THE DECLARATION OF INDEPENDENCE AS KINDLING THE AMERICAN CULTURE OF REASON-GIVING

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The Declaration of Independence[1] celebrates its semiquincentennial in 2026.[2] Across 250 years, the study of the Declaration and its impact have, of course, been extensive. It is credited for so many things–including establishing tests for legitimacy of government; setting the rules for identifying the source from which governments derive their powers and the critical element of consent of the governed; articulating self-evident truths about the nature of freedom and equality; explaining the unalienable nature of rights; identifying a non-exclusive list of unalienable rights as to include life, liberty, and the pursuit of happiness; and enumerating which grievances may justify revolution. And the nature of the Declaration as an instrument of persuasion for domestic and foreign readers is also well documented. There is, however, a related lesson to be drawn from the Declaration of Independence that has been underexplored: It was an exercise and exemplar of "reason-giving," arguably kindling by example a custom and culture of reason-giving in American law and politics.

The very first paragraph of the Declaration acknowledges that setting forth reasons to act must be considered a necessary prerequisite for their declaration to be respected. First, the seriousness of the affair triggers the necessity for reason-giving: "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and Nature's God entitle them."[3] If, indeed, so serious an act is to be justified, then, "a decent respect to the opinions of mankind *requires* that they should *declare the causes which impel them* to the separation."[4] An action as serious as this must be accompanied by a list of reasons against which its validity may be judged. The signers of the Declaration phrase it

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[1] THE DECLARATION OF INDEPENDENCE (U.S. 1776), available at https://www.archives.gov/founding-docs/declaration-transcript [https://perma.cc/2D27-3SZJ]. *See also The Annotated Declaration of Independence*, NATIONAL CONSTITUTION CENTER (last visited Mar. 29, 2026), https://constitutioncenter.org/declaration/annotated-declaration [https://perma.cc/QQ8C-WBDJ].

[2] America250, U.S. SEMIQUINCENTENNIAL COMMISSION (last visited Mar. 29, 2026), https://america250.org/americas-250th/ [https://perma.cc/ZSG5-ZPQG] (website of the U.S. Semiquincentennial Commission, established in 2016 by the U.S. Congress "to plan and orchestrate the 250th anniversary of the signing of the Declaration of Independence.").

[3] THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

[4] *Id*.

this way not simply saying that they understand the utility of reasons to persuade. As written, instead, the language recognizes a necessity of stating reasons as a necessary prerequisite to the action proposed as a measure of respect and fulfillment of a deontological duty.[5]

The Declaration of Independence's insistence on reason-giving kindled a culture of "reason-giving" surrounding political and legal decisionmaking that operates as a critical component in establishing the legitimacy of those decisions, instills confidence in adherence to limits on authority, and projects consistency with the Rule of Law. Indeed, the signers of the Declaration were setting forth a list of grievances, many of which were grounded in the arbitrariness of the action of King George. By acknowledging a mandate for reason-giving before acting, the signers were impliedly, by example, setting up a direct contrast with action that is arbitrary, ipse dixit, or otherwise devoid of reasons, providing reasons ex ante that themselves then necessarily become the focused targets against which the legitimacy and wisdom of the action can be judged.

The Declaration should also be seen as presenting two categories of reasons. First, it sets forth the conditions in law, morality, and justice that are legitimate reasons justifying "one people to dissolve the political bands"[6] and separate from their existing sovereign. The second category is the reasons in fact that are the "long train of abuses"[7] (or list of grievances and "history of repeated injuries and usurpations") that fit within the first category of objectively valid conditions that rise to the kinds of reasons justifying separation. And "[t]o prove this"[8] fit, the signers declared "let Facts be submitted to a candid world"[9] and proceeded to list the facts, or reasons, that conditions had reached a level that objectively justify separation. And ultimately, by providing reasons, the signers of the Declaration were proclaiming that they, unlike the King, were not exercising raw political power.[10] There was a legitimate and defensible set of reasons compelling their extraordinary action.

Note too that publicity of reasons is a key feature of our culture of reason-giving in American political and legal discourse today. That goal is captured in the signers' proclamation that they wanted the "Facts be submitted to a candid world."[11] And the acts surrounding the release of the Declaration prove the publicity imperative as well. The desire to inform the

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[5] For a more detailed account of this theory of reason-giving, *see generally* Donald J. Kochan, *The "Reason Giving" Lawyer: An Ethical, Practical, and Pedagogical Perspective*, 26 GEO. J. LEGAL ETHICS 261 (2013) (examining the demand for, and purpose and foundation of, reason-giving requirements in human interaction and for legitimacy of legal and political institutions and decisionmaking).

