

## DECLARATION OF INDEPENDENCE PT. 1 HANDOUT

### The Modern Rejection of the Declaration of Independence

The quotations offered here are examples of the modern intellectual, academic, and political climate in the United States and the widespread rejection of the principles of the American founding.

Those principles are based, as the Declaration says, on “the laws of nature and of nature’s God” and on certain “self-evident truths,” such as “all men are created equal.” The American Founders regarded those moral truths as objective, unchanging, valid for all human beings, all times, and all places, because they are truths rooted in universal, unchanging human nature.

The very possibility of such objective truth is generally denied today by educated Americans. Or, if the possibility of moral truth is admitted, the specific propositions of the Declaration are denied. At any rate, the principles enshrined in the Declaration of Independence and given legal force by the Constitution are widely rejected today.

#### **Charles Merriam, *A History of American Political Theories* (1903):**

The individualistic ideas of the natural right school of political theory, endorsed in the [American] Revolution, are discredited and repudiated. The notion that political society and government are based upon a contract between independent individuals and that such a contract is the sole source of political obligation, is regarded as no longer tenable. . . .

It is of vital importance to notice that liberty is not a natural right which belongs to every human being without regard to the state or society under which he lives. On the contrary, it is logically true and may be historically demonstrated that the state is the source of individual liberty. It is the state that makes liberty possible, determines what its limits shall be, guarantees and protects it. . . . It is denied that any limit can be set to governmental activity [because the natural rights theory of the U.S. Constitution] no longer seems sufficient.

#### **Carl Becker, *The Declaration of Independence: A Study in the History of Ideas* (1922):**

To ask whether the natural rights philosophy of the Declaration of Independence is true or false is essentially a meaningless question [because the Declaration] was founded upon a superficial knowledge of history [as well as] a naïve faith in the instinctive virtues of human nature [that] could not survive the harsh realities of the modern world [as increasing] scientific

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criticism steadily dissolv[ed] its own 'universal and eternal laws' into a multiplicity of incomplete and temporary hypotheses.

**Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (1948):**

No man who is as well abreast of modern science as the Founding Fathers were of 18<sup>th</sup> Century science believes any longer in an unchanging human nature.

### Modern Liberals

**Thurgood Marshall, "Reflections on the Bicentennial of the United States Constitution," *Harvard Law Review*, Vol. 101, November, 1987.**

Like many anniversary celebrations, the plan for 1987 takes particular events and holds them up as the source for all the very best that has followed. Patriotic feelings will surely swell, prompting proud proclamations of the wisdom, foresight, and sense of justice shared by the framers and reflected in a written document now yellowed with age. This is unfortunate -- not the patriotism itself, but the tendency for the celebration to oversimplify, and overlook the many other events that have been instrumental to our achievements as a nation. The focus of this celebration invites a complacent belief that the vision of those who debated and compromised in Philadelphia yielded the "more perfect Union" it is said we now enjoy.

I cannot accept this invitation, for I do not believe that the meaning of the Constitution was forever "fixed" at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedom and human rights, that we hold as fundamental today. When contemporary Americans cite "The Constitution," they invoke a concept that is vastly different from what the framers barely began to construct two centuries ago...

The original intent of the phrase, "We the People," was far too clear for any ameliorating construction. Writing for the Supreme Court in 1857, Chief Justice Taney penned the following passage in the Dred Scott case, on the issue of whether, in the eyes of the framers, slaves were "constituent members of the sovereignty," and were to be included among "We the People":

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We think they are not, and that they are not included, and were not intended to be included...They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race...and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit...Accordingly, a negro of the African race was regarded... as an article of property, and held, and bought and sold as such... No one seems to have doubted the correctness of the prevailing opinion of the time.

And so, nearly seven decades after the Constitutional Convention, the Supreme Court reaffirmed the prevailing opinion of the framers regarding the rights of Negroes in America.

**Conor Cruise O'Brien, *The Long Affair: Thomas Jefferson and the French Revolution* (1996):**

It is accepted that the words "all men are created equal" do not, in their literal meaning, apply to women, and were not intended by the Founding Fathers (collectively) to apply to slaves. Yet it is also accepted that the expectations aroused by this formula have been a force which eventually changed the meaning of the formula, to include women and people of all races.

