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# THE DECLARATION OF THE UNITED COLONIES: AMERICA'S FIRST JUST WAR STATEMENT

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*Was the American War for Independence just? In July 1775, a full year before the Declaration of Independence, the colonists argued that they had the right to self-defense. They made this argument using language that accords with what we can broadly call classical just war thinking, based, inter alia, on their claim that their provincial authorities had a responsibility to defend the colonists from British violence. In the 1775 Declaration of the United Colonies, written two months after British troops attacked colonial citizens, such arguments are made. This essay carefully looks at the historical context of the 1775 Declaration, the arguments made by the colonists, and the philosophical and theological underpinnings of those claims, and concludes that the colonists made a compelling argument commensurate with just war thinking.*

KEY WORDS: American Revolution, American War for Independence, just war theory, *jus ad bellum*, self-defense, Declaration of Rights and Grievances, just cause

## Introduction

Was the American War for Independence just? Academic debates over this question continue, but the American colonists of the late eighteenth century believed that the fate of their society could depend on the answer to it. This essay contends that the colonists were correct: the war was just. More specifically, we mean 'just' in two ways that will be discussed in this essay. First, the colonists were writing in the context of the contemporary milieu of the political and religious thinking on authority and rebellion (notably in the Calvinist tradition). Second, because much of today's discussion of the issue applies the contemporary just war framework, specifically *jus ad bellum*, to the colonists' arguments, we will carefully look there as well with a specific focus on the arguments made a full year before the 1776 Declaration of Independence.

In the July 1775 Declaration of the United Colonies on the Causes and Necessity of Taking up Arms, also known as the Declaration of the United Colonies (see appendix),<sup>1</sup> penned by the Second Continental Congress, colonial statesmen left us a document that clearly articulates a classical just war approach. By 'classical' just war thinking we simply mean a focus on long-recognized *jus ad bellum* categories such as legitimate authority, just cause and right intention, as well as the fundamental right of self-defense. The Declaration argues first and foremost that the war was forced on the colonists. They were only fighting, it contends, because their English and natural rights to life, liberty and property were in

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danger of being destroyed. But although there has been a long scholarly consensus that a war truly fought in self-defense is nearly always just, the Declaration's case is also aligned with other stipulations of classical *jus ad bellum*. It asserts, for example, that, by virtue of their charters, the British constitution and the principles of natural law, the colonial assemblies have 'legitimate authority' to resist Parliament's aggression. The Declaration also argues that the colonists have a 'just cause' since they are defending their birthright as Englishmen and human beings; it shows that they are taking up arms with 'right intent' – at this juncture in 1775 they were, after all, not seeking independence or revolution. They were merely seeking to restore the authority that their colonial assemblies had enjoyed for more than a century.

Thus, a full year before the Declaration of Independence of July 1776, the Declaration of the United Colonies laid out a rationale for self-defense consistent with classical just war theory. This essay begins with an extensive overview of the historical context in the period leading up to 1775. This paves the way for a consideration of the Declaration in context and considers its relative obscurity in the scholarly literature; the essay then elucidates the just war arguments made in the document. We conclude that these arguments are contextually appropriate and aligned with just war thinking – and that what ultimately became the American War for Independence was manifestly and demonstrably a just war.

### The Historical Backdrop: 150 Years of Self-Government

From their settlement, Britain's colonies in America enjoyed a significant degree of autonomy – they were, in fact, founded at the expense of private individuals rather than the British government (Morgan 1992: 9). In return for taming a wilderness for the glory and profit of a distant monarch, the colonists obtained charters from the Crown that 'forever' granted Americans the same 'Liberties ... and Immunities ... as if they had been ... born, within this our Realm of England' (The First Charter of Virginia 1606). Anthony McFarlane observes that this was a 'practical expedient'. 'If English colonists were to be attracted to the Americas, they had to be afforded ... the same rights that they enjoyed at home' (McFarlane 1994: 193). Perhaps the most important English right was freedom from taxes levied without consent (Greene 2011: 95). The colonists understood their assemblies to be sovereign internally, while Parliament, in the interest of the empire, could regulate their external commerce (Gould 2000: 123–125).

By the middle of the seventeenth century, technical ambiguities in this legal relationship encouraged Britain to attempt to redefine it to her advantage, despite colonial resistance. However, the historical evidence indicates that no consensus emerged. In fact, Crown and Parliament (excepting the later Stuarts) often accepted the colonial view of this relationship.<sup>2</sup> In the Navigation Act of 1660 and similar enactments, Parliament limited itself to regulating the colonies' external commerce, 'disregarding repeated suggestions from royal Governors and other British officials ... that ... taxes be laid' (Knollenberg 2002: 147). Parliament in 1649 was obliged to acknowledge that only the House of Burgesses could tax Virginians (Hyneman & Lutz 1983: 77–79). Even Charles II, whose imperial policies were rebuked following 1688, recognized the right of Rhode Island and Connecticut to govern themselves (McFarlane 1994: 196).

In the mid-1680s, James II tried to unite all the New England colonies under the direct control of the Crown (Greene 2011: 13). The charters of New York and Massachusetts were denied legal status, and the colonists of New England were subjected to the

'Absolute and Arbitrary' rule of the King's deputy, Edmund Andros.<sup>3</sup> Andros not only tried to levy taxes without the assemblies' consent; he went so far as to impose Anglican observances on fiercely Puritan Massachusetts. Brendan McConville (2006: 35, 38) observes that this 'institutional architecture' forced on the colonies by the Stuart monarchs 'effectively denied any role, voice, or honor for most colonial leaders'.

With the accession of William and Mary following the 'Glorious Revolution' of 1688, the Stuarts' colonial policies were seemingly repudiated (Greene 2011: 47–48), and the English government officially recognized its dependence on the consent of the peoples' representatives (Gould 2000: 15). The colonists naturally assumed that their own struggles to '[tame] the royal governors ... as Parliament tamed the King' were now vindicated (Morgan 1992: 9). They were, after all, unrepresented in the Parliament that now declared all Englishmen immune from arbitrary taxation.<sup>4</sup>

They were quickly disappointed. As little as nine years later, the Board of Trade recommended that Parliament bring the colonies directly under the control of the Crown. Although this was never attempted, similar actions were threatened when the New York legislature refused to cooperate with its royal governor (Greene 2011: 42–43). Even more threatening to colonial ideas of sovereignty were the White Pine Acts, which directly regulated how Americans used their own property (Maier 1991: 20–21). The old consensus that the colonies were sovereign internally but subject to Parliament externally, was breaking down in England. By the 1760s '[t]he common presumption in England, wholly unexamined, was that all was clear in the colonial relation' and that the colonies were completely subject to Parliament's jurisdiction (Middlekauff 2005: 28).

Britain justified intrusions into colonial affairs with an innovative theory of sovereignty. Monarchs had granted the colonial charters before 1688, when the Glorious Revolution returned many of the Crown's prerogatives to Parliament (Gould 2000: 15–16). Now that Parliament embodied much of what had once been the Crown's will – the concept of the 'King-in-Parliament' – it also took over the Crown's responsibility for the colonies (Greene 2011: 50, 35–66). Thus, representing the collective will of the entire empire, Parliament's authority was 'final, unqualified and indivisible' (Bailyn 1982: 200).