[6] THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

[7] *Id.* para. 2.

[8] *Id.*

[9] *Id*.

[10] Although not discussing the Declaration of Independence, Mashaw explains this utility of reason-giving as avoiding the raw exercise of power and a respect for entitlement to reasons by the recipients of the reasons: "[T]o be subject to administrative authority that is unreasoned is to be treated as a mere object of the law or political power, not a subject with independent rational capacities. Unreasoned coercion denies our moral agency and our political standing as citizens entitled to respect as ends in ourselves, not as mere means in the effectuation of state purposes. This sort of explanation begins to illuminate why we might think of reasoned administrations as an individual right, indeed a fundamental individual right, not just as a contingent feature of accountability regimes." Jerry L. Mashaw, *Reasoned Administration*, 76 GEO. WASH. L. REV. 99, 104–05 (2007).

[11] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

colonists and the world of the Declaration and allow them to examine the reasons was strong. For example, "[i]mmediately after approving the Declaration, the Second Continental Congress ordered that copies be sent to state assemblies and military commanders and that its text be 'proclaimed'—read aloud—'in each of the United States, and at the head of the army.'"[12] And it was widely disseminated and "proclaimed" throughout the states in the days that followed.[13] "More broadly, the Declaration's words reached eyes and ears up and down the continent through public readings, newspapers, and broadsides."[14] Indeed, it is widely thought that one function of the Declaration and the detailed reasons for separation listed in it was to persuade foreign nations of the legitimacy of the effort and its consistency with the law of nations. A list of grievances and why they violated fundamental values and conditions provided the reasons necessary to garner recognition of legitimacy from foreign nations, while also setting a path for the fledgling nation to be seen as an equal among sovereigns.

While an adherence to reason-giving by the Founders was no doubt reflective of learnings from respected philosophers studied by them and not one of immaculate conception in the Declaration,[15] the insistence on reason-giving in the Declaration can be argued as signaling its customary necessity within the American theory of government and political legitimacy. After all, as Professor Randy Barnett has explained, "the Declaration . . . *officially* identified the political theory on which the United States was founded,"[16] and a close reading finds richness in its text beyond the most popularly cited passages about rights and equality. Reason-giving is one such overlooked feature with enduring effect on our legal and political culture.

Indeed, the reason-giving effort informs the meaning of the other tenets of the Declaration. For example, one critical contribution of the Declaration was to declare that the consent of the governed was a necessity for legitimacy of a government—"to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."[17] But what steps are required in order to obtain that consent and to confirm its presence? To understand the meaning of consent in the Declaration's legitimacy framework, its insistence on consent for legitimacy must be taken together with its adherence to reason-giving.

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[12] National Constitution Center, *supra* note 1.

[13] *Id.* The urgent marketing and informational effort are summarized here: "In the days that followed, the Congress's president—John Hancock, whose signature featured prominently on the Dunlap broadsides—sent copies to the states, urging that the Declaration be proclaimed "in such a Manner, that the People may be universally informed of it." He also sent a copy to General Washington, who ordered it read to the troops in the hopes that the reading would 'serve as a fresh incentive to every officer, and soldier, to act with Fidelity and Courage.'" *Id.*

[14] *Id.*

[15] Robert Atkinson explains that "[i]n a culture that values giving reasons for one's conduct, as ours has at least since Socrates's time, acting in disregard of the reasons one gives is, in and of itself, discrediting and thus costly." Rob Atkinson, *Connecting Business Ethics and Legal Ethics to the Common Good: Come, Let Us Reason Together*, 29 J. CORP. L. 469, 527 (2004). Similarly, Glen Staszewski explains: "Social scientists and philosophers have recognized that reason-giving is an innate characteristic of human beings that is associated with our ability to rationally evaluate and justify our actions. From this perspective, we do not necessarily need to give reasons to anyone for reason-giving to carry intrinsic meaning." Glen Staszewski, *Reason-Giving and Accountability*, 93 MINN. L. REV. 1253, 1285 (2009).

