you can ignore it, and [inaudible 00:41:23]

**[00:41:22] Caroline Fredrickson:** If we were going to break up with the Declaration.

**[00:41:24] Caroline Fredrickson:** I, you know, I, again, I don't think, I don't believe in hating geography. I am not about worship of founders. However, I may, maybe think that I can agree with both Charlie and Jamelle in this way.

**[00:41:36] Caroline Fredrickson:** Um, I think the words of the Declaration are extremely powerful. The fact that the people who wrote the Declaration were extreme hypocrites is not that important to me. Um, I think we need to recognize and we need to know that they were working in a context. So in, that's where I really agree. They were political actors, they were working in a context. They were using language, um, that was responsive to political theory, um, that was evoking high ideals. That was justifying a break, um, with the mother country.

**[00:42:15] Caroline Fredrickson:** Um, but the fact that those words were used by other people in another context that they could not have foreseen perhaps, or did not foresee, I think is incredible. And the, the, that the abolitionists and those who ended slavery used it, used that language to effectuate change, to justify it in a way that brought us that continuity that we've talked about. Do or not have continuity. They created the continuity by referring back to that document, and giving a justification for a second founding, that I think was just brilliant.

**[00:42:52] Caroline Fredrickson:** Again, it was contextualized. And perhaps they were using it opportunistically in the moment, but it was referring back, um, to a brilliant set of ideas expressed by highly-flawed people. I would say the preamble itself is also another such, um, uh, uh, uh, a set of words that can inspire us. And I think Doug earlier talked about how we're working towards a more perfect union. I mean, the early, the recognition right from the beginning that we and the Constitution were not there yet. And have a huge amount of work still to do.

**[00:43:27] Caroline Fredrickson:** Um, but I, so I think there's, there's actually place to bridge this, what I don't see as really a difference. Um, in that, um, yes, they were hypocrites. Yes, we should think about who they were. But we also need to acknowledge that the, their language in the, what Abraham Lincoln used in the Gettysburg Address was able to bring us, um, a connection between the founding and the second founding in a way that justified, that in, that um, lifted up as, as idealistic and, and it, so important for the future of our country. The project the he embarked on, and the fact that we had to have a war to achieve it, um, was a great tragedy.

**[00:44:14] Caroline Fredrickson:** But that it hearkened back to that for early moment. Again, Thomas Jefferson, highly flawed. Um, but that language was inspiring, and it was, um, used in a way that he may never have, and probably never did, anticipate to the better of all of us.

**[00:44:34] Jeffery Rosen:** Dear Akhil, I'm going to ask you to answer the question squarely, because the audience is going to have to vote. Um, and this is in the spirit of the show, What The Constitution Means To Me. Heidi Schreck asks the audience to vote at the end, should we abandoned the Constitution or not? So you're going to have to answer the question, should we break up with the founders?

**[00:44:55] Jeffery Rosen:** But I want you to focus on the question, should we break up the text of the Declaration? We hold these truths to be self-evident, all men are created equal. Endowed by our creator with certain unalienable rights, among them the rights to life, liberty, and the pursuit of happiness. When, uh, that to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed.

**[00:45:13] Jeffery Rosen:** Those words which you've taught Kim, and Me, and so many students are among the words that made us. Should we break up with them?

**[00:45:20] Akhil Reed Amar:** We should not break up with the Declaration. We should not break up with the Constitution. Um, we should not break up with the founders as such. But I do think we have to break up with Thomas Jefferson and James Madison in important ways.

**[00:45:33] Akhil Reed Amar:** Now, Jamelle is with David Hume, who doesn't believe that ideas are strong causal forces. Um, in the world. Um, I think, um, the force of ideas can be overstated, but it can't be ignored. And here's what Charlie said, and it's amazing, because this is chapter one of the new book that I just started. Immediately, immediately, alongside 1776, you are getting abolition in half of America. You are getting the world's first abolition society, the world's first is formed in a place called Philadelphia. Interesting. What a coincidence in 1775.

**[00:46:17] Akhil Reed Amar:** And then you get, and this is not Jefferson, this is Franklin and Adams, you get the Pennsylvania Constitution, that's tracking Locke and, and, and his ideas. And um, and then, uh, abolition in Pennsylvania based on the 1776 Pennsylvania Constitution, and Ben Franklin presides at that convention.

**[00:46:35] Akhil Reed Amar:** And then you've got 1780, Massachusetts, it's presided over by John Adams. And it says all men are born free and equal, the other one says are men are equally free, uh, created. Uh, uh, excuse me. Uh, uh, uh, uh, by nature, uh, a free and independent. And you get it in Massachusetts and they use, the judges and the juries use that for abolition. And 1777 in Vermont, and again in actually Rhode Island, it's a statute.

