

IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,
I Declare!

Where in the course of human events, it becomes necessary to dissolve the political bands which have connected them with another, and to establish new relations, and among them to declare that these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all future connection with Great Britain ought to be based on friendship and commerce, a decent respect to the opinions of mankind requires that the

The Key to Independency

of the Colonies

It is well with a **Land**

its well with a Lock. The

down on the Crown

all the dangers of invasion from without, and convulsions within. — He has endeavoured to prevent the population of Foreigners; refusing to pass laws to encourage their migrations hither, and raising the conditions of new Appropriations

Legitimacy and Legality

IN THE

in the

Declaration of Independence

and Locke's

Second Treatise of

Representatives of the united States of America, in General Congress Assembled, appealing to the Supreme
 Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right
 ought to be, free and independent States, that they have full Power to levy War, conclude Peace, contract Alliances, enter into
 Commercials, and to do all other Acts and Things which Independent States may of Right do.

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually

Jm Hooper
 Joseph Hewes
 John Hancock
 Nares Ingerman
 Rob Morris
 Benjamin Rush
 Wm Franklin
 Phil. Lu
 David

February, 2011

mitted in partial fulfillment of the requirements for the B.A. degree

The Originals to June
 Thomas Lynch Junr
 Arthur M. Deane
 George Maythe
 Richard Henry Lee
 Th. J. H.
 James Madison
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 Caesar Rodney
 Jas. Witherspoon
 Treat Hopkyns

M. Jefferson

Francis Lightfoot Lee
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Introduction

The foundation of the United States of America is one of the most remarkable events in human history. States have been established and have perished since time immemorial, but there are a number of unique elements to the story of America. What allows a people to declare themselves sovereign? What justifies a people in asserting their right to revolt? Where would such a right come from in the first place?

This paper initially deals with the *Declaration of Independence* as it stands by itself. It next explores the philosophical influences on the thinking that went into it, drawing from John Locke's *Second Treatise of Government*. The end of government *per se* is taken up very superficially, inasmuch as the issue is dealt with in the *Declaration* and the *Second Treatise*. Issues dealing with the maintenance of regimes also lie mostly beyond the scope of this paper. What is relevant and what is being particularly gleaned from the texts are insights into the right to revolt and secede – the right to proclaim sovereignty as portrayed in the *Declaration* and the philosophical basis which provides for such a right as discussed in the *Second Treatise*.

The final section of this paper offers concluding thoughts and speculations on political philosophy and various aspects of statehood, in particular the problem of legitimacy and legality as viewed from these two texts.

Ἡ Φωνὴ τοῦ Λαοῦ καὶ Ἡ Φωνὴ τοῦ Θεοῦ
Vox Populi, Vox Dei

The *Declaration of Independence* consists of three sections. The first lays out principles and basic arguments, the second lists the practical grievances that the Colonies have against the Crown, and the third concludes the *Declaration* with further justifications and reaffirmations. Of the sections, it is the first that is of the most interest from a philosophical point of view, although much can be said of the other two in relation to the first.

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 of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

The very beginning of the *Declaration* gives an indication of what to expect from the document. For the Colonies, it is “necessary ... to dissolve the political bands”, an unequivocal matter. But they are also willing to explain why this is so, in accordance with “a decent respect to the opinions of mankind”. The Colonies are certain of what they are doing, and they have a line of reasoning to share that elaborates on their actions. The authors of the *Declaration* are assured that the course of action they have chosen is necessary, and, indeed, right, going so far as to include numerous instances of the invocation of the divine in this matter.

That line of reasoning and invocation of the divine begins in the next paragraph.

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 ...

The starting point of the *Declaration* is axiomatic. There are “truths ... self-evident” with regards to men, having divine origin, including but not limited to rights to “Life, Liberty, and the pursuit of Happiness”. Man’s equality is also a divine right since it is the “Creator” who bestows the other rights, while men are also “created equal”. Further, the end of government according to the authors of the *Declaration* is to guarantee those rights.

