Constitutional scholars often treat the Declaration of Independence as a relic of a bygone era. My recent book, For Liberty and Equality: The Life and Times of the Declaration of Independence (Oxford University Press 2012), shows how out of step that thinking is with social movements. Some of the most progressive groups in this country’s history based their demands for change, justice, and equality on the grand statements of the nation’s manifesto. Unlike constitutional scholars, manhood suffragists, abolitionists, woman suffragists, labor organizers, and a host of other progressives turned to the Declaration to condemn the hypocrisies of the Constitution.

From the earliest days of the Republic, anti-slavery activists decried the incompatibility of adopting the universal sounding language of the Declaration of Independence while providing constitutional protections for the institution of slavery. In 1783, New Jersey Quaker leader David Cooper underscored the contradictions between Revolutionary principles of equality and the institution of slavery in two, side-by-side columns. He quoted from the Declaration in the left-hand column and in the right-hand column condemned those signatories of the document who were slaveholders, speaking of the blessings of liberty while securing it only for white men. Even that characterization of American democracy was too generous given the endemic racism that spilled over far beyond the boundaries of slave plantations.

The manhood suffrage movement of the early nineteenth century turned to the Declaration’s principles of equality to vindicate the right of propertyless white men to vote. Laborers complained that in a country committed to liberty, equality, and the pursuit of happiness an aristocratic democracy had been erected on the backs of the workingman. Writing about political equality in 1800, Thomas Paine’s biographer, James Cheetham, interpreted the Declaration of Independence’s words that “all men are created equal” to include “the political equality of man.” From this followed the principle that “the right of suffrage cannot . . . belong to a part without belonging to the whole.”

The success of the manhood suffrage movement was well and good, but it left half of U.S. citizens politically disempowered. Not only did Elizabeth Cady Stanton expand the Declaration of Independence’s egalitarianism to women through her 1848 Seneca Falls Convention Declaration of Sentiments, but so did many other first wave feminists. The 1,000 men and women who attended the 1850 woman suffrage convention in Worcester, Massachusetts adopted a statement, proclaiming in part that the framework of the Declaration of Independence opened the door to women being informed voters, executives, legislators, and judges at the local, state, and federal levels. The trend to invoke the Declaration continued into 1920 with the ratification of the Nineteenth Amendment, securing the right to vote for women.
A host of other activists seeking to expand the relevance of freedom and equality likewise invoked the Declaration. The document’s statements became an instrument of constitutional interpretation for the labor movement as it did the civil rights movement. My book, For Liberty and Equality, provides an in-depth account of how these and many other progressive social movements relied on the Declaration of Independence in their efforts to vindicate fundamental rights.

Despite this oft-proved strategy for achieving meaningful improvements for so many people, in the twenty-first century constitutional scholars on the left rarely invoke the Declaration for its substantive value. They of course continue to herald the founding document as a national symbol, but it is rarely conceived as an instrument for constitutional change. In part this trend is due to the common reliance on the Supreme Court to function as a counter-majoritarian institution, capable of invoking just the right amount of scrutiny to eliminate existing forms of state discrimination. The overreliance on the Court is unfortunate, to my mind, because it relegates the people’s prerogative to identify and vindicate their rights exclusively to unelected legal luminaries. At a time when the Court recently struck key provisions of the Americans with Disabilities Act, the Age Discrimination in Employment Act, and Violence against Women Act such an reliance is unjustified.

I am not advocating for the end of judicial review. Far from it; since Justice Harlan Fiske Stone’s statement in the fourth footnote to Carolene Products the Court has often proven itself adept at striking invidious state practices. But the Declaration remains a vehicle of the people to call for equality in matters as sweeping as immigration, voting rights, and the limits of judicial review. There are paragraphs in the Declaration that speak to these matters, but virtually no litigant, court, or scholar invokes them. I recently wrote of this in an article, and I hope it might start a dialogue of how popular constitutionalism can help fulfill the liberal equality contemplated by the highest ideals of the Declaration of Independence.