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Američko pravorude i Deklaracija nezavisnosti

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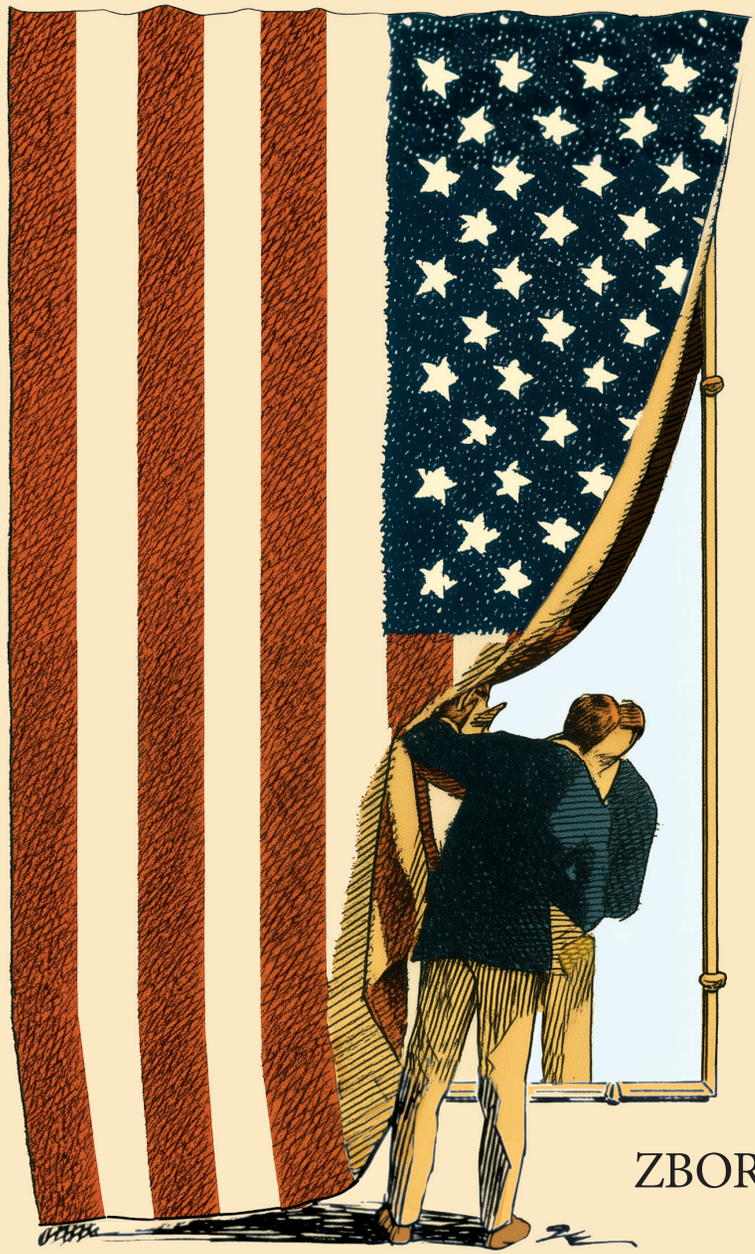

ZBORNIK

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Godina izdanja 2025.

SADRŽAJ/ Contents

Predgovor

Ejmi Koni Baret, sudkinja Vrhovnog suda Sjedinjenih država, uvod svoje knjige „Slušanje prava", počela je opaskom da joj je od trenutka kada se prilključila Vrhovnom sudu postalo jasno koliko Amerikanaca želi da sazna više o tome šta sudije rade i kako sudovi funkcionišu. Ova opaska sudkinje Baret odražava odnos američke javnosti prema sudskoj vlasti, za koju smatram da je ključni element vladavine prava. Bez javnosti koja je zainteresovana za rad pravosuđa, nema ni jakog pravosuđa, a ako pravosuđe nije jako, onda nije ni nezavisno. Kako samo nezavisno pravosuđe može stvoriti sudsku vlast u pravom smislu te reči, jasno je da zatvoreno, netransparentno i činovnički orijentisano pravosuđe, u biti ne vrši sudsku vlast.

U trenutku dok pišem ovaj tekst, desio se jedan tužan događaj, koji me je naveo na duboko razmišljanje. Sudija Ustavnog suda Republike Srbije, čije ime iz pijeteta neću pomenuti, iznenada je preminula u toku vršenja svoje funkcije. Ovaj događaj u potpunosti je ostao sakriven od javnosti. Ustavni sud je doduše na svojoj internet stranici objavio prilično skromno saopštenje, koje bi i moglo biti prikladno da je preminuo vozač ili portir tog suda. Nije bilo konferencije za medije, zastave spuštene na pola koplja niti telegrama saučešća nosilaca državne vlasti. Čak su pojedine kolege preminule sudije Ustavnog suda, odlučile da se pojave na sahrani u sportskoj garderobi i u patikama. Mediji su vest objavili tek nekoliko dana nakon sahrane i to na pritisak pojedinih građana koji su ovo ćutanje javnosti smatrali skandalom.

Kakve veze ima zbornik radova o Deklaraciji nezavisnosti sa odnosom američke javnosti na koji ukazuje sudija Baret i ovim nemilim događajem sa Ustavnim sudom Srbije? I da li je uopšte prikladno da u predgovoru zbornika na njih ukazujem?

Veza, ili tačnije kontrast ovih događaja predstavlja motiv Centra za američko pravo da inicira a zatim i izda ovaj zbornik. Kao potpredsednica Centra, smatram da je odnos javnosti i percepcija građana prema sudskoj vlasti u Americi pravilan a u Srbiji apsolutno neprihvatljiv. I da je taj odnos stvaran godinama na zdravim osnovama kad je Amerika u pitanju. U čemu se sastoje ti zdravi osnovi koje pominjem? U činjenici da je Deklaracija nezavisnosti, doneta pre četvrt milenijuma, upravo stvorila okvir države koja je zasnovana na prinicipima vladavine prava i nezavisne sudske vlasti. Okvir koji po mom dubokom uverenju moramo razumeti i o njemu nešto saznati da bismo uopšte mogli da najpre prepoznamo, a zatim i raspravljamo o njegovim posledicama. Okvir čije je istraživanje važno za naše studente prava ali i za celu zajednicu ne samo pravnika već svih nas koji smo na neki način u svom radu usmereni ka vladavini prava. Rečima jednog od autora, taj okvir itekako može da bude svetionik ka kome možemo da težimo i naš sistem i, u konačnom, našu državu, učinimo boljom.

Sa druge strane, obeležavanje 250 godina od donošenja Deklaracije nezavisnosti, bio je pravi trenutak da istovremeno ukažemo poštovanje kako tvoricima Deklaracije, tako i američkoj naciji. Doprinos vladavini prava na svetskom nivou, koju je posredno obezbedila Deklaracija nezavisnosti je ne samo nemerljiv, već u svom praktičnom značaju neuporediv sa bilo kojim drugim doprinosom. Da u Americi nije stvorena i očuvana nezavisna sudska vlast, pitanje je da li bi vladavina prava uopšte bila smatrana mogućom ili bi bila tretirana kao utopijski ideal. Drugim rečima, da li bismo i mi sami bili svesni koliko je strašno to što je gubitak sudije Ustavnog suda u Srbiji neprikladno obeležen.

Sami radovi su u potpunosti opravdali očekivanja projekta. Odlučili smo da proberemo radove studenata i da objavimo samo one koji su bili plod istraživanja. Istovremeno, ti radovi nisu na bilo koji način ispravljani ili dorađivani od strane Centra za američko pravo. Oni su verni prikaz nivoa kvaliteta i otvorenosti naših

studenata ka američkoj pravnoj tradiciji i pravu. Verujem da svaki od autora iz reda studenata ima razlog da bude ponosan na objektivni rezultat uloženog truda.

Osim studentskih radova, u zborniku se nalaze i dva rada starijih pravnika praktičara. Jedan od njih je iz Srbije, drugi iz Amerike. Ti radovi svesno nisu prevedni na engleski, odnosno srpski jezik i objavljeni su na maternjim jezicima autora. Simbolički, ti radovi predstavljaju dve različite obale koje, kao most povezuju vrednosti Deklaracije nezavisnosti. Centar za američko pravo će sebe potpisati kao arhitektu koji je taj most projektovao i izgradio i ovim poslati poruku da je sa gradnjom mostova tek počeo.

Pred čitaocima je dakle jedna knjiga, čiju smo izbalansiranost pokušali da ostvarimo asimetrijom i kojom prevladavaju iskrenost, volja i vera u budućnost. Knjiga koja je svoju svrhu ostvarila već svojim samim izdavanjem. Put koji je važniji od bilo kog cilja.

Ogledalo mogućnosti.

Ivana Matić
Potpredsednica Centra za američko pravo

Scott Y. Stuart, Esq.

250 Years Later — Do America's Founding Principles Still Guide Sustainable Democracies?

INTRODUCTION — A Nation at 250: From Inception to Reflection

As the United States approaches its **250th anniversary** of the Declaration of Independence in **2026**, the milestone invites not just celebration but reflection.

Although two and a half centuries have passed since a group of bold visionaries, came together in Philadelphia to declare an unprecedented path forward rooted in a new thinking: that government derives its just powers from the consent of the governed, and that all men are endowed with unalienable rights to life, liberty, and the pursuit of happiness.

The creation of that document, the Declaration of Independence, inked in the midst of a fierce rebellion against the most powerful monarchy in the world, was more than a notice of separation from the British Crown. It was a **statement of principles**, a moral and philosophical defining moment that would be the birth of a new nation. And in the years that followed, those ideals would became the foundation for a more enduring blueprint—the **United States Constitution**, a living, breathing document designed to outlast the men who drafted it and to serve generations yet unborn.

What's remarkable is not simply that this framework has endured for 250 years, but that it has done so while guiding a nation through changes the framers could have never foreseen.

From thirteen colonies huddled along the Atlantic coast to a sprawling, diverse republic that would become fifty states; from muskets and parchment to a space age and tech revolution; from a nation where liberty was reserved for a few to one where the idea, though still imperfect in practice, is a nation where liberty belongs to all.

The **Declaration of Independence** was the foundational starting point, articulating ideals that the Constitution would attempt to codify, a starting point of a new nation, new government and new way of thinking.

It declared that people are sovereign, that power is a trust and not an entitlement, and that governments are accountable to those they govern. The **Constitution** took that thinking of the forefathers, and gave it form: checks and balances, separation of powers, federalism, and a system that could adapt as the nation evolved.

Across generations, America has tested, strained, and sometimes brought to the brink this great experiment called democracy.

Slavery and a civil war. Reconstruction and Jim Crow laws. Suffrage battles and civil rights marches and through moments of unity and times of dangerous division. Yet somehow, through it all, the philosophical foundation built in 1776, and what followed in 1787, has held.

Now, as we pause to commemorate this historic anniversary, the question today is **do those founding principles still guide us—still sustain us—in an era of polarization, rapid change, and global interconnectedness?**

The answer is complex. The philosophical underpinnings of equality, liberty, and popular sovereignty remain at the core of our national identity. But how those principles are interpreted and, more critically, how they are applied, has shifted dramatically.

Today's America wrestles with issues that many argue threaten the very pillars of democracy.

Gerrymandering tests the notion of government by the people; with executive and judicial powers that sometimes seem untethered from their original limits; and with cultural battles that reflect deep

fractures in what it means to be one nation, indivisible. These are the questions America is asking itself today.

And beyond our shores, the world continues to watch. As America wrestles with the complexities, it remains the **template for democracy**. Emerging nations—from Eastern Europe after the Cold War to South Africa after apartheid—have looked to our model for inspiration, even as they adapt it to their own cultural context.

At the same time, adversaries and skeptics question whether the great American experiment, once seen as the gold standard for freedom and self rule by the people, is faltering under the weight of partisanship and institutional distrust.

This moment, then, is both an opportunity and a responsibility: an opportunity to examine where we've been, where we are, and where we might go; and a responsibility to do so with honesty, acknowledging both the brilliance of our founding architecture and the cracks that have formed over time.

This analysis, rooted in history but informed by the realities of the present, seeks to provoke thought and look towards the future, exploring a fundamental question as we step into our next quarter-millennium: **can a living document, conceived in a different era, continue to sustain a democracy that is larger, louder, and more complex than its framers could have ever imagined?**

II. POLITICS OF THE DECLARATION OF INDEPENDENCE — IDEALS AND COMPROMISES.

To much of the world in **1776**, the Declaration of Independence was the unthinkable- a daring and bold proclamation staking a claim on independence from the world's most powerful monarchy.

It was a radical declaration of autonomy, and a radical break from colonialism. It was also something far deeper: a carefully reasoned statement of **why**.

In a world defined by hereditary power, the Declaration articulated a philosophy that would reverberate across continents: that all men are created equal; that rights are inherent, not granted; and that governments exist only through the consent of the governed.

The clarity of that message transformed what could have been dismissed as rebellion, into a legitimate claim for sovereignty. In that, the Declaration's legitimacy was established.

Make no mistake about this bold creation as it was not without high stakes and many challenges it it's making. On American shores, the Declaration was not a universally celebrated act of bravery. It was the product of fierce debate, calculated compromise, and deep divisions that foreshadowed the very tensions that would nearly tear the nation apart less than a century later.

A. The Thoughtful Architecture of "Why"

Thomas Jefferson's pen gave voice to the collective will of the colonies, but the Declaration was more than elegant language and a statement of intention. It was methodically constructed to justify action, to build unity, and to invite support. Its second section detailing the grievances against King George III reads almost like a

legal complaint, with specific charges laid out for the "court" of public opinion, both domestic and international to digest and contemplate.

That Declaration was an act of purpose and precision. First, it served to rally the colonies by giving a common narrative to their frustrations; second, to make it clear to the world, and especially to potential allies like France, that this was no mere insurrection but the birth of a new political order meant to sustain independently and without further attachment to and support of the British empire.

Its legalistic clarity remains a throughline in American law today, where specificity and reasoned argument form the foundation of judicial proceedings. In this sense, the Declaration didn't just announce independence, it set the stage for the rule of law that would serve as the foundation of the new nation.

B. Unity and Division- A Delicate Balance

For all, the Declaration represented unity against colonial rule. It was also a **political document**, shaped by the realities of its time. The colonies were not monolithic. Massachusetts and Virginia for example, driven by revolutionary fervor, would, in today's parlance, be seen as progressives, demanding swift and decisive action. New York and Pennsylvania, while leaning toward independence, sought moderation and incrementalism. And the southern colonies, whose economies were deeply intertwined with slavery, were conservative and deeply resistant to any challenge to that institution.
These divisions shaped the compromises embedded in the Declaration. Jefferson himself, though personally uneasy with slavery, agreed to strike language condemning the slave trade to maintain unity among the colonies. Without that concession, the southern colonies, unbroken in their unity over this issue, would have refused to sign, splintering the fragile alliance and perhaps dooming the revolution before it began.

It's a sobering reminder that **compromise is often the price of progress**, a theme that would echo through every era of American history, which continues to this day. It is the cornerstone of why America stands out, but also fragile in its sustainability in the modern age.

C. A Statement to the World

Beyond its immediate political function, the Declaration sent a signal that extended far beyond the Atlantic seaboard. Its rejection of monarchy and embrace of self-determination reverberated across Europe and, over time, the globe. Revolutionary France drew directly on Jefferson's language in drafting its Declaration of the Rights of Man and of the Citizen. Nearly two centuries later, emerging democracies in Eastern Europe, freed from Soviet domination, would look to the great American experiment as they built their own systems of self-rule.