In effect, this meant that Parliament could now approve of colonial policies in the place of the Crown, and was in no way bound by legal immunities that previous monarchs had granted (Kammen 1970: 31). There could be no constitutional boundaries, then, around the will of Parliament (Maier 1991: 186–187) – not even chartered rights promised to the colonists 'forever', 'any statute ... to the contrary notwithstanding'.<sup>5</sup> Indeed, Greene (2011: 39) writes, '[t]he constitution became precisely what Parliament said it was'. William Pym argued that by virtue of this authority 'the British parliament can at any time set aside all the charters that have ever been granted' if those charters cease to serve the 'general good'.<sup>6</sup>

Although British officials such as Lord Camden, the Duke of Newcastle, William Pitt and Edmund Burke vehemently disagreed with such assertions, their voices were overcome by the force of circumstances. When Britain lapsed into recession following the Seven Years War, Parliament put its theory of sovereignty to the test by passing the first direct tax on Americans' internal commerce: the Sugar Act (Morgan 1992: 15–17). Bernhard Knollenberg (2002: 140) observes that Parliament made 'no effort' to make this 'revolutionary measure' acceptable to the colonists. The act was passed with 'surprising ease ... considering that the Americans were unrepresented in Parliament ... which took

its beginnings from the right of the people to be taxed only by their representatives. No one reminded the members of this old right...' (Middlekauff 2005: 64).

Other taxes and regulations soon followed in the Currency and Stamp Acts. Legislators preparing these laws 'spurned' American petitions (Maier 1991: 53), and did not consult colonial agents (Knollenberg 2002: xxiii). As a result, these regulations severely restricted the carrying trade on which many colonies depended. Ships transporting goods to market now had to file a detailed invoice of their merchandise with the nearest customs office, whether a few dozen, or a few hundred miles distant. The merchants' vessels could be searched or even seized at the officer's discretion (Knollenberg 2002: 166). These regulations, Knollenberg (2002: 170) writes, 'were accompanied by a ... depression of exceptional severity in most of the mainland colonies'. Unlike their British cousins, the colonists now had to pay two sets of taxes: those imposed by Parliament and those levied by their own colonial assemblies.<sup>7</sup>

At the time, Adam Smith acknowledged that these taxes sacrificed colonial commerce to Britain's mercantile interests (Kammen 1970: 125). Even the British secretary of state, Lord Dartmouth, was astonished at what he considered Parliament's illegal provision (Maier 1991: 231) that admiralty courts were now empowered to summon suspects to trial far from their homes – a significant expense – where juries were likely to be hostile (Morgan 1992: 20). In effect, he believed, this denied the English right to trial by jury (Barger 1965: 77–78).

Given the novelty of these taxes and the severity of the economic crisis that they provoked, the Americans' response was loud rhetoric but measured action. Although isolated violence occurred, this was widely condemned by colonial leaders and newspapers. Generally speaking, protests were remarkably orderly and peaceful (Maier 1991: 52–53, 63–75, 114). Clergymen enjoined loyalty to the laws and displayed reluctance about transforming America's cause into a holy war (Endy 1985: 16–17). It is true that Jonathan Mayhew, Samuel West, John Tucker and other influential ministers interpreted Scriptural passages like Romans 13 so as to support the right of resistance, but they also took great pains to make clear that these passages imposed duties of obedience on subjects.<sup>8</sup> A typical example of this is Samuel West's claim that 'the same principles which oblige us to submit to government do equally oblige us to resist tyranny...' (Hyneman & Lutz 1983: 412).<sup>9</sup> Moreover, Steven M. Dworkin (1990: 156) shows that these interpretations were not driven by revolutionary ideology but were, in fact, the result of a long exegetical tradition.<sup>10</sup>

What was the basis of this resistance theology? In brief, the clergy followed Romans 13 that the state's foremost purpose was to provide political order. At this time period, this was a widely accepted view in the Lutheran, Anglican (of all stripes) and Reformed traditions. It is the Reformed tradition, however, that was most influential on this point in the colonies, whether in the Congregational churches in the North or among diverse religious constituencies (such as Presbyterians) in Virginia. The basic question, where what became the Reformed tradition differed from Lutheranism (and later influenced many Puritan-style Anglicans in the colonies) had to do with the appropriate response of citizens to a king who neglected his responsibility to provide political order because the regime had become a tyranny. This Reformed thinking on resistance – citing (some would say inaccurately) John Calvin, but far more developed in Peter Martyr Vermigli (who advocated resistance), John Ponet's *A Short Treatise on Political Power* (he supported tyrannicide), John

Knox, and several that followed — argued that resistance was justified — even morally required in some cases — if the national political authority became corrupt and tyrannical.

The appropriate body to take such action, it was generally argued, was intermediate political authorities (e.g. chartered colonial governments) acting within the rule of law to preserve the security, rights and freedom of the citizens. As Jack Greene (2012) and others have argued, many of the clergy were supportive of the notion, supported by many thinkers especially in Virginia and Massachusetts, that the colonial charters and representative governments of the colonies fulfilled this role. Furthermore, the clergy (alongside other citizens like Adams, Franklin, Jefferson and Otis) were not simply making a theoretical argument, but were responding to the contra-Hobbesian writings on the social contract and good government of their day. Most notable among these were John Locke's *Second Treatise on Government* (1689) and Emer de Vattel's *Law of Nations*, which argued that government existed for good purposes with an end toward peace and the betterment of the citizenry, not just to stave off a brutish existence in the state of nature.

To be more specific, the most potent of these sermons was Jonathan Mayhew's 1750 'Discourse Concerning the Unlimited Submission and Non-Resistance to Higher Authorities'. This sermon was printed and reprinted numerous times in the colonies and in London; John Adams famously said that everyone had read it in the colonies. Mayhew begins:

Let us now trace the apostle's reasoning in favor of submission to the *higher powers*, a little more particularly and exactly. For by this it will appear, on one hand, how good and conclusive it is, for submission to those rulers who exercise their power in a proper manner: And, on the other, how weak and trifling and unconnected it is, if it be supposed to be meant by the apostle to show the obligation and duty of obedience to tyrannical, oppressive rulers in common with others of a different character. (Mayhew 1750, emphasis in original)

Mayhew distinguishes between the moral duty of the Christian to submit to lawful authority, and the citizen's duty toward 'lawless, unreasonable' tyranny:

those who resist a reasonable and just authority, which is agreeable to the will of God, do really resist the will of God himself; and will, therefore, be punished by him. But how does this prove, that those who resist a lawless, unreasonable power, which is contrary to the will of God, do therein resist the will and ordinance of God? (Mayhew 1750)

Consequently, Mayhew argues:

Thus, upon a careful review of the apostle's reasoning in this passage, it appears that his arguments to enforce submission, are of such a nature, as to conclude only in favor of submission to *such rulers as he himself describes*; i.e., such as rule for the good of society, which is the only end of their institution. Common tyrants, and public oppressors, are not entitled to obedience from their subjects, by virtue of anything here laid down by the inspired apostle. (Mayhew 1750, emphasis in original)

This lays the groundwork for action against 'tyrants and public oppressors'. Mayhew's argument goes on at length, but clearly articulates a rationale that became increasingly part of the colonial consciousness: the purpose of government was the common good and that citizens, working with established political authorities at the local and state level, had a moral duty to resist tyranny.

