

# Tulsa Journal of Comparative and International Law

---

Volume 8 | Issue 1

Article 7

---

9-1-2000

## Some Thoughts on the American Declaration of Independence and Its Irish/European Connections at Century's End

Larry Cata Backer

Follow this and additional works at: <http://digitalcommons.law.utulsa.edu/tjcil>



Part of the [Law Commons](#)

---

### Recommended Citation

Larry C. Backer, *Some Thoughts on the American Declaration of Independence and Its Irish/European Connections at Century's End*, 8 Tulsa J. Comp. & Int'l L. 87 (2000).

Available at: <http://digitalcommons.law.utulsa.edu/tjcil/vol8/iss1/7>



## SOME THOUGHTS ON THE AMERICAN DECLARATION OF INDEPENDENCE AND ITS IRISH/EUROPEAN CONNECTIONS AT CENTURY'S END

*Larry Catá Backer<sup>†</sup>*

I want to thank the Dún Laoghaire Fourth of July Festival Committee for their kind invitation to address you today. I also want to wish you, and all the friends of the people of the United States of America, a happy Fourth of July.

We are here to celebrate the American Declaration of Independence. American Independence Day commemorates the day on which the revolutionary representatives of the people of the several American colonies declared their intention to form sovereign states. As a consequence, a long, bloody, fratricidal war ensued from out of which emerged thirteen sovereign states that eventually came together to form an American Union. Ireland shares our pattern of revolutionary history, though in many respects its particularities were more brutal. Much as we did over a century earlier, Ireland proclaimed its intention to join the community of independent states in the midst of a bloody, often fratricidal, conflict to throw off the political rule of the United Kingdom. Instrumental in the intellectual front of the American and Irish efforts were the declarations of intention that we have come to know as the American Declaration of Independence, the Irish Easter Proclamation, and the Irish Declaration of Independence.<sup>1</sup> Each has long outlived and

---

<sup>†</sup> Professor of Law and Executive Director, Comparative and International Law Center, University of Tulsa College of Law; Visiting Professor of Law, Penn. State Dickinson School of Law. This is the text of a speech delivered on July 3, 1999 in Dún Laoghaire, Republic of Ireland. Footnotes have been added sparingly and only where necessary. My thanks to Bruce Carolan (Dublin Institute of Technology) for critically listening to earlier versions of this presentation.

1. PROCLAMATION OF THE REPUBLIC (Ir. 1916), *reprinted in* EION NEESON, THE BIRTH OF A REPUBLIC 336-37 (1998); THE DECLARATION OF INDEPENDENCE (Ir. 1919), *id.* at 339.

outgrown the circumstances of its creation. All continue to assert great influence in the world.

This longevity, this outgrowing, has proven to be as troubling as it has been valuable to our respective societies. I will argue here today that these declarations of independence, these statements of political theory, these products of single minded and singular revolutionary movements, are dangerous. They are especially dangerous when, as now, in the closing moments of this century, they exist unmoored from their historical foundations. Thus floating free, the principles of these declarations can be mobilized, over and over again, against the very political covenants—the constitutions—which were created to implement the socio-political reality emerging from out of the violent wake of the revolutionary movements that produced the declarations. These principles are particularly dangerous to established governments and nation-states bereft of social, political or communal consensus. Such pronouncements of political theory, like the revolutions which such statements are used to justify, can as easily be bent to the will of those who would undo the work of the founding parents of our respective republics as they can be used to support them. Like Biblical verities preached in the house of Satan to undo the work of the Divine, broad declarations of principle or political theory can be used to justify any horror, if the people who control their interpretations can bend chapter and verse to their will.