Even today, activists and reformers around the world, from pro-democracy movements in Hong Kong, Vietnam and Taiwan, to constitutional reformers in Africa, cite the Declaration's central premise that legitimacy in government flows upward, from the people, and not downward from rulers.

D. The Cost of Compromise-Challenges Deferred

In significant compromise, particularly on the issue of slavery, the Declaration contained the seeds of future conflict. By sidestepping the issue of slavery, the founders left unresolved a contradiction that would fester for generations. The assertion that "all men are created equal" coexisted with a brutal system that denied basic humanity to millions. That dissonance would explode in the Civil War, testing not just the durability of the Union but the meaning of the very principles declared in 1776.

This reality is critical to understanding the politics of the Declaration. Its ideals were revolutionary, but its execution was pragmatic. The founders while visionaries, also had to be realists, deeply aware that the survival of the revolution required unity at almost any cost, yet setting the stage for inevitable future conflict.

E. Lessons for Today

Two and a half centuries later, those political dynamics still echo. The debates that shaped the Declaration, about the balance between principle and pragmatism, about unity versus purity, about deferring on issues that set the stage for potential future conflict, are still playing out in modern America.

In today's polarized political climate, where ideological purity often trumps collaboration, there's a lesson in the calculated pragmatism of the Second Continental Congress. The founders understood that building something enduring required not only conviction but also the willingness to bridge divides, however imperfectly, something that is in a diminished state today.

And so, the Declaration stands not just as a historical foundation, but as a stern reminder that our ongoing struggle to reconcile who we are with who we aspire to be is ongoing.

III. FROM FORMATION TO FRAMEWORK — THE CONSTITUTION AND THE STRAIN OF MODERN DEMOCRACY

If the **Declaration of Independence** was the spark, the **Constitution** was the structure. One declared, the other designed. Together, they created the foundation of the great American experiment, a system rooted in principles practical enough to adapt, built for a republic that would grow in ways its framers could scarcely have imagined, but knew had to be sustainable beyond their time.

The brilliance of the Constitution is that it was never meant to be static. It is, by design, a **living document**, grounded in timeless values but flexible enough to meet the demands of change. It gave the new nation a framework for governance and assured balance of powers, a federal structure, and a recognition that authority ultimately flows from the people upward, not the other way around, a premise under great strain in today's political climate.

While the framework has endured, it has many times over been strained, and today being tested like never before, with forces of hyper-partisanship, systemic inequities, and a technological and geopolitical landscape driving divergent agendas on this nation's future against the backdrop of a fractured America.

A. From a Philosophical Vision to a Foundational Reality

The road from the Declaration to the Constitution was neither straight nor easy. The early years of independence were marked by trial and error. The first attempt at codifying the future was through the **Articles of Confederation**, a loose and fragile alliance of states that quickly exposed its weaknesses. States operated like sovereign nations. Congress had little power to tax, regulate commerce, or

enforce its laws. The chaotic state of an infant nation in this time needed to be reconciled.

By 1787, it was clear something more enduring was needed. What emerged from the **Constitutional Convention** in Philadelphia that summer, a creation of much trial and error of the early years of America's independence, was a blueprint that balanced federal power with state sovereignty, limited government with strong governance, and liberty with order. It was an act of extraordinary vision, balance and compromise.

Most importantly, the framers did not seek to write the perfect document reflecting government by the people and for the people in that moment. They believed they were writing a **durable one**, one that future generations would interpret, refine, and, when necessary, amend. An amazing feat of selfless vision, the framers acknowledgment that the work of democracy is never finished, a cornerstone of what has allowed the Constitution to endure 250 years and through some of this nation's and the world's most turbulent times.

B. The Bill of Rights — A Guardrail for Liberty

If the Constitution provided the framework, the **Bill of Rights** supplied the guardrails. The first ten amendments, ratified in 1791, codified liberties that the framers believed were so essential they had to be explicitly protected including freedom of speech, press, religion; the right to assemble; the right to due process; and protections against unreasonable search and seizure.

These were not abstract ideas; they were lessons drawn from lived experience under the heavy hand of the Crown. The framers knew the dangers of unchecked authority, and they built a system of **checks and balances** to ensure no branch of government could accumulate

too much power without accountability. Thus, the system of checks and balances by and between the executive, legislative and judicial branches was born.

Two and a half centuries later, those principles remain the backbone of American democracy. But they are also under strain, as evolving politics, expanding executive authority, and a more polarized judiciary test the limits of those original guardrails.

C. Modern Politics and Constitutional Challenges

The framers could not have foreseen a world of instant communication, global interdependence, and 24-hour news cycles. They could not have imagined super PACs, social media algorithms, or hyper-partisan primaries driving elected officials to the ideological extremes. Yet these are the realities of modern governance, and they are reshaping how the Constitution functions in practice.

Gerrymandering and partisan redistricting for example, have, in many places, undermined the principle of government "by the people," distorting representation to entrench power rather than reflect the electorate in a fair way. The founders built a representative republic, not a direct democracy, but they also firmly believed in the fundamental fairness of a government that answers to the governed. That ideal feels increasingly fragile in an era where maps, not majorities, often determine outcomes, and the power that wields left unchecked.

The question of **executive power,** however, looms large over the republic today. Particularly in the 20th century, the presidency has grown in reach, often through urgent moments requiring immediate actions- war, economic crisis, national security. But in that growth, the delicate balance between branches has tilted. Executive orders now function as policy tools when legislative consensus is elusive, raising legitimate questions about accountability. Military powers, too, have expanded

well beyond what the framers envisioned, with Congress frequently ceding its constitutional role in authorizing or restraining action.

D. The Loss of Judicial Neutrality

Nowhere is the strain more visible than in the judiciary. The framers envisioned the courts as an independent arbiter, the neutral check point on the excesses of the other branches. They granted lifetime tenure to insulate judges from political pressure and to ensure decisions grounded in law, not politics.

But in today's reality, judicial appointments are highly politicized, with lifetime seats on the federal bench and, especially the Supreme Court, viewed as generational opportunities to shape the nation's legal landscape. This shift erodes public trust in the judiciary as a neutral branch and raises hard questions about whether our system of checks and balances can function as intended when one branch appears to serve partisan ends, a danger that once embedded in the republic's norm, may become an irreversible and untethered new norm.

Recent Supreme Court decisions, whether expanding executive authority or recalibrating the balance between federal and state power, have deepened perceptions of partisanship on the Court, a perception the framers would have found deeply troubling.

E. Federalism — A Double-Edged Sword

Federalism was, and remains, one of the Constitution's most innovative, and most complex, features. The framers sought to prevent the concentration of power they had fought to escape, balancing a strong central government with the sovereignty of the states. It is a design that has allowed extraordinary diversity across regions while maintaining national unity.

Yet today, federalism is a flashpoint. The overturning of *Roe v. Wade* in 2022 which returned decisions on abortion to the states, ignited fierce debate about where the line between state authority and national rights should be drawn.
Conversely, the growing use of federal authority over traditionally local matters, from public health to law enforcement, raises parallel concerns about federal overreach.

Although this tension always loomed large from inception, as these issues grow more complex and the stakes on how far our democracy can be stretched today's reality, the balance becomes harder to maintain, and the future of the republic as it was envisioned less assured.

F. An Enduring Document

Despite these challenges, the genius of the Constitution endures. Its elasticity and its ability to adapt without losing its essence, is why the American experiment has survived crises from civil war to global conflict to economic collapse. But that elasticity also demands vigilance. A living document requires living stewardship of the citizenry and leadership willing to engage with its principles honestly, to respect its boundaries, and to work, however imperfectly, toward its promise.

As we step into the next quarter-millennium, we face a question the framers would recognize: how do we preserve a system designed to reflect the will of the people while protecting against the excesses of power? The answer, as it was in 1787, will not come easily. It will demand debate, compromise, and above all, a shared belief that the framework they gave us is worth protecting, not for what it was, but for what it must be to restrain abuses and the potential of a constitutional crisis.

IV. THE U.S. CONSTITUTION TODAY — PRINCIPLES UNDER PRESSURE

Two hundred and fifty years in, the Constitution still stands, but it does not stand untouched. It has been bent, stretched, amended, tested, and, yes, at times even ignored. What the Founders crafted as a **living document** has proven resilient, but resilience is not the same as invincibility.

The genius of the Constitution lies in its elegant simplicity and the framework it established for the future in the principals of checks and balances, separation of powers, federalism, and individual liberties, all underpinned by the basic and hard fought premise of governance by people, not kings or elites. Today, however, those ideals are colliding with realities the framers could never have imagined: globalism, digital communication, polarized media, and a political climate that rewards performance over principle.

The question isn't whether the framework works, but whether we, the inheritors of this extraordinary system, are willing to steward it with the same seriousness, humility, and shared sense of purpose that guided its creation.

A. Hyper-Partisanship

At its core, the Constitution was designed for governance by consensus. Not unanimity, not uniformity, but **deliberation and compromise**. The framers assumed that people with different interests and perspectives would be forced to come together, to negotiate, to meet somewhere in the middle for the sake of the republic.

That assumption seems to be fleeting today. Hyper-partisanship has virtually obviated the middle ground, and compromise, once the engine of progress, is now framed as weakness or betrayal. Legislators

increasingly legislate for their base and to a great extent at the will of the executive. The result is paralysis: government shutdowns, delayed budgets, judicial appointments mired in political trench warfare and more.

This isn't what Madison or Hamilton envisioned when they debated the structure of a representative republic. They anticipated tension; they did not anticipate gridlock. And the cost of that gridlock is profound in that it erodes trust in institutions, deepening divisions among citizens, and creating space for extremism to thrive.

B. The Supreme Court — The Struggle for Neutrality

If the legislative branch is gridlocked and the executive is overextended, the judiciary, particularly the Supreme Court, has become the arena where the fiercest battles for America's soul are fought.

The Founders intended the judiciary to be insulated from politics. Lifetime appointments were meant to ensure independence, not to create generational power struggles. Yet today, confirmation processes resemble partisan campaigns, and decisions on Cristal issues central to the republic's core, including voting rights, reproductive rights, and executive authority continue to deepen the country along ideological lines.

Public confidence in the Court has slipped to historic lows. And while some argue that this is a symptom of polarization rather than cause, the result is a growing sense that even the branch designed to be above politics has been pulled far afield from its neutrality. When faith in judicial neutrality erodes, so too does faith in the system itself.

C. Federalism in a Fragmented Nation

The tension between federal and state power is as old as the republic, but today it feels amplified. Federalism was meant to balance unity with diversity, allowing states to tailor governance to their unique populations while maintaining a shared national identity. But in our time, federalism often looks less like balance and more like division.

Whether it's healthcare, education, immigration, or voting rights, we see states charting starkly different paths. Red states and blue states are more and more crafting policies that reflect their political leanings, sometimes in direct defiance of federal authority. In some ways, this is federalism working as intended; in others, it feels like a slow drift toward fragmentation, where the citizenry's rights and freedoms depend less on being an American and more about the political climate of where one resides.

The framers could not have predicted this level of divergence, and they certainly could not have foreseen how national crises such as a pandemic, economic shocks, and even natural disasters, would stress-test the balance between state autonomy and federal oversight the way that it has and continues to unfold today.

D. The Pace of Change- Media, Technology and Beyond

Today, information moves at the speed of light, amplified by platforms that blur the line between fact and opinion, between news and noise. The First Amendment protects speech with extraordinary breadth , a core principle of our system, but it also means our political discourse is vulnerable to manipulation, distortion, and division.

Social media has democratized communication, giving every citizen a voice. But it has also created echo chambers where misinformation

spreads unchecked, and where algorithms reward outrage over reason. The Founders believed an informed citizenry was the cornerstone of democracy. Today however we live in a landscape where information itself is so contested that we cannot even agree on basic facts and in that distortion lies room for manipulation that challenges the foundation of what the framers built.

E. Managing Globalization-Unchartered Territory

Finally, there is the reality of globalization. The Constitution was drafted for a young republic finding its place in a world of colonialist empires. Although America remains the anchor for the world to emulate, with the U.S. economy intertwined with others, its security dependent on alliances, its policies scrutinized by adversaries and allies alike, how this nation's policies align or do not with those of others was not contemplated when the Constitution was formed.

This interconnectedness adds layers of complexity to governance. Trade policy, cybersecurity, and climate change for example are not problems that respect borders, yet our system was built for a world where borders defined almost everything. The challenge now is adapting our domestic framework to address global realities without losing the principles that make it uniquely American.

F. The Unfinished Work of "We the People"

There is still reason to hope. Despite deep polarization, the institutional strain, and painful imbalances, the Constitution endures. It endures because it was never meant to do the work alone. It depends on the citizens, leaders, and institutions, all operating with a shared commitment to something larger than ourselves.
The Founders created an imperfect union and a new doctrine to guide its growth. They created the **blueprint for a nation** that they

trusted each generation would take up the work of building on.

That work has never been easy. It wasn't easy in 1776, or 1861, or 1964. And it won't be easy in 2026. But the fact that the system still holds , that we still gather under the same principles articulated nearly 250 years ago , is proof that the experiment, fragile though it may be, is still alive.

V. CONCLUSION — THE PROMISE AND THE BURDEN OF SELF-GOVERNANCE

When the ink dried on the Declaration of Independence in 1776, and again when the Constitution was ratified in 1789, the men in that room understood something profound: they were testing an invention and walking into unchartered territory. In that, they were laying the foundation for a nation that would have to be defended and reimagined by each generation that followed.

That's the quiet genius of this experiment in self-governance in that it was never meant to be static. It was meant to breathe, to adapt, to grow with the people of the nation, and when necessary, to withstand the headwinds of adversity that might bring.

Today, we live in a country that feels louder, faster, and more fractured than at any other time in recent memory. We scroll through headlines that suggest decline and doom. We witness leaders who seem lost on the founding principals of the nation, yet weaponize what it stands for in an effort amass power and self gain. And we ask ourselves whether the system is breaking , or whether it is simply demanding that we do better by it.

A. The Weight of Balance in Light of Political Strain

We inherited a Constitution written in the glow of rich ideals that have sustained the test of time, but in the shadow of human imperfection. The forefathers, brilliant and visionary, gave us a republic rooted in compromise and aspirational truths. They could not resolve all the contradictions of their age, but they set the stage of how to do so and entrusted us with the tools to confront them in ours.

That inheritance is both a gift and a burden. It reminds us that democracy is not self-executing. It requires work, vigilance and in moments of crisis, the courage to stand for what is principled. The revolution fought was to protect these ideals, and as those ideals get tested as they are being tested now, it is we the people who must take ownership of the moment and guide this nation back to its center.

B. Fragility and Strength

We often look to the Constitution as indestructible, even when the foundation it was built on shows cracks. But its true strength lies in its **fragility**, a stark and critically important reminder that it only functions if we, the people, insist that it does. The rule of law, separation of powers, the balance between liberty and order are not self-enforcing. They endure only when we demand that they endure and if that is sacrificed, so may the foundation America was built on.

Through much upheaval and a nation tested time and again, from civil war to civil rights, the framework of the framers has held. Not because it is perfect, but because generation after generation has chosen to keep faith with it, to interpret it, to argue over it, to expand its promise and, at times, to correct its course. This is the call to action that again today is worthy of being reminded about.