These facts help to qualify the claims made in some prominent studies, such as that by Calhoun (1989), that the mob rule that resulted from colonial resistance caused many prominent citizens to become Loyalists. Pauline Maier (1991: 286) goes so far as to suggest that 'at most 20 per cent, and perhaps much less, of the white population, retained its loyalty to Britain'. This is a departure from older estimates that tended to accept John Adams' calculation that this number was as high as one-third of the colonial population (Marina 1976). Maya Jasanoff's recent work on American loyalism, however, reinforces Maier's conclusion, and argues that Loyalists acted from a much wider array of motivations than is often portrayed. Despite this varied background, the number of those who maintained loyalty to Britain was relatively insignificant (Jasanoff 2011: 6–8, 188–189, 346–347).

The Stamp Act Congress exemplified the colonists' moderation. The delegates' solutions were defensive in nature: a boycott of British goods, a declaration and petitions protesting Parliament's taxes, all to be sent to Britain. These documents made clear what the colonies had maintained since their founding: the colonies were subordinate to Britain, and accepted Parliamentary authority over their external affairs as they had for over a century of trade regulations. However, they maintained that no power could justly deprive them of their rights as Englishmen to be tried by a jury of their peers and to be exempt from taxation without representation (Morgan 1992: 26–27).

British writers like Thomas Whately responded by arguing that the Americans were, in fact, represented in Parliament and were thus subject to taxes levied by that body (Gould 2000: 119). Like the Americans, Whately asserted, many Englishmen did not vote directly for their representatives, but their interests were 'virtually' represented in Parliament nonetheless. Moreover, Parliament's power was supreme within the empire and could not be resisted without undermining the foundations on which the Glorious Revolution had been justified (Hammond et al. 2007: 166–170).

The British argument for virtual representation – an argument that historian Edmund S. Morgan (1992: 20) memorably characterized as 'specious nonsense' – was considered tenuous, not only by British contemporaries like Adam Smith, but even by prominent Loyalists such as Thomas Hutchinson, who were aware that there was a significant divergence between English and American interests. Michael Kammen's (1970: 124–128) analysis provides evidence that this divergence was real, and that the colonies' lack of actual representation caused a systematic isolation of North American interests during the debates between 1760 and 1770. Nor was this a new phenomenon. Since 1733, regulations like the Molasses Act had had the effect of penalizing American merchants and enriching British mercantile interests elsewhere (McFarlane 1994: 236).

In addition, colonial writer Daniel Dulany pointed out that the argument for virtual representation raised 'rotten boroughs' and other idiosyncrasies to the level of normativity. Surely these were defects, not proof that virtual representation was justifiable (Hammond et al. 2007: 177–182). Whately's justifications seemed increasingly insufficient for controlling the lives, liberties and properties of several million colonists who had no direct voice in Parliament.

The colonists also employed the latest in natural law theory to support their cause. If Parliament could legally ignore their charters, they could legally ignore Parliament. In 1766, citing John Locke, Wollaston and others, Richard Bland reminded his audience that the first colonists had possessed a natural right to emigrate, and had crossed the Atlantic at their own expense. The Crown, therefore, had no right to require that they obtain charters.

Either the colonists voluntarily and conditionally consented to the charters, or the charters were unjustly imposed (Hyneman & Lutz 1983: 75). If the colonists had consented, they could withdraw their consent if Britain violated the charters.<sup>11</sup> These arguments for the natural right of emigration and property acquisition followed the natural law philosophy of Locke, and a long consensus in international law as interpreted by Hugo Grotius and Emer de Vattel.<sup>12</sup>

By 1766, the complaints of British merchants led the administration to deem the stamp tax 'detrimental to the commercial interests of the kingdom' and to repeal the Stamp Act.<sup>13</sup> Legislators once again ignored colonial petitions (Weslager 1970: 238–239),<sup>14</sup> however, and issued the Declaratory Act, in which, Morgan (1992: 62) comments wryly, the 'members of Parliament assured themselves that they had [authority over colonial legislatures] by announcing that they had it'. Despite principled disagreement with this expression of Parliament's supreme authority, however, the repeal of the stamp tax was enough to placate the colonists (Maier 1991: 145).

A brief period of calm followed. In 1767, however, Parliament passed legislation that seemed to bear out arguments that virtual representation did not adequately take American interests into account. The Townshend Acts raised import duties on Americans at the same time that the overall financial burden on Englishmen was diminished (Middlekauff 2005: 155–156). They also increased the number of British officials in America and directed that their salaries come from Britain, ensuring their loyalty to the Crown (Morgan 1992: 34).

Although these taxes were justified as a way of making the colonies share the burden of the Seven Years War, Middlekauff (2005: 157) observes that their provisions did little to raise an actual revenue – a fact that seemed to lend credence to colonial fears of conspiracy. The British army in North America, according to Knollenberg, was actually increased, rather than decreased, after the Seven Years War, raising doubts that the ministry's intention was to simply defend the empire. It is likely, he argues, that Parliament sought to station additional troops in North America, if not to provide a means for greater coercion of the colonists, then to shift the expense of maintaining the army from the British and onto the American taxpayers (Knollenberg 2002: 76–87).

As the new set of taxes and discriminatory military policies revealed, it was becoming increasingly evident that '[t]he interests of Americans, especially in taxation, were apt to be the opposite of Englishmen's and wholly incapable of expression through virtual representation' (Morgan 1992: 25). The colonists, now paying taxes to both Parliament and their local assemblies, responded to these threats in a measured fashion as before (Maier 1991: 124–125), answering tax with boycott. This time, John Dickinson gave voice to the colonists' old case that Parliament could regulate the colonies' trade, but could not tax them directly because of their charter and English rights.<sup>15</sup>

Many of the customs officers sent to enforce the Townshend Acts were labeled 'a rapacious band of bureaucrats' who 'exploit[ed] [the law] ... to the utmost' and 'used ... technicalities in a deliberately capricious manner to trap colonial merchants'. The officers could haul the accused into juryless courts on little evidence, frequently costing the merchant as much as a new ship in court fees, whether he was convicted or not (Morgan 1992: 37–38). Even governor Thomas Hutchinson, a prominent Loyalist, believed that the officers would 'starve' without 'bribery and corruption' (Middlekauff 2005: 67).

The customs officers requested military reinforcements to protect them even though they had not yet experienced any threats, unnecessarily escalating tensions on both sides

(Morgan 1992: 39). When they arrived in 1768, 'such an embarrassing calm prevailed that no ... use could be found for the troops at all' and half of the troops departed for Halifax. That the other half remained increased colonial suspicions that they had not been sent merely to keep the peace (Morgan 1992: 46–47). These fears seemed to be confirmed when British soldiers responded to a bombardment of snowballs and ice with a volley of bullets, killing five Bostonians and wounding six others (Maier 1991: 194–195). This incident is well known for John Adams' willingness to defend the soldiers in court. However, what is arguably most remarkable of all, given the hysteria that followed,<sup>16</sup> is the fact that local leaders successfully ensured that the soldiers involved received a fair trial, despite both pressure from Britain to exonerate them and pressure from the radicals in Boston to condemn them (Zobel 1970: 285–298).