Thus, we do our respective republics a grave injustice to concentrate on our declarations of principles to the exclusion of the social and political covenants that we have created as the foundation stones on which we have built our democratic, humane, and tolerant societies. Yet, documents like the American Declaration of Independence and the Easter Proclamation of 1916 tend to get all the attention. The celebrations of the American 1789 Constitution or the Irish 1937 Constitution remain mooted indeed. I believe there should be less celebration of declarations of independence and more celebration of the constitutional norms that represent the rich fruit of those declarations. In truth, we must celebrate our great good fortune that those who were charged with the construction of our political structures chose wisely among the political options that each declaration permitted. Let me expand on this theme in a little more detail.

The American Declaration of Independence was drafted to serve a variety of purposes. Though we think of it now primarily as a statement of general principles of union and disunion, the Declaration of Independence was also meant to work as a judicial document. It was written by a lawyer. It was to be a complaint laid before the court of British and world opinion. Its purpose was to persuade those in a position to judge that the actions of American revolutionaries were justified both as a matter of law, that is, as

a matter of general principles of political and moral theory, and as a matter of fact, that is, on the application of these principles to the specific acts of mistreatment suffered by the American colonies at the instigation of the government in London.

The Declaration begins by declaring its purpose: justification for rebellion against lawful governmental authority. "When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, . . . a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."<sup>2</sup> Its most famous section follows, a long paragraph in which the theory of political separation, of self-determination, is elaborated. Self-evident truths are paraded:

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 those rights, governments are instituted among men, deriving their just powers from the consent of the governed; . . .<sup>3</sup>

People who are denied these self-evident rights by other people acquire other rights. "But 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 a government, and to provide new guards for their future security."<sup>4</sup>

The third, and by far the longest section, provides us with a detailed listing of the facts that prove the case for separation. Its purpose is to convince those listening that the "history of the present King of Great Britain is a history of repeated injuries and usurpation's [sic], all having in direct object the establishment of an absolute tyranny over these states."<sup>5</sup> Its last section is written in the form of a proclamation. Having applied the law to the facts, the case for self-determination of a newly differentiated people is made. As such, "appealing to the Supreme Judge of the World for the rectitude of our intentions, . . . in the name and by the authority of the good people of these colonies," the signatories declare the independence of each of the former colonies, united only in their determination to resist further British tyranny.<sup>6</sup>

---

2. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

3. *Id.* para. 2.

4. *Id.*

5. *Id.*

6. *Id.* para. 31.

The Irish Easter Proclamation of 1916 as well as the Irish Declaration of Independence of 1919 owe much to their American predecessor. Like their American progenitor, both have also served as sources of tremendous inspiration to politically oppressed communities. Sadly, and also like their American parent, both have well served as instruments through which the good people of Ireland have sometimes seemed to reap the whirlwind. Read together, the two documents comprise a declaration very similar to the American Declaration.

The passion belongs to the Easter Declaration—its stirring beginning the equal of the American Declaration of Independence: “Irishmen and Irishwomen: In the name of God and of the dead generations from which she received her old tradition of manhood, Ireland, through us, summons her children to her flag and strikes for her freedom.”<sup>7</sup> It declares the right of the people of Ireland to the ownership of the island and of the right to rid the island of those who had until then usurped the rights of its true owners. It guaranteed the rights of all members of the Irish nation and takes on the enormous task of creating an Irish society in which equal rights and equal opportunities are afforded its diverse and heretofore divided citizenry. This is to be done, if necessary, by force of arms.

The Irish Declaration of Independence<sup>8</sup> was written under vastly different circumstances and on the eve of the first bloody attempt to resolve long simmering differences between Irish patriots. Written in the form of a statute or corporate resolution, it sets forth the legal effect of the history of British usurpation and tyranny in Ireland, the actions leading to the General Election of 1918, and the authority of the declarants to act on behalf of the ancient Irish people in parliament assembled—an assembly fully the counterpart in dignity and effect to the Imperial Parliament in Westminster. On that basis, and in reliance on the authority cited, it declared Ireland an independent republic with sole power to govern the island and its people, which power would be defended to the full extent of the powers of the people of Ireland.