C. A Call to Stewardship

As we approach the 250th anniversary of American independence, the question before America is the same question that it faced upon the birth of the republic: What is the nation that will be.

Are we willing to do the hard, unglamorous work of governing — of listening, of compromising, of seeing one another not as enemies but as fellow stewards of a shared experiment? Are we willing to remember that self-government only works when "we the people" see ourselves as part of a larger "we," bound by a common commitment to liberty, to justice, to the messy, beautiful process of striving toward a more perfect union?

The answer to those questions will determine not just the health of our institutions, but the very future of the American idea.

The story of America has never been a straight line. It has been a winding, often painful, but always forward moving journey, maintained by its founding ideals. Every generation has faced its tests in wars, depressions, assassinations, social upheaval. And every generation has had the founding principals of the Declaration and Constitution to look to as the beacon of light to find its way home.

America faces unprecedented challenges today that some believe are the beginning of the end of of this 250 year old experiment. The question now is whether America has the capacity to rise above the noise, to reject cynicism, to embrace that radical, revolutionary idea that animated Jefferson's quill and Madison's pen: that ordinary citizens, bound by nothing more than common cause and shared responsibility, can govern themselves.

E. What Happens Now

As we reflect on our history, we would do well to remember that the

Declaration and the Constitution were not written for their moment alone. They were written for ours, and for every moment that will follow. The tried and true principals in the formation of a nation that has lead the world in so many defining ways, strained and tested as it may seem today remains the one constant we can must go back to, as we course correct, yet again, and navigate this generation's unprecedented challenges.

In the end, that is the enduring promise, and the enduring burden, of this republic. To take what we have been given, imperfect and incomplete, and to keep working at it. To keep striving for that more perfect union, knowing full well that perfection will always be just out of reach, but progress always within our grasp.

The founders handed us a fragile framework. It is up to us in our time, with our tools, and with our choices to decide if the experiment survives and thrives for the generations that will inherit what we leave behind.

That is the glory of the American story.

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Katarina Nikolić

Uticaj britanskog prava na američko revolucionarno pravo: fokus na Deklaraciju nezavisnosti

Sadržaj

I Uvod

Na prvi pogled, Deklaracija nezavisnosti SAD deluje kao radikalno odstupanje od Britanije, ali njeni pravni temelji leže u samom sistemu koji su kolonije želele da napuste. Ovaj rad razmatra tvrdnju da su britansko običajno pravo i filozofija uticali na Deklaraciju nezavisnosti, postavljajući pitanje da li je taj uticaj bio potpun ili samo delimičan. Britanske tradicije oblikovale su kolonijalnu pravnu kulturu više od jednog veka i, osnažene delom Džona Loka *Dve rasprave o vladi* (1689), usađivale su verovanje da su svi ljudi rođeni sa prirodnim pravima na život, slobodu i svojinu, da vlada postoji samo uz pristanak onih kojima vlada i da vladari moraju ostati podložni zakonu. Ključno je što je Lok insistirao da, kada vlade krše ta prava, narod ima ovlašćenje da pruži otpor i uspostavi nove oblike vlasti – radikalna ideja koja je direktno oblikovala jezik Deklaracije nezavisnosti (Locke, *Excerpts from the Second Treatise on Government*, Battlefields).

Tomas Džeferson je i sam, u delu *Pregled prava Britanske Amerike* (1774), snažno koristio britanske pravne tradicije i filozofiju prirodnih prava kako bi tvrdio da Parlament ne može vršiti proizvoljnu vlast nad kolonijama. Iz britanske perspektive, ovi argumenti bili su ukorenjeni u dugoj tradiciji običajnog prava i ustavnih ograničenja suverene moći, vidljivih u slučajevima kao što je *Entik protiv Karingtona* (1765) i u dokumentima poput Engleskog zakona o pravima (1689), koji je potvrdio da su vladari vezani zakonom. Ipak, Džeferson i američki revolucionari transformisali su te principe, primenivši ih na kolonijalni kontekst, prelazeći od zahteva za priznanjem unutar britanskog sistema ka opravdanju za potpunu nezavisnost. Na taj način, britansko običajno pravo obezbedilo je intelektualni temelj, ali je američko iskustvo opažene nepravde radikalizovalo te ideje u revolucionarni jezik Deklaracije (Jefferson, *A Summary View of the Rights of British America*, Encyclopedia Virginia).
Još jedan primer britanskog uticaja može se videti u značajnom

slučaju *Entik protiv Karingtona* (1765), u kojem su engleski sudovi presudili da državni zvaničnici ne mogu zadirati u privatnu svojinu bez izričitog zakonskog ovlašćenja. Iz britanske perspektive, ova odluka je učvrstila princip da je izvršna vlast vezana zakonom i da su individualna prava zaštićena od proizvoljnog delovanja države. Za američke kolonije, slučaj je imao još veći značaj: pružio je pravni presedan za otpor zloupotrebama vlasti, jačajući argument da vladari moraju delovati u okvirima utvrđenog zakona. Kada su Džeferson i njegovi savremenici oblikovali Deklaraciju, oslanjali su se na ovu tradiciju tvrdeći da vlade svoju legitimnost izvode jedino kroz zakonitu vlast i zaštitu prirodnih prava. Tako je, dok je *Entik protiv Karingtona* u Britaniji prvobitno predstavljao odbranu slobode unutar monarhije, u Americi postao deo intelektualnog arsenala koji je opravdavao nezavisnost upravo od te iste monarhije (*Entik protiv Karingtona*, 1765).

Ovaj esej razmatra u kojoj meri su britansko običajno pravo i filozofija uticali na Deklaraciju nezavisnosti i da li se njihov uticaj može smatrati potpuno presudnim. U Engleskoj, 1610. godine, *Slučaj proklamacija* osporio je ideju da monarh može samom proklamacijom izmeniti običajno pravo ili stvoriti nova krivična dela bez saglasnosti Parlamenta. Ser Edvard Kok je izjavio da „kralj ne može menjati nijedan deo običajnog prava, niti stvoriti nikakvo krivično delo svojom proklamacijom koje već ranije nije bilo krivično delo bez Parlamenta". Iz britanske ustavne perspektive, ovo je predstavljalo temeljno ograničenje suverene vlasti – utvrdivši da kraljevski prerogativ nije apsolutan i da mora da se vlada zakonom, a ne monarhovom voljom.

Za američke koloniste, ovaj pravni princip obezbedio je deo intelektualnog temelja za tvrdnje u Deklaraciji da suverena vlast mora biti ograničena, da su prava urođena, a ne dodeljena, i da nijedan vladar ne sme proizvoljno nametati terete bez zakonskog osnova. Na taj način, *Slučaj proklamacija* predstavlja jasan kanal kroz koji su britanske pravne tradicije dale snagu idealima koje su kasnije izrazili Džeferson i njegovi savremenici.

Britansko običajno pravo oblikovalo je kolonijalnu pravnu kulturu

više od jednog veka, obezbeđujući okvir koji naglašava prirodna prava, vladavinu prava i ograničenja suverene vlasti. Ovi principi, duboko ukorenjeni u britanskoj pravnoj tradiciji, usmeravali su američke kolonije u razumevanju prava pojedinaca i odgovarajućeg dometa državne vlasti. Kako jedan učenjak primećuje, britanske ideje o običajnom i prirodnom pravu i nastojanja da se uspostave politička i građanska prava unutar monarhije uticali su na Osnivače u oblikovanju ideologije i pravosudnog sistema nove nacije (Halfond, 2022). Filozofi poput Džona Loka dodatno su razradili prirodna prava na život, slobodu i svojinu, dok je Tomas Džeferson, u delima poput *Pregleda prava Britanske Amerike* (1774), prilagodio ove britanske pravne i filozofske ideje američkom kontekstu. Džeferson je preneo te principe u Deklaraciju nezavisnosti, oblikujući ih u revolucionarnom jeziku neotuđivih prava i narodnog ovlašćenja da promeni ili ukine nepravednu vlast.

Iako je Deklaracija nezavisnosti označila odlučujuće političko odvajanje od Britanije, ona je delimično bila ukorenjena u principima britanskog običajnog prava – naročito u prirodnim pravima, vladavini prava i teoriji društvenog ugovora – ali su američki revolucionari te ideje prilagodili, transformisali i selektivno primenili kako bi opravdali nezavisnost, a ne da bi u potpunosti replicirali britanske pravne tradicije.

II Pozadina: Britansko običajno pravo i kolonijalna Amerika

Običajno pravo, pravni sistem zasnovan na sudskim presedanima, a ne na sveobuhvatnim zakonodavnim kodovima, duboko je oblikovalo pravne sisteme brojnih zemalja, posebno Sjedinjenih Američkih Država, Ujedinjenog Kraljevstva i mnogih država Komonvelta. Od nastanka pa do danas, običajno pravo razvilo se u jedan od najuticajnijih pravnih sistema u svetu. Pojavivši se u srednjovekovnoj Engleskoj nakon Normanskog osvajanja 1066. godine, razvilo se iz potrebe za jedinstvenim i doslednim sistemom pravde širom kraljevstva. Njegove ključne karakteristike – oslanjanje

na sudsku praksu i princip *stare decisis*, odnosno pridržavanje presedana – omogućile su mu da se prilagođava promenljivim okolnostima, a istovremeno održava kontinuitet. Ove osobine učinile su običajno pravo naročito uticajnim u američkim kolonijama, gde su se doseljenici oslanjali na njegove principe kako bi oblikovali kolonijalne pravne sisteme, potvrdili individualna prava i ograničili vršenje državne vlasti. Razumevanje prirode običajnog prava stoga je ključno za praćenje načina na koji su britanske pravne tradicije oblikovale kolonijalnu Ameriku i, na kraju, ideološke temelje Deklaracije nezavisnosti.

U praksi, kolonijalni sudovi i zakonodavne skupštine pažljivo su se modelovali prema britanskom običajnom pravu, usvajajući njegove postupke, principe i pravno rezonovanje kao standard za rešavanje sporova. Kolonisti su uglavnom smatrali da imaju pravo na istu zaštitu kao engleski podanici, uključujući prava na svojinu, suđenje porotom i zaštitu od proizvoljne vlasti. Ovo usvajanje prevazilazilo je puku pravnu formalnost: oblikovalo je politička i društvena očekivanja kolonijalnog društva, učvršćujući ideje o zakonitoj vlasti, individualnim pravima i ograničenju izvršne vlasti. Osnivanjem svojih pravnih institucija na britanskim presedanima, kolonisti su usvojili principe prirodnih prava i vladavine prava, koji će kasnije biti prizivani u revolucionarnoj retorici. Prisutnost ovih pravnih tradicija stvorila je osnovu na kojoj su američki lideri poput Tomasa Džefersona mogli da tvrde da je Kruna prekršila dugotrajne pravne norme, opravdavajući zahteve za nezavisnošću i oblikujući ih u terminima poznatim iz britanskog pravnog sistema (Library of Congress, *Rights of Englishmen in British America*).

Kolonijalni sudovi i skupštine nisu samo usvojili britansko običajno pravo već su ga i prilagodili svojim jedinstvenim okolnostima. Iako su zadržali osnovne principe engleskog prava, kao što su zaštita individualnih prava i vladavina prava, oni su istovremeno modifikovali određene aspekte kako bi bolje odgovarali kolonijalnom kontekstu. Na primer, kolonijalne zakonodavne skupštine često su donosile lokalne statute, koji su rešavali specifične potrebe i okolnosti

kolonija, a koje englesko pravo nije pokrivalo. Pored toga, primena engleskog običajnog prava ponekad je bila nedosledna, pod uticajem lokalnih običaja, ekonomskih uslova i stepena kraljevske kontrole. Ova selektivna adaptacija i modifikacija britanskih pravnih tradicija omogućila je kolonijama da potvrde svoja prava i autonomiju, a da istovremeno utemelje svoje pravne sisteme na poznatim engleskim principima. Međutim, kako su tenzije sa Britanijom rasle, te iste pravne tradicije postale su oruđe kolonista za osporavanje uočenih nepravdi, što je na kraju doprinelo ideološkoj osnovi Deklaracije nezavisnosti (Hand, *Courts in Early America*; Carrier, *Passages of Arms*).

Za američke kolonije, slučaj *Entick protiv Carringtona* imao je još veći značaj: pružio je pravni presedan za otpor zloupotrebama vlasti, jačajući argument da vladari moraju delovati u okvirima utvrđenog zakona. Kada su Džeferson i njegovi savremenici oblikovali Deklaraciju, oslanjali su se na ovu tradiciju tvrdeći da vlade svoju legitimnost izvode jedino kroz zakonitu vlast i zaštitu prirodnih prava. Tako je, dok je *Entik protiv Karingtona* u Britaniji prvobitno predstavljao odbranu slobode unutar monarhije, u Americi postao deo intelektualnog arsenala koji je opravdavao nezavisnost upravo od te iste monarhije (ibid.).

Mnogi kolonijalni lideri, uključujući Tomasa Džefersona i Džona Adamsa, bili su obrazovani u britanskim pravnim tradicijama, dobijajući formalnu i praktičnu obuku zasnovanu na engleskom običajnom pravu. Džeferson je započeo svoja pravna proučavanja nakon što je diplomirao na Koledžu „Vilijam i Meri" 1762. godine, šegrtujući kod Džordža Vajta, istaknutog pravnog učenjaka koji je naglašavao principe engleskog prava, prirodnih prava i moralnih obaveza vlade. Vajtovo mentorstvo ne samo da je Džefersonu prenelo tehnička znanja iz pravne prakse već mu je usadilo i duboko razumevanje filozofskih temelja prava, uključujući i ideju da je legitimna vlast ograničena i odgovorna narodu (*Thomas Jefferson: Life Before the Presidency*, Miller Center).
Slično tome, Džon Adams, obrazovan na koledžu Harvard, intenzivno

je proučavao sistem običajnog prava, fokusirajući se na „forme tužbi" i proceduralne strukture koje su uređivale pravne sporove u Engleskoj i kolonijama. Adamsovo upoznavanje sa engleskim pravnim rezonovanjem dalo mu je analitičke alate da tumači statute, procenjuje presedane i uverljivo se zalaže za zaštitu individualnih prava. I Džeferson i Adams prilagodili su ove britanske pravne koncepte kolonijalnom kontekstu, koristeći ih da artikulišu žalbe, opravdaju otpor politikama Krune i obezbede koherentan pravni i moralni osnov za nezavisnost. Njihovo obrazovanje osiguralo je da revolucionarni argumenti ne budu samo ideološki već čvrsto utemeljeni u priznatom pravnom okviru, povezujući britansku pravnu tradiciju sa nastajućim američkim političkim identitetom (Bernstein, 2020).

Ova rigorozna osnova u britanskom pravu i pravnom rezonovanju nije samo oblikovala praktične veštine kolonijalnih lidera već je obezbedila i intelektualni okvir kroz koji su razumeli fundamentalne principe pravde, individualne slobode i odgovornosti vlasti. Opremljeni ovim pravnim i filozofskim temeljem, ličnosti poput Džefersona i Adamsa mogle su da se oslone na šire tradicije prirodnog prava i prosvetiteljskog mišljenja kako bi artikulisale moralne i pravne argumente koji će podupreti Deklaraciju nezavisnosti.

Sledeći odeljak razmatra kako su ideje o prirodnim pravima i teoriji društvenog ugovora oblikovale kolonijalna shvatanja legitimne vlasti i prava pojedinaca.

