

# The Declaration of Independence: A Constitutional Document

George Athan Billias, *Clark University*

The Declaration of Independence represents the most important public paper ever produced in the United States. Besides being the birth certificate of the nation, it remains the best and most succinct statement of America's constitutional ideals. Within the context of our country's history, the document articulated those constitutional values which had relevance for all mankind. Constitution-makers throughout the world referred to the document in precisely such terms during the past two hundred years. For these reasons, the Declaration deserves to be ranked among the major milestones in the history of Western constitutionalism- if constitutionalism is defined as the ideal of a fundamental law above and outside of the structure of government.

## ABOUT THE AUTHOR

**George Athan Billias**, is Jacob and Frances Hiatt Professor of History at Clark University. He is the author of *Heard Round the World: American Constitutionism Abroad*

Many historians, political scientists, and legal scholars, however, refuse to consider the Declaration as a constitutional document. It is, they hold, a document designed to persuade, proclaiming rights and different from a constitution creating a government and granting rights. In their eyes it lacks the force of a legal instrument normally associated with a written constitution. Four arguments may be advanced for including the Declaration among America's major constitutional documents.

First, American constitutionalism abroad is identified more with the Declaration than with any other single document. The Declaration, to be sure, had almost no influence overseas immediately after the Revolution, and Europeans scarcely mentioned it. But in subsequent years, its preamble exercised a powerful impact. People throughout the world came to consider it one of the great charters of human freedom. "During the nineteenth century," wrote the historian Carl Becker, "it was accepted by radical and revolutionary parties in every European country, in South America and in the United States as a classic and semi-sacred formulation of the fundamental democratic doctrines that governments 'derive their just Powers from the consent of the governed,' and that 'when any form of Government becomes . destructive of the natural rights of man it is the Right of the People to alter or to abolish it.'"

In the twentieth century, the Declaration still speaks forcefully to many peoples with a different heritage and history who seek to uphold human rights. The document has had a greater influence abroad than the Constitution itself. It embodies the spirit of American constitutionalism rather than the letter of the law, and consequently has affected more people. When constitution-makers abroad wish to articulate three ideals-that all men are "created equal," that they have an equal right to life, liberty, and the pursuit of happiness, and that government should be based on the consent of the governed-framers turn to the eloquent phrases of the Declaration.

Second, the Declaration qualifies as a constitutional document because of the way it employs the concept of the social contract. To many Americans of 1776, the Declaration represented the precise moment in time when the tie, or social contract, between Great Britain and the thirteen colonial governments was cut. Since the British constitution supposedly had been subverted by the King, the original contract between the monarch and the American people was no longer considered binding. The colonists, according to this theory, were thereby released from their allegiance to George III. The Declaration, in other words, represented a deliberate attempt to put into practice in a literal way the severing of the contract between

the ruler and ruled.

The Declaration, more importantly, was used also to provide the constitutional basis for creating new social contracts in the form of state governments. The state constitutions written in 1776 were perceived by American patriots as social contracts allowing legitimate governments to be established on the basis of the constituent power of the people. America's founding fathers, in other words, felt compelled to fall back upon a kind of convenient fiction- the contract theory- to provide an authorization for erecting new state governments.

Third, the principles of the Declaration were incorporated into a number of the first state constitutions. The spirit as well as many actual phrases were written into the preambles of eight of these constitutions. In the case of New York, the connection was more pronounced: the entire Declaration was included in the first constitution of that state.

Finally, the Declaration can be considered a constitutional document because it has been cited as such in decisions of the Supreme Court. In one of the Slaughter-House Cases, Justice Stephen Field in 1884 wrote in glowing terms of the right of butchers in New Orleans to slaughter their cattle as they pleased and their right to pursue any lawful business or avocation they desired. "These inherent rights have never been more happily expressed than in the Declaration of Independence, that evangel of liberty to the people," Field declared. Almost eighty years later, in 1963, Justice Potter Stewart in *Gray v. Sanders* cited the Declaration to base the concept of political equality on historical grounds. "The conception of political equality," Justice Stewart argued, "from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing-one person one vote."

The place of the Declaration in world history has far transcended the circumstances of its birth. Its immediate purpose was to provide the patriots with an effective justification for the war against Britain. In 1776 the Declaration was a propaganda document based upon the national needs of the new nation and addressed to a "candid world" to gain its support. But the founding fathers built better than they knew. What was a nationalist manifesto listing grievances against King George III became recognized over time as a constitutional document of global significance. The famous preamble came into its own as a ringing affirmation of human rights. People world-wide insisted increasingly that government be based upon the concept of the consent of the governed and that it guarantee such fundamental rights as life, liberty, and the pursuit of happiness. Unless a government was based on this concept and provided such guarantees, they felt, it had no right to exist. The Declaration became in this way a model by which to measure constitutional government based upon the principles of popular consent and fundamental rights. Thus colonial peoples struggling for independence and seeking to set up governments along republican lines in the twentieth century came to consider the Declaration as one of the world's foundation documents of constitutional government.

---

Copyright 1985 by the American Political Science Association and American Historical Association. This essay may be photocopied if attributed as follows: "Reprinted from this Constitution: A Bicentennial Chronicle, Fall 1985, published by Project '87 of the American Political Science Association and American Historical Association. For further information on APSA copyrights contact APSA at [apsa@apsanet.org](mailto:apsa@apsanet.org), by phone at (202) 483-2512 or Fax (202) 483-2657.