In April 1770, Parliament again bowed to economic pressure and repealed the Townshend Acts. There followed three years of relative calm, even though Parliament maintained its claims of sovereignty and kept the customs officers where they were. This time the calm ended when Parliament tried to revive the ailing East India Company. The resulting 1773 Tea Act, 'an extreme case of shortsighted discrimination against ... Americans' (Morgan 1992: 58–59), gave the Company a monopoly on tea importation in North America (Knollenberg 2002: 102–105). A group of peers in the House of Lords condemned the act as 'part of a design, long since formed ... for enlarging the influence of the Crown...'.<sup>17</sup>

Boston was the only city whose government was willing to risk a political crisis and ordered that the tea be landed (Ramsay [ca. 1789] 1990: 92). Middlekauff writes that the colonists believed that they had no choice but to resist. To accept the Company's tea would mean yielding the point they had contested so far, and consenting to Parliament's right to abolish their charter rights and tax them without their consent (Middlekauff 2005: 227). The result was the Boston Tea Party. Although this effort was spearheaded by radicals associated with Samuel Adams, Pauline Maier (1991: 276) contends that it was 'a model of justified forcible resistance upon traditional criteria'. Tension ran higher during this crisis than at any point in the dispute so far, and although the radicals destroyed the Company's entire shipment of tea, remarkably they did not damage the Company's ships or any other private property.

Britain's response was unprecedented in its severity. Dismissing petitions from Massachusetts, Parliament passed the Coercive Acts of 1774. These acts 'struck at the very roots of local self-government long enjoyed in Massachusetts...' (Knollenberg 2002: 125). They shut down Boston's harbor, revoked Massachusetts' royal charter, prohibited town meetings, gave the governor a wide array of emergency powers, and allowed him to quarter troops on Bostonians' private property. The Quebec Act gave the colonies' western lands to Canada. Even more alarming to the American colonists, it placed the Canadians under a Crown-appointed governor who was empowered to rule without an elected assembly, '[confirming] colonial fears that the crown was intent on infringing their freedom' (McFarlane 1994: 259). These acts, wrote a London resident to Samuel Adams, 'so incensed the [British] People that they declared for America, and imprecated every Anathema upon it, if it should submit to the late Act...' (quoted in Maier 1991: 248).

Even at this juncture, with troops boarded in private homes in Boston, and Massachusetts' economy and government at the mercy of Parliament, the colonists responded cautiously. Delegates to the First Continental Congress asked for little more from Britain than the Stamp Act Congress had ten years before. Although military training

was recommended as a defensive measure, an army was not yet created. Congress merely stated the colonies' willingness to assent to Parliamentary regulation of their external commerce, appealed to the British people for support, proposed another boycott, outlined a list of Parliament's constitutional violations, and petitioned the King for a redress of grievances (Knollenberg 2002: 173–195). This petition to George III declared: 'We wish not a diminution of the prerogative ... Your royal authority over us ... we shall always carefully and zealously support and maintain.'<sup>18</sup>

These petitions were, as in every previous case, effectively ignored by the British ministry (Knollenberg 2002: 206). A petition from the merchants of London in favor of the colonists' cause was evaded by resort to Parliamentary procedure. Similar petitions from major English cities like Bristol, Glasgow, Norwich, Liverpool, Manchester, Birmingham, Wolverhampton and others met an identical fate. Even the re-emergence of Lord Chatham from retirement was unable to affect deliberation (Ramsay [ca. 1789] 1990: 138–140). 'Proposals for conciliation ... failed: although influential voices called for concessions, the response from Lord North and King George III was uncompromising' (McFarlane 1994: 260). Congress finally received a conciliatory offer from Britain in 1775, but because it simply reiterated the principles of the Declaratory Act, it was rejected (Morgan 1992: 67).

It was at this impasse that war finally erupted, following British General Gage's attempt to seize colonial munitions in the Massachusetts countryside. Shortly thereafter, the Second Continental Congress was convened. Although '[t]hese men convened when enthusiasm for war raged throughout the colonies' (Middlekauff 2005: 284), delegates refused to authorize revolution, committing themselves to resistance until a settlement could be forged. They created a defensive army and issued two documents in early July 1775 — the Declaration of the Causes and Necessities of Taking up Arms and the Olive Branch Petition — in a final bid for negotiation (Morgan 1992: 69).

The Declaration of the Causes and Necessities of Taking up Arms (see appendix), penned primarily by conservative delegate John Dickinson, was a declaration of self-defense. It laid out a history of British oppression and once again made the colonists' long-established legal case that Parliament's jurisdiction over the colonies was external, not internal. It contended that the colonists were fighting because of British provocation, 'not for glory or for conquest', but 'in defense of the freedom that is our birthright' and 'for the protection of our property'. Crucially, it promised Britain that the colonists would lay down their arms as soon as aggression ceased (Boyd 1950: 51–73).

One of the Declaration's main purposes, according to Julian P. Boyd (1950: 70–72), was providing incentive for the King to take the Congress's Olive Branch Petition seriously. As in the 1774 Petition to the King, the Congress in this petition professed their loyalty to the Crown and blamed present misunderstandings on the false and one-sided information given to him by his ministers (Wood 2002: 53). Like so many of the petitions, declarations and addresses that Congress had sent to Britain over the past ten years, this attempt proved futile. 'The King himself,' Morgan observes, 'treated the Olive Branch Petition with contempt.' Two days later, he declared that the colonies were in a state of rebellion (Morgan 1992: 70).

After a decade of defending their rights from a government that had, for more than a century, recognized and upheld those rights, the colonists believed that they had exhausted all peaceful solutions. The facts appear to bear out this belief. Before 1775, the colonists had relied almost exclusively on private boycotts and other non-coercive remedies, but these had proven ineffective. None of the official petitions sent to Britain

between 1764 and 1775 were duly considered by the British government. Parliament continued to assert its 'absolute supremacy', based on the doctrine of virtual representation, but consistently proved unable to incorporate colonial interests into British policy-making in a tangible way. This was recognized at the time by such staunch supporters of empire as Adam Smith, and the Loyalist governor of Massachusetts, Thomas Hutchinson, and has been confirmed by modern scholarship.<sup>19</sup> Consequently, Parliament's policies from 1764 onward – whether purposely, as the colonists believed, or not –sacrificed American interests to British interests, precipitating a severe economic crisis in the northeastern colonies (Knollenberg 2002: 170).

Finally, when Parliament revoked colonial charters that had been granted 'in perpetuity', it justified its actions by appealing to principles that seemed to be in tension with the very foundations of its post-1688 authority (Morgan 1992: 17–18). The attitude of the British ministry, Morgan notes, was inadvertently betrayed in Lord North's dismissal of Londoners' attempts to petition Parliament: 'I can never acquiesce in the absurd opinion that all men are equal.'<sup>20</sup> Indeed, Knollenberg argues, whether one looks at the English constitution, British policy toward other colonies, influential interpretations of common law, or justifications of the post-1688 establishment by Locke and other Whigs, the American colonists had the weight of constitutional precedent, English law and contemporary theory on their side from the 1760s onward (Knollenberg 2002: 147–152). Colonial leaders believed that their rights, elucidated in the charters, were being stripped, and thus it was Parliament, not the American colonies, that had introduced innovations into the British constitution. This was an important justification for pushing back against London.

### **The Ethics of the American War for Independence: Is There a Consensus?**

Considering that the Declaration of the United Colonies was the first and most comprehensive defense of the war that the colonies made, and that it so succinctly fitted their reasoning into a just war framework, it is remarkable how seldom it is mentioned by just war theorists, historians and scholars in other, pertinent fields. One possible reason is the fact that this Declaration was soon overshadowed by the Declaration of Independence, and that the defensive aims of the former proved unable to bring the British to the bargaining table.

