

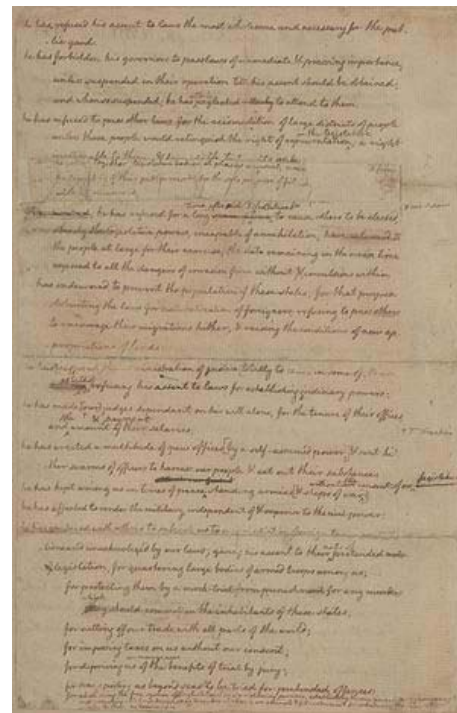
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# Was The Declaration Of Independence Legal? Brits Will Argue 'No' Tomorrow



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*I cover finance, the law, and how the two interact.*

Civility and decorum will be strained tomorrow evening in Philadelphia when a top-flight team of English barristers jet in to argue that the Declaration of Independence was illegal. Not just illegal, but treasonous.



Treasonous diatribe? Image via Wikipedia

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They'll be participating in a debate sponsored by the [Temple American Inn of Court](#), a professional group modeled upon the Inns of Court that U.K. lawyers are required to join in order to argue before that country's highest courts. The event

starts at 5:45 p.m. at the [American Philosophical Society's Benjamin Franklin Hall](#) in Philadelphia.

This historic reconsideration of the document that set the American Revolution in motion was the idea of [Anthony Haller](#), a Blank Rome partner who also happens to be a member of [Gray's Inn](#) in London. Assisting him is U.S. District Judge Cynthia Rufe. She acknowledged mixed emotions about the American team's expected argument that the Declaration is legal.

"For a judge, who is supposed to uphold a legal system, it is hard to uphold a document that says `We're going outside the law and making one of our own,'" said Rufe.

Then again, when she gets an earful of the British argument it might not be so hard to root for illegality. Arguing for King George will be Hon. Michael J. Beloff, former president of Trinity College, Oxford and member of Gray's Inn; Sally Jane O'Neill, with Furnival Chambers; and Sir Charles Haddon-Cave, to take his seat as Justice of the High Court on Oct. 31.

Haller declined to give away too many details of their arguments, but suffice it to say they won't go over well in a hall full of Americans, under the portraits of Franklin, Jefferson and Washington. The Brits will cite the historical illegality of secession movements generally and the treasonous nature of this one, given that the colonies were established by British citizens who pledged their loyalty to the king. A betting man might even expect a cite or two to writings of that great lawyer-statesman Abraham Lincoln, who dealt firmly with his own breakaway republic. And the barristers -- assuming they aren't shouted down -- can be expected to dismiss as "trivial" the economic arguments of the poor colonists, such as that taxation-without-representation rot. The taxes went to defend them against the French, after all.

"The heart of the debate is was this truly a legal act?" said Haller. "Because if you accept the rule of law, how is it a group or subgroup is allowed to say the rule of law is no longer the rule, there's a new rule?"

For the American side will be Dean David Levi of Duke Law School, a former federal judge; [U.S. District Judge Louis Pollack](#) from Philadelphia, a former dean

of Yale Law School; and [Kathleen Sullivan](#) of Quinn Emmanuel in New York and former dean of Stanford Law School.

They can point to the fact the revolution was explicitly ruled legal by the Treaty Of Paris of 1783, and that much of British history afterward supports the idea of independence and the dismantling of the colonial empire. But that's an ends-justifies-the-means argument. To justify the actual declaration, the U.S. team will have to reach to natural law. This states that some concepts, such as the illegality of slavery, the idea all people are created equal, and that governments serve only with the consent of the governed, transcend the written law of legislators and judges.

Natural law already was gaining traction in the 18th century through the writings of philosopher [John Locke](#), Britain's Magna Carta and the [English Bill of Rights](#), which justified the ouster of King James II in 1689. (This last reads an awful lot like the Declaration of Independence.) To make this argument work, the Americans will have to address concerns that natural law could be cited to justify all sorts of things, from stealing bread to feed the poor to confiscating the property of everybody who earns more than \$100,000 a year. Expect some sharp debate on that point.

At the end of the program the audience will vote for the winning side.

"They are supposed to put aside all preconceptions and vote only on the legal arguments they have heard," Haller said. Maybe so. But I've got a Ben Franklin in my pocket says the Brits get poured out of court on this one.



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I am a senior editor at Forbes, covering legal affairs, corporate finance, macroeconomics and the occasional sailing story. I was the Southwest Bureau manager for Forbes in Houston from 1999 to 2003, when I returned home to Connecticut for a Knight fellowship at Yale Law Sc...

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