What is particularly noteworthy is that it is unquestionable for the authors of the *Declaration* that men are equal and possess “unalienable Rights”, and yet, it is a necessity for governments to exist in order to establish and maintain those rights. “Governments are instituted among Men”, the *Declaration* says: the human has to act in order to accomplish what has already been provided by the divine. And not only that, but those governments “deriv[e] their just powers from the consent of the governed”, that is, without any direct divine intermediation. The equality and rights come from on high, but it is people who have to realise (i.e., understand) the equality and rights as well as realise them (i.e., render them real). The truths are not quite self-evident, then, unless one reflects on them. And the self-evident truths are not necessarily always in practice unless people agree to governments, “consent” to them, in order to achieve those ends.

But,

...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. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes ...

The number of rights increase – now including “Safety”, in keeping with “Life” and “Liberty” – as well as including the right to the sort of government that would guarantee the

equality and the other rights. The rights themselves cannot be changed or denied, but the government can, if need be. Now the practical elements in the *Declaration* already begin to make an appearance. It would be imprudent, the text says, to destabilise a “long established” government “for light and transient causes”. There is something relevant about custom and tradition, then, and there is also some significance connected with the degree of dissatisfaction with one’s government.

What is more, “accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed”. So, it also takes some effort to change the government. Men are either a lazy bunch or an adaptable bunch, so long as “evils are sufferable”. The self-evident truths are derived from the divine, but there is no necessity to demand them from temporal powers if they are not being violated *too* much. However,

... when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies ...

Therefore, when matters are taken to the extreme, approaching “absolute Despotism”, not only do men remember their right to a government that maintains the rights as expressed by the self-evident truths, but it also becomes a veritable duty “to throw off such Government”. The dissatisfaction must be consistent, thought-through, with an eye for the long term, before it becomes necessary to take any decisive measures against a government that disregards those rights derived from the divine. There is a duty that goes along with carrying out those rights, then, to be taken on by mankind alone, using government as a tool. Presumably, the Colonies

would not deservedly demand the rights they claimed unless they took on or were willing to take on the duties that came along with them. But in the case of the Crown,

... such is now the necessity which constrains [these Colonies] to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.

Most significantly it becomes explicit in this part of the *Declaration* that the trouble is with the “Systems of Government”, that is to say, the form of government or the regime is what is at stake. The Colonies have sufficient confidence to qualify already the ongoing arrangement between Crown and Colony as, in fact, a “former” one, the aim being to avoid “absolute Tyranny” and “absolute Despotism”.

The line of reasoning of this first section of the *Declaration* is thus: that there exist certain fundamental rights for all mankind that find their basis in the divine; that there is a necessity of government established by men for men in order to provide and guarantee those rights; that if a regime is found ultimately incapable of so doing, then it is absolutely necessary – there is a duty, in fact, along with those rights – to abolish it and to establish a new one.

The more practical aspects giving rise to the necessity of fulfilling the above line of reasoning can be immediately seen in the second section of the *Declaration*. The list of grievances offers direct reasons for the Colonies to take decisive measures for the sake of their interests. Among the complaints, the *Declaration* states that,

[The King] has refused his Assent to Laws, the most wholesome and necessary for the public good. ...

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. ...

... abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies ...

... taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments ...

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Thus it is clear that, again, the problem lies with the regime, with the policies being carried out by the Crown that are not in keeping with the sort of government that recognises and abides by the self-evident truths as claimed by the authors of the *Declaration*, nor with the sort of government practiced heretofore by the Colonies which reflected that equality and those rights. And, as the lattermost citation indicates, the Colonies have already used available mechanisms and channels to have their complaints looked into, before deciding finally on the more radical step of declaring independence. The evils are no longer “sufferable”, and the causes that impelled revolution are not “light and transient”.