Whatever the reason, the absence of the Declaration of the United Colonies from treatments of the American Revolution has affected judgments about the justice of the colonists' cause. Although relatively little has been written specifically analyzing the War for Independence in the light of classical just war theory, works in the existing literature tend to display misunderstandings that could be corrected by carefully considering the Declaration's arguments.

It is beyond the scope of this essay to engage the entirety of this literature, but we will look at two important, representative authors. John Keown and George M. Marsden are among a group of contemporary scholars who have directly confronted the question that this essay seeks to answer and decided that the War for Independence was not a just war, but rather an unjust revolution. In 'America's War for Independence: Just or Unjust?', Keown (2009: 283) argues that the war was not just in light of the Declaration of Independence's claims. However, he fails to place that document in the context of the Declaration of the United Colonies' argument that the war began in self-defense. In effect, he advances the Declaration of Independence, instead of the Declaration of the United Colonies, as the

colonists' attempt to justify the war. This gives the impression that independence was the colonists' goal from the very beginning, despite the fact that the British attacked colonials in April 1775 at Lexington and Concord and the Declaration of the United Colonies was penned subsequently in July 1775 – a full year before the Declaration of Independence.

Keown's view of the war assumes that conflict begun in self-defense and proceeding, however unintentionally, toward independence is morally equivalent to a war begun as a rebellion from the outset. It also makes reconciling the colonists' claims to just war criteria – particularly that the war be fought with right intent and as a last resort – difficult. This, together with Keown's failure to mention the colonial counterarguments to the doctrine of virtual representation,<sup>21</sup> make it understandable that he assumes that the war was a 'colonial insurrection' (Keown 2009: 304). If one simply assumes the efficacy of virtual representation, and its consistency with the British constitution, as Keown does, it is indeed extremely difficult to argue that the colonists were fighting under legitimately constituted authorities.

Marsden's assessment of the war is similar. Like Keown, Marsden (1991: 15) looks to the 1776 Declaration of Independence for the colonists' attempts 'to justify ... an already existing war'. This inference leads him to express surprise that, when given the chance to defend their actions, the colonists 'directed their efforts not toward providing their rationale for a just war ... but toward rationalizing a just revolt against a king'. The 'revolutionaries', he continues, seem to have been 'far more concerned to justify ... revolution [than] warfare' (Marsden 1991: 15). However, Marsden does not refer to the arguments of the Declaration of the United Colonies, which attempt to justify the colonists' defensive war.

Moreover, Marsden (1991: 17) finds it 'puzzling' that the colonists 'came to believe that theirs was one of those extreme ... instances when revolution ... was justified'. He writes that '[t]he American revolutionaries ... seem generally not to have felt any need to provide an elaborate rationale for resorting to violence and killing' (Marsden 1991: 14). However, no mention is made of the many contemporary sermons, such as Stephen Case's 'Defensive Arms Vindicated' or Simeon Howard's 1773 sermon to the Boston artillery company, that are filled with such a rationale.<sup>22</sup> Marsden (1991: 28) instead writes of the 'extravagant clerical support for the war', which equated the colonial cause with the coming of the millennium – a line of interpretation that has been brought into question by other studies of which Marsden does not take note (Endy 1985; Valeri 1989; Dworetz 1990), or studies that have appeared subsequently (Byrd 2013: 162).

Dismissing colonial fears of Parliament's 'absolute tyranny', Marsden asserts that bloodshed could have been avoided by more diplomacy. The war, in his opinion, was by no means a 'last resort'. He does not, however, address the fact that the colonists had sent numerous petitions to Parliament in the decade between 1760 and 1770, and that all of them had been effectively ignored. Neither does Marsden adequately examine the Declaration's constitutional case. Although he admits that British rule in Massachusetts 'appears unjust and to have removed ancient liberties', he remarks that 'it is not clear that these extreme measures were more than an inept attempt to teach a lesson...' (Marsden 1991: 25). Parliament's sovereignty, in other words, is assumed in this argument, when the colonists' case against this position – based on over a century of precedent – is precisely what the conflict was fought over.

Histories of the conflict have also sometimes misinterpreted the economic claims that the Continental Congress made in the Declaration of the United Colonies. For

example, histories written during the 'Progressive Era', exemplified by Arthur M. Schlesinger, Sr.'s (1917) *The Colonial Merchants and the American Revolution, 1763–1776* and Charles Beard's (1921) *An Economic Interpretation of the Constitution of the United States*, read the colonists' official justifications of the war as a kind of gloss over crass, material motives. In the view of Beard and Schlesinger, it is the commercial interests of the colonial merchant class that drove the war. However, this line of interpretation has been brought into doubt.<sup>23</sup> Bernhard Knollenberg (2002: 170), for instance, has shown that it does not adequately account for the fact that economic warfare affected every strata of American society.

Gordon Wood's recent works on eighteenth-century American history argue that the idea that the American Revolution was a limited and conservative revolution is a 'myth'. '[T]he white American colonists were not an oppressed people .... [They] knew they were freer, more equal, more prosperous, and less burdened ... than any other part of mankind in the eighteenth century' (Wood 1991: 4). This argument implies that the reasons for going to war given in hundreds of pamphlets, thousands of sermons and legislatures' official resolutions are untrustworthy. Such a war, if this picture is accurate, is difficult to harmonize with the stipulations of 'right intent', 'last resort' and 'just cause' demanded by classical just war theory. However, Wood's argument is grounded primarily on private letters and other documents. This study has demonstrated that, state and congressional documents arguing that Parliament was overturning a long-established consensus on the constitutional protections afforded American colonists through their local legislatures were essentially accurate.

As this overview of the literature suggests, surprisingly little has been written about the Declaration of the United Colonies – the focus is almost always on the content of the Declaration of Independence, published almost 17 months after British forces fired on American colonists at Lexington and Concord and King George called the colonists 'traitors and rebels'.<sup>24</sup> Those very few scholars who have factored the Declaration of Rights and Grievance's arguments into their narratives tend to display a more balanced assessment of the way that the war gradually evolved: from a limited, defensive measure to an outright war for independence. Reginald C. Stuart, for instance, acknowledges the Declaration of the United Colonies as a kind of declaration of war and uses this, other colonial writings and circumstantial evidence to conclude that the war was fundamentally limited in its aims. 'Americans,' he maintains, 'were bent on redress, not conquest' (Stuart 1976: 37, 24).

Carl L. Becker's classic study also places the Declaration of Independence in the context of its predecessor. Becker notes that the 'hope of reconciliation' displayed throughout the Declaration of the United Colonies 'died slowly'. The colonists 'clung to it in desperation ... because they had ... declared that separation was no part of their purpose and utterly abhorrent to their desire'. It was not the colonists' aim to separate from the British Empire, according to Becker. Independence was the result of 'practical difficulties' (Becker 1922: 126–127).

As these works suggest, if independence was not the aim of the war but an unintended result – and if the war's objectives and justifications are more accurately stated in the Declaration of the United Colonies than the Declaration of Independence – the conclusions of Keown and Marsden become difficult to maintain. The works by Becker and Stuart, however, necessarily stop short of a full just war analysis of the War for Independence; their assertions that allude to the justice of the war are thus confined to a limited scope.