The American Declaration of Independence created wonderful but detachable principles that can be used for a wide variety of purposes. As the eminent historian Bernard Bailyn has remarked, “[t]he Declaration of Independence set forth a philosophy of human rights that could be applied not only to Americans, but to peoples everywhere. It was essential in giving the American Revolution a universal appeal.”<sup>9</sup> Conventional

---

7. PROCLAMATION OF THE REPUBLIC, *reprinted in NEESON, supra note 1.*

8. THE DECLARATION OF INDEPENDENCE, *reprinted in NEESON, supra note 1.*

9. 1 BERNARD BAILYN ET AL., THE GREAT REPUBLIC: A HISTORY OF THE AMERICAN PEOPLE 256 (4<sup>th</sup> ed. 1992).

thinking about the political theory underlying the American Declaration of Independence would have us believe that the Declaration of Independence is the preeminent statement of American political theory and the cornerstone of the American system of government.<sup>10</sup> It owes much to John Locke as well as to the mostly Protestant political covenant theory of thinkers such as Johannes Althusius. At least since Althusius in the 17<sup>th</sup> century, European political theory had been concerned with the optimal size and constitution of political associations.<sup>11</sup> The refinement of these principles was the product of the French Enlightenment as well as of developing American indigenous tradition. The French provided the world, among other things, with theories of just governance, of the necessity for revaluing the old hierarchy of social and political positions of citizens of modern nation-states, and of the nature of the proper relationship between free people and their government.

Yet the radical implications of the Declaration of Independence are rarely acknowledged, especially around the Fourth of July. The Declaration's expression of general principles of the inalienable political rights of every identifiable group of people

not only antedated the existence of government; they were superior to it in authority. As John Dickinson [a contemporary of the American Revolutionary period] expressed it, 'our liberties do not come from charters; for these are only the declaration of preexisting rights. They do not depend on parchments or seals; but come from the King of Kings and Lord of all the Earth.'<sup>12</sup>

No government may limit or control the inalienable rights described in the document. No people may impose restrictions on recourse to those rights by others. Those rights have become so self-evident, so important, so transcendent, that they have been invoked by every group purporting to act on behalf of the people of any political community. Thus, these principles have been invoked by the founders of the American, French and Irish Republics. They have also been invoked by the political opposites of the founders of those republics—that is, by those who established the most rank republics of the 20<sup>th</sup> century in Germany, Italy, Cambodia, and other places that we have come to label fascist or totalitarian. Consequently, the meaning of the inalienable rights of the American Declaration of

---

10. C. HERMAN PRITCHETT, THE AMERICAN CONSTITUTION 8 (1959).

11. JOHANNES ALTHUSIUS, POLITICS METHODICALLY SET FORTH, AND ILLUSTRATED WITH SACRED AND PROFANE EXAMPLES, at ix (Frederick S. Carney trans., 1964) (1614).

12. *Id.*

Independence, and their application to the people in any particular time and context, has not been subject to a singular and uncontested reading. Indeed, history demonstrates that the very opposite of stable and unitary meaning has been the rule.

In this context, the second great set of principles of the Declaration of Independence, that government is created to secure a people's inalienable rights and only with the consent of the governed, produces other radical effects. Who, after all, can constitute a single unit of the governed has become a most vital question in our time. Europeans are well aware of the consequences of the answer as they see devolution of powers in Spain, and, more pointedly, in places like Yugoslavia. Prior to the 1750s, it would have been hard to argue that the American colonies were populated by a group of people, the socio-politically dominant group of which were not English. The colonists were English by birth (in England or the colonies) or by migration; all belonged to the same family—the same *volk*. After 1776, and by a political act, two different peoples existed where only one had existed before, at least as far as the colonists were concerned. Their English siblings, of course, disagreed. Only by force of arms was this disagreement resolved.

