

CONSTITUTING *Liberty* — FROM THE — DECLARATION TO THE BILL OF RIGHTS

AT THE NATIONAL CONSTITUTION CENTER, YOU WILL FIND RARE COPIES OF THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION, AND THE BILL OF RIGHTS. THESE ARE THE THREE MOST IMPORTANT DOCUMENTS IN AMERICAN HISTORY.

But why are they important, and what are their similarities and differences? And how did each document, in turn, influence the next in America's ongoing quest for liberty and equality?

There are some clear similarities among the three documents. All have preambles. All were drafted by people of similar backgrounds, generally educated white men of property. The Declaration and Constitution were drafted by a congress and a convention that met in the Pennsylvania State House in Philadelphia (now known as Independence Hall) in 1776 and 1787 respectively. The Bill of Rights was proposed by the Congress that met in Federal Hall in New York City in 1789. Thomas Jefferson was the principal drafter of the Declaration and James Madison of the Bill of Rights; Madison, along with Gouverneur Morris and James Wilson, was also one of the principal architects of the Constitution.

Most importantly, the Declaration, the Constitution, and the Bill of Rights are based on the idea that all people have certain fundamental rights that governments are created to protect. Those rights include common law rights, which come from British sources like the Magna Carta, or natural

rights, which, the Founders believed, came from God. The Founders believed that natural rights are inherent in all people by virtue of their being human and that certain of these rights are unalienable, meaning they cannot be surrendered to government under any circumstances.

At the same time, the Declaration, the Constitution, and the Bill of Rights are different kinds of documents with different purposes. The Declaration was designed to justify breaking away from a government; the Constitution and Bill of Rights were designed to establish a government. The Declaration stands on its own — it has never been amended — while the Constitution has been amended 27 times. (The first ten amendments are called the Bill of Rights.) The Declaration and Bill of Rights set limitations on government; the Constitution was designed both to create an energetic government and also to constrain it. The Declaration and Bill of Rights reflect a fear of an overly centralized government imposing its will on the people of the states; the Constitution was designed to empower the central government to preserve the blessings of liberty for “We the People of the United States.” In this sense, the Declaration and Bill of Rights, on the one hand, and the Constitution, on the other, are mirror images of each other.

Despite these similarities and differences, the Declaration, the Constitution, and the Bill of Rights are, in many ways, fused together in the minds of Americans, because they represent what is best about America. They are symbols of the liberty that allows us to achieve success and of the equality that ensures that we are all equal in the eyes of the law. The Declaration of Independence made certain promises about which liberties were fundamental and inherent, but those liberties didn't become legally enforceable until they were enumerated in the Constitution and the Bill of Rights. In other words, the fundamental freedoms of the American people were alluded to in the Declaration of Independence, implicit in the Constitution, and enumerated in the Bill of Rights. But it took the

Civil War, which President Lincoln in the Gettysburg Address called “a new birth of freedom,” to vindicate the Declaration’s famous promise that “all men are created equal.” And it took the 14th Amendment to the Constitution, ratified in 1868 after the Civil War, to vindicate James Madison’s initial hope that not only the federal government but also the states would be constitutionally required to respect fundamental liberties guaranteed in the Bill of Rights — a process that continues today.

WHY DID JEFFERSON DRAFT THE DECLARATION OF INDEPENDENCE?

When the Second Continental Congress convened in Philadelphia in 1775, it was far from clear that the delegates would pass a resolution to separate from Great Britain. To persuade them, someone needed to articulate why the Americans were breaking away. Congress formed a committee to do just that; members included John Adams from Massachusetts, Benjamin Franklin from Pennsylvania, Roger Sherman from Connecticut, Roger Livingston from New York, and Thomas Jefferson from Virginia, who at age 33 was one of the youngest delegates.

Although Jefferson disputed his account, John Adams later recalled that he had persuaded Jefferson to write the draft because Jefferson had the fewest enemies in Congress and was the best writer. (Jefferson would have gotten the job anyway — he was elected chair of the committee.) Jefferson had 17 days to produce the document and reportedly wrote a draft in a day or two. In a rented room not far from the State House, he wrote the Declaration with few books and pamphlets beside him, except for a copy of George Mason’s Virginia Declaration of Rights and the draft Virginia Constitution, which Jefferson had written himself.