III Prirodna prava i pravna filozofija

Nadovezujući se na svoje poznavanje britanskog običajnog prava, kolonijalni mislioci okrenuli su se širim filozofskim tradicijama prirodnog prava kako bi artikulisali urođena prava pojedinaca. Pod uticajem prosvetiteljskih filozofa poput Džona Loka, oni su naglašavali da su određena prava – život, sloboda i svojina – neotuđiva i da postoje nezavisno od vlasti. Ovi principi obezbedili su moralno i pravno

opravdanje za ograničavanje državne vlasti i isticanje zahteva kolonija protiv uočenih zloupotreba koje je počinila Kruna.

Razumevanje načina na koji se teorija prirodnih prava preplitala sa pravnim presedanima ključno je za praćenje intelektualnih temelja Deklaracije nezavisnosti i revolucionarnih argumenata koje ona sadrži. Lok je tvrdio da ta prirodna prava ne dodeljuje nijedan vladar ni vlada, već da su ona urođena ljudskoj prirodi, otkrivaju se razumom i važe za sve pojedince bez obzira na društvene zakone (Locke, *Locke's Political Philosophy*, Stanford).

Lokova teorija polazila je od toga da su u prirodnom stanju pojedinci slobodni i jednaki, vođeni prirodnim zakonom, koji nalaže da niko ne bi trebalo da nanosi štetu drugome u životu, zdravlju, slobodi i posedima. Ovaj koncept prirodnog zakona pružio je moralnu osnovu za ideju da legitimna vlast proizilazi iz pristanka onih kojima se vlada i da postoji kako bi zaštitila ova fundamentalna prava. Ako vlada to ne čini, isticao je Lok, narod ima pravo da je izmeni ili ukine – princip koji je direktno uticao na opravdanje američkih kolonija za traženje nezavisnosti (ibid.).

Štaviše, Lokovo insistiranje na podeli vlasti i principu vladavine većine odjeknulo je među kolonijalnim liderima, koji su nastojali da oblikuju svoju novu vladu na način koji bi sprečio koncentraciju moći i zaštitio individualne slobode. Ovi filozofski temelji, ukorenjeni u prirodnom pravu i Lokovoj političkoj teoriji, obezbedili su intelektualni okvir za Deklaraciju nezavisnosti, gde je Džeferson pisao o neotuđivim pravima koja je podario Stvoritelj, odražavajući Lokova tvrđenja o prirodnim pravima.

Nadovezujući se na ove ideje, Lokova politička filozofija dalje je razrađivala mehanizme putem kojih vlade treba da funkcionišu i ostanu odgovorne narodu. Tvrdio je da su u prirodnom stanju pojedinci slobodni i jednaki, vođeni prirodnim zakonom, te da ulaze u društveni ugovor kako bi formirali vlade koje štite njihova prava na život, slobodu i svojinu. Ovaj ugovor podrazumeva prenošenje

određenih ovlašćenja na vladu uz zadržavanje fundamentalnih prava, uspostavljajući princip da legitimna vlast zavisi od pristanka onih kojima se vlada.

Lok je takođe naglašavao pravo na revoluciju, tvrdeći da, ako vlada ne uspe da zaštiti ta prirodna prava ili deluje bez pristanka, narod ima opravdanje da je izmeni ili ukine. Pored toga, zalagao se za podelu vlasti i vladavinu većine kako bi se sprečila koncentracija autoriteta i obezbedilo da vlast odražava volju naroda. Ovi koncepti – društveni ugovor, pravo na revoluciju i strukturisana vlast – pružili su kolonijalnim liderima koherentan pravni i filozofski okvir, dopunjujući njihovo poznavanje britanskog običajnog prava i oblikujući ideološku osnovu na kojoj su Džeferson i drugi artikulisali principe Deklaracije nezavisnosti (ibid.).

Ser Edvard Kok zauzima centralno ali i osporavano mesto u genealoškom razvoju angloameričke ustavne misli, a njegov uticaj posebno je važan za razumevanje Deklaracije nezavisnosti kao hibridnog dokumenta koji spaja filozofiju prirodnih prava sa tradicijom običajnog prava. Kako Kejn pokazuje, Kok je transformisao srednjovekovne autoritete poput Magna Karte, Braktona i *Year Books* u živi mit o „drevnim slobodama", predstavljajući ih ne kao uske feudalne privilegije, već kao trajne garancije individualne slobode i ograničenja proizvoljne vlasti. U svojim *Institucijama* i izveštajima, Magna Karta je postala, Kejnovim rečima, „garancija individualne slobode i parlamentarne vlasti", dok je Peticija o pravima iz 1628. godine oblikovana kao deklaracija o „već postojećim pravima Engleza". Ovo novo tumačenje obezbedilo je američkim kolonistima časni rečnik otpora: kada su Džeferson i drugi tvrdili da je Džordž III prekršio „prava Engleza", oni su u velikoj meri prizivali Kokovu pravnu mitologiju da su engleske slobode večite i primenljive protiv Krune.

Jednako značajna za filozofsku dimenziju revolucionarnog prava jeste Kokova izjava u slučaju *Dr Bonham* da „običajno pravo može kontrolisati akte Parlamenta i ponekad ih proglasiti potpuno ništavnim". Iako Kejn upozorava da se ovo ne treba čitati kao direktnu

anticipaciju američke sudske revizije, srodnost sa rezonovanjem prirodnog prava jeste neosporna. Pravo se, za Koka, moglo meriti prema „opštem pravu i razumu", što implicira da zakonodavstvo koje je nesaglasno sa fundamentalnim principima može biti nevažeće. Za američke revolucionare, oblikovane Lokovom moralnom teorijom o životu, slobodi i svojini, Kokova tvrdnja pružila je pravno-istorijsku potporu, pokazujući da čak i unutar engleske jurisprudencije postoje presedani za ograničavanje suprematije Parlamenta ili prerogativa Krune.

Ipak, Kejn naglašava da je Kokovo nasleđe ispunjeno kontradikcijama. On je ponekad bio branilac kraljevske vlasti, njegovo učenje su oblikovale partijske borbe, a njegova karijera nije bila bez autoritarnih praksi. Kejn ukazuje da se Kokovo ime pojavljuje na nalozima koji su odobravali upotrebu torture i da je njegova uloga u vladi bila „u potpunosti usklađena sa autoritarnom rojalističkom vladom" u ranijim fazama njegove karijere. Ove kontradikcije naglašavaju da je revolucionarno prizivanje Koka bilo veoma selektivno: kolonisti su prihvatali odlomke koji podržavaju slobodu i konstitucionalizam, dok su ignorisali ili potiskivali nepovoljnije aspekte njegove biografije.

U tom smislu, Kok je u Američkoj revoluciji bio ne toliko dosledni teoretičar prirodnih prava koliko retorički i istorijski resurs – izvor pravnog autoriteta koji se mogao uskladiti sa filozofijom prosvetiteljstva. Prava filozofska osnova Deklaracije bio je Lok, ali Lokovi apstraktni principi dobijali su na ubedljivosti kada su predstavljani zajedno sa Kokovom pravnom naracijom o večitim pravima. Kejn eksplicitno naglašava ovu razliku, primećujući da, „ako je Kok bio pravna inspiracija Američke revolucije, Lok je bio filozofska". Džefersonov nacrt tako objedinjuje dve tradicije: Lokovo tvrđenje da su svi ljudi obdareni neotuđivim pravima po prirodi i tvrdnju da Englezi odavno uživaju slobode priznate običajnim pravom i učvršćene dokumentima poput Magna Karte i Peticije o pravima.
Ova sinteza proizvela je revolucionarni argument koji je bio i univerzalan i poseban: univerzalan u svom prizivanju prirodnih prava kao osnove političkog legitimiteta, a poseban u oblikovanju

kolonijalnih žalbi kao kršenja istorijskih engleskih sloboda. Kombinovanjem Kokovog pravnog jezika sa Lokovom filozofijom Deklaracija je stekla i neposrednost i autoritet, istovremeno se oslonivši na nasleđe običajnog prava kolonista i na šire prosvetiteljske ideale koji su mogli opravdati razlaz sa Britanijom.

Kejnova analiza stoga osvetljava kako su rezonovanje običajnog prava i filozofija prirodnog prava presecali jedno drugo u revolucionarnoj imaginaciji: Kok nije obezbedio filozofiju Deklaracije, ali bez njegove mitologizovane vizije običajnog prava tvrdnje Deklaracije o prirodnim pravima ne bi imale duboku istorijsku i pravnu rezonancu koja ih je činila ubedljivim za publiku 18. veka sa obe strane Atlantika (Keane, *Sir Edward Coke and the Common Law*).

Džefersonova slavna formulacija o „neotuđivim pravima" na „život, slobodu i težnju ka sreći" u Deklaraciji nezavisnosti najbolje se razume kao kulminacija Lokove filozofije prirodnih prava, prelomljene kroz idiome običajnog prava i religijsko-politički diskurs američkih kolonija. Kao što pokazuje Kristina Benham, Džefersonov originalni nacrt išao je dalje od konačne verzije naglašavajući božansko stvaranje kao osnov jednakosti: „svi ljudi su stvoreni jednaki i nezavisni, i iz tog jednakog stvaranja proizilaze prava urođena i neotuđiva". Ova svesna promena u odnosu na Deklaraciju prava Virdžinije Džordža Mejsona – gde su ljudi „rođeni jednako slobodni i nezavisni" – naglašavala je teološku osnovu, odražavajući Lokovo insistiranje u *Drugom traktatu* da, budući da su ljudi delo Božje, oni ne mogu biti potčinjeni jedni drugima bez pristanka i da svako poseduje prirodno pravo na život, slobodu i svojinu. Lok je objašnjavao da je život božanski dar, sloboda njegov neophodni uslov, a svojina produžetak sopstva kroz rad – trojstvo sažeto u njegovoj frazi „životi, slobode i imanja, koje nazivam opštim imenom Svojina".
Džefersonova čuvena zamena „težnje ka sreći" umesto „svojine" često je prikazivana kao odstupanje, ali, kako Benham tvrdi, bila je više prilagođavanje Lokovog okvira širem prosvetiteljskom moralnom jeziku ljudskog napretka, dok je i dalje bila u skladu sa Lokovim utemeljenjem prava u samom činu stvaranja. Štaviše, Džefersonovo

prvobitno formuliranje prava kao „svetih i neporecivih" pre nego što ih je Kongres izmenio u „samoevidentna" pokazuje kako je prvobitno zamišljao prava kao da imaju kvazireligijsku svetost, u skladu sa Lokovim tvrđenjem da su prava istovremeno racionalna i božanska. Džeferson je kasnije priznao da ne polaže pravo na originalnost, opisujući Deklaraciju kao „izraz američkog uma" i objašnjavajući da njen autoritet počiva „na usklađenim osećanjima tog doba", osećanjima koja su oblikovali Lok, Ciceron, Sidni i Aristotel, ali i decenije kolonijalnih religijskih i političkih debata.

Lokov uticaj nije bio ograničen na Džefersonovo proučavanje, već je prožimao američku kulturu 1770-ih. Novine, gradski sastanci i propovedi ponavljali su lokovske ideje u religijskom idiomu. *The Connecticut Courant* u maju 1775. godine izjavio je da su „prava čovečanstva, tj. lična sigurnost, sloboda i privatna svojina, izvedena iz velikog prvog uzroka – držana božanskim pravom, velikom Poveljom Onoga koji nas je stvorio, i prirodna su našem samom postojanju".

Gradski sastanci u Goramu u Masačusetsu i Njuportu na Roud Ajlendu slično su prizivali „zakon Božji i Britanski ustav" da se odupru imperijalnom oporezivanju. Zakonodavci Masačusetsa direktno su citirali Loka u sporovima sa kraljevskim guvernerima, dok su propovedi crpile i iz Svetog pisma i iz *Drugog traktata*, predstavljajući slobodu kao sam dah života – „onaj sam dah života koji je Bog udahnuo u čoveka kada je postao živa duša", kako je napisao sveštenik Džon Alen 1773. godine. Pamfletisti poput Džejmsa Otisa naširoko su citirali Loka, insistirajući da je prirodna sloboda nerazdvojiva od samoodržanja i da nikada ne može biti potpuno odrečena. Čak i moto „Žalba Nebu", ispisan na zastavama 1775. godine, poticao je direktno iz Lokovog tvrđenja da, kada zemaljski vladari iznevere poverenje, narod može prizvati Boga kao konačnog sudiju.

Do trenutka kada je Džeferson sastavio Deklaraciju, Lokov jezik prirodnih prava – život, sloboda, svojina, savest – bio je toliko poznat da su savremenici opisivali njegovo ime kao da nosi „neodoljivu ubedljivu moć" u svim političkim pitanjima. Džefersonov lični

religijsko-filozofski pogled dodatno je pojačao ovo lokovsko nasleđe. Iako je odbacivao ortodoksne hrišćanske doktrine, on je zastupao racionalnog Stvoritelja kao davaoca prava i razuma, ponavljajući Lokovo insistiranje da su „prava savesti sveta i neotuđiva" i da vlada mora biti ograničena na očuvanje života, slobode i svojine. Njegov *Statut Virdžinije o verskoj slobodi* kasnije je kristalisao ove principe, proglašavajući da je „Svemogući Bog stvorio um slobodnim" i osuđujući prinudu u pitanjima vere, u odjeku Lokovog *Pisma o toleranciji*. Džefersonova odluka da 1776. godine koristi jezik stvaranja i neotuđivih prava odražavala je ne samo prosvetiteljski racionalizam već i kolonijalnu tradiciju koja je povezivala građanske i verske slobode – tradiciju koju su ojačali evangelistički disidenti iz Velikog buđenja, tvrdeći da Bogom data prava savesti stoje rame uz rame sa pravima na život i svojinu.

Sintetišući Lokovo filozofsko trojstvo sa Kokovom mitologijom običajnog prava i religijskim idiomom kolonista, Džeferson je stvorio retoričku formulu koja je istovremeno bila pravna, filozofska i teološka. Čuvena trijada – „život, sloboda i težnja ka sreći" – otelovila je univerzalnost prirodnih prava, posvećenih činom stvaranja i prilagođenih političkoj stvarnosti raznolike kolonijalne publike. Ona je omogućila da Deklaracija govori istovremeno jezikom razuma, religije i prava: Lok je dao arhitekturu, Kok istorijski rečnik engleskih sloboda, a Džeferson elokvenciju da ta prava proglasi univerzalnim i „neotuđivim". Na taj način, Deklaracija je transformisala kolonijalni poziv na tradicionalna prava u revolucionarnu tvrdnju o samoupravi zasnovanoj i na prirodnom pravu i na božanskoj pravdi, obezbeđujući da Džefersonovo izražavanje odjekuje ne samo kao politički argument već i kao moralna istina (ibid.).

Tako je, oslanjajući Deklaraciju i na tradiciju Kokovog običajnog prava i na Lokovu filozofiju prirodnih prava, Džeferson oblikovao nezavisnost ne samo kao politički raskid već kao potvrdu univerzalnih principa koji prevazilaze i Parlament i Krunu.
Ipak, Deklaracija je bila više od filozofskog manifesta – bila je i pravna optužnica. Nakon što je uspostavio osnovu prirodnih prava i granice

političke vlasti, Džeferson je pokazao kako je Džordž III prekršio upravo te principe, predstavivši katalog žalbi koji je ilustrovao urušavanje vladavine prava u kolonijama.