What applied to the American colonists then applies today to any number of communities who determine that they now constitute a group separate and apart from another, and who determine that their inalienable rights have been usurped by a government serving others. The Declaration of Independence teaches these newly self-conscious communities that each may seek 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."<sup>13</sup> No nation-state, no group hitherto or hereafter recognized as such has an eternal or inalienable right to continued unitary existence. Thus, like the meaning of those inalienable rights that are to be protected for the benefit of the people, the notion of peoplehood is also highly fluid. Your countryman today may well be an alien in your midst tomorrow.

The fourth great principle of the Declaration of Independence—rebellion and separation—follows from the others. Revolution is a right reserved to the people when the government established to serve them breaches the contract under which it was established. A complete breach permits the people, even a people heretofore part of a greater group, to forfeit their loyalty to the government of that now alien group.

---

13. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

[W]henever 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.<sup>14</sup>

Any group feeling itself the subject of the tyranny of others has the moral authority, on the basis of the principles of the Declaration of Independence, to seek to join the community of nations as an equal, separate and apart from those who had oppressed it. The ultimate mechanism for the resolution of disputes, for the satisfaction of grievances, is separation. The great principles of the Declaration of Independence provide no other remedy for the resolution of fundamental disputes among those who, living together within a political union, believe themselves the victims of the tyranny of others. The 20<sup>th</sup> century's preoccupation with the political dignity of ethnic, religious, racial, sexual, intellectual and cultural groups, is testament to the power of the principles of the Declaration of Independence as a force for political fracture and political vindication. Groups form and reform in a never-ending swirl of difference discovery, and the principles of the Declaration of Independence provide the principles by which each is politically empowered—if each has the strength of will and arms to support a separation.

Both the great principles and the interpretive radicalism possible in the Irish Easter Declaration and Declaration of Independence mirror that of the American Declaration: that people can be governed only with their consent; that usurpations and tyranny, if severe enough, are justification for one people to throw off the bands of allegiance to such a government; that certain inalienable rights must be guaranteed by a government, including the right to religious and civil liberty, equal rights and opportunities for all citizens, and the happiness and prosperity of the entire nation. The documents also attempt to define authoritatively the composition of those people who belong to the Irish nation, eliminating religion as a basis for separating Irish people one from the other. The basis of any such difference, the document declares, is necessarily the product of a false consciousness perpetuated on its victims and constituting another pernicious form of imperial tyranny.

In these forms have the principles so eloquently situated within these documents become powerful verities in the world since the 18<sup>th</sup> century. These principles have escaped the bonds of the quasi-legal document of which they form the introduction. Yet this very transformation from the

---

14. *Id.* para. 2.

parochial to the universal has created both the promise and the danger for political unions in the coming century. *The problem, of course, is in the application.* Here we confront a problem as old as our religion—universal principles loosen their mooring after their first utterance. Even the word of God can become lost or distorted within the many interpretive masks humanity has been so adept at constructing.

It is no surprise then that grand, general principles, such as those in the Declaration of Independence and the Easter Proclamation, can be bent to further aims and goals inimical to the basis of the social and political organizations of our Republics. Cut loose from the circumstances which gave them life, and detached from these historical documents, the principles espoused therein can look frightening indeed. I recall the apocryphal story of the people who had retyped the American Declaration of Independence on an old typewriter in the form of a petition and then attempted to get people on the street to sign their "petition." As they presented their petition on the streets of America they encountered a generally scandalized citizenry. Many people refused to sign the document, believing that the document espoused dangerous principles of communism.

Moreover, the universal principles of the American Declaration and the Easter Proclamation loudly shout to every man and woman of every nation that each of them has the authority to invoke their principles against those who purport to act for the people and to rupture the bonds of loyalty and brotherhood which bind one to the other. Every person, every one of you in this room, has the power of the revolutionary within you. This power is consecrated by the blood of our forebearers and sanctified with the imprimatur of the general principles of the American Declaration and the Irish Proclamation. The power of the revolutionary is the power to judge and to act. Action is not limited to the democratic machinery, which the Declaration and Proclamation suggest may sometimes become a part of the corruption to be excised. Victory depends, as it has often depended, on eloquence and arms.