The third source of literature that touches on the War for Independence's relationship to just war theory may be thought of as a kind of social and cultural history. Works of this type examine what the colonists themselves (rather than their elected representatives) thought about the war, what their motivations for fighting were, and thus seek to inform and correct the larger picture that political history represents. As such, even though these works do not often directly ask abstract questions like 'Was the War for Independence just?', their focus on what people truly thought and believed inevitably has an important, even if limited, bearing on how we answer such questions.

Social historians of the 'New Left', like Staughton Lynd (2009) and Jesse Lemisch (1997), for instance, tend to portray the war as a class conflict between merchants and businessmen on the one hand, and the rest of the colonial population on the other, raising the question of whether or not the colonists, taken as a whole, fought with the 'right intent'. James P. Byrd's (2013) recent work *Sacred Scripture, Sacred War* and influential articles by Melvin B. Endy Jr. (1985) and Mark Valeri (1989) all discuss how the colonists' religious beliefs influenced their view of the war. These authors generally concur with Byrd (2013: 52) when he suggests that the majority of eighteenth-century ministers 'hoped to fight wars that met only just war criteria'.

Although much of the language in such tracts and sermons talked in terms of 'holy war', it is important to recognize that these were not arguments for unlimited war (such as we often associate with terms such as crusade or jihad). When colonial clergymen spoke of 'holy war', they were talking about war justified by religious impulses, including in protection of that most precious of individual liberties – freedom of religion. They were also describing, often in Old Testament terms, the obligations that free men had to defend their neighbors and promote justice (Byrd: 2013: 73–92).

Thus, religious language was indeed present in sermons and pamphlets. The patriots 'saw the conflict as a just war, fully defensible on those grounds, but ... fought it with religious resolve...' (Byrd 2013: 167). As Endy (1985: 4) notes: '[The clergy's] understanding of legitimate authority for the war, its justifying causes ... more often fit the just war tradition ... than the interpretation of the Revolution as a holy war....' Because clergymen were so influential in forming the beliefs of the common man, these writings, too, are important for assessing the justice and intent of the war. However, they can only be supplementary to a comprehensive approach that also uses official, public documents and statements, such as the Declaration of the United Colonies.

### Just War Thinking

Thus far we have illuminated some of the context leading up to the Declaration of Rights and Grievances, as well as demonstrating that there is a trend among some influential academics to call the American War for Independence an unjust war on *jus ad bellum* grounds. The second half of this article looks carefully at the arguments that the colonists made in the months immediately following the bloodshed in Massachusetts in 1775. Did those arguments comport with just war thinking? Classical just war theory considers two things: under what conditions is it moral to go to war (*jus ad bellum*); and how violence can be employed and restrained during war in ways that comport with just war principles (*jus in bello*). In recent years, Eric Patterson and others have developed models for *jus post bellum* as well.<sup>25</sup> Our focus here is on the *jus ad bellum* criteria. The classical just war framework is the foundation for customary international law as well as the formal laws of

armed conflict. Just war theory generally assumes that a collective, just like an individual, has a fundamental right to self-defense. Furthermore, when it comes to collectives, the just war tradition begins with three criteria for the just decision (*jus ad bellum*) to use military force: *legitimate authority* acting on a *just cause* with *right intent*. Practical, secondary *jus ad bellum* considerations include: *likelihood of success*, *proportionality of ends* and *last resort*. Just war theory also has criteria regarding how war is conducted (*jus in bello*): using means and tactics proportionate (*proportionality*) to battlefield objectives and that limit harm to civilians and other noncombatants (*discrimination*).

More specifically, political actors should carefully examine the following principles when considering the implementation of military force:

*Jus ad bellum*

- *Legitimate authority*: Representative political authorities are morally responsible for the security of their constituents and are therefore obligated to make decisions about war and peace.
- *Just cause*: Self-defense of citizens' lives, livelihoods and way of life are typically just causes; more generally speaking, the cause is likely just if it rights a past wrong, punishes wrongdoers, or prevents further wrong.<sup>26</sup>
- *Right intent*: Political motivations are subject to ethical scrutiny; violence intended for the purpose of order, justice and ultimate conciliation is just, whereas violence for the sake of hatred, revenge and destruction is not just.
- *Likelihood of success*: Political leaders should consider whether or not their action will make a difference in real-world outcomes. This principle is subject to context and judgment, because it may be appropriate to act despite a low likelihood of success (e.g. against local genocide). Conversely, it may be inappropriate to act due to low efficacy despite the compelling nature of the case.
- *Proportionality of ends*: Does the preferred outcome justify this course of action, in terms of the cost in lives and material resources?
- *Last resort*: Have traditional diplomatic and other efforts been reasonably employed in order to avoid outright bloodshed?

### **Just War Theory and the Declaration on the Causes and Necessities of Taking up Arms**

Did the advent of the colonists' taking up arms meet the criteria for a just war? One way to get at this is to consider the arguments of colonists at the time. On 6 July 1775 – a year before the Declaration of Independence – the Second Continental Congress issued the Declaration of the United Colonies. Penned primarily by Pennsylvania's John Dickinson – a man of Quaker sympathies who abstained from voting on the 1776 Declaration of Independence – with assistance from Thomas Jefferson, the 1775 Declaration was written just weeks after the British attacks at Lexington and Concord. It lays out a rationale for self-defense that aligns well with just war thinking. Indeed, the colonists beseech London to not provoke 'the calamities civil war'; there is no talk of independence.

Because there is contemporary discussion about whether or not the American War for Independence was a 'just war' – and those discussions use contemporary categories – we will use the just war framework to look at the moral language employed by the writers of the Declaration. The document begins with a question about *legitimate authority*: does

God grant to government 'unbounded authority ... never rightfully resistible, however severe and oppressive' or is it 'instituted to promote the welfare of mankind'?<sup>27</sup> This is a critical question, because it hearkens to the very foundations of the just war tradition. Christian just war thinking – that associated with Ambrose, Augustine, Aquinas and others – often goes back to the New Testament, more specifically, Romans 13. This passage argues that political order is a divinely instituted social institution: 'For he [the government official] is the minister of God to thee for good...' Because of this, temporal authorities have the responsibility to 'bear the sword' to 'execute wrath upon him that doeth evil'.

The colonists were deeply embedded in a Christian worldview, regardless of the unorthodoxy of the faith of some prominent individuals such as Thomas Jefferson and Benjamin Franklin. They took Romans 13 and other Biblical passages about the ethics of political authority very seriously; this influence can be seen in the Mayflower Compact, colonial charters and other documents. Their argument is simple: political authority is a divinely ordained good. Thus, when political leaders become tyrants, and when there are alternative forms of political authority that will preserve the lives, livelihoods and way of life of citizens, then it may be appropriate to act in self-defense. Indeed, there was a theological argument made at the time, and as discussed above, made previously for two centuries by Poynt and others, that oppressive regimes lost their legitimacy when they harmed their own citizens, and so it is appropriate for the citizenry to act on behalf of the principles of law and righteousness.

It could be said that the colonists' just war argument essentially rests on the question of: 'What is the purpose of political order in the first place?' This was a question that had been hotly debated in Great Britain over the past century, as King James and others had argued for a divine right of kings that gave government *carte blanche* based on its supreme authority. By the late eighteenth century, some Parliamentarians were making a similar claim: London could essentially do as it pleased. The Declaration makes this point:

By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? ... We saw the misery to which such despotism would reduce us.