[16] Randy E. Barnett, *The Declaration of Independence and the American Theory of Government: "First Come Rights, and Then Comes Government"*, 42 HARV. J.L. & PUB. POL'Y 23, 24 (2019) (emphasis in original).

[17] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

The governed must first be presented with reasons they can judge to determine whether to grant consent. Indeed, it can be argued that one cannot receive the informed consent of the governed unless the governed are informed of that to which their consent is sought. Reason-giving is at least a partial fulfillment of that informational prerogative. Or, as Mashaw argues in a different context, "reason-giving's most fundamental function [is] the creation of authentic democratic governance."[18]

Pamphlets and newspapers served as conduits of dissemination and completion of the publicity of reasons for revolution, separation, and the development of constitutional governance. In other words, the culture of pamphleteering was an exemplar of the reason-giving culture thickened at the Founding as well. Pamphleteering has a long history as an effective process for distributing ideas on law, social policy, politics, revolution, social change, and other subjects.[19]

As the Supreme Court has observed: "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind."[20] Indeed, the pamphleteering before and shortly after the Declaration of Independence accomplish this role by solidifying a uniquely American culture of reason-giving. Thomas Paine's *Common Sense*[21]—also celebrating its 250th anniversary in 2026—is a great example of something setting forth the reasons for independence based in the Crown's acts antithetical to liberty.[22] As the U.S. Supreme Court has observed, "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th-century Committees of Correspondence and the pamphleteers were early examples of this phenomenon, and *The Federalist Papers* were perhaps the most significant and lasting example."[23] Political pamphlets were part of the process of publicizing reasons while adding a persuasive marketing effort to convince readers of the wisdom of and justification for the reasons being proffered for proposed action.

As mentioned, *The Federalist Papers* deserve particular attention in this regard. They follow in the tradition of the Declaration of Independence a decade later by identifying and defending the reasons Publius posits for the ratification of the U.S. Constitution. While *The Federalist Papers* undoubtedly took on goals of reflection, education, and persuasion, in its purest form, their project was a product of the reason-giving culture, meant to satisfy the American public's popular

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[18] Mashaw, Reasoned Administration, *supra* note 10, at 101.

[19] See generally Sandra Clark, The Elizabethan Pamphleteers: Popular Moralistic Pamphlets, 1580–1640 (1983); Joel Raymond ET AL., PAMPHLETS AND PAMPHLETEERING IN EARLY MODERN BRITAIN (2003). As another author stated, "[f]rom pamphlets may be learned the genius of the age, the debates of the learned, the bevues of government, and mistakes of the courtiers. Pamphlets furnish beaus with their airs; coquettes with their charms. Pamphlets are as modish ornaments to gentlewomen's toilets, as to gentlemen's pockets: they carry a reputation of wit and learning to all that make them their companions." H.L. MENCKEN, A NEW DICTIONARY OF QUOTATIONS ON HISTORICAL PRINCIPLES FROM ANCIENT AND MODERN SOURCES 883 (Knopf ed., 1991) (1942) (quoting MYLES DAVIS, ICON LIBELLORUM (1715)).

[20] *Talley v. California*, 362 U.S. 60, 64 (1960).

[21] Thomas Paine, COMMON SENSE (1776), https://oll.libertyfund.org/pages/1776-paine-common-sense-pamphlet [https://perma.cc/WT6J-SCK9].

[22] Robert C. Berring, *Deconstructing the Law Library: The Wisdom of Meredith Willson*, 89 MINN. L. REV. 1381, 1405 (2005) ("Thomas Paine's *Common Sense* [was] a pamphlet that changed the course of the history of the United States.").

[23] Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, 454 U.S. 290, 294 (1981).

demand for reasons within that culture. In other words, the content and approach of *The Federalist Papers* reflects a continuation of the Declaration's theme that reason-giving is required before political change is proposed. and demonstrates the roots developing for reason-giving in American legal and political culture. There is an inextricable tie between reason-giving and a plea for recognition of legitimacy and as a step in persuasion as to utility or prudence.

Indeed, a passage that may be too easily missed in *Federalist No. 1* demonstrates that James Madison, Alexander Hamilton, and John Jay saw their service as one fulfilling a reason-giving demand. Hamilton explains in *Federalist No. 1*, "I frankly acknowledge to you my convictions [regarding why the Constitution should be ratified], and I will freely lay before you the reasons on which they are founded."[24] Hamilton then explains that there is a need for transparency such that the reasons may be evaluated by the readers: "My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth."[25] Immediately after that promise, with the presentation of a roadmap, the papers are launched in that spirit of reason-giving: "I propose, in a series of papers, to discuss the following interesting particulars."[26] Thus, one should view *The Federalist* project not simply as one of persuasion but also as one compelled by the belief that reason-giving was required for constitutional ratification—a fundamental obligation when proposing a legal change of major importance and as a legitimizing function.