The Declaration of Independence has three parts. It has a preamble, which later became the most famous part of the document but at the time was largely ignored. It has a

second part that lists the sins of the King of Great Britain, and it has a third part that declares independence from Britain and that all political connections between the British Crown and the “Free and Independent States” of America should be totally dissolved.

The preamble to the Declaration of Independence contains the entire theory of American government in a single, inspiring passage:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

When Jefferson wrote the preamble, it was largely an afterthought. Why is it so important today? It captured perfectly the essence of the ideals that would eventually define the United States. “We hold these truths to be self-evident, that all men are created equal,” Jefferson began, in one of the most famous sentences in the English language. How could Jefferson write this at a time that he and other Founders who signed the Declaration owned slaves? The document was an expression of an ideal. In his personal conduct, Jefferson violated it. But the ideal — “that all men are created equal” — came to take on a life of its own and is now considered the most perfect embodiment of the American creed.

When Lincoln delivered the Gettysburg Address during the Civil War in November 1863, several months after the Union Army defeated Confederate forces at the Battle of

Gettysburg, he took Jefferson's language and transformed it into constitutional poetry. "Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal," Lincoln declared. "Four score and seven years ago" refers to the year 1776, making clear that Lincoln was referring not to the Constitution but to Jefferson's Declaration. Lincoln believed that the "principles of Jefferson are the definitions and axioms of free society," as he wrote shortly before the anniversary of Jefferson's birthday in 1859. Three years later, on the anniversary of George Washington's birthday in 1861, Lincoln said in a speech at what by that time was being called "Independence Hall," "I would rather be assassinated on this spot than to surrender" the principles of the Declaration of Independence.

It took the Civil War, the bloodiest war in American history, for Lincoln to begin to make Jefferson's vision of equality a constitutional reality. After the war, the Declaration's vision was embodied in the 13th, 14th, and 15th Amendments to the Constitution, which formally ended slavery, guaranteed all persons the "equal protection of the laws," and gave African-American men the right to vote. At the Seneca Falls Convention in 1848, when supporters of gaining greater rights for women met, they, too, used the Declaration of Independence as a guide for drafting their Declaration of Sentiments. (Their efforts to achieve equal suffrage culminated in 1920 in the ratification of the 19th Amendment, which granted women the right to vote.) And during the civil rights movement in the 1960s, Dr. Martin Luther King, Jr. said in his famous address at the Lincoln Memorial, "When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men — yes, black men as well as white men — would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness."

In addition to its promise of equality, Jefferson's preamble

is also a promise of liberty. Like the other Founders, he was steeped in the political philosophy of the Enlightenment, in philosophers such as John Locke, Jean-Jacques Burlamaqui, Francis Hutcheson, and Montesquieu. All of them believed that people have certain unalienable and inherent rights that come from God, not government, or come simply from being human. They also believed that when people form governments, they give those governments control over certain natural rights to ensure the safety and security of other rights. Jefferson, George Mason, and the other Founders frequently spoke of the same set of rights as being natural and unalienable. They included the right to worship God "according to the dictates of conscience," the right of "enjoyment of life and liberty," "the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety," and, most important of all, the right of a majority of the people to "alter and abolish" their government whenever it threatened to invade natural rights rather than protect them.

In other words, when Jefferson wrote the Declaration of Independence and began to articulate some of the rights that were ultimately enumerated in the Bill of Rights, he wasn't inventing these rights out of thin air. On the contrary, 10 American colonies between 1606 and 1701 were granted charters that included representative assemblies and promised the colonists the basic rights of Englishmen, including a version of the promise in the Magna Carta that no freeman could be imprisoned or destroyed "except by the lawful judgment of his peers or by the law of the land." This legacy kindled the colonists' hatred of arbitrary authority, which allowed the King to seize their bodies or property on his own say-so. In the revolutionary period, the galvanizing examples of government overreaching were the "general warrants" and "writs of assistance" that authorized the King's agents to break into the homes of scores of innocent citizens in an indiscriminate search for the anonymous authors of pamphlets criticizing the King. Writs of assistance, for example, authorized customs officers "to break open doors, Chests, Trunks, and other Packages" in a search for stolen goods,

without specifying either the goods to be seized or the houses to be searched. In a famous attack on the constitutionality of writs of assistance in 1761, prominent lawyer James Otis said, “It is a power that places the liberty of every man in the hands of every petty officer.”