**[00:47:00] Akhil Reed Amar:** Um, it's hard to prove causation. But immediately, these words that they're hurling at the Brits, because they're, some of them are thinking, we can't be hypocrites, and we have to actually now live up to what we are asking to live up to. And you're

seeing, I think, causal force in James Otis in 1764, even. You know, saying, well, how we're treating black people is wrong because it's inconsistent with how we want to be treated by England.

**[00:47:28] Akhil Reed Amar:** So I do think we can't break up with the Declaration. I do think we can't break up with the Constitution. Because without it, you don't get reconstruction, even though it took a war and, and all the rest. I don't want us to break up with the founders, because some of them are really, I think, you know they're all flawed, so are we. Um, but, pretty darn admirable. But I have really ... Jeff knows that we used to talk a lot when he was my student, about Jefferson.

**[00:47:53] Akhil Reed Amar:** And I used to tell him, which was true, that you know when I was his age, when he was my student, and if I ever had a son, uh, if, with, with my wife's permission, I was going to name him Jefferson. Today my son turned 24. You know, but, but, uh, and we didn't name him Jefferson. You know, and I wouldn't name a son Jefferson because you've heard the reasons why.

**[00:48:14] Akhil Reed Amar:** The last chapter of my last book, I tell, tell how everyone dies. It's called the adieu. And Jefferson dies for Jefferson with a monument to Jefferson, claiming to be the author of the Declaration of Independence, which he's actually not. So he, he dies with a lie on his lips. Okay? And, and, and Madison and he do not free their slaves, and they never made any effort to do so in their life. And their slaves are sold on auction blocks.

**[00:48:40] Akhil Reed Amar:** Now, Washington's not perfect, but he's planning a long time. This is not just one last act, but he's planning a long time to make this possible. And it's not perfect, but he's getting better. And Ben Franklin, you know, who dies with an amazing pamphlet about, um, um, uh, a spoof of how horrible slavery is, and a petition to congress, using the words of the Declaration of Independence. Actually they say, "Go as far as you possibly can to get rid of human bondage."

**[00:49:08] Akhil Reed Amar:** So good for old Ben. You know, we can't change the past, we can only get better, you know we hope. Jefferson and Madison are getting worse. Hamilton, you don't know this, but he actually dies, and you know, I'm trying to tell this story, for union. For America. Because he's really worried about secessionism and, and, um, uh, I won't go into all the details, but, but he dies for union. He's an immigrant, you know? And he gets it. Um, and, and Washington and, and Franklin, the rosebud on their lips is emancipation and abolition, which is pretty extraordinary.

**[00:49:46] Akhil Reed Amar:** Adams is a little more complicated. My lesson from him would be, even if we're not perfect, let's actually hope that our children, you know, will actually be inspired by public service. Because I think the most amazing thing about Adams is, you know, he does produce another generation of public service, and another guy, John Jay, [inaudible 00:50:08] has a longer history of public service than anyone in American history. He's the only guy, actually the only president who knew both Lincoln and Washington, how amazing is that?



**[00:50:17] Akhil Reed Amar:** Charles Francis Adams turns out to be a really important person in, in championing. He's a, a free soil candidate for vice president. So, Adams teach our children. Washington and Franklin, let's actually in the time remaining, try to get right with God and the universe, and, and do better. Hamilton dies for America, for union.

**[00:50:40] Akhil Reed Amar:** So no, don't vote to break up the Declaration. Don't vote to break up with the Constitution. Don't vote to break up with the founders as such. But honestly, and this, this is hard for me. Because what I told you, I, I am breaking up with, with, with Jefferson and Madison.

**[00:51:02] Jeffery Rosen:** Uh, friends, we're about to vote. But first, please join me in thanking our panelists.

**[00:51:16] Jeffery Rosen:** And now, this is an extraordinarily important vote. I'd like you to deliberate thoughtfully before you cast it, recognizing the, the significant consequences. But the question is, shall we break up with the founders or not? All who would like to vote yes to the question, shall we break up with the founders, please do. And all who would like to vote no.

**[00:51:41] Jeffery Rosen:** I'm delighted to report that we are not breaking up with the founders, wonderful!

**[00:51:50] Jeffery Rosen:** Today's episode was produced by Lana Ulrich, Bill Pollock, and Sam Dessai. Research was provided Sophia Gardell, Sam Desai, and Lana Ulrich. Please recommend this show to friends, colleagues, or anyone anywhere who is eager for a weekly dose of Constitutional illumination and debate. Sign up for the newsletter at [Constitutioncenter.org/connect](https://constitutioncenter.org/connect).

**[00:52:10] Jeffery Rosen:** And always remember, whether you wake or whether you are sleeping, that the National Constitutional Center's a private nonprofit, despite that congressional charter that I talk about in the mission statement. We receive little or no governmental funds from year to year, and we rely on the generosity of people from across the country who are inspired by our non-partisan mission of Constitutional education and debate.

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**[00:52:45] Jeffery Rosen:** On behalf of the National Constitution Center, I'm Jeffery Rosen.