There is also a lot of talk of “people” or “the People”, in all sections of the *Declaration* in fact, and also in the list of grievances. It is unclear what exactly such a category might entail – whether or not it involves solely an enfranchised population, for example – but it is telling that the Colonies see this component of society as an essential part of government. The rights pertain to them, after all, and the duties are also borne by them. There is thus a reinforcement of the universality of government and its ends within at least the Colonies in their point of view; the government and the people are not entirely distinct and separate entities. What is more,

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our

emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

An appeal, a threatening ultimatum, in fact, is made to the British people itself at the end of the second section of the *Declaration*. It is one thing to display indignation against the Crown and to secede from its authority, but to break ties with the people of Britain is a starker move, especially given that the inhabitants of the Colonies consider themselves “a free People”, as quoted above. This would imply that the people of the mother country are not free, or are not free anymore, and perhaps they might consider taking similar measures back in the Metropolis. Thus, the reasoning and the decision taken by the Colonies may be taken to extend much farther than simply changing the relationship with the Crown, as actions inherently right, especially given their divine basis, the practice of which should by no means be limited to the Colonies and their circumstances alone. Such wording reinforces as well the strong inter-relationship between the government and the people as perceived by the authors of the *Declaration*.

Finally, the *Declaration* offers a summary at the very end of the document, re-iterating the convictions and decisions of the Colonies,

That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.

And, once again, the right to do what the Colonies are doing is emphasised, that they “are, and of Right ought to be” independent, that their decision “is and ought to be” so, and that they will henceforth carry out activities “which Independent States may of right do”. The firmness of conviction is further stressed by yet more invocations of the divine,

... appealing to the Supreme Judge of the world for the rectitude of our intentions [...] for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Perhaps such language was more characteristic of the time than today – that is to say, religion may have had a more visible and common role in day-to-day life then – but nevertheless, suggesting a divine basis for one’s actions and, consequently, attributing divine approbation to them is in fact quite the claim to make at any time, at any place. And interestingly, the *Declaration* is bookended by an invocation of Prudence in the beginning and of Providence in the end. Both words have a similar etymology with implications of divine oversight and care. Both thus reinforce a strong feeling of confidence in the rights of the Colonies and their actions.

In order actually to realise any independence, of course, there would need to be victory in the armed conflict that would invariably follow the declaration of such. Throughout the course of human history, peoples have suffered under unjust rule, both by domestic tyrants and by harsh foreign invaders, rebellions have taken place, and it has often been a matter of brute force or fortune whether or not the yoke of some reign or other could be shirked off, or how long such newly-established sovereignty might last. The Colonies were not without this problem. But by bringing to the fore the reasoning behind their actions, going beyond the merely practical, the authors of the *Declaration* offer a qualitatively different approach to their cause. Such an

approach might indeed be more inspiring to the people involved, while striking at the opponent as well in a unique and powerful manner.

The philosophy behind the presented reasoning is well in keeping with the spirit of the time, namely with the thoughts of such figures of the Enlightenment as John Locke and Jean-Jacques Rousseau. Although there is no explicit indication in the text of the influence of either, it can be inferred that the authors of the *Declaration* were familiar with both and more, given what is known from historical accounts, and also with the similarity of language and the flow of reasoning, especially in comparison with Locke's *Second Treatise*.

Νηγοιϋήν Σηηνϋρηέων 'Οπένρ Ρωρδρωρωρδ
Salus Populi Suprema Lex

Published in the late seventeenth century, the first of John Locke's *Two Treatises of Government* is concerned with refuting a certain Sir Robert Filmer, arguing against the basis of sovereignty of an absolute monarch on the creation, fatherhood, property, or subjugation borne by Adam, somehow handed down by inheritance. Sir Robert's position is summed up as "*That no Man is born free*" and "*That all Government is Absolute Monarchy*", both premises, and whatsoever derived from them, being thoroughly denied by Locke.

The *Second Treatise* builds on the ideas of the earlier refutations. The point of the work is made quite clear by the title itself: "An Essay Concerning the True Original, Extent, and End of Civil Government". (The word "Original" here conveys the meaning of "origin".) Locke deals extensively with much the same questions as taken on in the first section of the *Declaration* and, indeed, as reflected by the entire *Declaration* itself.

The general thrust of the *Second Treatise* is to showcase that the authority of the ruler is not simply an extrapolation of paternal or other familial rights, or the relationship between master and slave, or captain and deck-hand. For Locke, there is a qualitative, categorical difference in the basis of civil political power, as opposed to the more natural and immediate power that comes from other manifestations of positions of authority.

The groundwork for Locke's thinking is placed in the first few chapters. It is more towards the end of the work, however, in two chapters in particular, that one finds ideas with more immediate implications with regards to what the Colonies had to face.