The colonists, in contrast, argued that London lost its authority to govern when it violated its basic responsibility to protect the well-being of citizens within the Commonwealth. This includes a variety of threats to their security, both passive and active, that are discussed below.

The Declaration goes on to suggest that governing charters, constitutional rights and colonial legislatures represent a richer understanding of the political arrangement providing political order in the colonies: 'Our forefathers ... left their native land, to seek on these shores a residence for civil and religious freedom.' The writers note that at little cost to the Crown, over a period of nearly 150 years, British colonists had, through their own blood, sweat and fortunes, settled the 'distant and inhospitable wilds of America'. They were largely self-governing with royal charters; the relationship was so 'mutual[ly] beneficial' as to 'excite astonishment'.

The Declaration transitions from a discussion of *legitimate authority* to one of *just cause*:

Parliament ... in the course of eleven years, [has] undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of

admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the “murderers” of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried. (Emphasis in original)

The Declaration enumerates trampled liberties, and it comes across as a damning list, even if it is clearly one-sided and polemical. Running throughout it all is a series of taxes (‘acts’) that have been imposed upon the colonies one after the other for the previous 11 years, many with the explicit purpose not only to raise revenue but to demonstrate the political primacy of the British Empire. These taxes were buttressed by a naval blockade and various anti-smuggling initiatives designed to choke American trade, and thus the livelihood of thousands of colonials. This was seen as an assault on individual liberty and private property – including risk of penury and starvation.

The Declaration describes the motivation for this economic warfare: ‘These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder.’ And now, the King and Parliament had called the self-defensive actions of the colonists ‘a rebellion’ and promised to take ‘measures to inforce due obedience’.

A second set of ‘just cause’ arguments revolves around the legal rights of citizens within the understood constitutional framework of the British Empire. The colonists were accustomed to trial by jury of their peers, but London had revoked this in numerous instances, setting up an alternative juridical system. Admiralty courts were empowered to deal with many cases, meaning that what had formally been a civil case (e.g. contraband found among legitimate cargo) now could be tried under Admiralty law, with no jury or appeal. Under the new system, colonists could be imprisoned, and have their property confiscated, contrary to the British rights guaranteed to them by their charters.

More concerning, however, was the fear that the colonists could be transported to Canada or even London for trial before a most inhospitable audience, without recourse to local witnesses and evidence. Moreover, the armies quartered on North American soil, which were no longer focused on fighting the French and which were increasingly in league with American Indians – who at times terrorized the borders of the colonies – all suggested a malign plot to force the colonies into virtual slavery.

There is a line of thinking that suggests that the colonists’ claims were merely hype (Jennings 2000; Draper 1997), but consider the text and context of the Declaration. The document reports that on 19 April 1775, a ‘large detachment’ of General Gage’s army, which ‘had taken possession of the town of Boston’, ‘made an unprovoked assault on the inhabitants of’ Lexington and Concord. Gage extended the battle: ‘Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation.’ One might argue that Gage and the colonial militia were simply opposing armies on the battlefield, but the colonists saw this differently. Gage was

garrisoned in the city of Boston. His was arguably a war against civilians, because he had promised that the civilians could freely leave Boston 'with their effects' if they gave up their weapons (which many did). However, 'they accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties', the weapons were 'seized by a body of soldiers' who then 'detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind'.

Gage went on to brand them all as rebels and traitors. The Declaration quotes from General Gage's statement of 12 June 1775 to 'declare them all ... to be rebels and traitors, to supersede the course of the common law, and to .... exercise of the law martial'. 'His troops have butchered our countrymen [at Lexington and Concord] ... and he is exerting his utmost power to spread destruction and devastation around him.' Not only this, but 'General Carleton [Carleton], the governor of Canada, is instigating the people of that province and the Indians to fall upon us'.

In short, the colonists made a *legitimate authority* proposition, arguing that London has neglected its responsibilities to the Commonwealth, choosing a tyrannical course of action that severely limited the basic rights of the colonists. And, the colonists have made a *just cause* argument that their actions are legitimate self-defense. They go on to emphasize their *right intent*. Their purpose is not to plunder their neighbors or establish a new kingdom. There is no imperial design here, nor are acts of self-defense intended to promote anarchy:

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us ... We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. ... [but] In our own native land, in defence of the freedom that is our birthright, ... for the protection of our property ... against violence actually offered, we have taken up arms.

The colonists had counted the cost, and they reminded London that there was a strong likelihood of success if the colonies must defend themselves. Despite the powerful British navy, the colonists could turn internally for all of the basic resources of life. The North American continent was rich in resources and space, and the colonies had a robust population. The colonies spread over a wide geography that would not be easy for London to tame, particularly if the colonists could achieve some sort of alliance with foreign powers. Such an alliance would not have been surprising and would have been seen as clearly threatening by Great Britain: there is little doubt that France, Spain and others could have become involved in a global war like that of the Seven Years War (French and Indian War). Furthermore, while some in London believed that they could split off rebellious Massachusetts from 'loyal' New York or the Southern colonies, the signers of this Declaration insisted on the unity of the colonies.

The colonists summarize this strategic milieu:

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. – We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had

been previously exercised in warlike operation, and possessed of the means of defending ourselves.

In conclusion, the colonists reminded London of their many previous petitions, making claims about *last resort* and *proportionality of ends*. Since 1765, individual colonies had sent various petitions and appeals to London, nearly all of which were met with hostility. American representatives, such as Benjamin Franklin, had crossed the Atlantic to make their case, but were typically not given audience in official settings. They had seen their freedoms reduced, their options limited, and their livelihoods, across all sectors of the economy, challenged. More specifically, the 1774 Coercive ('Intolerable') Acts were essentially acts of war: Boston Harbor was closed; the charter of Massachusetts was revoked; the Administration of Justice Act remitted criminal cases to be tried in Britain; the Quartering Act allowed troops to be housed in private homes, not only inns and public houses; and the territory of Canada was extended to deny colonists access to Western lands (it also granted a larger measure of autonomy to Roman Catholics). What many in Massachusetts, Virginia, and elsewhere were asking was: what is next – the imposition of English bishops? Mercenary troops coming to conquer the civilian populace?

We are reduced to the alternative of chusing an unconditional submission to the tyranny ... or resistance by force ... We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery.

## Conclusion

The American War for Independence was, according to the argument made above, a just war. After 150 years in North America, the colonists had to make a choice in the 1770s about whether or not they would continue to allow their fundamental rights to be curtailed by London. What we have tried to do, in the first section of this essay, is to recover some of the human experience behind the claims made in the Declaration of Rights and Grievances. Today's small-business owners and parents can easily imagine what is might have been like to be a merchant in Boston or New York in the 1770s, with revenues drying up and redcoats taking over your home and stables for their use, with little financial compensation (not to mention concern for your teenage daughters). This is an important part of the context of the self-defense and just war claims made in the Declaration of the United Colonies, which was a last-ditch effort to forestall war. The Declaration was written in the immediate aftermath of British attacks at Lexington and Concord, yet a full year before the 1776 Declaration of Independence. Its arguments are made by a constitutive group of representatives assembled from across the colonies and it makes arguments congruent with *jus ad bellum* criteria about just cause, right intention, proportionality of ends, likelihood of success and even last resort.