As members of the Continental Congress contemplated independence in May and June of 1776, many colonies were dissolving their charters with England. As the actual vote on independence approached, a few colonies were issuing their own declarations of independence and bills of rights. The Virginia Declaration of Rights of 1776, written by George Mason, began by declaring that “all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”

When Jefferson wrote his famous preamble, he was restating, in more eloquent language, the philosophy of natural rights expressed in the Virginia Declaration that the Founders embraced. And when Jefferson said, in the first paragraph of the Declaration of Independence, that “[w]hen in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another,” he was recognizing the right of revolution that, the Founders believed, had to be exercised whenever a tyrannical government threatened natural rights. That’s what Jefferson meant when he said Americans had to assume “the separate and equal station to which the Laws of Nature and of Nature’s God entitle them.”

The Declaration of Independence was a propaganda document rather than a legal one. It didn’t give any rights to anyone. It was an advertisement about why the colonists were breaking away from England. Although there was no legal reason to sign the Declaration, Jefferson and the other

Founders signed it because they wanted to “mutually pledge” to each other that they were bound to support it with “our Lives, our Fortunes and our sacred Honor.” Their signatures were courageous because the signers realized they were committing treason: according to legend, after affixing his flamboyantly large signature John Hancock said that King George — or the British ministry — would be able to read his name without spectacles. But the courage of the signers shouldn’t be overstated: the names of the signers of the Declaration weren’t published until after General George Washington won crucial battles at Trenton and Princeton and it was clear that the war for independence was going well.

WHAT IS THE RELATIONSHIP BETWEEN THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION?

In the years between 1776 and 1787, most of the 13 states drafted constitutions that contained a declaration of rights within the body of the document or as a separate provision at the beginning, many of them listing the same natural rights that Jefferson had embraced in the Declaration. When it came time to form a central government in 1776, the Continental Congress began to create a weak union governed by the Articles of Confederation. (The Articles of Confederation was sent to the states for ratification in 1777; it was formally adopted in 1781.) The goal was to avoid a powerful federal government with the ability to invade rights and to threaten private property, as the King’s agents had done with the hated general warrants and writs of assistance. But the Articles of Confederation proved too weak for bringing together a fledgling nation that needed both to wage war and to manage the economy. Supporters of a stronger central government, like James Madison, lamented the inability of the government under the Articles to curb the excesses of economic populism that were afflicting the states, such as Shays’ Rebellion in Massachusetts, where farmers shut down the courts demanding debt relief. As a result, Madison and others gathered in Philadelphia in 1787 with the goal of creating a stronger, but still limited, federal government.

CONSTITUTING LIBERTY: FROM THE DECLARATION TO THE BILL OF RIGHTS

The Constitutional Convention was held in Philadelphia in the Pennsylvania State House, in the room where the Declaration of Independence was adopted. Jefferson, who was in France at the time, wasn't among them. After four months of debate, the delegates produced a constitution.

During the final days of debate, delegates George Mason and Elbridge Gerry objected that the Constitution, too, should include a bill of rights to protect the fundamental liberties of the people against the newly empowered president and Congress. Their motion was swiftly — and unanimously — defeated; a debate over what rights to include could go on for weeks, and the delegates were tired and wanted to go home. The Constitution was approved by the Constitutional Convention and sent to the states for ratification without a bill of rights.

During the ratification process, which took around 10 months (the Constitution took effect when New Hampshire became the ninth state to ratify in late June 1788; the 13th state, Rhode Island, would not join the union until May 1790), many state ratifying conventions proposed amendments specifying the rights that Jefferson had recognized in the Declaration and that they protected in their own state constitutions. James Madison and other supporters of the Constitution initially resisted the need for a bill of rights as either unnecessary (because the federal government was granted no power to abridge individual liberty) or dangerous (since it implied that the federal government had the power to infringe liberty in the first place). In the face of a groundswell of popular demand for a bill of rights, Madison changed his mind and introduced a bill of rights in Congress on June 8, 1789.