IV Vladavina prava i žalbe u Deklaraciji

Deklaracija nezavisnosti nije bila samo izjava političkog prkosa; ona je bila i pravni spis utemeljen na angloameričkom principu vladavine prava. U tradiciji engleskog običajnog prava, legitimna vlast bila je definisana pridržavanjem utvrđenih zakona koji obavezuju i vladare i podanike (Lerner, *History of the Common Law*). Magna Karta (1215) ustanovila je da nijedna slobodna osoba ne može biti lišena slobode ni svojine bez zakonite presude svoje vršnjačke grupe, uvodeći princip da su čak i monarsi ograničeni pravnim normama (Landrith, *Magna Carta's Influence on the Declaration & U.S. Constitution*).

Ovaj princip potvrđen je u Peticiji o pravima (1628), koja je ograničila oporezivanje bez saglasnosti Parlamenta i osudila proizvoljna hapšenja (Petition of Right, *Britannica*), kao i u Engleskom zakoniku o pravima (1689), koji je proglasio da suverena vlast mora delovati u okviru zakona (UK Parliament, *Bill of Rights 1689*). Ovi tekstovi činili su osnovu angloameričkog shvatanja da je zakon, a ne vladareva volja, vrhovni autoritet.

Džeferson i Kontinentalni kongres svesno su ovo podvukli prilikom sastavljanja Deklaracije. Mnoge žalbe navedene protiv Džordža III nisu bile oblikovane kao politički nesporazumi, već kao kršenja fundamentalnih pravnih normi. Kraljevo odbijanje da odobri zakone, raspuštanje kolonijalnih zakonodavnih tela, nametanje poreza bez saglasnosti i uskraćivanje prava na suđenje porotom – sve su to bila kršenja principa odavno uspostavljenih u engleskoj ustavnoj tradiciji (Gilder Lehrman Institute, *Annotated Grievances*). Nabrajajući ove prestupe, Deklaracija je predstavila Džordža III kao tiranina koji je napustio vladavinu prava. Pravna formulacija bila je strateška: ona je pokazala i domaćoj i međunarodnoj javnosti da američka nezavisnost nije bila bezakonita pobuna, već logična odbrana prava

kada je uspostavljeni poredak zakazao (National Archives, *Stylistic Artistry of the Declaration*).

Ipak, Džeferson je otišao dalje od svojih engleskih prethodnika. Dok je englesko običajno pravo istorijski prizivano kako bi ograničilo kraljevske prerogative unutar monarhije, Deklaracija je univerzalizovala princip vladavine prava. Ona je tvrdila da sve vlade, a ne samo monarhije, moraju ostati odgovorne pred višim zakonom i da, kada dosledno krše fundamentalna prava, narod ima ovlašćenje da ih izmeni ili ukine (Locke, *Two Treatises of Government*). Tako je Deklaracija radikalizovala konzervativnu pravnu doktrinu, transformišući je iz sredstva za obuzdavanje kraljeva u univerzalno opravdanje za revoluciju (Burset, *Redefining the Rule of Law*).

V Politička evolucija pravnih ideja

Politička misao kolonista nije odmah prešla iz pravnog protesta u revoluciju; ona se razvijala kroz faze oblikovane i britanskim presedanom i američkim iskustvom. U početku su kolonijalni lideri tražili pravnu zaštitu unutar okvira britanskog prava. Peticije upućene kralju, rasprave u kolonijalnim skupštinama i pamfleti poput Džefersonovog *Pregleda prava Britanske Amerike* (1774) oblikovali su njihove žalbe kao pozive na „prava Engleza". U ovoj fazi cilj nije bila nezavisnost – naprotiv, kolonisti su zahtevali priznanje unutar britanskog ustavnog sistema (Jefferson, *Summary View of the Rights of British America*, TeachingAmericanHistory).
Međutim, kada su ovi zahtevi dosledno odbijani, kolonijalni lideri su sve više uviđali da britanski ustav ili nije voljan ili nije sposoban da zaštiti njihove slobode. Ovo saznanje izazvalo je preokret: umesto da se oslanjaju samo na istorijska engleska prava, revolucionari su počeli da ističu univerzalne principe prirodnog prava kao pravi temelj legitimne vlasti. Pravno rezonovanje – utemeljeno na Magna Karti, Peticiji o pravima i slučajevima poput *Entik protiv Karingtona* – pružalo je presedane, dok je filozofija prosvetiteljstva, posebno Lokova teorija prirodnih prava i društvenog ugovora, obezbeđivala

širu legitimnost. Sinteza ta dva pristupa omogućila je Amerikancima da tvrde da je njihova borba istovremeno istorijski utemeljena i univerzalno pravedna (ibid.).

Do 1776. godine, ova evolucija kulminirala je u Deklaraciji nezavisnosti, koja se čita kao pravna optužnica: preambula koja iznosi principe, spisak pojedinačnih prekršaja i zaključak koji proglašava nezavisnost kao jedino rešenje (National Archives, *Declaration History*). Po formi i funkciji, ona odražava tužbene podneske običajnog prava, transformišući vekove britanske ustavne tradicije u revolucionarni argument. Tako Deklaracija ilustruje kako se političke ideje razvijaju od konzervativnog pravnog protesta do radikalnog opravdanja revolucije kada uspostavljeni poredak prestane da funkcioniše (ibid.).

VI Zaključak

Deklaracija nezavisnosti, iako revolucionarna po svom efektu, bila je duboko konzervativna u svojim pravnim izvorima i jeziku. Daleko od napuštanja prava, američki osnivači su svoje argumente utemeljili na vekovnim tradicijama britanskog običajnog prava: Magna Karti, Peticiji o pravima, Engleskom zakoniku o pravima i sudskoj praksi koja je ograničavala suverenu vlast. Ovi pravni presedani, u kombinaciji sa filozofijom prirodnih prava koju je artikulisao Lok, obezbedili su intelektualni okvir za Džefersonov argument da vlade postoje samo uz pristanak onih kojima se vlada i da moraju biti vezane zakonom.

Ono što je Deklaraciju učinilo revolucionarnom nisu bili sami principi već njihova transformacija. Američki lideri su doktrine osmišljene da obuzdaju kraljeve unutar monarhije primenili univerzalno, kako bi opravdali potpuno odvajanje od te monarhije. Spajanjem konzervativne pravne tradicije običajnog prava sa radikalnom filozofijom prirodnih prava, Deklaracija je stvorila hibridni argument: ona je istovremeno bila odbrana „prava Engleza" i proklamacija univerzalnih prava čovečanstva.

Ovo dvostruko nasleđe objašnjava trajnu snagu Deklaracije. Ona govori i istorijskom trenutku iz 1776. godine i bezvremenim pitanjima prava i legitimiteta. Njeno nasleđe nas podseća da Američka revolucija nije bila odbacivanje prava, već njegovo ponovno prisvajanje, preoblikovano da služi novom političkom poretku. Utemeljujući nezavisnost na vladavini prava i prirodnim pravima, Džeferson i njegovi savremenici osigurali su da Sjedinjene Američke Države budu rođene ne kao pobuna protiv pravne tradicije već kao njeno najhrabrije tumačenje.

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Katarina Nikolić

The Influence of British Common Law on American Revolutionary Law: A Focus on the Declaration of Independence

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I Introduction

At first glance, the American Declaration of Independence appears to constitute a radical departure from Britain; yet its legal foundations lie in the very system the colonies sought to leave behind. This essay examines the claim that British common law and philosophy influenced the Declaration of Independence, questioning whether this influence was absolute or merely partial.

British traditions shaped colonial legal culture for over a century and, reinforced by John Locke's *Two Treatises of Government* (1689), instilled the belief that all people are born with natural rights to life, liberty, and property, that government exists only with the consent of the governed, and that rulers must remain bound by law. Crucially, Locke insisted that when governments violate these rights, the people have the authority to resist and establish new forms of rule, a radical idea that directly informed the language of the Declaration of Independence. (Locke, *Excerpts from the Second Treatise on Government*, Battlefields) Thomas Jefferson himself, in *A Summary View of the Rights of British America* (1774), drew heavily on British legal traditions and natural rights philosophy to argue that Parliament could not exercise arbitrary authority over the colonies. From a British perspective, these arguments were rooted in a long tradition of common law and constitutional limits on sovereign power, seen in cases such as *Entick v. Carrington* (1765) and in documents like the English Bill of Rights (1689), which affirmed that rulers were bound by law.

Yet Jefferson and the American revolutionaries transformed these principles by applying them to a colonial context, shifting from a call for recognition within the British system to a justification for complete independence. In this way, British common law provided the intellectual foundation, but it was the American experience of perceived injustice that radicalized those ideas into the revolutionary language of the Declaration.(Jefferson, *A Summary View of the Rights of British America*, Encyclopedia Virginia).Another example of British influence can be seen in the landmark case of *Entick v. Carrington* (1765), where the English courts ruled that government officials could not intrude upon private property without explicit legal authority. From a British

perspective, this decision reinforced the principle that the executive was bound by law and that individual rights were protected against arbitrary state action. For the American colonies, the case carried even greater significance: it provided a legal precedent for resisting abuses of power, strengthening the argument that rulers must act within the confines of established law. When Jefferson and his contemporaries framed the Declaration, they drew on this tradition by asserting that governments derive their legitimacy only through lawful authority and the protection of natural rights. Thus, while *Entick v. Carrington* was originally a British defense of liberty within the monarchy, in America it became part of the intellectual arsenal justifying independence from that very monarchy.(Entick v. Carrington, 1765).

This essay considers the extent to which British common law and philosophy influenced the Declaration of Independence, and whether their impact can be seen as fully decisive. In England in 1610, the *Case of Proclamations* challenged the idea that the monarch could, by proclamation alone, alter common law or create new offences without Parliament's consent. Sir Edward Coke famously held that "the King cannot change any part of the common law, nor create any offence, by his proclamation, which was not an offence before, without Parliament." From a British constitutional perspective, this was a foundational limitation on sovereign power—establishing that royal prerogative was not absolute and that law, not the will of the monarch, must govern. For American colonists, this legal principle provided part of the intellectual foundation for claims in the Declaration that the sovereign power must be constrained, that rights are inherent rather than granted, and that no ruler may arbitrarily impose burdens without legal basis. In this way, the *Case of Proclamations* represents a clear channel through which British legal traditions lent force to the ideals later expressed by Jefferson and his contemporaries.("hcommons record 8ex2p-4at71", hcommons).

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For the American colonies, the case carried even greater significance: it provided a legal precedent for resisting abuses of power, strengthening the argument that rulers must act within the confines of established law. When Jefferson and his contemporaries framed the Declaration, they drew on this tradition by asserting that governments derive their legitimacy only through lawful authority and the protection of natural rights. Thus, while *Entick v. Carrington* was originally a British defense of liberty within the monarchy, in America it became part of the intellectual arsenal justifying independence from that very monarchy.

British common law shaped colonial legal culture for over a century, providing a framework that emphasized natural rights, the rule of law, and limits on sovereign power. These principles, deeply embedded in British legal traditions, guided the American colonies in understanding the rights of individuals and the proper scope of government authority. As one scholar notes, British ideas concerning common law and natural law, and the efforts to establish political and civil rights under a monarchy, influenced the Founders in forming the ideology and procedures of the new nation's judicial system. (Halfond, 2022) Philosophers such as John Locke further articulated the natural rights of life, liberty, and property, while Thomas Jefferson, in works like *A Summary View of the Rights of British America* (1774), adapted these British legal and philosophical ideas to the American context. Jefferson carried these principles into the Declaration of Independence, framing them in the revolutionary language of unalienable rights and the people's authority to alter or abolish unjust government.

While the Declaration of Independence marked a decisive political separation from Britain, it was partly rooted in British Common Law principles—particularly natural rights, the rule of law, and the contract theory of government—but these ideas were adapted, transformed, and selectively applied by the American revolutionaries, who used them to justify independence rather than fully replicate British legal traditions.

II Background:
British Common Law and Colonial America

Common law, a legal system grounded in judicial precedent rather than comprehensive legislative codes, has profoundly shaped the legal landscapes of numerous countries, most notably the United States, the United Kingdom, and many nations within the Commonwealth. From its origins to the present day, common law has evolved into one of the world's most influential legal systems. Emerging in medieval England after the Norman Conquest of 1066, it developed out of a need for a unified and consistent system of justice across the realm. Its defining features—the reliance on case law and the principle of *stare decisis*, or adherence to precedent—allow it to adapt to changing circumstances while maintaining continuity. These characteristics made common law particularly influential in the American colonies, where settlers drew upon its principles to structure colonial legal systems, assert individual rights, and limit the exercise of government authority. Understanding the nature of common law is therefore essential for tracing how British legal traditions shaped colonial America and, ultimately, the ideological foundations of the Declaration of Independence.

In practice, colonial courts and legislative assemblies closely modeled themselves on British Common Law, adopting its procedures, principles, and legal reasoning as the standard for adjudicating disputes. Colonists generally considered themselves entitled to the same rights and protections as English subjects, including the rights to property, trial by jury, and protection from arbitrary authority. This adoption went beyond mere legal formality: it shaped the political and social expectations of colonial society, reinforcing ideas about lawful governance, individual rights, and limits on executive power. By grounding their legal institutions in British precedent, colonists internalized the principles of natural rights and the rule of law, which would later be invoked in revolutionary rhetoric. The presence of these legal traditions created a foundation upon which American leaders like Thomas Jefferson could argue that the Crown had violated long-standing legal norms, justifying claims for

independence while framing them in terms familiar from the British legal system.(Library of Congress, *Rights of Englishmen in British America*).

Colonial courts and assemblies not only adopted British common law but also adapted it to their unique circumstances. While they maintained the core principles of English law, such as the protection of individual rights and the rule of law, they also modified certain aspects to better fit the colonial context. For instance, colonial legislatures often enacted local statutes that addressed specific needs and circumstances of the colonies, which were not covered by English law. Additionally, the application of English common law was sometimes inconsistent, influenced by local customs, economic conditions, and the degree of royal control. This selective adaptation and modification of British legal traditions allowed the colonies to assert their rights and autonomy while still grounding their legal systems in familiar English principles. However, as tensions with Britain escalated, these same legal traditions became tools for the colonists to challenge perceived injustices, ultimately contributing to the ideological foundation of the Declaration of Independence.(Hand, *Courts in Early America*) (Carrier, *Passages of Arms*)

In *Entick v. Carrington*, the English courts ruled that government officials could not enter private property without explicit legal authority. This landmark decision reinforced the principle that the executive was bound by law and that individual rights were protected against arbitrary state action. The case became a foundational precedent in British legal tradition, emphasizing that the state may act only within the boundaries of the law.(Entick v. Carrington, 1765).
For the American colonies, *Entick v. Carrington* carried even greater significance: it provided a legal precedent for resisting abuses of power, strengthening the argument that rulers must act within the confines of established law. When Jefferson and his contemporaries framed the Declaration, they drew on this tradition by asserting that governments derive their legitimacy only through lawful authority and the protection of natural rights. Thus, while *Entick v. Carrington*

was originally a British defense of liberty within the monarchy, in America it became part of the intellectual arsenal justifying independence from that very monarchy. (ibid.)

