

Some Reflections on the Declaration of Independence

Dean Joseph D. Kearney addressed the Rotary Club of Milwaukee concerning the 250th anniversary of the Declaration of Independence. This is a lightly edited version of his remarks on July 14, 2026, at Milwaukee's War Memorial Center. James T. Barry III introduced the dean.

Thank you, Jim, for your kind introduction. This is a humbling invitation, for two reasons in particular.

First, we could save time by my simply reading aloud here the full Declaration of Independence. We would begin with the first sentence:

> 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 entire effort would require scarcely 12 minutes, and we would all be sure to learn something. Such a public reading of the Declaration of Independence would also be in keeping with an American civic tradition of sorts, if not quite so widespread today as once was the case. Yet, tempting though that purely oratorical approach would be, I have taken it not to be consistent with my charge.

The second reason for my humility is that this 250th anniversary has occasioned a substantial number of books exploring the birth of our nation generally and the Declaration more specifically. I am not among the authors. I make this second point to persuade you not that the organizers of this program made a mistake in inviting me but rather that much very good learning in longer form, about 1776 and the origins, meaning, and legacy of the Declaration of Independence, is available to you (at Boswell Books and elsewhere). Yet I believe myself to be in a position to make some suggestions as to the place of the Declaration in our legal and broader political system—and the way in which it variously is both a statement of founding principles and an exquisite piece of lawyering in its own right.

Do let me begin with an important point: The Declaration of Independence is not itself law as we Americans today tend to understand the concept—as a set of mandatory instructions or prohibitions. To give you a quick feel



for this, we did a bit of research: since statehood, the Wisconsin Supreme Court or a justice of the court has invoked the Declaration of Independence in only some three dozen judicial writings over the past 178 years. To be sure, the Wisconsin *Constitution* begins with a declaration of rights, the first sentence of which borrows from the Declaration of Independence, but the very scarcity of references is a telling point with respect to what the Declaration is (or is not): It is not law as we experience it every day or as our courts, state or federal, understand their work to involve.

Yet no one should doubt the centrality of the Declaration to the American experiment and experience. The Declaration's *second* sentence speaks of rights even more directly than would the subsequent 1787 Constitution (before the first ten amendments, which we have come to know as the Bill of Rights). While I do not plan intermittently to smuggle in a reading of the entire Declaration, here is that second sentence:

> 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.

The title of a recent book by Walter Isaacson has proclaimed this *The Greatest Sentence Ever Written*. The superlative in particular is a matter of opinion and taste, but the power of the sentence is plain.

Over time, we have come to emphasize rather more—and to *develop*—the first portion of this sentence concerning equality than, say, the latter, asserting the right of the people to alter or to abolish the government. Indeed, the Declaration's allusion to equality helped stir the American conscience in the nineteenth century in such a way that we eventually confronted and abolished the institution that had blighted and belied American ideals from the beginning: I refer, of course, to slavery. Certainly, the 1787 Constitution was of quite limited help in any direct sense.

Consider Frederick Douglass's famous 1852 speech, to the Rochester Ladies' Anti-Slavery Society, "What to the Slave Is the Fourth of July?" In this searing indictment of "the gross injustice and cruelty" of slavery, Douglass nominally relied on the Constitution. But it was the "great principles" of the Declaration of Independence that gave his jeremiad true power. Liberty and equality are often seen as in tension with one another, and to my mind, one of the greatest accomplishments of the Declaration of Independence is that it speaks so comfortably and enduringly to both concepts and helps us in part to reconcile them—as Douglass's effort sought to require.

In fact, the Declaration's early, almost prefatory, reference to equality is scarcely central to the document's

Illustrations by Robert Neubecker

essential logic. But the assertion was and is there, available to Douglass and all, for such use and value as can be fashioned from it.

Such a summary or account as I have given so far may give the misimpression that the Declaration of Independence, being not law for us, rather is simply a statement of political philosophy. In fact, the Declaration is an intensely practical document. Not only does it *do* something, but it grounds its action in particulars—and rather quickly and extensively.

After only one more sentence (beyond what we have already read together), the Declaration turns to what might be called a bill of particulars against King George III, detailing the "long train of abuses and usurpations" that formed or sought to form "the establishment of an absolute tyranny over these States." "To prove this," the Declaration says, "let Facts be submitted to a candid world." There then follows an interesting catalogue, which forms the bulk of the document.

Let me give three of the 27 or so grievances, as they are often called (the *he* refers to the king):

- "He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people."
- "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."
- "He has affected to render the Military independent of and superior to the Civil power."

It is hard to stop there, particularly with other powerful indictments, such as this: "He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people."