Locke begins with the state of nature, and how the two chief characteristics for all men are their freedom and equality within it.

But tho this be a *State of Liberty*, yet it is not a *State of Licence* ... The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his Life, Health, Liberty, or Possessions ... (Ch II, § 6)

For Locke, therefore, there is a pre-supposed reason, accessible by man, which ought to lead his conduct. That is, man is free as an individual and equal to all other men, but he has not the right to do anything with regards to other men, but only those things that fall within reason.

Therefore, in the state of nature, the regulation of the actions of men falls to each individual, for they are all equal; there is no over-arching body that makes or enforces laws. The enforcing of laws, according to Locke, is the only lawful coercive power, but it has to take place, for its part, “so far as calm Reason and Conscience dictate ... as may serve for *Reparation* and *Restraint*” (Ch II, § 8). The offender trespasses against the “measure God has set to the Actions of Men” (Ch II, § 8), and against “Reason, the common Rule and Measure God hath given to Mankind” (Ch II, § 11). Thus Locke sees the ultimate source of the guiding reason to be divine.

What is more, given the obvious biases that arise in the scenario where every individual may act as judge, jury, and executioner, “God hath certainly appointed Government to restrain the Partiality and Violence of Men. I easily grant, that *Civil Government* is the proper Remedy for the Inconveniencies of the state of Nature ...” (Ch II, § 13).

The rationale behind government is thus divine, which is, again, reasonable. That is to say, if government stems from God, and reason stems from God, then there is a reasonable basis for government as well, besides the divine.

Locke insists, however, that all men, even today, are born into the state of nature, “and remain so, till by their own Consents they make themselves Members of some politick Society” (Ch II, § 15). The consent is key, for any action forcibly subjugating another without reason is

looked upon as a declaration of the state of war, “because such Men are not under the Ties of the common Law of Reason, have no other Rule, but that of Force and Violence ...” (Ch III, § 16). Freedom is a paramount principle of the state of nature, after all, and any act aimed at violating it is unreasonable, not to mention that it involves violating the other paramount principle of equality.

Men living together according to Reason, without a common Superior on Earth, with Authority to judge between them, is *properly the state of Nature*. But Force, or a declared Design of Force, upon the Person of another, where there is no common Superior on Earth to appeal to for Relief, is the state of War: And 'tis the want of such an Appeal gives a Man the Right of War even against an *Aggressor*, tho he be in Society and a Fellow Subject. (Ch III, § 19)

Locke goes on to justify this claim further by invoking the want of an ever-present judge. Violence countering violence is a vicious cycle, and does not end easily, according to Locke. In the state of nature, it is therefore dangerous to allow every individual to enforce laws as he or she sees fit. Besides it being unreasonable to do so coercively, some are simply not as physically able as others.

To avoid this *state of War* (wherein there is no Appeal but to Heaven, and wherein every the least Difference is apt to end, where there is no Authority to decide between the Contenders) is one great *Reason of Mens putting themselves into Society*, and quitting the state of Nature: for where there is an Authority, a Power on Earth, from which Relief can be had by *Appeal*, there the continuance of the *state of War* is excluded, and the Controversy is decided by that Power. (Ch III, § 21)

The rationale behind government thus involves something of the practical as well. The state of war, which is characteristic of the state of nature and a possibility in organised society, is a hindrance to peace, stability, development – the sorts of things Locke would consider the public good. Instead of constantly appealing to the divine to settle matters, men may organise

themselves in such a manner as to resolve their differences reasonably. Such thinking is reflected in the idea brought forth in the *Declaration* that the rights of mankind stem from the divine, but that it has to be human action that puts those rights into practice. Government acts as the means to do so.

Furthermore, the actions of men giving meaning to the political also goes well with the idea put forth by Locke later on in the *Second Treatise* of giving value to natural resources by putting work into them, thus making them property, making them one's own. Government – civil government – has the individual appropriate the organised society in a similar way, thereby rendering it appropriate.