Many colonial leaders, including Thomas Jefferson and John Adams, were trained in British legal traditions, receiving both formal and practical instruction grounded in English common law. Jefferson began his legal studies after graduating from the College of William & Mary in 1762, apprenticing under George Wythe, a prominent legal scholar who emphasized the principles of English law, natural rights, and the moral obligations of government Wythe's mentorship not only taught Jefferson the technicalities of legal practice but also instilled a deep understanding of the philosophical foundations of law, including the idea that legitimate government is limited and accountable to the people.("Thomas Jefferson: Life Before the Presidency", Miller Center)
Similarly, John Adams, educated at Harvard College, studied the common law system intensively, focusing on the "forms of action" and procedural structures that governed legal disputes in England and the colonies. Adams's exposure to English legal reasoning gave him the analytical tools to interpret statutes, evaluate precedent, and argue persuasively for the protection of individual rights. Both Jefferson and Adams adapted these British legal concepts to the colonial context, using them to articulate grievances, justify resistance to Crown policies, and provide a coherent legal and moral rationale for independence. Their education ensured that revolutionary arguments were not merely ideological but firmly grounded in a recognized legal framework, bridging British legal tradition with the emerging American political identity.(Bernstein, 2020).

This rigorous grounding in British law and legal reasoning not only shaped the practical skills of colonial leaders but also provided the intellectual framework through which they understood fundamental principles of justice, individual liberty, and government accountability. Equipped with this legal and philosophical foundation, figures like Jefferson and Adams could draw upon the broader

traditions of natural law and Enlightenment thought to articulate the moral and legal arguments that would underpin the Declaration of Independence. The next section examines how these ideas of natural rights and contract theory informed colonial conceptions of legitimate government and the rights of individuals.

III Natural Rights and Legal Philosophy

Building on their grounding in British common law, colonial thinkers turned to the broader philosophical traditions of natural law to articulate the inherent rights of individuals. Influenced by Enlightenment philosophers such as John Locke, they emphasized that certain rights—life, liberty, and property—were inalienable and existed independently of government. These principles provided the moral and legal justification for limiting governmental authority and asserting the colonies' claims against perceived abuses by the Crown. Understanding how natural rights theory intersected with legal precedent is crucial for tracing the intellectual foundations of the Declaration of Independence and the revolutionary arguments it embodies.

Locke argued that these natural rights were not granted by any ruler or government but were inherent to human nature, discoverable through reason, and applicable to all individuals regardless of societal laws. (Locke, *Locke's Political Philosophy*, Stanford)

Locke's theory posited that in the state of nature, individuals were free and equal, governed by natural law, which dictated that no one ought to harm another in their life, health, liberty, or possessions. This concept of natural law provided a moral foundation for the idea that legitimate government arises from the consent of the governed and exists to protect these fundamental rights. If a government fails to do so, Locke asserted, the people have the right to alter or abolish it—a principle that directly influenced the American colonies' justification for seeking independence.(ibid.)

Moreover, Locke's emphasis on the separation of powers and the principle of majority rule resonated with colonial leaders who sought to structure their new government in a way that would prevent

the concentration of power and protect individual liberties. These philosophical foundations, rooted in natural law and Locke's political theory, provided the intellectual framework for the Declaration of Independence, where Jefferson famously wrote of unalienable rights endowed by the Creator, echoing Locke's assertions of natural rights.

Building on these ideas, Locke's political philosophy further elaborated the mechanisms by which governments should operate and remain accountable to the people. He argued that in the state of nature, individuals are free and equal, governed by natural law, and that they enter into a social contract to form governments that protect their rights to life, liberty, and property. This contract entails transferring certain powers to the government while retaining fundamental rights, establishing the principle that legitimate authority depends on the consent of the governed. Locke also emphasized the right of revolution, asserting that if a government fails to safeguard these natural rights or acts without consent, the people are justified in altering or abolishing it. Additionally, he advocated for a separation of powers and majority rule to prevent the concentration of authority and to ensure that governance reflects the will of the populace. These concepts—social contract, right of revolution, and structured government—provided colonial leaders with a coherent legal and philosophical framework, complementing their grounding in British common law and shaping the ideological foundation upon which Jefferson and others articulated the principles of the Declaration of Independence.(ibid.)

Sir Edward Coke occupies a central yet contested place in the genealogy of Anglo-American constitutional thought, and his influence is especially important for understanding the Declaration of Independence as a hybrid document that merges natural-rights philosophy with common-law tradition. As Keane shows, Coke transformed medieval authorities such as Magna Carta, Bracton, and the Year Books into a living myth of "ancient liberties," portraying them not as narrow feudal privileges but as enduring guarantees of individual freedom and limits on arbitrary power. In his Institutes

and reports, Magna Carta became, in Keane's words, "a guarantee of individual liberty and Parliamentary government," and the Petition of Right of 1628 was framed as a declaration of "the pre-existing rights of Englishmen."This reinterpretation supplied the American colonists with a venerable vocabulary of resistance: when Jefferson and others claimed that George III had violated the "rights of Englishmen," they were in large part invoking Coke's legal mythology that English liberties were immemorial and enforceable against the Crown. Equally significant for the philosophical dimension of revolutionary law is Coke's statement in *Dr Bonham's Case* that "the common law will controul Acts of Parliament, and sometimes adjudge them to be utterly void."Although Keane cautions against reading this as a direct anticipation of American judicial review, the resonance with natural-law reasoning is unmistakable: law, for Coke, could be measured against "common right and reason," implying that legislation inconsistent with fundamental principles could be invalid. For American revolutionaries steeped in Locke's moral theory of life, liberty, and property, Coke's dictum provided legal-historical reinforcement, showing that even within English jurisprudence there were precedents for limiting the supremacy of Parliament or the prerogatives of the Crown. Yet Keane also insists that Coke's legacy is riddled with ambiguities. He was at times a defender of royal authority, his scholarship was shaped by partisan battles, and his career was not untainted by authoritarian practices—Keane points out that Coke's name "appears on warrants authorising the use of torture"and that his role in government was "entirely consistent with authoritarian royalist government" in earlier stages of his career.These contradictions underline that the revolutionary invocation of Coke was highly selective: colonists embraced the passages that supported liberty and constitutionalism while ignoring or suppressing the less flattering aspects of his record. In this sense, Coke's role in the American Revolution was less as a consistent theorist of natural rights than as a rhetorical and historical resource, a source of legal authority that could be harmonized with Enlightenment philosophy. The real philosophical backbone of the Declaration was Locke, but Locke's abstract principles gained

persuasive power when presented alongside Coke's legal narrative of immemorial rights. Keane explicitly highlights this distinction, noting that "if Coke was the legal inspiration of the American Revolution, Locke was the philosophical one."Jefferson's draft thus fuses two traditions: the Lockean claim that all men are endowed with inalienable rights by nature, and the claim that Englishmen had long possessed liberties recognized by common law and fortified by documents like Magna Carta and the Petition of Right. The synthesis produced a revolutionary argument that was both universal and particular: universal in its appeal to natural rights as the basis of political legitimacy, and particular in its framing of colonial grievances as violations of historic English liberties. By combining Coke's legal idiom with Locke's philosophy, the Declaration gained both immediacy and authority, simultaneously appealing to the common-law heritage of the colonists and to the broader Enlightenment ideals that could justify separation from Britain. Keane's analysis therefore illuminates how common-law reasoning and natural-law philosophy intersected in the revolutionary imagination: Coke did not provide the philosophy of the Declaration, but without his mythologized vision of the common law, the Declaration's natural-rights claims would have lacked the deep historical and legal resonance that made them compelling to eighteenth-century audiences on both sides of the Atlantic.(Keane, *Sir Edward Coke and the Common Law*)

Jefferson's celebrated formulation of "unalienable Rights" to "Life, Liberty and the pursuit of Happiness" in the Declaration of Independence is best understood as the culmination of Locke's natural-rights philosophy refracted through both common-law idioms and the religious-political discourse of the American colonies. As Kristina Benham shows, Jefferson's original draft went further than the final version in stressing divine creation as the basis of equality: "all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable". This deliberate change from George Mason's Virginia Declaration of Rights—where men were "born equally free and independent"—underscored a theological foundation, echoing Locke's insistence

in the *Second Treatise* that because men are God's workmanship, they cannot be subjected to one another without consent, and that they each possess a natural right to life, liberty, and property. Locke explained that life is a divine gift, liberty its necessary condition, and property the extension of self through labor, a trinity summarized in his phrase "Lives, Liberties and Estates, which I call by the general Name, Property." Jefferson's famous substitution of "the pursuit of Happiness" for "property" has often been portrayed as a departure, but as Benham argues, it was more an adaptation of Locke's framework to the broader Enlightenment moral language of human flourishing, while still consistent with Locke's grounding of rights in creation itself. Moreover, Jefferson's initial phrasing of rights as "sacred and undeniable" before Congress edited it to "self-evident" illustrates how he originally conceived of rights as having a quasi-religious sanctity, resonating with Locke's claim that rights are both rational and divine. Jefferson later admitted that he did not claim originality, describing the Declaration as an "expression of the American mind" and explaining that its authority rested "on the harmonizing sentiments of the day," sentiments shaped by Locke, Cicero, Sidney, and Aristotle but also by decades of colonial religious and political debate. Locke's influence was not confined to Jefferson's study but had saturated American culture by the 1770s. Newspapers, town meetings, and sermons reiterated Lockean ideas in a religious idiom. The Connecticut Courant in May 1775 declared that "the rights of mankind, viz. to personal security, liberty, and private property, are derived from the great first cause—are holden by a divine tenure, the great Charter of him that made us, and are natural to our very existence". Town meetings in Gorham, Massachusetts and Newport, Rhode Island likewise invoked "the law of God and the British Constitution" to resist imperial taxation. Massachusetts legislators cited Locke directly in disputes with royal governors, while sermons drew from both Scripture and the *Second Treatise*, portraying liberty as the breath of life itself—"that very breath of life that God breathed into man when he became a living soul," as Reverend John Allen wrote in 1773. Pamphleteers like James Otis quoted Locke extensively, insisting that natural liberty was inseparable from self-preservation

and could never be totally surrendered. Even the motto "An Appeal to Heaven," emblazoned on banners in 1775, came directly from Locke's assertion that when earthly rulers break trust, people may appeal to God as the ultimate judge. By the time Jefferson drafted the Declaration, Locke's language of natural rights—life, liberty, property, conscience—was so familiar that contemporaries described his name as carrying "irresistibly persuasive" weight in all matters of politics. Jefferson's personal religious-philosophical outlook amplified this Lockean inheritance. While rejecting orthodox Christian doctrines, he upheld a rational Creator as the giver of rights and reason, repeating Locke's insistence that "the rights of conscience are sacred and unalienable" and that government must be limited to preserving life, liberty, and property. His Virginia Statute for Religious Freedom later crystallized these principles, declaring that "Almighty God hath created the mind free" and condemning coercion in matters of faith, echoing Locke's *Letter Concerning Toleration*. Jefferson's decision to use the language of creation and unalienable rights in 1776 reflected not only Enlightenment rationalism but also a colonial tradition that linked civil and religious liberty—a tradition strengthened by evangelical dissenters of the Great Awakening, who argued that God-given rights of conscience stood alongside the rights to life and property.

By synthesizing Locke's philosophical trinity with Coke's common-law mythology and the colonists' religious idiom, Jefferson produced a rhetorical formula that was at once legal, philosophical, and theological. The famous triad—"Life, Liberty and the pursuit of Happiness"—embodied the universality of natural rights, sanctified by creation, and adapted to the political realities of a diverse colonial audience. It allowed the Declaration to speak simultaneously in the language of reason, religion, and law: Locke gave the architecture, Coke the historical vocabulary of English liberties, and Jefferson the eloquence to declare these rights universal and "unalienable." In this way, the Declaration transformed the colonial appeal to traditional rights into a revolutionary claim to self-government grounded in both natural law

and divine justice, ensuring that Jefferson's phrasing would resonate not only as political argument but as moral truth. (ibid.)

Thus, by grounding the Declaration in both the common-law tradition of Coke and the natural-rights philosophy of Locke, Jefferson framed independence as not merely a political rupture but as an assertion of universal principles that transcended Parliament and Crown alike.
Yet the Declaration was more than a philosophical manifesto—it was also a legal indictment. Having established the foundation of natural rights and the limits of political authority, Jefferson turned to demonstrate how George III had violated those very principles, presenting a catalogue of grievances that illustrated the collapse of the rule of law in the colonies.

IV Rule of Law and Grievances in the Declaration

The Declaration of Independence was not merely a statement of political defiance; it was also a legal brief rooted in the Anglo-American principle of the rule of law. In the English common-law tradition, legitimate authority was defined by adherence to established law that bound rulers as well as subjects.(Lerner, *History of the Common Law*) Magna Carta (1215) established that no free person could be deprived of liberty or property without lawful judgment by peers, introducing the principle that even monarchs were constrained by legal norms.(Landrith, *Magna Carta's Influence on the Declaration & U.S. Constitution*) This principle was reaffirmed in the Petition of Right (1628), which restricted taxation without parliamentary consent and condemned arbitrary imprisonment, (Petition of Right, Britannica) and in the English Bill of Rights (1689), which declared that sovereign power must operate within the law. (UK Parliament, *Bill of Rights 1689*)These texts formed the foundation of the Anglo-American understanding that law, not the will of the ruler, is supreme.
Jefferson and the Continental Congress deliberately echoed this tradition when drafting the Declaration. Many of the grievances

listed against George III are framed not as political disagreements but as breaches of fundamental legal norms. The King's refusal to assent to laws, dissolution of colonial legislatures, imposition of taxes without consent, and denial of jury trials all violated principles long established in English constitutional tradition.(Gilder Lehrman Institute, *Annotated Grievances*) By cataloguing these offenses, the Declaration presented George III not as a lawful monarch but as a tyrant who had abandoned the rule of law. The legal framing was strategic: it demonstrated to both domestic and international audiences that American independence was not lawless rebellion but the logical defense of legal rights when the established order had failed.(National Archives, *Stylistic Artistry of the Declaration*)

Yet Jefferson went further than his English predecessors. Where English common law had historically been invoked to limit royal prerogative within a monarchy, the Declaration universalized the rule-of-law principle. It asserted that *all* governments, not just monarchies, must remain accountable to higher law, and that when they consistently violate fundamental rights, the people have the authority to alter or abolish them.(Locke, *Two Treatises of Government*) Thus, the Declaration radicalized a conservative legal doctrine, transforming it from a check on kings into a universal justification for revolution.(Burset, *Redefining the Rule of Law*)

V Political Evolution of Legal Ideas

The colonists' political thought did not leap immediately from legal protest to revolution; it evolved through stages shaped by both British precedent and American experience. Initially, colonial leaders sought redress within the framework of British law. Petitions to the King, debates in colonial assemblies, and pamphlets such as Jefferson's *A Summary View of the Rights of British America* (1774) framed their grievances as appeals to the "rights of Englishmen." At this stage, independence was not the goal—rather, colonists demanded recognition within the British constitutional system. (Jefferson, *Summary View of the Rights of British America*, TeachingAmericanHistory)

When these appeals were consistently rejected, however, colonial leaders increasingly recognized that the British constitution was either unwilling or unable to protect their liberties. This realization prompted a shift: instead of merely invoking historic English rights, revolutionaries began to assert universal principles of natural law as the true foundation of legitimate government. Legal reasoning—anchored in Magna Carta, the Petition of Right, and cases like *Entick v. Carrington*—provided precedents, while Enlightenment philosophy, especially Locke's theory of natural rights and the social contract, supplied broader legitimacy. The synthesis of the two allowed Americans to argue that their struggle was both historically grounded and universally just. (ibid.)

