

Is the US Declaration of Independence illegal?

By Matt Danzico and Kate Dailey BBC News Magazine



Was the Declaration of Independence legal?

In Philadelphia, American and British lawyers have debated the legality of America's founding documents.

On Tuesday night, while Republican candidates in Nevada were debating such American issues as nuclear waste disposal and the immigration status of Mitt Romney's gardener, American and British lawyers in Philadelphia were taking on a far more fundamental topic.

Namely, just what did Thomas Jefferson think he was doing?

Some background: during the hot and sweltering summer of 1776, members of the second Continental Congress travelled to Philadelphia to discuss their frustration with royal rule.

By 4 July, America's founding fathers approved a simple document penned by Jefferson that enumerated their grievances and announced themselves a sovereign nation.

“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”

The Declaration of Independence

Called **the Declaration of Independence**, it was a blow for freedom, a call to war, and the founding of a new empire.

It was also totally illegitimate and illegal.

At least, that was what lawyers from the UK argued during a debate at Philadelphia's Ben Franklin Hall.

American experiment

The event, presented by the **Temple American Inn of Court** in conjunction with Gray's Inn, London, pitted British barristers against American lawyers to determine whether or not the American colonists had legal grounds to declare secession.

For American lawyers, the answer is simple: "The English had used their own Declaration of Rights to depose James II and these acts were deemed completely lawful and justified," they say in their summary.

To the British, however, secession isn't the legal or proper tool by which to settle internal disputes. "What if Texas decided today it wanted to secede from the Union? Lincoln made the case against secession and he was right," they argue in their brief.

A vote at the end of the debate reaffirmed the legality of Jefferson and company's insurrection, and the American experiment survived to see another day.

It was an unsurprising result, **considering the venue** - just a few blocks away from where the Declaration was drafted. But did they get it right? Below are some more of the arguments from both sides.

The American case for the Declaration



Did the Founding Fathers have any respect for the law?

The Declaration is unquestionably "legal". Under basic principles of "Natural Law", government can only be by the consent of the people and there comes a point when allegiance is no longer required in face of tyranny.

The legality of the Declaration and its validity is proven by subsequent independence movements which have been enforced by world opinion as right and just, based on the fundamental principles of equality and self-determination now reflected in the UN Charter.

The British case against it



The Declaration emerged from the second Continental Congress

The Declaration of Independence was not only illegal, but actually treasonable. There is no legal principle then or now to allow a group of citizens to establish their own laws because they want to. What if Texas decided today it wanted to secede from the Union?

Lincoln made the case against secession and he was right. The Declaration of Independence itself, in the absence of any recognised legal basis, had to appeal to "natural law", an undefined concept, and to "self-evident truths", that is to say truths for which no evidence could be provided.

The grievances listed in the Declaration were too trivial to justify secession. The main one - no taxation without representation - was no more than a wish on the part of the colonists, to avoid paying for the expense of protecting them against the French during seven years of arduous war and conflict.

You tell us: was the Declaration of Independence legal?