Madison was least concerned by “abuse in the executive department,” which he predicted would be the weakest branch of government. He was more worried about abuse by Congress, because he viewed the legislative branch as “the most powerful, and most likely to be abused, because it is under the least control.” (He was especially worried that

Congress might enforce tax laws by issuing general warrants to break into people's houses.) But in his view “the great danger lies rather in the abuse of the community than in the legislative body” — in other words, local majorities who would take over state governments and threaten the fundamental rights of minorities, including creditors and property holders. For this reason, the proposed amendment that Madison considered “the most valuable amendment in the whole list” would have prohibited the state governments from abridging freedom of conscience, speech, and the press, as well as trial by jury in criminal cases. Madison's favorite amendment was eliminated by the Senate and not resurrected until after the Civil War, when the 14th Amendment required state governments to respect basic civil and economic liberties.

In the end, by pulling from the amendments proposed by state ratifying conventions and Mason's Virginia Declaration of Rights, Madison proposed 19 amendments to the Constitution. Congress approved 12 amendments to be sent to the states for ratification. Only 10 of the amendments were ultimately ratified in 1791 and became the Bill of Rights. The first of the two amendments that failed was intended to guarantee small congressional districts to ensure that representatives remained close to the people. The other would have prohibited senators and representatives from giving themselves a pay raise unless it went into effect at the start of the next Congress. (This latter amendment was finally ratified in 1992 and became the 27th Amendment.)

To address the concern that the federal government might claim that rights not listed in the Bill of Rights were not protected, Madison included what became the Ninth Amendment, which says the “enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” To ensure that Congress would be viewed as a government of limited rather than unlimited powers, he included the 10th Amendment, which says the “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are

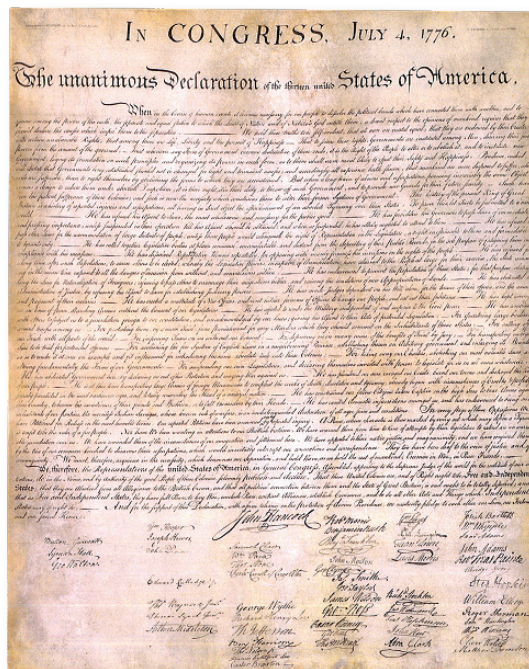
CONSTITUTING LIBERTY: FROM THE DECLARATION TO THE BILL OF RIGHTS

reserved to the States respectively, or to the people.” Because of the first Congress’s focus on protecting people from the kinds of threats to liberty they had experienced at the hands of King George, the rights listed in the first eight amendments of the Bill of Rights apply only to the federal government, not to the states or to private companies. (One of the amendments submitted by the North Carolina ratifying convention but not included by Madison in his proposal to Congress would have prohibited Congress from establishing monopolies or companies with “exclusive advantages of commerce.”)

But the protections in the Bill of Rights — forbidding Congress from abridging free speech, for example, or conducting unreasonable searches and seizures — were largely ignored by the courts for the first 100 years after the Bill of Rights was ratified in 1791. Like the preamble to the Declaration, the Bill of Rights was largely a promissory note. It wasn’t until the 20th century, when the Supreme Court began vigorously to apply the Bill of Rights against the states, that the document became the centerpiece of contemporary struggles over liberty and equality. The Bill of Rights became a document that defends not only majorities of the people against an overreaching federal government but also minorities against overreaching state governments. Today, there are debates over whether the federal government has become too powerful in threatening fundamental liberties. There are also debates about how to protect the least powerful in society against the tyranny of local majorities.