Over time, we have come to appreciate myriad benefits flowing from the embrace of a reason-giving culture in law and politics, let alone in life. In other words, there are many good reasons for giving reasons. These range from the philosophical, psychological, moral, ethical, or legal to the practical, prudent, or instrumental.[27]

Individuals respect and value the enterprise of reason-giving. Whether or not it is legally required, reason-giving is widely regarded as essential to effective communication, even in ordinary human affairs.[28] We interact more respectfully and deliberate more carefully when we seek to make others understand the grounds for our positions.[29]

Reasons generate trust and respect, which in turn can influence allegiance to government and willingness to comply with official commands.[30] They enable observers to assess whether a

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[24] THE FEDERALIST NO. 1, at 6 (Alexander Hamilton) (Jacob E. Cooke ed. , 1961)

[25] *Id*.

[26] *Id*.

[27] Susan G. Kupfer, *Authentic Legal Practices*, 10 GEO. J. LEGAL ETHICS 33, 90–93 (1996) (excellent discussion of reasons for giving reasons in ethical practice, including "the act of giving reasons may potentially uncover the faulty or fallacious reasoning of the proponent by exposing the reasons to further argument and evaluation").

[28] Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633, 648 (1995) ("The conclusion that, in law, giving reasons commits the giver is also supported by the fact that quotations directly justifying a result have considerable purchase in legal argument."). *See also* Cass Sunstein, *Incompletely Theorized Agreements*, 108 HARV. L. REV. 1733, 1755 (1995) (cautiously noting that "[a]ll well-functioning legal systems value the enterprise of reason-giving").

[29] *See generally* Charles Tilly, WHY?: WHAT HAPPENS WHEN PEOPLE GIVE REASONS . . . AND WHY (2006) (showing how social relations in everyday life continuously involve demand for reasons); EXPLAINING ONE'S SELF TO OTHERS: REASON-GIVING IN A SOCIAL CONTEXT (Margaret L. McLaughlin, et al. eds., 1992).

[30] Hanoch Dagan, *The Realist Conception of Law*, 57 U. TORONTO L. REV. 607, 631 (2007) ("Because law is a coercive mechanism backed by state-mandated power, legal discourse—our public conversation about state-mandated coercion—must be a justificatory discourse, an exercise in reason-giving.").

decisionmaker treats individuals equally and whether her decisions exhibit coherence.[31] Levels of compliance often correlate with the degree of confidence placed in the authority's stated reasons.[32] In this way, reason-giving functions as a constraint on power and as a mechanism of accountability.

Recipients of reasons can use them to determine whether reliance is warranted and to evaluate the performance of the decisionmaker.[33] Reasons create a record for judgment and may establish precedent. They also provide a metric of verifiability—a testable reference point against which future conduct may be measured.[34] Collectively, these features are said to foster a more democratic relationship between those who exercise authority and those subject to it.

Reasons enhance legitimacy, and deviations from articulated rationales tend to cast official action into doubt.[35] Moreover, the obligation to provide reasons can induce deliberative discipline, particularly when the decisionmaker understands that those reasons will be transparent and subject to scrutiny and review.

There are many prudential, consequential, moral, and utilitarian reasons that reasons are given in law.[36] Reasons are demanded to force decisionmakers to make lasting commitments.[37] Reasons influence the level of respect given to decisions and authorities.[38] Reasons can provide assurances against arbitrary or capricious behavior.[39] Reasons serve rule of law values, presumably justifying action based on some testable standard.[40] Reasons serve accountability, because when they are demanded authorities must provide some answer and their answer provides a basis for outsider review.[41] So, reason-giving is ubiquitous in law even if it is not always the subject of a specific, codified requirement. Custom and demand from the consumers of law demand it.

The embedding of reason-giving requirements in legal doctrine—particularly as restraints on governmental power—has generated substantial scholarly attention.[42] Briefly summarized, in

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[31] Staszewski, *supra* note 15, at 1281.

[32] Schauer, *supra* note 28, at 658.