Thus it is that both the American Declaration of Independence and the Easter Proclamation have been used as a sword and shroud by those brothers and countrymen who would invoke their principles to support absolutely contrary positions. In the United States, its principles were, of course, invoked by its framers to support disunion with Britain. Yet those who would remain loyal to the Crown and Parliament in London would have invoked those same principles against the revolutionaries.

Those who fought on opposite sides of the American Civil War also invoked the great principles of the Declaration of Independence. The seceding states of the Confederacy invoked the great principles of

disunion. They presented a case against their northern brethren which paralleled the indictment of the abuses of Britain toward the American colonies less than a century earlier. The Union states invoked the Declaration of Independence for the universal principles of free status of individuals, and on that basis, as justification for the breach of an important covenant on which the American Union was formed—the protection of the right to hold slaves. Each side in the conflict thus embraced one set of the fundamental principles of the Declaration of Independence to justify both the alteration of the original covenant creating one nation and the disbanding of the Union itself.

Moreover, the principles of inalienable rights, and of rebellion in their furtherance, are no longer limited to grievances between people forming separable nations. The principles apply now with equal force within any nation to those who feel subordinated within it. Communal separations are no longer marked only by political borders within a geographic space. Thus, for example, those who fought for the civil rights of women and racial minorities have invoked the Declaration of Independence since the start of the Republic. It was invoked in the 19<sup>th</sup> century by the women's rights movement and by the anti-slavery movement. Abraham Lincoln famously invoked it in his attack on the institution of slavery by arguing that black people were entitled to "all the natural rights enumerated in the Declaration of Independence, the right to life, liberty and the pursuit of happiness."<sup>15</sup> Elizabeth Cady Stanton and Lucretia Mott modeled the Declaration of Sentiments issued by the first ever women's rights convention in Seneca Falls, New York in 1848, on the Declaration of Independence. That document sought to lay out an indictment of males which paralleled the indictment of the tyranny of Britain against the American colonies outlined in the Declaration of Independence. It exclaimed that "the history of mankind is a history of repeated injuries and usurpations on the part of man toward women, having in direct object the establishment of an absolute tyranny over her."<sup>16</sup> On the other hand, advocates of slavery and women's inferior status invoked the Declaration of Independence as well. The American Supreme Court judges in the *Dred Scott*<sup>17</sup> decision, which expressed the view that African-Americans were not citizens of the United States even if free, contended that the Declaration of Independence was never meant to apply to African people. Thus we have one Declaration, yet two strongly held incompatible views. In the 20<sup>th</sup> century, the Declaration of Independence has provided the

---

15. BAILEY, *supra* note 9, at 576-77.

16. *Id.* at 444.

17. *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1856).

intellectual justification for the civil disobedience of the civil rights movement of the 1960s and the protests against the Vietnam War of the 1960s and 1970s.

Ireland also is not without examples of great principles invoked to opposite effect. The conflict arising over the treaty establishing the Irish Free State is a case in point. Michael Collins argued that “[t]he Treaty gives us freedom, not the ultimate freedom that all nations desire and develop to, but the freedom to achieve it.”<sup>18</sup> As such it constituted an important step in the achievement of the ultimate aim of the Easter Proclamation. The anti-treaty proponents argued that the treaty would require the Irish to do what 700 years of colonization had failed to procure—the voluntary relinquishment of Irish independence.<sup>19</sup> “[James] Connolly himself made the obvious point when he advised his troops to keep their weapons in the event of victory since ‘those who are our comrades to-day [sic] we may be compelled to fight tomorrow.’”<sup>20</sup> On this disagreement, in some respect, the tragedy of the Irish Civil War rested.