**Gordon Wood, "Equality and Social Conflict in the American Revolution," (1994):**

What was radical about the Declaration in 1776? We know it did not mean that blacks and women were created equal to white men (although it would in time be used to justify those equalities too). It was radical in 1776 because it meant that all white men were equal.

**President Bill Clinton, speech in 1997:**

"We have to broaden the imagination of America. We are redefining in practical terms the immutable ideals that have guided us from the beginning."

**Alan Dershowitz, *America Declares Independence* (2003):**

"[R]ights and equality" are purely "human inventions." The reality is that natural law simply does not exist.

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### Modern Conservatives

**William Rehnquist, “The Notion of a Living Constitution,” in Mark Cannon et. al., ed., *Views from the Bench* (1985):**

[What are] the nature of political value judgments in a democratic society? If such a society adopts a constitution and incorporates in that constitution safeguards for individual liberty, those safeguards indeed do take on a generalized moral rightness or goodness. They assume a general social acceptance neither because of any intrinsic worth nor because of any unique origins in someone’s idea of natural justice but instead simply because they have been incorporated in a constitution by the people...

There is no conceivable way in which I can logically demonstrate to you that the judgments of your conscience are superior to the judgments of my conscience, and vice versa. Many of us necessarily feel strongly and deeply about our own moral judgments, but they remain only personal moral judgments until in some way given the sanction of law.

As Mr. Justice Holmes said in his famous essay on natural law: “Certitude is not the test of certainty. We have been cocksure of many things that were not so ... What we most love and revere generally is determined by early associations. I love granite hills and barberry bushes, no doubt because with them were my earliest joys that reach back through the past eternity of my life. But while one’s experience thus makes certain preferences dogmatic for oneself, recognition of how they came to be so leaves one able to see that others, poor souls, may be equally dogmatic about something else. And this again means skepticism.”

**Robert Bork, *The Tempting of America: The Political Seduction of the Law* (1989):**

Moral philosophy has never succeeded in providing an overarching system that commands general assent. The first reason to doubt that moral philosophy can ever arrive at a universally accepted system is simply that it never has. Or, at least, philosophers have never agreed on one.

There is no principled way to make the necessary distinctions. Why is sexual gratification more worthy than moral gratification?...There is no way to decide these questions other than by reference to some system of moral or ethical imperatives about which people can and do disagree. Because we disagree, we put such issues to a vote and...that majority morality prevails.

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This line of argument, which I have made before, has led some commentators to label me a moral relativist or a radical moral skeptic. Nothing could be further from the truth. Like most people, I believe I have moral understanding and live and vote accordingly.

**Richard Posner is a retired judge who sat on the US. Court of Appeals for the Seventh Circuit. He is regarded as a leading conservative jurist. These remarks are from a speech delivered at the American Enterprise Institute in Washington D.C. on January 7, 1991:**

I deny the priority of reason in human judgment. I am suggesting that we can, because we do, have confident beliefs without reasoning to them from unimpeachable truths ...

Every society has a concept of murder as wrongful, but not every society has or had a concept of infanticide or slavery as bad things or of freedom and equality as good things. Hence you cannot derive a system of justice for this country from universal human experience or a set of religious norms. When you start discussing these questions, you simply set out on an unending search for the unimpeachable premises of moral action.

**Antonin Scalia was a United States Supreme Court Justice. This comes from a 1996 speech he delivered at the Gregorian University in Rome:**

If the people, for example, want abortion, the state should permit abortion. If the people do not want it, the state should prohibit it.

The whole theory of democracy is that the majority rules; that is the whole theory of it. You protect minorities only because the majority determines that there are certain minority positions that deserve protection.

You either agree with democratic theory or you do not. But you cannot have democratic theory and then say, "But what about the minority?" The minority loses, except to the extent that the majority, in its document of government, has agreed to accord the minority rights.

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**Alasdair MacIntyre is a prominent defender of philosophic traditionalism and conservatism. In his well-known book *After Virtue* (1981), he speaks of natural rights in this way:**

I mean those rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty, and happiness.... [T]here are no such rights, and belief in them is one with belief in witches and unicorns.