[33] Staszewski, *supra* note 15, at 1293.

[34] *Id.* at 1281.

[35] Staszewski, *supra* note 15, at 1282.

[36] *See generally* Schauer, *supra* note 28 (explaining the history of the logic and morality of giving reasons).

[37] *Id.* at 643–44 (giving reasons leads to a future commitment to a reason offered).

[38] *Id.* at 658 ("[G]iving reasons may be a sign of respect.").

[39] Sunstein, *Incompletely Theorized Agreements*, *supra* note 28, at 1754 ("Reason-giving is usually prized in law, as of course it should be. Without reasons, there is no assurance that decisions are not arbitrary or irrational . . . .").

[40] James W. Torke, *What is This Thing Called Law?*, 34 IND. L. REV. 1445, 1450 (2001) ("The rule of law does not promise results so much as it promises an approach, a process, a practice of reason-giving, a set of argumentative conventions.").

[41] Staszewski, *supra* note 15, at 1279 ("[P]ublic officials in a democracy can be held deliberatively accountable by a requirement or expectation that they give reasoned explanations for their decisions"); Martin Shapiro, *The Giving Reasons Requirement*, 1992 U. CHI. LEGAL F. 179, 181 (1992) ("As Carl Friedrich noted long before the recent focus on reason giving, in the Western tradition, the very concept of political authority, or indeed any kind of authority, implies the capacity to give reasons.").

[42] Schauer, *supra* note 28, at 638 (examining reason-giving, primarily in the context of judicial decision making); Paul P. Craig, *The Common Law, Reasons and Administrative Justice*, 53 CAMBRIDGE L.J. 282, 283–84 (1994) (discussing duties of public officials to provide reasons for decisions); Henry M. Hart, Jr. & Albert M. Sacks, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 383–403 (William N. Eskridge, Jr. & Phillip P. Frickey eds., 1994) (discussing the role of

the United States, the legislature, judiciary, and, for the most part, the President, are not subject to legal mandates to give reasons for their decisions.[43] Similarly, juries are not typically required to give reasons for their verdicts.[44] In other words, *required* reason-giving is not the norm in American government.[45]

Administrative law is different.[46] Unlike the legislative and judicial domains where reason-giving is more a matter of prudence than mandate, the rules developed in the administrative domain have institutionalized as non-discretionary the requirement that agencies give reasons for their actions and the law has created enforcement mechanisms to hold agencies responsible to those reason-giving requirements.[47] The lawfulness of administrative agency actions is often judged by the reasons proffered for decisions, and the failure to give adequate reasons is the most frequent justification for finding administrative decisions invalid and unenforceable in court.[48] In

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reason-giving in judicial decisions in furthering its appearance as principled and legitimate); Staszewski, *supra* note 15, at 1279.

[43] Margaret B. Kwoka, *Deference, Chenery, and FOIA*, 73 MD. L. REV. 1060, 1092 (2014) (explaining that Congress need not provide a rationale for its actions in order for legislation to be upheld); Jerry L. Mashaw, *Small Things Like Reasons Are Put in a Jar: Reason and Legitimacy in the Administrative State*, 70 FORDHAM L. REV. 17, 19–26 (2001) (comparing and contrasting judicial review of agency action, legislation, and judicial decisions and the relative importance of reasons for decision); Shapiro, *The Giving*, *supra* note 41, at 193 ("Legislatures are not seen as subject to a formal giving reasons requirement."); Schauer, *supra* note 28, at 636–37 (explaining statutes are distinguishable from administrative decisions in terms of reason-giving); Staszewski, *supra* note 15, at 1298–99 ("There are no comparable structural safeguards that consistently require the President to give reasoned explanations for his decisions, but congressional oversight and modern media coverage may provide some selective opportunities for his policy decisions to be subject to deliberative accountability.").

[44] Schauer, *supra* note 28, at 637 (giving juries and other institutional examples where, in law, reason-giving is not required).

[45] *Id.* (reason-giving *requirements* are not omnipresent in law).