Moreover, several of the declarations of the Easter Proclamation have yet to be realized. Among the most important is that which declares that “[t]he Irish Republic is entitled to, and hereby claims, the allegiance of every Irishman and Irishwoman”<sup>21</sup>—an integral part of the Proclamation. And from the perspective of those who would apply the principles of the Proclamation—“the right of the people of Ireland to ownership of Ireland and to the unfettered control of Irish destinies”<sup>22</sup>—its eventual fulfillment remains important. Yet its fulfillment requires the defeat of a notion that Irish control or Ireland does not require the establishment of a single state, that two Irish communities, divided by culture or religion, can co-exist on the same island, represented by different, though Irish, governments. From out of a proclamation can come the source of support for irreconcilable positions.

Thus, at the end of the day, what seems more important than great principles is the manner in which a society can provide for the resolution of interpretation and implementation of those great principles in the day to day lives of its citizens—not merely a mere majority of its citizens, but a majority of all of the disparate groups comprising the citizenry of the nation. This is especially critical where, as often happens, the people of a nation ascribe to the great principles of the Declaration of Independence

---

18. NEESON, *supra* note 1, at 262.

19. *Id.* at 269.

20. *Id.* at 188-89.

21. PROCLAMATION OF THE REPUBLIC para. 4, reprinted in NEESON, *supra* note 1.

22. *Id.* para. 3.

and the Easter Proclamation, but few of them can agree on the application of the principles in fundamental situations of governance and the ordering of society. Declarations and proclamations are of little help for this great task. Declarations and proclamations are as much documents of rupture as they are witnesses to the birth of nations and people.

Principles, like law then, ultimately must be judged only by the work of those who have the power to impose these principles on or for the people on whose behalf they engage in such work. The servants of the people, on whom have been delegated the powers of the master, also have the master's power to coerce a particular vision—for good or ill—on those whom they serve. For that, both the American and Irish nations have much to offer us in the form of their respective constitutions.

Constitutions are embodiments of social and political implementation; they are a memorialization of the structures of fairness from which conflicts between and among the various people of a nation-state may be resolved. These are not declarations of separation and rebellion but of the possibility of the attainment of unity within difference. The resolution of differences between siblings within a nation is what a good constitution is meant to do. Both the American and Irish constitutions engage in this task masterfully. Both are constructed as variations on a singular theme first sounded by Montesquieu and the thinkers of the French Enlightenment. These themes have produced governments of limited power based on principles of separation of powers, of checks and balances between three independent branches – an executive, a judiciary and a legislature—and of a suspicion of the doctrine of bare majority rule.

Declarations and proclamations thus bear fruit only through the creation and maintenance of strong covenants designed to resolve difference and to give voice to all of the great disparate leanings of the individuals making up the people of a nation. It is only when those mechanisms fail that resort to the great principles, and to the principles of power and armed struggle, must follow.

We would do better, then, to treat as the subject of our intense solemnization our great social and political covenants, our memorializations of those fundamental rights and obligations of the people of our nations to each other, growing out of our generalized declarations of principles, yet representing a particularized institution of those principles among us.

I come here, then, this evening to celebrate the constitutional principles of democratic self-governance forged in revolutionary fires rather than the revolutionary fires themselves. Fires burn all who touch them; once started they are hard to put out; they easily rage out of the control of those who start them. But fire also brings warmth and comfort;

fire provides the critical ingredient for the crucible in which the prophets tell us that our human mettle can be purified and from out of which the dross can be discarded—thus its value and its danger. Principles unanchored and unrestrained, dark interpretations and a propensity toward hyper-separation, may be dangerous indeed. Constitutions, scrupulously observed in letter and spirit, along with the institutions for the building of consensus within a people wholly similar, yet not identical, provide the only framework within which the fires of declaratory principles may be usefully contained.

I wish you all a happy Fourth of July.