WHAT DO WE KNOW ABOUT THE DOCUMENTARY HISTORY OF THE RARE COPIES OF THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION, AND THE BILL OF RIGHTS ON DISPLAY AT THE NATIONAL CONSTITUTION CENTER?

Generally, when people think about the original Declaration, they are referring to the official engrossed — or final — copy now in the National Archives. That is the one that John Hancock, Thomas Jefferson, and most of the other members of the Second Continental Congress signed, state by



STONE ENGRAVING OF THE DECLARATION OF INDEPENDENCE

Courtesy of David Rubenstein

state, on August 2, 1776. John Dunlap, a Philadelphia printer, published the official printing of the Declaration ordered by Congress, known as the Dunlap Broadside, on the night of July 4th and the morning of July 5th. About 200 copies are believed to have been printed. At least 27 are known to survive.

The document on display at the National Constitution Center is known as a Stone Engraving, after the engraver William J. Stone, whom then Secretary of State John Quincy Adams commissioned in 1820 to create a precise facsimile of the original engrossed version of the Declaration. That manuscript had become faded and worn after nearly 45 years of travel with Congress between Philadelphia, New York City, and eventually Washington, D.C., among other places, including Leesburg, Virginia, where it was rolled up and hidden during the British invasion of the capital in 1814.

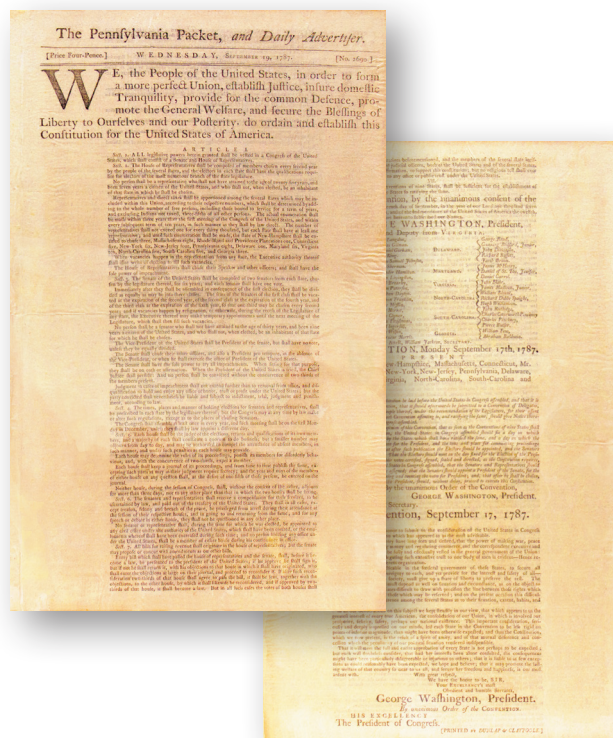
CONSTITUTING LIBERTY: FROM THE DECLARATION TO THE BILL OF RIGHTS

To ensure that future generations would have a clear image of the original Declaration, William Stone made copies of the document before it faded away entirely. Historians dispute how Stone rendered the facsimiles. He kept the original Declaration in his shop for up to three years and may have used a process that involved taking a wet cloth, putting it on the original document, and creating a perfect copy by taking off half the ink. He would have then put the ink on a copper plate to do the etching (though he might have, instead, traced the entire document by hand without making a press copy). Stone used the copper plate to print 200 first edition engravings as well as one copy for himself in 1823, selling the plate and the engravings to the State Department. John

Quincy Adams sent copies to each of the living signers of the Declaration (there were three at the time), public officials like President James Monroe, Congress, other executive departments, governors and state legislatures, and official repositories such as universities. The Stone engravings give us the clearest idea of what the original engrossed Declaration looked like on the day it was signed.