[46] The long history, evolution, and justification for reason-giving requirements in administrative law have been thoroughly examined by several scholars. *See, e.g.*, Donald J. Kochan, *Constituencies and Contemporaneousness in Reason-Giving: Thoughts and Direction after T-Mobile,* 37 CARDOZO L. REV. 1 (2015); Donald J. Kochan, *Reason-Giving, Rulemaking, and the Rule of Law*, 87 UMKC L. REV. 525 (2019); *see also, e.g.*, David Dyzenhaus & Michael Taggart, REASONED DECISIONS AND LEGAL THEORY, IN COMMON LAW THEORY 134, 138–40 (Douglas E. Edlin ed., 2007); Martin Shapiro, WHO GUARDS THE GUARDIANS? JUDICIAL CONTROL OF ADMINISTRATION (1988); Harold J. Krent, *Ancillary Issues Concerning Agency Explanations*, *in* A GUIDE TO JUDICIAL AND POLITICAL REVIEW OF FEDERAL AGENCIES 197 (John F. Duffy & Michael Herz eds., 2005); Martin Shapiro & Alec Stone Sweet, ON LAW, POLITICS AND JUDICIALIZATION (2002); Henry J. Friendly, *Chenery Revisited: Reflections on Reversal and Remand of Administrative Orders*, 1969 DUKE L.J. 199, 206–22 (1969); Gary Lawson, *Outcome, Procedure and Process: Agency Duties of Explanation for Legal Conclusions*, 48 RUTGERS L. REV. 313, 315, 332 (1996); Mashaw, *Reasoned Administration*, *supra* note 10, at 105–12; Martin Shapiro, *Administrative Discretion: The Next Stage*, 92 YALE L.J. 1487 (1983); Martin Shapiro, *The Giving, supra* note 41, at 182; Matthew C. Stephenson, *A Costly Signaling Theory of "Hard Look" Judicial Review*, 58 ADMIN. L. REV. 753, 755–67 (2006); Kevin M. Stack, *The Constitutional Foundations of* Chenery, 116 YALE L.J. 952, 957 (2007); Kwoka, *supra* note 43, at 1091–92 (explaining the uniqueness of administrative law as being the only field of governmental activity where courts require reasons to uphold action, calling it "administrative exceptionalism"); Jodi L. Short, *The Political Turn in American Administrative Law: Power, Rationality, and Reasons*, 61 DUKE L.J. 1811, 1813 (2012) (discussing reason-giving as "central to U.S. administrative law and practice").

[47] Stack, *supra* note 46, at 955 ("Administrative agencies may act with the force of law, but their obligations to give reasons for their decisions are very different from those that apply to Congress or the federal courts."); Shapiro, *The Giving*, *supra* note 41, at 196 (legislatures need not respond to concerns raised by "during hearings and debates"); Sidney A. Shapiro & Richard E. Levy, *Heightened Scrutiny of the Fourth Branch: Separation of Powers and the Requirement of Adequate Reasons for Agency Decisions*, 1987 DUKE L.J. 387, 429 (1987) ("As stated by the Court in *State Farm* and *Bowen*, administrative agencies, unlike legislatures, are not entitled to the same presumption of correctness because they are neither politically accountable nor directly subject to checks and balances.").

[48] Richard J. Pierce, Jr., *Judicial Review of Agency Actions in a Period of Diminishing Agency Resources*, 49 ADMIN. L. REV. 61, 72 (1997) ("[I]nadequate reasoning is the most frequent basis for judicial rejection of agency decisions."); Peter H. Schuck & E.

short, an agency cannot just exercise the full scope of its authority; it must also explain its choice to use that authority in a particular way.[49] In addition to facilitating judicial review,[50] the reason-giving requirement in administrative law is designed to serve a number of other purposes and policies, including the promotion of educated deliberation, transparency, and the facilitation of public participation.[51] The public that wishes to participate must have some view into the agency's mind if they are to provide useful comments, and the agency must at the same time give reasons for the acceptance or rejection of such comments.[52] Forcing an agency to make its reasons known on the record supports accountability[53] and legitimacy.[54] It is designed to ensure that there is a record of the agency's deliberation.[55]

The provision of reasons accompanying administrative agency decisions has firmly rooted itself as an expected and often required practice in modern administrative law,[56] where validity of agency action is tested by the agency's ability to itself explain why it is taking action, do so contemporaneously, and base those reasons on the record before the agency.[57] As Michael Livermore and Richard Revesz posit, "[s]ome of the classic justifications for reason-giving include limiting the scope of agency discretion, promoting transparency in government, and legitimating the exercise of administrative discretion."[58] These goals seem to reverberate in all of the areas where reason-giving has been mandated by law, like administrative law, or expected by custom, as in legislatures, courts, and other institutions of legal and political decisionmaking.