It is curious that, at one point, Locke gives the example of America as a case of labour and toil over land being the argument to assert one's rights to property (even if the yield is a hundredth that of Devonshire; Ch V, § 37). The example may serve as a compelling basis for the claims of sovereignty of the Colonies over their territory, as opposed to any claims the Crown might make. There are, in fact, various mentions of “America” in the work, though often not directly related to the Colonies, but references to the organised peoples of what we would today call Latin America or South America. The examples are mostly meant to showcase negative aspects of the state of nature, as opposed to a society with a civil government. Even if not exactly the Colonies, mentioning the continent itself may have served to make some sort of connection, if not an inspiration, for the authors of the *Declaration* to perceive an unjustness stemming from the Crown and its policies with regards to the Colonies.

Over the course of several chapters, Locke discusses a number of examples of various natural and artificial relationships of ruler and ruled, and, in each, a case might be made in favour

of the Colonies. Locke disagrees with paternal, familial, or marriage rights, for example, as bases for rule, but arguments could be made that would serve to support the actions of the Colonies even so, as analogous children or spouses of the Crown. As another example, the Colonies may be perceived as indeed in a state of war with the Crown, as Locke would have it, for the two could in fact be considered equal in their sovereignty, and the step from a figurative to a literal state of war would not be difficult to take or justify. All sovereigns, for Locke, are in that very state of nature and potential war with one another, as they do not all come under any authority or government. Locke also dismisses outright conquest or despotism as a basis of government, and he highly questions and discourages absolute monarchy as such.

But it is at the end of the *Second Treatise* that Locke takes on the most relevant arguments with regards to the *Declaration*, in Chapter XIX, “Of the Dissolution of Government”. Locke considers governments either headed by a monarch, an assembly of nobles, or an assembly of representatives. Whatever the case may be,

... whenever the *Legislators endeavour to take away, and destroy the Property of the People*, or to reduce them to Slavery under arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. (Ch XIX, § 222)

Locke considers “the Lives, Liberties and Estates” as “Property” (Ch IX, § 123; repeated in this very section, the phrasing being used in numerous instances throughout the work). They are essential elements to the consent that goes into the formation of a civil government. He makes use of the idea of “Trust” a great deal as well, and how the “breach of Trust” leads to the rightful dissolution of government. The section continues,

Whensoever therefore the *Legislative* shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, *endeavour to grasp themselves, or put into the hands of any other, an absolute Power* over the Lives, Liberties, and Estates of the People; by this breach of Trust they *forfeit the Power* the People had put into their hands for quite contrary Ends, and it devolves to the People, who have a Right to resume their original Liberty, and, by the Establishment of a new Legislative, (such as they shall think fit) provide for their own Safety and Security, which is the End for which they are in Society. (Ch XIX, § 222)

The section adds that the above arguments apply just as well to a monarch, and, in fact, even more so, given that a monarch would have “a double Trust put in him”, both as legislative and executive authority, “... when he goes about to set up his own arbitrary Will as the Law of the Society” (Ch XIX, § 222). And the same chapter goes on to mention how people tend to avoid frequent revolutions, that they stick with whatever government they have for as long as they can, and it is only when a series of great transgressions take place that the doubts of the people are strengthened enough to call for an outright change in the state of affairs (Ch XIX, §§ 223-225). For,

... if a long train of Abuses, Prevarications and Artifices, all tending the same way, make the Design visible to the People ... 'tis not to be wonder'd, that they should then rouse themselves, and endeavour to put the Rule into such hands which may secure to them the Ends for which Government was at first erected. (Ch XIX, § 225)

All of the aforementioned points raised in this chapter are clearly reflected in the first section of the *Declaration*, with even some very similar wording. What is significant is, again, that it is a fundamental matter of the way the government is working, rather than a question of changing the current leadership. The government is in place to fulfill certain ends, and when that government is unable to do so, then it might end up having to be a case of modifying the regime itself, for the people are rendered into the state of war with the body which purported to be their

government. The people then face the necessity – the duty following the right – to establish a civil government anew, whatever the form, it is important to note: whether it be a monarchy, an oligarchy, or a democracy.