However, it is not just the self-defense argument that is important to the Declaration's context. The Declaration was written at a time when there was at least a century of writing and thinking on the nexus of armed force (including organized resistance), on the one hand, and issues of government, the social compact, the role of the state and the like, on the other. The individuals who made up the Continental Congress in 1775 reflected on 150 years of colonial history, their state charters, the ebb and flow of British politics and international affairs during that period (e.g. Cromwell, the Glorious Revolution, religious wars and the Peace of Westphalia, the French and Indian War and

antecedent conflicts, the Covenanters, etc.), as well as contemporary thinking on politics and good government, including international legal theory rooted in principles that derived from just war categories such as sovereignty (legitimate authority) and the appropriate times to employ armed force. The American context was a religious context at the time, and some of those trends have been demonstrated as well, as illustrated by Jonathan Mayhew's (1750) famous 'Discourse'.

Thus, the writers and supporters of the Declaration of Rights and Grievances felt that their cause was just and ultimately they did engage in seven years of war that resulted in the United States of America. Clearly, although the battlefield victory is long won, there continues to be controversy over the moral and political claims over the 'justice' of the parties involved.

**Appendix: A Declaration by the Representatives of the United Colonies of North-America, Now Met in Congress at Philadelphia, Setting Forth the Causes and Necessity of Their Taking up Arms. (6 July 1775)<sup>28</sup>**

If it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desparate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms. – Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to sight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and unhospitable wilds of America, then filled with numerous and warlike barbarians. – Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they

derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies. – Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. – From that fatal movement, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations. – The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and then subduing her faithful friends.

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder. – The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations. – Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the *'murderers'* of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can *'of right make laws to bind us in all cases whatsoever.'* What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our control or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for

ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure; we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty. – This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho' we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that *'a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned with it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to inforce due obedience to the laws and authority of the supreme legislature.'* – Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their coasts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and strenuously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. – equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favor. Parliament adopted an insidious manoeuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of

Boston, in the province of Massachusetts-Bay, and still occupied it a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation. – The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismissal, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrate, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to *'declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial.'* – His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that general Carelton [Carleton], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword and famine. We are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. – The latter is our choice. – We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. – Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations

to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. – We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, declare, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. – Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. – We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it – for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

## NOTES

1. The Declaration is available at: [http://avalon.law.yale.edu/18th\\_century/arms.asp](http://avalon.law.yale.edu/18th_century/arms.asp).
2. A significant number of colonists did, as Greene (2011: 40–47) shows, occasionally recognize Parliament's legitimacy, but this recognition was mainly of those laws that cohered with the colonial conception of external Parliamentary sovereignty, and internal colonial sovereignty. Additionally, it is interesting to note that several attempts to consolidate the empire and place the colonies on a more dependent basis were tried, particularly under the later Stuarts, such as Charles II – the implication, of course, being that such actions by a Stuart monarch were part of the tyranny repudiated by Parliament in 1688. See Stanwood (2011: 125–153).

3. See the 'Boston Declaration of Grievances', in Frohnen (2002: 103).
4. See the 'English Bill of Rights, 1689', in Frohnen (2002: 106–109).
5. See Kammen (1970: 186–187) and *Charter of Carolina* (1663).
6. See William Pym's 'Letter to the London General Evening Post and the Newport Mercury', 1765, in Hammond et al. (2007: 176).
7. Stephen Hopkins discusses this problem in his pamphlet 'The Rights of Colonies Examined', 1764 (see Hyneman & Lutz 1983: 59–60).
8. See Dworetz: The clergy did not treat St. Paul as a radical simply as a matter of Revolutionary exigency. Jonathan Mayhew in 1750, and Samuel West in 1776, offered the same "liberal" interpretation of Romans 13. Even before Mayhew this interpretation appeared in a number of pamphlets and sermons ... The "liberal" reading of Romans 13 was not, in fact, an American innovation. Quentin Skinner traces the prototype to John Colet, a fifteenth century English humanist ... (Dworetz 1990: 156)
9. See Samuel West, 'On the Right to Rebel against Governors', 1776, in Hyneman & Lutz (1983: 412).
10. See note 8 above.
11. An informative discussion of the Anglo-American debates on British constitutionalism can be found in the work of Lee Ward, who contrasts this 'radical' or 'Lockean' or 'radical' Whig theory of Parliamentary sovereignty with the 'moderate' Whig theory derived from Blackstone. While pointing out problems in the 'radical' or 'Lockean' theory, however, Ward does not simultaneously show the problems inherent in the 'moderate' view. Particularly, he does not show how Blackstone's alternative argument for Parliament as absolutely sovereign is itself in tension with that institution's post-1688 theoretical foundation on the consent of the people. See Ward (2004: 344, 351–374).
12. See Grotius ([ca. 1625] 2005: 553–555), Vattel ([ca. 1758] 2008: 220–225) and Locke ([ca. 1689] 2005: 285–297, 344–349).
13. See 'The Act Repealing the Stamp Act', in Frohnen (2002: 135).
14. See Weslager (1970: 238–239).
15. See John Dickinson, 'Letters from a Farmer in Pennsylvania', in Hammond et al. (2007: 200–213).
16. The 'massacre' was exploited by colonial radicals, but Maier observes that such lawless actions were never defended by any organ of authority, whether a newspaper, legislature, or a prominent colonial spokesman, and were, in fact, repeatedly condemned. Even the Sons of Liberty abstained from the riots. As Maier (1991: 125–126) notes, 'violence was everywhere curtailed'.
17. This text, originally from the *London Evening Post*, was reprinted in the *Massachusetts Spy*, 22 April 1773.
18. See 'The Petition to the King', in Ford (1904: 119).
19. See Kammen (1970), Morgan (1992), Knollenberg (2002) and Middlekauff (2005).
20. Quoted in Morgan (1992: 17 (1991: 125–126) 18); Lord North quoted in Morgan (1992: 66).
21. Keown (2009: 286–290) quotes Samuel Johnson and John Wesley, whose pamphlets make many of the same points that Thomas Whately made about virtual representation. However, he acts as if these arguments were the last word on the subject. They were not. In fact, not only were they answered by the colonists, but a great many of the years leading up to 1776 were spent in developing and refining the answers to these arguments.

22. There are several collections that contain representative samples of these widely distributed and influential sermons. See Sandoz (1998), as well as Hyneman & Lutz (1983). For the influence of the clergy and its relationship to both theological and philosophical currents of the day, Dworetz (1990) is an excellent resource.
23. See McDonald (1991) and Brown (1956). Ellen Nore (1987), a biographer of Beard, observes that Beard's emphasis on the primacy of economic motivations has been brought into serious doubt by more holistic and recent analyses.
24. Readers can try using major search engines to find academic commentary on the Declaration of the United Colonies: they will be surprised to find virtually no scholarship on the Declaration in the past century.
25. Patterson's (2012a, 2012b) principles of *jus post bellum* are Order, Justice and Conciliation.
26. This formulation derives directly from Augustine, as recorded in question 40 of the *Secunda Secundae* of Thomas Aquinas' *Summa Theologica*.
27. Extracts from the Declaration in this section are taken from: [http://avalon.law.yale.edu/18th\\_century/arms.asp](http://avalon.law.yale.edu/18th_century/arms.asp).
28. The text of the Declaration is taken from: [http://avalon.law.yale.edu/18th\\_century/arms.asp](http://avalon.law.yale.edu/18th_century/arms.asp)

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