By 1776, this evolution culminated in the Declaration of Independence, which reads like a legal indictment: a preamble stating principles, a bill of particulars cataloguing offenses, and a conclusion declaring independence as the only remedy.(National Archives, *Declaration History*) In form and function, it mirrors common-law pleadings, transforming centuries of British constitutional tradition into a revolutionary argument. The Declaration thus illustrates how political ideas evolve from conservative legal protest to radical justification for revolution when the established order ceases to function.(ibid.)

VI Conclusion

The Declaration of Independence, though revolutionary in its effect, was deeply conservative in its legal sources and language. Far from abandoning law, the American founders rooted their case in the centuries-old traditions of British common law: Magna Carta, the Petition of Right, the English Bill of Rights, and the case law that limited sovereign power. These legal precedents, combined with the philosophy of natural rights articulated by Locke, provided the intellectual scaffolding for Jefferson's argument that governments exist only with the consent of the governed and must be bound by law.

What made the Declaration revolutionary was not the principles themselves but their transformation. American leaders took

doctrines designed to restrain kings within a monarchy and applied them universally to justify breaking from that monarchy altogether. By fusing the conservative legal tradition of common law with the radical philosophy of natural rights, the Declaration created a hybrid argument: it was at once a defense of the "rights of Englishmen" and a proclamation of the universal rights of mankind.

This dual heritage explains the enduring power of the Declaration. It speaks both to the historical moment of 1776 and to timeless questions of law and legitimacy. Its legacy reminds us that the American Revolution was not a rejection of law but a reclaiming of it, reshaped to serve a new political order. In grounding independence in the rule of law and natural rights, Jefferson and his contemporaries ensured that the United States would be born not as a rebellion against legal tradition but as its boldest reinterpretation.

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„Život, sloboda i težnja **ka sreći**”: kako je Deklaracija nezavisnosti inspirisala migraciju u Sjedinjene Američke Države

Apstrakt

Deklaracija o nezavisnosti, usvojena 1776. godine, predstavlja jedan od najuticajnijih političkih dokumenata u modernoj istoriji.[1] Da bi se odbranila nezavisnost američkih kolonija od britanske vlasti, njena najtrajnija tvrdnja glasi da su svi ljudi „obdareni od svog Tvorca određenim neotuđivim pravima, među kojima su život, sloboda i težnja ka sreći".[2] Međutim, njeni principi su ubrzo prevazišli taj konkretni slučaj, postavši univerzalno oličenje slobode, poštovanja i ljudskih prava. Ukorenjena u prosvetiteljskoj misli i kolonijalnom iskustvu, Deklaracija je opravdavala raskid sa Britanijom – ali njena najmoćnija i najtrajnija ideja jeste da su „svi ljudi stvoreni jednaki". Ona je, takođe, služila kao svetionik za ljude širom sveta koji su bežali od ugnjetavanja, siromaštva i progona. Tokom vekova, ovi ideali su inspirisali bezbroj migranata da potraže novi život u Sjedinjenim Američkim Državama. Za njih, Sjedinjene Države su predstavljale više od puke destinacije; one su bile obećanje mogućnosti i zaštite. Ovaj esej istražuje kako su osnovni principi Deklaracije – naročito njeno isticanje života, slobode i težnje ka sreći – uticali na imigraciju u SAD tokom godina.

1 United States Department of State. (n.d.). *The Declaration of Independence, 1776*. Office of the Historian . https://history.state.gov/milestones/1776-1783/declaration#:~:text=By%20issuing%20the%20Declaration%20of,colonists'%20motivations%20for%20seeking%20independence.

2 Gwinnett, B., Hall, L., & Walton, G. et. al, (2025, August 7). *Declaration of independence: A transcription*. National Archives and Records Administration. https://www.archives.gov/founding-docs/declaration-transcript

Sadržaj

Uvod

Deklaracija o nezavisnosti, usvojena 4. jula 1776. godine, proistekla je iz perioda dubokih nemira i revolucionarnih ideja. Prvenstveno ju je napisao Tomas Džeferson, a ona je obrazložila opravdanost američkih kolonija za raskid sa britanskom vlašću. Deklaracija, koja se temeljila na prosvetiteljskim principima, tvrdila je da svi ljudi imaju neotuđiva prava, kao što su „život, sloboda i težnja ka sreći", i da vlade svoju legitimnost crpe iz saglasnosti onih kojima vladaju. Iako je njen prvobitni cilj bila mobilizacija podrške za nezavisnost, njena poruka je imala uticaj daleko izvan neposrednog istorijskog konteksta. Deklaracija se razvila u simbol za one koji traže slobodu i prilike, kao i u predstavu univerzalnih ljudskih prava.

Ovaj rad tvrdi da su osnovne ideje Deklaracije služile ne samo kao simbolično obećanje već i kao praktična inspiracija za migraciju u Sjedinjene Američke Države. Očekujući ostvarenje ovih prava, ljude iz celog sveta privlače Sjedinjene Države od kolonijalnog perioda pa sve do današnjeg dana. Pokazaćemo kako je Deklaracija oblikovala reputaciju Amerike kao zemlje nade, pružajući istorijski pregled, analizirajući značajne političke lidere, ispitujući iskustva imigranata i razmatrajući ustavni razvoj. U središtu ove rasprave biće slučaj *Jik Vo protiv Hopkinsa*, istorijska presuda koja je ispitala da li se osnivački ideali nacije zaista odnose i na imigrante.

Univerzalna privlačnost Deklaracije o nezavisnosti

Deklaracija o nezavisnosti uticala je na svet više nego bilo koji drugi američki dokument. Pošto je prva upotrebila naziv *Sjedinjene Američke Države*, Deklaracija je bila od suštinskog značaja za američku istoriju. Na taj način, ona je služila ne samo kao rodni list nacije već i kao njen prvi zakon o imigraciji.[3] Njen jezik je uveo revolucionarnu viziju vlade zasnovanu na univerzalnim ljudskim pravima. Deklaracija je u početku bila direktan odgovor na određene pritužbe protiv britanske vlasti, pre nego što je mogla

3 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, pg, 489. https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf

da postane simbol slobode i migracije. Antimigracione politike kralja Džordža III, koje su sve više frustrirale kolonije sredinom 18. veka, predstavljaju jedan od ključnih faktora koji su doveli do Američke revolucije. Britanske regulative su počele da ometaju pokušaje kolonija da privuku imigrante već 1760-ih i početkom 1770-ih godina, što je usporilo ekonomski razvoj i demografsko širenje Novog sveta. U svom delu *Pregled prava Britanske Amerike* iz 1774. godine, Tomas Džeferson[4] je izrazio snažno neodobravanje ovih ograničenja i osudio kralja što sprečava ljude da napuste svoje domovine i osnuju nove civilizacije u Americi. Dve godine kasnije, 1776. godine, ovaj stav je ugrađen u Deklaraciju o nezavisnosti, gde je Džeferson izričito naveo kraljeve pokušaje da „spreči naseljavanje ovih država"[5] tako što „ometa zakone o naturalizaciji stranaca"[6] i „odbija da usvoji druge zakone koji bi podstakli njihovu migraciju ovamo", istakavši ovo kao jednu od njegovih „nepravdi i uzurpacija".[7]

Ova ograničenja imigracije posmatrana su kao kršenje kolonijalne autonomije i urođenih prava, a ne samo kao neslaganja oko politike. Amerika će, usled ovog ideološkog raskola oko kontrole imigracije, preispitati pojam političkog članstva, što će takođe biti jedan od pokretača za donošenje Deklaracije o nezavisnosti. Deklaracija je u suštini preoblikovala političko članstvo kolonija tako što je najavila raskid sa Britanijom i razvila nove nacionalne odanosti. Ona je pretvorila britanske podanike u građane Sjedinjenih Američkih Država i uspostavila principe inkluzivne demokratije zasnovane na saglasnosti, a ne na poreklu. U simboličkom smislu, sam čin proglašenja nezavisnosti predstavljao je čin imigracije, odricanje od jednog suverenog identiteta da bi se pristupilo novoj

4 Jefferson, T. (1774). A Summary View of the Rights of British America. The Avalon Project. Yale Law School .https://avalon.law.yale.edu/18th_century/jeff-summ.asp

5 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, pg, 489. https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf pg. 490

6 Ibid,490.

7 Ibid, 490.

političkoj zajednici. Stručnjaci tu simboličku obnovu tumače kao postavljanje prvog filozofskog i pravnog presedana za zemlju prijateljski nastrojenu prema imigrantima.[8]

Prirodna prava, univerzalni ideali i temelji migracije

Tomas Džeferson je imao ključnu ulogu u oblikovanju ideala ugrađenih u Deklaraciju o nezavisnosti, posebno pojma da je migracija fundamentalno ljudsko pravo. U svom pamfletu iz 1774. godine, *Pregled prava Britanske Amerike*, Džeferson je izneo ovo uverenje još pre usvajanja Deklaracije.[9] On je tvrdio da ljudi imaju neotuđivo pravo „da napuste zemlju u koju ih je slučaj, a ne izbor, smestio, da traže nove naseobine i da tamo osnuju nove zajednice".[10] Ova moćna ideja, da ljudi imaju slobodu da traže slobodu u inostranstvu i da nisu ograničeni geografijom ili mestom rođenja, postavila je ideološki okvir za novu koncepciju Amerike kao utočišta za one koji traže slobodu i bolji život, odnosno kao zemlje koja će na kraju postati globalni simbol prilika, nade i težnje ka sreći.

Sa svojim univerzalnim jezikom, sama Deklaracija je pojačala i proširila ovaj koncept. Tekst izjavljuje da su „svi ljudi stvoreni jednaki" i da su „od svog Tvorca obdareni određenim neotuđivim pravima", kao što su „život, sloboda i težnja ka sreći". Dalje se navodi da vlade dobijaju „svoju pravednu vlast od saglasnosti onih kojima vladaju" kako bi zaštitile ova prava. Važno je napomenuti da ova retorika nije bila ograničena na pojedince sa pravnim ili političkim statusom; Deklaracija nije pravila razliku između građana i negrađana – ili to nije mogla, jer je ratifikovana 1776. godine, pre nego što je pojam američkog državljanina i postojao.[11] Umesto toga, ona je uspostavila filozofski i moralni okvir koji je prevazišao nacionalne granice i političke klasifikacije, potvrđujući prava koja svaki čovek ima samo po osnovu svog postojanja. Generacije imigranata koje su smatrale da je preseljenje u Sjedinjene Američke Države njihova prilika za

8 Ibid, 490.

9 Ibid, 493.

10 Ibid, 493.

11 Ibid, 493.

slobodu i dostojanstvo bile su inspirisane ovim univerzalizmom, koji je postavio konceptualne osnove da se proširi obećanje prava i prilika i na buduće američke državljane. Zajedno, Džeferson i Deklaracija o nezavisnosti uspostavili su Sjedinjene Američke Države kao svetionik za one koji žele novi početak, kao naciju koja se otcepila, tvrdeći pravo na samoopredeljenje i prirodno pravo na migraciju. Sa ovim okvirom, Deklaracija o nezavisnosti postala je trajan izvor motivacije za imigraciju u Sjedinjene Američke Države.

Deklaracija o nezavisnosti nudi moralni i filozofski okvir na kojem su zasnovane ustavne ideje, iako se Ustav Sjedinjenih Američkih Država smatra najvišim pravnim okvirom zemlje. Mada je više pravno formalizovan i strukturisan, Ustav često koristi termin *osobe* umesto *građani*, posebno u Poglavlju o pravima, što sugeriše da su mnoga njegova zagarantovana prava primenljiva na sve koji su pod jurisdikcijom SAD.[12] Univerzalna tema Deklaracije, koja tvrdi da su „svi ljudi stvoreni jednaki" i da imaju „neotuđiva prava" na „život, slobodu i težnju ka sreći", vodila je razvoj tumačenja Ustava. Prethodne presude Vrhovnog suda, kao što je *Jik Vo protiv Hopkinsa* (1886), u kojoj je Sud potvrdio da svi Amerikanci imaju pravo na ustavna prava bez obzira na njihovo državljanstvo ili poreklo, jasan su primer ovog uticaja.[13] Ova ključna presuda biće obrađena detaljnije kasnije u radu kako bi se pokazalo kako su principi Deklaracije uticali na američko imigraciono pravo.

Filozofski koreni Deklaracije i njen globalni uticaj

Osnivači su verovali da legitimna vlast počiva na saglasnosti onih kojima vlada i da postoji pre svega radi zaštite prirodnih prava pojedinaca. Oni su prihvatili ideju društvenog ugovora, u kojem građani i vlada dele međusobnu odgovornost za očuvanje slobode i pravde. Jedan od stubova američkog političkog sistema jeste koncept društvenog ugovora. Ovaj koncept se odnosi na ideju da država postoji isključivo da služi volji naroda, jer narod predstavlja izvor

12 Ibid, 492.

13 Ibid, 497

sve političke moći kojom država raspolaže. Ovu moć narod može dodeliti ili odbiti.[14]

Deklaracija je tvrdila da, kada vlada postane pogubna po ova prava, građani imaju ne samo pravo već i dužnost da je izmene ili ukinu.[15] Pozivajući se na „duži niz zloupotreba" kralja Džordža III, Osnivači su opravdali nezavisnost kao neophodan odgovor na kršenje njihovih osnovnih ljudskih prava. Oni su, takođe, smatrali da je objašnjavanje ove odluke svetu moralna obaveza, zasnovana na „primerenom poštovanju mišljenja čovečanstva".[16] Ove ideje nisu samo položile temelje američkoj demokratiji već su odzvanjale i preko granica, pomažući u oblikovanju savremene diskusije o međunarodnim ljudskim pravima. Pored toga, uticaj Deklaracije brzo je prevazišao međunarodne granice i proširio se na slične osnivačke tekstove u drugim zemljama. Džefersonovi principi posebno su navedeni u Francuskoj Deklaraciji o pravima čoveka i građanina (1789), čija preambula odzvanja američkim „samoočiglednim" istinama, navodeći da se ljudi „rađaju i ostaju slobodni i jednaki u pravima".[17] Prvi nacrt je sastavio markiz De Lafajet uz pomoć Tomasa Džefersona, a predstavljen je Francuskoj Nacionalnoj skupštini samo nekoliko dana pre napada na Bastilju.[18] Iako su pojedinci kao što su Emanuel Žozef Sijes i grof of Miraboa dovršili konačni nacrt, on je kasnije uključen u Francuski ustav iz 1791. godine. Postavio je temelje demokratskim reformama, nastojeći da ukine monarhiju i

14 Kelly, M. (2025, April 28). *The social contract and its impact on American politics*. ThoughtCo. Retrieved August 24, 2025, from https://www.thoughtco.com/social-contract-in-politics-105424

15 National Archives and Records Administration. (n.d.). *Declaration of Independence: A transcription*. National Archives. Retrieved August 24, 2025, from https://www.archives.gov/founding-docs/declaration-transcript

16 Ibid.

17 Elysee. (2012, November 16). *The Declaration of the Rights of Man and of the Citizen*. elysee.fr. https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen

18 American Battlefield Trust. (n.d.). *Lafayette's draft of the Declaration of the Rights of Man and of the Citizen*.https://www.battlefields.org/learn/primary-sources/lafayettes-draft-declaration-rights-man-and-citizen

očuva suverenitet naroda.[19] Ovaj dokument, koji je u velikoj meri bio pod uticajem američke Deklaracije, postao je model za Univerzalnu deklaraciju o ljudskim pravima Ujedinjenih nacija i uticao je na globalnu diskusiju o ljudskim pravima.[20]