The culture and custom of reason-giving—arguably reinforced by early American commitments reflected in the Declaration of Independence and related founding documents—remain robust. As Frederick Schauer explains, the practice of giving reasons "is seen as a necessary condition of rationality," and, consequently, "[r]esults unaccompanied by reasons are typically castigated as deficient on precisely those grounds."[59] Professor Cass Sunstein has proclaimed that "any position about law and politics, in order to be worth holding, must be justified by reference to reasons. . . . a view unsupported by reasons is unlikely to deserve serious

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Donald Elliott, *To the* Chevron *Station: An Empirical Study of Federal Administrative Law*, 1990 DUKE L.J. 984, 1035 tbl. 6 (1990) (20.7% of remands in 1985 were based on an inadequate agency rationale); Stack, *supra* note 46, at 956–57 ("despite the industry of agency justification that the Chenery principle has helped to create, inadequate explanation is still among the most common grounds for judicial reversal and remand.").

[49] Mashaw, *Reasoned Administration*, *supra* note 10, at 117.

[50] Shapiro, *The Giving*, *supra* note 41, at 181 (giving reasons requirements are for the benefit of judges but also for the public).

[51] *Id.* at 180–88; Mashaw, *Small Things, supra* note 43, at 23–24.

[52] Mashaw, *Reasoned Administration*, *supra* note 10, at 111.

[53] Shapiro, *The Giving*, *supra* note 41, at 181 ("The reason-giving administrator is likely to make more reasonable decisions than he or she otherwise might and is more subject to general public surveillance.").

[54] Mashaw, *Small Things*, *supra* note 43, at 23–24; Shapiro & Levy, *supra* note 47, at 395.

[55] Shapiro, *The Giving*, *supra* note 41, at 182 (the reasons requirement evolved into a record requirement and "if there is no record of agency deliberation, an administrative agency wielding its discretion is impervious to judicial review.").

[56] *Id.* at 179 ("Giving reasons . . . is densely packed with past legal and constitutional experience and replete with potential for development.").

[57] Stack, *supra* note 46, at 955 ("One 'fundamental' and 'bedrock' principle of administrative law is that a court may uphold an agency's action only for the reasons the agency expressly relied upon when it acted.").

[58] Michael A. Livermore & Richard Revesz, *Rethinking Health-Based Environmental Standards*, 89 N.Y.U. L. REV. 1184, 1233 (2014).

[59] Schauer, *supra* note 28, at 633–34.

consideration."[60] Conclusions unsupported by reasons are, indeed, conclusory—a label to be avoided if one is to make a credible or persuasive case.[61]

Today, in no small part because we stressed its importance in the Declaration of Independence, reason-giving pervades the legal and political process—often demanded as a matter of customary expectation even when not also an enforceable legal requirement.[62] Reason-giving is required in some, expected in others, desired in many, and useful in most legal and political processes.[63] Indeed, "[r]eason has become the modern language of law in a liberal state," regularizing a culture of reason-giving as a result.[64]

Thus, as we search for the roots of the reason-giving culture in American law and politics, it is important to examine the Nation's birth certificate. We should recognize the kindling and regularization of a reason-giving legal and political culture as one independent legacy of the Declaration of Independence which itself drew its legitimacy from its adherence to a reason-giving core. That independent legacy is one more unique reason to celebrate the enduring impact of the Declaration on our world today.

[60] Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 779 n.130 (1993).

[61] *See generally* Donald J. Kochan, *While Effusive, "Conclusory" is Still Quite Elusive: The Story of a Word,* Iqbal*, and a Perplexing Lexical Inquiry of Supreme Importance*, 73 U. PITT. L. REV. 215 (2011).

[62] Sunstein, *Incompletely Theorized, supra* note 28, at 1756 ("[A] special quality of most legal systems is a presumptive requirement of reasons for legal outcomes.").

[63] Schauer, *supra* note 28, at 648 ("The conclusion that, in law, giving reasons commits the giver is also supported by the fact that quotations directly justifying a result have considerable purchase in legal argument."). *See also* Sunstein, *Incompletely Theorized*, *supra* note 28, at 1755 (stating that "[a]ll well-functioning legal systems value the enterprise of reason-giving," although recognizing some difficulties with that fact.).

[64] Mashaw, *Small Things*, *supra* note 43, at 18.