Trust and consent are pivotal concepts for Locke. And not just for that one thinker. Rousseau makes great use of the word *légitime* in the first book of *Du Contract Social*, and although Locke never once takes up the term “legitimate” himself, the idea is shared with Rousseau that there must be some sort of legitimacy to any civil government or civil state, that its very formation has to take place in a legitimate manner, and that, for Rousseau and Locke, the legitimacy of the civil government or the civil state is derived from the consent of those participating in such a political body. But also, as Rousseau puts it, an organised society is “*un corps moral et collectif*” (“a moral and shared body”; *Du Contract Social* I.6). The frequent invocation of the divine in Locke as well indicates this shared sentiment that there is something sublime about the political enterprise, apart from the more immediate and mundane-sounding “social contract”. That at the heart of a contract is the trust among the contracting parties is a further reflection of the emphasis on trust that Locke places in his vision of civil government.

There is an important distinction to be pointed out here, however. Locke makes the strong case that the political relationship is not formed on the basis of an extrapolation of the relationship of man with the divine. But in so doing, the nuance brought forth by Locke lies in negating the divine right as a basis for arbitrary rule as professed and practiced by European monarchs of the time. The difference lies in the fact that civil government is based on reason and morals – which are ultimately derived from the divine – as opposed to an intermediary co-opting the divine and regulating it arbitrarily.

But surely there is some degree of arbitrariness to rule; the ultimately-subjective nature of the decisions of individuals in positions of authority cannot be helped. Locke touches upon ideas pertaining to such problems in an interesting way in Chapter XIV of the *Second Treatise*, entitled “Of Prerogative”. It outlines the power of the ruler to act outside of or even contrary to the law, as long as it is for the public good: “This Power to act according to Discretion, for the Publick Good, without the Prescription of the Law, and sometimes even against it, is that which is called *Prerogative* ...” (Ch XIV, § 160).

Locke admits the arbitrariness of such authority, even though he rails against arbitrariness in ruling on numerous occasions in the *Second Treatise*. In particular, there is danger in precedents being set for future generations of incompetent rulers to exploit and abuse, even if those precedents were set by wise rulers – “God-like Princes” who not only had the absolute power akin to the divine, but also “his Wisdom and Goodness” (Ch XIV, § 166). The criterion for legitimacy of prerogative as Locke sees it rests, again, on some degree of divine inspiration and, more significantly, whether or not the prerogative is used for the public good.

... it is impossible that any body in the Society should ever have a Right to do the People harm; though it be very possible, and reasonable, that the People should not go about to set any Bounds to the *Prerogative* of those Kings or Rulers, who themselves transgressed not the Bounds of the publick Good: for *Prerogative is nothing but the Power of doing Publick Good without a Rule*. (Ch XIV, § 166)

As with Locke’s ideas on government generally, it all hinges on trust in the ruler. Once that trust has been breached, the legitimacy is at an end. What to do then? The chapter closes with the assertion that the decision on the right use of prerogative has no “Judge on Earth”, but can only be determined with an “Appeal to Heaven” (Ch XIV, § 168). There is thus more use of language invoking the divine.

The grievances listed in the *Declaration* are clear examples of abuse of prerogative. The very first of the complaints against the Crown, in fact, specifically mentions policies harmful for “the public good”. But there could only be the divine to which to turn for the Colonies in their predicament, as expressed by the rhetoric of the *Declaration*. The invocation of the divine involves a call to action for men to fulfill what the divine provides, be it legally, through a promulgated act of the law, or legitimately, through an act of prerogative, both of these aimed at the public good.

*Աստուած ժողովրդեան շայն Ողջութեան թէ՞ շայն Օրինաց
Deus Populi – Vox Salutis vel Vox Legis?*

The *Declaration* is proposing a case for the legitimacy of the secession of the Colonies. It may be philosophically coherent, but, practically, there was a war that needed to be won in order to achieve independence, as was mentioned. It might not be too worthwhile, but it would be interesting to speculate just a little bit on a scenario with an outcome of the armed conflict unfavourable to the Colonies. It is impossible to say what sort of measures the Crown would have taken afterwards – probably the execution of the leadership of the revolution at the very least. More importantly, would continued rule by the Crown have been perceived as legitimate, simply because its coercive force turned out to be more successful? Is it possible to force consent upon the governed? Perhaps, if the governed have no choice but to consent, it would appear that way.