The Constitution, too, has an original engrossed, handwritten version as well as a printing of the final document. John Dunlap, who also served as the official printer of the Declaration, and his partner David C. Claypoole, who worked with him to publish the *Pennsylvania Packet and Daily Advertiser*, America's first successful daily newspaper founded by Dunlap in 1771, secretly printed copies of the convention's committee reports for the delegates to review, debate, and make changes. At the end of the day on September 15, 1787, after all of the delegations present had approved the Constitution, the convention ordered it engrossed on parchment. Jacob Shallus, assistant clerk to the Pennsylvania legislature, spent the rest of the weekend preparing the engrossed copy (now in the National Archives), while Dunlap and Claypoole were ordered to print 500 copies of the final text for distribution to the delegates, Congress, and the states. The engrossed copy was signed on Monday, September 17th, which is now celebrated as Constitution Day.

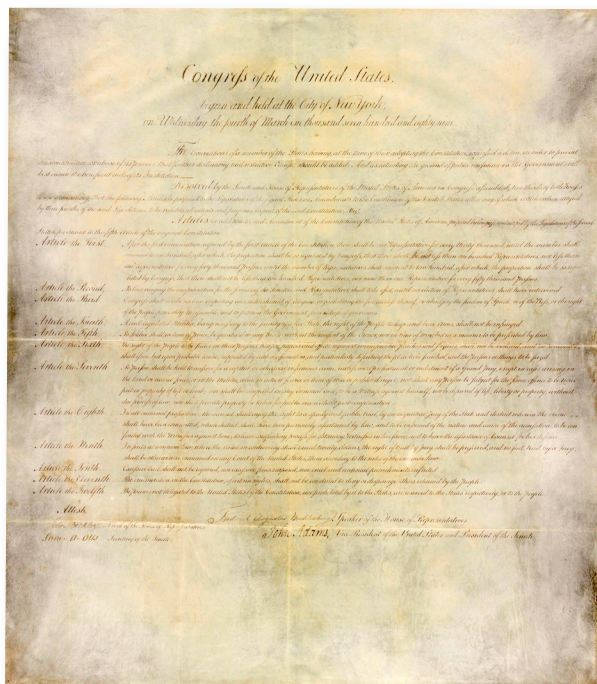
The copy of the Constitution on display at the National Constitution Center was published in Dunlap and Claypoole's *Pennsylvania Packet* newspaper on September 19, 1787. Because it was the first public printing of the document — the first time Americans saw the Constitution — scholars consider its constitutional significance to be especially profound. The publication of the Constitution in the *Pennsylvania Packet* was the first opportunity for “We the People of the United States” to read the Constitution that had been drafted and would later be ratified in their name.



FIRST PUBLIC PRINTING OF THE CONSTITUTION IN THE PENNSYLVANIA PACKET

National Constitution Center Collection, Gift from Robert L. McNeil, Jr.

CONSTITUTING LIBERTY: FROM THE DECLARATION TO THE BILL OF RIGHTS



the approbation of those to whom it is addressed.” Only 25 copies of the *Pennsylvania Packet* Constitution are known to have survived.

Finally, there is the Bill of Rights. On October 2, 1789, Congress sent 12 proposed amendments to the Constitution to the states for ratification — including the 10 that would come to be known as the Bill of Rights. There were 14 original manuscript copies, including the one displayed at the National Constitution Center—one for the federal government and one for each of the 13 states.

Twelve of the 14 copies are known to have survived. Two copies — those of the federal government and Delaware — are in the National Archives. Eight states currently have their original documents; Georgia, Maryland, New York, and Pennsylvania do not. There are two existing unidentified copies, one held by the Library of Congress and one held by The New York Public Library. The copy on display at the National Constitution Center is from the collections of The New York Public Library and will be on display for several years through an agreement between the Library and the Commonwealth of Pennsylvania; the display coincides with the 225th anniversary of the proposal and ratification of the Bill of Rights.

The Declaration, the Constitution, and the Bill of Rights are the three most important documents in American history because they express the ideals that define “We the People of the United States” and inspire free people around the world.

THE BILL OF RIGHTS

From the collection of The New York Public Library

The handwritten Constitution inspires awe, but the first public printing reminds us that it was only the ratification of the document by “We the People” that made the Constitution the supreme law of the land. As James Madison emphasized in *Federalist No. 40* in 1788, the delegates to the Constitutional Convention had “proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with