My interest is to note, if I may, that this is good lawyering. It is a fine thing eloquently to have articulated governing principles, as already summarized, even if the best one can do in terms of authority has been to say that he is relying on "truths [that are] self-evident." (Please know, by the way, that I say that wryly: Thomas Jefferson's original draft had stated, "We hold these truths to be sacred & undeniable." It was Benjamin Franklin who in the editing process made the felicitous revision to describe these truths as "self-evident.") Yet a legal precept standing alone isn't enough; a good lawyer must marshal the facts that, together with the law, point toward judgment in one's favor.

So we have been given the law or legal precepts, in a few elegant opening sentences, and then, in some considerable detail, the facts. One might think us to be ready for the judgment—the decree, if you will—or at least the application of the law to the facts.

Yet the signers of the Declaration are careful next to say that they have exhausted their remedies, if I may borrow a familiar phrase in the modern law:

> 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.

That is, by the way, the fourth (and final) reference to a "tyrant" or "tyranny" in the Declaration. This was an important classical concept that John Locke, among others, had further developed in the late seventeenth century, to explain when the executive's misconduct makes the people's rebellion or "an appeal to heaven" appropriate.

Let me complete the point about the Declaration's being a last resort:

> Nor have We been wanting in attentions to our Brittish 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.

To my mind, this is a political rather than a legal point, even in the context of the Declaration itself. That is not to denigrate it.

We sometimes use the word *politics* to suggest something common, even base: the former it certainly is, or should be, but mostly unapologetically so. *Politics* is nothing more—or, more pertinently here, nothing less—than the sorting out of relations among individuals who live in the same community. For example, when Aristotle referred to man as a "political animal," as it

is often translated, the basis of the adjective in his phrase (πολιτικὸν ὁ ἄνθρωπος ζῷον) is the noun πόλις, or city-state. This is why the phrase can be equally well translated that "man is a *social* animal."

But my focus should be the eighteenth century, not more than two millennia earlier, and it is fine rhetoric to express an interest in a good future relationship with the British people, beyond the king. This certainly supported the reminder to them that they had been, well, "on notice" (as we might say) and a reassurance that there was no inherent enmity but a long-term interest in friendship.

Let me get to the *declaring clause* itself:

> We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by 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 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.

This is a magnificently stated sentence ("General Congress," "Supreme Judge of the world," "solemnly publish and declare," etc.); it is also an intensely practical one. It announces to the world at large (especially other nations) our arrival as independent states and some of the rights appurtenant thereto.

Such an announcement would be important given that the new country was engrossed in a war that was not going well. It had been going better earlier that year, when General George Washington had caused General William Howe to withdraw the British forces from Boston and decamp to Nova Scotia. In June 1776, however, the British had begun to sail from there to New York. It would take some weeks or months for the British, under the command of Howe's older brother, Admiral Richard Howe, to assemble one of the largest naval fleets the world had ever known, but it was already clear that the action was coming a lot closer to Philadelphia and the Second Continental Congress.



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It was in this general context that Jefferson and the other members of the Committee of Five charged with drafting a proclamation of independence (John Adams, Benjamin Franklin, Robert Livingston, and Roger Sherman) undertook their work. This was one of three concurrent committees formed to build a case for the Lee Resolution, pending before the Congress, whose other two parts (and thus the other two committees) concerned taking "effectual measures for forming foreign Alliances" and preparing "a plan of confederation." In other words, one needed a declaration of independence in order to be in a position to treat with other nations (in particular, to seek their military and financial support) and to govern oneself. In a sense, such a declaration was just a necessary formality.

The fact of a committee—of an editing process involving multiple people—is one of my own favorite facts about the Declaration. We often refer to the Declaration simply as Jefferson's handiwork, and he was unquestionably the principal author.

Yet editing was involved, as we already noted in discussing the "self-evident" truths. Most of the editorial attention in the Second Continental Congress concerned the "facts" (that is, the grievances). We today have the liberty, perhaps

even the responsibility, to regret one deletion, in which Jefferson, whom we famously remember as a slaveowner, excoriated the British for the slave trade. But the point's exclusion may have been not only necessary to keep South Carolina and Georgia onboard but also almost essential to avoid immediately discrediting or too obviously belying the claim of equality. Nor would any of us suggest that a document referring to "the merciless Indian savages" reflects all of our best ideals as Americans.

For my point of focus here: Without doubting Jefferson's centrality in the draftsmanship or its falling short in some respects, the Declaration was a better document for not having been the product of only one person. My own experience on somewhat less important documents reflects the value of such an approach, time and again.

Beyond its immediate practical value, the Declaration of Independence has enduring value as a cultural document. The Declaration establishes us as a creedal nation, it has been said—one that belongs to newcomers who embrace its defining principles and ideals no less than to those whose direct ancestors were present at the creation or who are of a particular race, religion, or ethnicity.