It would only be a matter of time, however, before another opportunity would arise to revolt, unless the people did not perceive it in their immediate interests to do so. There is thus a factor of “appeasement of the governed” in order to maintain a government. Interestingly, the divine order of things – that is, the relationship of the creator with all of creation – can be easily viewed as an example of despotism (as opposed to a republican system or a democracy), but presumably, it is the sort of despotism that allows for equality, life, liberty, safety, and happiness, or at least it is a despotism with a writ of all of those things as rights for mankind, which can certainly be viewed as an appeasement of mankind.

But the idea of appeasing the governed removes the government from the people, rendering them two distinct and separate units. Civil government offers something qualitatively different: the basis of the organisation of society is the general consent among all the people; it is the people who rule themselves inasmuch as that is a possibility, and who consent to that mutual

rule. They must maintain that level of trust for themselves, as Locke would put it – something much more challenging, one might even say more virtuous, than mere appeasement. The conscious self-rule under civil government may be seen as something higher, more moral, therefore more legitimate, reflecting and analogous to the desirable self-rule on an individual level, as Plato would have it in his expressions on the ordering of the soul.

A further bit of speculation which, again, would be inconclusive, yet thought-provoking: what of the case of the South half a century and more later? Undoubtedly, similar philosophical and practical arguments could be made on behalf of the Confederacy. One point is particularly relevant, that the southern states had acceded to the Constitution. They were legally bound to form part of the Union, and so their secession was entirely illegal, even if it was legitimate from their own point of view. It would be more difficult to make such an objective argument against the Colonies, as different points may be raised with regards to their exact legal status in relation with the Crown. Not without reason, then, the authors of the *Declaration* take the bold step of invoking the philosophical and the divine from which to draw their right to revolt.

These two speculations are brought up in order to explore further the question of legality and legitimacy, which is at the heart of the problem of revolution. Legitimacy may call upon something higher, but if legal mechanisms are not in place to fulfill what is legitimate, then the struggle to carry out the legitimate becomes harder in practical terms, and the case to be made for it also becomes more complicated. Of course, the fact that it is a “case” at all is an indication of the necessity of the legal regulation of the affairs of states. After all, even the most legitimate revolution can only end up being a revolution with the signing and ratification of a legal document, such as a treaty or a formal recognition of new sovereignty.

The central concepts brought forth by Locke, for his part, include: the fundamental freedom and equality shared by all mankind, the state of nature and the state of war, as opposed to a society with a government, a civil government in fact (the *état civil* for Rousseau), based on consent to that government and trust with regards to it, with the function of fulfilling the public good. Locke and Rousseau mirror each other in their ideas on the basis of government, ideas echoed by the authors of the *Declaration*. Significantly, they all invoke higher concepts as well, the moral and the divine. All of the above are taken into account when it comes to civil government and are important factors in rendering it legitimate.

Now, it would be a little ambitious to relate the legitimate with the divine as immediately as all that; perhaps it is more readily connected with the moral. The legitimate is arguably known and discussed in a different way at a given time and place, far more assertively than is the divine. The moral, for its part, may serve as a go-between or intermediary concept, as legitimacy may be taken to be a measure of acceptability in keeping with or in accordance with a more or less well-defined moral code, which may or may not find its origin in the divine. The uncertainty in the wording of the previous sentence serves to showcase that it is indeed very difficult to pinpoint the legitimate and the moral, to say nothing of the divine, and this difficulty finds its way into questions of government just as it does into other aspects of human life.

The exact details of the difficulty notwithstanding, Locke and the authors of the *Declaration* perceive the divine and the legitimate as having some bearing on government, and therefore on the law. And so, the philosophical or even moral necessity may be for the legal to conform to the legitimate, but, at the same time, also to define it in more ways than one – in words, as well as in practical legal boundaries, to create a feasible framework for its proper functioning. Such frameworks cannot be too rigid, though, as the details of the legitimate and

what is perceived as legitimate tend to change over the course of generations. The problematic nature of the legitimate thus has its bearing on the legal as well, but the legal is at least defined in much stricter terms for a given law and its application, even if some judicial systems allow for greater leeway than others. But these are more concerns that go along with the administration of justice or the basic functioning of a government, that is, the issues dealt with in national or state constitutions and the applications of legal principles.

What is more significant for the authors of the *Declaration*, as well as for Locke and Rousseau, is that the very origin of the state must be based on the legitimate, drawing from the aforementioned central concepts. The state must be founded on solid philosophical and moral bases. The stability of the regime would otherwise be tenuous at best. In truth, what goes into the formation of a state hinges a great deal on the end of that state, what intentions and goals the participants in that state foresee it fulfilling. This problem may have its immediate solutions – security, stability, the public good – but it can very quickly and very easily get complicated. The question of the best regime is heavily loaded, as is the problem of the maintenance of that regime, the question of what the regime wants the state to do, how it wants its people to turn out, what the best sort of people entails, what the best sort of regime to produce such people might look like, etc.

Complicated though it may be, the turn of events of 1776 may have been the first time in human history that conscious efforts were made in these regards for any state, at any time. Real thought went into what it meant to found a state, an unprecedented course of action. After all, most sovereign states then did not have a known founding with any recorded historical accuracy, nor did they pursue any particular ideology. For the authors of the *Declaration*, the right to establish a new regime was the assertion, and it was a bold novelty, a good start. The relevant

questions on the organisation of the state and its ends were not yet taken up, at least not explicitly in the *Declaration*, but they were naturally not too long to follow either.

In twentieth century parlance, the Thirteen Colonies argued for and realised their “right to self-determination”, a principle in international law brought up a great deal ever since it was popularised by President Woodrow Wilson in the aftermath of the First World War and much implemented over the course of de-colonisation. The twentieth century also saw a great deal of ethno-nationalist movements and the establishment of states based on clear marks of identity such as language, religion, and other aspects of national heritage.

This is another characteristic that sets America apart: much as there was a practical side to the Colonies breaking with the Crown, there was absolutely no basis in terms of ethno-nationalism, at least in the way we would understand it today. What makes the story of the founding of the United States so fascinating from the perspective of more commonplace nationalism is that it had ideas behind it just as much as it had mundane grievances. Nationalist narratives may also consist of mundane grievances, but the ideas behind them are often cruder, pointing out the differences in ethnic or national identities as a motivation, the premise being the necessity for each nation to have its own nation-state. Arguments can be made for all sides, of course, but those of the *Declaration* invite thinking different in nature in this regard.

The problem of freedom of peoples has not gone away in today’s world. Just in the past few decades, the international community has had to deal with and continues to face disputes over such territories as Artsakh (Nagorno-Karabakh), Northern Cyprus, South Sudan, East Timor, Western Sahara, Kosovo, Abkhazia, and more – territories wherein the people had clear, tangible distinctions to draw on from the political entities with which they used to be associated.

The necessary wars notwithstanding, did similar thoughts as were at the heart of the American Revolution go into their efforts, alongside the more immediate ethno-nationalistic differences, as a basis for their struggles? Does such a way of thinking about things render a movement for sovereignty more legitimate in any way? There may be something to be said about bringing up universal concepts – ascribed to all of humanity, derived from the divine – that would add weight to the justification of any social or political movement, rendering it particularly compelling for the participants of that movement, their opponents, as well as bystanders generally.

A lot more went into the founding and maintenance of the United States, of course, more than just the *Declaration*. There was the war and, a decade later, an arrangement among the states that laid down certain basic principles of governance, but was also flexible enough to be relevant with changing times. Much as debates keep going on surrounding the Constitution, states' rights, and other laws of this country, the legacy of slavery and the dispossession of the native population, the Civil War and other armed conflicts, the fact of the matter remains that the United States of America has one of the oldest formal state regimes in the world. Its longevity probably owes a great deal to wealth, a robust economy, and a strong army, but there is something very significant about the foundation of America as setting the stage for all the successes – and indeed, the failures – that followed.

That there is an idea at the heart of it, a conscious, thought-out, decisive step taken by an entire people, one may say with some figurative license, remains the most remarkable aspect of this story, certainly worthy of reflection.

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