This is a good thing for me, all of whose forebears were nowhere near Philadelphia or even North America in the late eighteenth century. (To be sure, being all in Ireland at the time, my people would not have been outflanked in terms of righteous grievances against the king of Great Britain.) None of them was here at the time of the Civil War either. Yet all of them—and thus I—benefited upon their immigrating to the United States from not just the laws that enabled them to become citizens but also from the culture that sufficiently if imperfectly welcomed them.

Even in our darker times, we have had available to read not only the text of the document that establishes the government of the United States of America, the Constitution, but its context, in particular the Declaration that preceded it.

To speak of "text" and "context" is not very poetic. Thus, I am rather more drawn to a metaphor, from Abraham Lincoln (which I am grateful to Jim Barry for having noted to me). You need no tutorial on the circumstances in which the Union and Lincoln found themselves as he journeyed in February 1861 from Springfield, Illinois, to Washington, D.C., to take the oath of office as the sixteenth president of the United States.

His notes and jottings have helped one modern student of Lincoln (Harold Holzer) capture Lincoln's thinking. Here's Holzer, in a 2023 article in *History Now*, liberally quoting Lincoln's personal notes:

> [I]n a fragment crafted before leaving his hometown, [Lincoln] imagined that the nation might yet be saved precisely because it had been inspirited by a declaration of principles and then protected by a constitution of laws. Without the aspirational expressions in the Declaration, he opined [to himself], "we could not, I think, have secured our free government, and consequent prosperity." Echoing the Book of Proverbs—[among the] proof that Lincoln considered the Declaration equivalent to American scripture—he described Jefferson's gem as "the word, 'fitly spoken' which has proved an 'apple of gold' to us." The "*Union*, and the *Constitution*," he perpetuated the biblical metaphor, "are the picture of silver subsequently framed around it. . . . The picture was made for the *apple*—not the apple for the *picture*. So let us act, that neither picture, or apple shall ever be blurred, or bruised or broken."

Then, stopping in Philadelphia and now speaking *publicly*, at Independence Hall on Washington's birthday in 1861, Lincoln made the general point (without the apple metaphor). Here's Holzer again (mostly quoting Lincoln):

> "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence," [Lincoln] proudly admitted to "great cheering" from the audience filling the shrine where the document had been signed. "It was not the mere matter of the separation of the colonies from the mother land; but something in that Declaration giving liberty, not alone to the people of this country, but hope to the world for all future time. It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that *all* should have an equal chance."

Lincoln was, of course, an exceptional lawyer, and his skills in that regard (and other respects) helped save the Union. Yet he ranked

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the Constitution behind the Declaration of Independence in importance to the success of the United States, not only in the late eighteenth century but in the face of our greatest crisis as a nation, a civil war in the mid-nineteenth.

Time permitting (as it does not), we could adduce other examples, including women's rights and women's suffrage into the twentieth century and the civil rights movement of the 1960s, where the Declaration of Independence and its ideals, as we had come to understand and refine them, made a powerful positive contribution to the course of events. Candor would require us to acknowledge, with dismay, some less admirable invocations as well.

In short, let no one doubt that the "political bands" (in Jefferson's phrase) or the social connections (if you prefer) that we have with one another—these aspects of our *culture*—make an extraordinary contribution to our survival and our growth.

This is why, with apologies to Mr. Isaacson, it is the last sentence of the Declaration that is my own favorite: "And 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." Its very rhetoric is elegant—what an accomplishment to write a phrase that begins with a mutual pledge of "our Lives" yet does not turn anticlimactic. Its substance, too, is essential. It is true that we may look to our constitution and our other laws—including, not least, the courts that they create—to preserve our rights. Yet we must ultimately rely on ourselves and one another together to preserve the American republic. To return, finally, to the Declaration's first sentence, we must be "one people."

And as "one people," we must be confident in certain basic propositions—as, most obviously, in declaring ourselves an independent nation. Yet let me submit that the Declaration also reflects the value of our tolerating not only difference but also some ambiguity, irresolution, and even avoidance on certain points or at least at certain moments. The Declaration of Independence's precise attitude toward equality, toward slavery, toward some underlying questions of theology or philosophy is hard to pin down. Some of these questions could be deferred only briefly (such as the form of government), others for a longer time (into the nineteenth century), and still others remain our society's work to take up or not today.

While the legislatures or other republican devices (for example, school boards) should continue as central venues for our unfolding work as a people, so, too, should be gathering places like this where we come together with others beyond our tribes of religion, political party, or the like—where we gather as Americans.

In that regard, I want to say that I can think of no place where I would have been gladder to speak on this topic than the Rotary Club of Milwaukee. Kudos to you and other such civic groups for promoting and helping continue to secure the premise and promise of American independence. ■