Ho Ši Min, osnivač i prvi predsednik Demokratske Republike Vijetnam, upotrebio je iste reči u Vijetnamskoj deklaraciji o nezavisnosti iz 1945. godine, počevši sa: „Svi ljudi su stvoreni jednaki", kako bi uspostavio nacionalno samoopredeljenje i, decenijama kasnije, izgradio argument za međunarodno priznanje u Aziji.[21]

Naturalizacija, državljanstvo i mešovito nasleđe kolonijalne migracije: kratka istorija imigracione politike SAD

Složena dinamika kolonijalne vlasti, prinudne migracije i promenjeni pojmovi političkog članstva predstavljaju temelj istorije američke imigracije, koja datira još mnogo pre osnivanja Sjedinjenih Država. Evropske merkantilističke zemlje, posebno Velika Britanija, regulisale su imigraciju, naturalizaciju i političko i ekonomsko učešće u periodu od 1607. do 1776. godine.[22] Zakoni o naturalizaciji u britanskim kolonijama često su bili blaži nego u matičnoj zemlji; kako bi privukle naseobine, kolonijalne vlade nudile su zemlju, olakšice u otplati dugova i brzu naturalizaciju. Ipak, počev od 1700. godine, Britanski parlament je počeo da ograničava kolonijalnu vlast nad naturalizacijom, što je dovelo do Plantažnog zakona iz 1740. godine. On je postavio strože zahteve i verska ispitivanja za strane državljane koji su želeli da postanu građani Engleske nakon sedam godina prebivališta.[23] Kroz naturalizaciju, imigranti, uglavnom protestanti iz Evrope, postajali su britanski podanici i dobijali pravo vlasništva nad

19 Ibid.

20 Ibid.

21 Menand, L. (2019, July 4). *The Declaration heard around the world*. The New Yorker. https://www.newyorker.com/news/daily-comment/the-declaration-heard-around-the-world

22 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immigration policy from the colonial period to the present day* (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 Pg. 2

23 Ibid, 2.

zemljom, pravo glasa, pravo da obavljaju javne funkcije i zakonito vode poslovanje. Ovo je značajno jer je kolonijalni pravni, ekonomski i politički život bio isključivo dostupan britanskim podanicima. Parlament je, takođe, ograničio kolonijalnu naturalizaciju do 1773. godine, što je povećalo kolonijalne frustracije. Kralj je „pokušavao da spreči naseljavanje ovih država, u te svrhe ometajući zakone o naturalizaciji stranaca, odbijajući da usvoji druge zakone koji bi podstakli njihovu migraciju ovamo".[24]

Prema Džefersonovom kasnijem pisanju u Deklaraciji o nezavisnosti, pojam nezavisnosti i samoupravljanja kolonija postao je u velikoj meri zasnovan na imigraciji i naturalizaciji, što je potvrđeno ovom direktnom kritikom kralja Džordža III. Pravo kolonija da napreduju i upravljaju svojom sudbinom bilo je narušeno kraljevskim ograničenjima, koja su posmatrana kao nešto više od običnih administrativnih prepreka. Stoga je Deklaracija predstavljala snažnu odbranu slobodne migracije i samostalnog građenja nacije, pored toga što je bila javna deklaracija nezavisnosti.

Tokom kolonijalne ere postojala su dva različita tipa migracije: prinudna i dobrovoljna. Neke imigrante su dovodili u kolonije protiv njihove volje, ali mnogi su dolazili u potrazi za ekonomskim prilikama, pristupačnom zemljom i verskom slobodom. Prema britanskom zakonu, oko 50.000 zatvorenika poslato je u Severnu Ameriku, često birajući prinudno premeštanje umesto smrti.[25] Štaviše, više od 388.000 Afrikanaca porobljeno je i primorano da služi u kolonijama.[26] Iako je u teoriji predstavljalo oblik migracije, ropstvo je bilo toliko surovo i degradirajuće da se teško može svrstati u narative o migracijama. Ipak, oba ova nasleđa – težnja i isključenje – uticala su na demografske osnove Amerike i ukazivala na suptilnu ulogu koju će migracija igrati u definisanju slobode.

24 HistoryHome. (2016, January 12). *The American Declaration of Independence: 4 July 1776*. https://www.historyhome.co.uk/c-eight/america/decind2.htm

25 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immigration policy from the colonial period to the present day* (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 Pg. 3

26 Ibid, 3.

Nakon sticanja nezavisnosti, jedno od prvih pitanja sa kojim se suočila nova nacija bilo je kako definisati državljanstvo. *Jus soli* (pravo tla), *jus sanguinis* (pravo krvi) i obećana odanost – jedinstveno američko razumevanje u kojem odanost i dobrovoljno građansko učešće predstavljaju put ka punopravnom članstvu u naciji – jesu tri osnovna koncepta koja su se pojavila.[27] Osnivači su u ranim godinama nakon Deklaracije naglašavali da će se građanski identitet osobe određivati njenom odanošću, a ne mestom rođenja ili poreklom. Državljanstvo je postalo pitanje namernog političkog opredeljenja, dok je nova nacija radila na tome da se ujedini i zaštiti.[28]

Uprkos ovom inkluzivnom osnovu, neki osnivači su izražavali zabrinutost zbog kulturnog i socijalnog sastava nove nacije – zbog kulturnih, jezičkih i verskih razlika. Ipak, Tomas Džeferson je ponudio liberalniju perspektivu, smatrajući da Sjedinjene Države treba da primaju imigrante kako bi brzo povećale svoje stanovništvo i omogućile razvoj i napredak. Kako je naveo: „Sadašnja želja Amerike jeste da proizvede brz rast stanovništva, što većim uvozom stranaca".[29] Obezbeđujući radnu snagu, obrađujući ogromne površine zemlje i prikupljajući poreze za otplatu dugova nacije, Džeferson i drugi zagovornici slobodne imigracije smatrali su da će povećanje stanovništva pomoći rastu zemlje. Ova harmonija između transparentnosti i razboritosti takođe je predstavljena u Ustavu SAD. Važno je napomenuti da on nije izričito davao federalnoj vladi moć da kontroliše imigraciju. Umesto toga, omogućavao je vladi da stvori „jednak pravilnik o naturalizaciji" u skladu sa Članom I, Sekcijom 8. To znači da je imigracija prvo poverena pojedinačnim državama, što je rezultiralo decentralizovanim sistemom u kojem lokalne politike određuju ko može da se nastani unutar svake države, čak i dok Kongres kontroliše naturalizaciju i put do državljanstva.[30] Ova razlika je ključna za razumevanje ranog američkog pristupa: odluke o prijemu i naseljavanju ostale su lokalizovane, dok je put do

27 Ibid, 4.

28 Ibid. 4.

29 Ibid, 5.

30 Ibid,5.

državljanstva bio pod kontrolom federalne vlade.

Činjenica da su Osnivači prioritet davali proširenju zemlje nad kulturnom raznolikošću jasan je pokazatelj njihovih prioriteta. Novoj republici je trebalo da više ljudi naseli njenu teritoriju, razvije resurse i ojača ekonomiju. Ova praktična potreba za povećanjem stanovništva često je prevazilazila druge brige i dovodila do politika koje podstiču imigraciju, pomažući da se izgradi imidž Amerike kao zemlje prilika i novih početaka.[31] Međutim, mnogi rani američki lideri smatrali su da svi koji borave u Sjedinjenim Državama treba da imaju prava navedena u Ustavu, a ne samo građani. Demokratskorepublikanci, koji su tvrdili da imigranti koji još nisu stekli državljanstvo SAD (negrađani) takođe treba da budu zaštićeni prema američkom zakonu, naročito su prihvatali ovu teoriju. Oni su isticali da, umesto da se Ustav i Deklaracija o nezavisnosti odnose samo na *građane*, oba dokumenta koriste opšte izraze poput *narod* i *osobe*.[32] Ovo formulisanje je jasno pokazivalo da svako, bez obzira na pravni status, ima pravo na osnovna prava kao što su život, sloboda i težnja ka sreći.

Džejms Medison, koji se često naziva ocem Ustava, zbog značajnog doprinosa u sastavljanju Ustava i Poglavlja o pravima, bio je jedan od najposvećenijih zagovornika ovog koncepta.[33] Medison je smatrao da negrađane ne treba nepravedno tretirati samo zato što nisu rođeni u Sjedinjenim Državama. On je upozoravao da oduzimanje prava negrađanima može pružiti mogućnost vlasti da zloupotrebi moć i pribegne represiji. Medison je verovao da je, kako bi se očuvala sloboda i sprečilo nepravedno postupanje vlade prema pojedincima, od ključnog značaja da se prava dodele svima, a ne samo građanima.[34]

31.Ibid, 6.

32 Ibid,5.

33 Morgan, Richard E., "Book Review: James Madison: The Founding Father. by Robert Allen Rutland; James Madison on the Constitution and the Bill of Rights. by Robert J. Morgan; the Last of the Fathers: James Madison and the Republican Legacy. by Drew R. McCoy." (1990). Constitutional Commentary. 882. https://scholarship.law.umn.edu/concomm/882 pg.187

34 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immi-*

Nadovezujući se na Medisonovu logiku, šira pravna tradicija Sjedinjenih Država potvrdila je ideju da svi koji žive u zemlji imaju ista osnovna prava, a ne samo građani. Univerzalne tvrdnje Deklaracije o nezavisnosti da su „svi ljudi stvoreni jednaki" i da poseduju „neotuđiva prava", kao što su „život, sloboda i težnja ka sreći", direktno se ogledaju u ovoj ideji. Ova ideja je ojačana Ustavom SAD, koji je građanima davao samo ograničen skup prava: pravo glasa i pravo da se kandiduju za federalne funkcije, dok su sva ostala prava ostala neograničena.[35] Sloboda izražavanja primenjivala se univerzalno i podjednako na sve Amerikance tokom Medisonovog predsedništva, bez obzira na to da li je glas dolazio od šire javnosti ili medija.[36] Medison se protivio ograničavanju slobode govora na određene grupe ili identitete jer je razumeo da bi to moglo postati opasno sredstvo za zloupotrebu vlasti, kao što je tvrdio da prava moraju važiti i za negrađane pod jurisdikcijom SAD. Pored toga, Peti i Četrnaesti amandman odnose se na *osobe* umesto na *građane*, što garantuje da osnovna prava, kao što su jednaka zaštita i pravičan postupak, važe za sve koji su pod jurisdikcijom SAD.[37] Štaviše, „optuženi" imaju prava vezana za krivične postupke, uključujući: javno suđenje, suđenje pred porotom, pravnu zastupljenost i mogućnost suočavanja sa tužiocima. Upravo prema ovim amandmanima *narodu* su dodeljene slobode govora, veroispovesti i privatnosti.[38]

Vrhovni sud je dosledno zauzimao stav da Klauzula o pravičnom postupku štiti sve, uključujući negrađane, bez obzira na to da li je

gration policy from the colonial period to the present day (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 pg. 6.

35 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297 pg. 370

36 Gaughan, A. J. (2020). James Madison, Citizens United, and the constitutional. *American University Law Review*, 69(5), 1161–1200 https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2165&context=aulr pg. 1491

37 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297 pg. 370

38 Ibid, 371

njihovo prisustvo legalno ili ilegalno, i da se Klauzula o jednakoj zaštiti odnosi na „sve osobe pod teritorijalnom jurisdikcijom, bez obzira na razlike u nacionalnosti".[39] Na kraju, američko pravo je usvojilo Medisonovu perspektivu, koja je naglašavala da oni koji duguju poslušnost američkim zakonima zauzvrat treba da dobiju zaštitu. „Stranci nisu straniji zakonu nego što su strani Ustavu; ipak, neće biti sporno da, pošto duguju, s jedne strane, privremenu poslušnost, imaju pravo, zauzvrat, na svoju zaštitu i korist".[40] Jedinstven položaj Amerike kao odredišta u kojem su prava vezana za ličnost, a ne za mesto rođenja omogućen je ovim pravnim sistemom, koji je zasnovan na doktrini prirodnih prava Deklaracije. On naglašava ideju da je ljudska priroda temelj osnovnih prava u Sjedinjenim Državama, što je nasleđe koje i dalje podstiče migraciju.

Ova rana posvećenost zaštiti prava negrađana pokazala je da se Sjedinjene Države percipiraju kao zemlja u kojoj stranci dobijaju pošten tretman, kao slobodna zemlja u kojoj bilo ko, sa bilo kog mesta u svetu, može tražiti bolji život. Kasnije u američkoj pravnoj istoriji, ova ideja zaštite negrađana postala je ključno pitanje, posebno onda kada su imigranti branili svoja prava.
Slučaj Vrhovnog suda *Jik Vo protiv Hopkinsa*, koji će biti obrađen u narednom odeljku, značajan je primer ovoga. On pokazuje kako su garancije Deklaracije o nezavisnosti o jednakosti, slobodi i životu zaštićene na sudu, čak i za negrađane.

„Jik Vo protiv Hopkinsa": praktična primena Deklaracije

Odluka Vrhovnog suda u slučaju *Jik Vo protiv Hopkinsa* (1886) jedan je od najznačajnijih primera kako su principi Deklaracije o nezavisnosti pretočeni u pravnu zaštitu za negrađane. U ovom slučaju, sud je razmatrao da li negrađani – konkretno, kineski imigranti – imaju pravo na ustavnu zaštitu prema Četrnaestom amandmanu. U slučaju *Jik Vo protiv Hopkinsa, 118 U.S. 356* (1886)[41]

39 Ibid, 372

40 Ibid, 371

41 Yick Wo v. Hopkins, 118 U.S. 356 (1886) https://supreme.justia.com/cases/federal/us/118/356/

tužioci su osporavali odredbu San Franciska koja, iako na prvi pogled neutralna, diskriminiše osobe kineskog porekla tako što im, u osnovi, zabranjuje da vode praonice veša.

Četrnaesti amandman Ustava glasi: „Nijedna država neće oduzeti nijednoj osobi život, slobodu ili imovinu bez zakonskog postupka; niti će bilo kojoj osobi pod svojom jurisdikcijom uskraćivati jednaku zaštitu zakona".[42] Ovo tumačenje odražava univerzalističku filozofiju koja je prvi put usvojena u Deklaraciji o nezavisnosti, a koja glasi da su „svi ljudi stvoreni jednaki" i da su „od svog Tvorca obdareni određenim neotuđivim pravima", uključujući „život, slobodu i težnju ka sreći".[43]U slučaju *Jik Vo*, sud je izričito pozvao na ove principe, naglašavajući da status državljanstva ne ograničava osnovna prava. Prema sudu, diskriminatorsko pravilo je kineskim vlasnicima praonica uskratilo „sredstva za život"[44] oduzimajući im „osnovna prava na život, slobodu i težnju ka sreći". Stručnjaci za pravo se slažu da je Vrhovni sud u slučaju *Jik Vo* svoju odluku zasnovao na konceptu jednakosti iz Deklaracije o nezavisnosti. Koristio je ili se oslanjao na poznatu izjavu Deklaracije – „svi ljudi su stvoreni jednaki" – kako bi pokazao zašto Ustav SAD treba da štiti sve, a ne samo građane, prema članku Amande Frost pod nazivom *Independence and Immigration*. U suštini, ideju da i negrađani treba da imaju pravnu zaštitu bez obzira na poreklo ili imigracioni status podržalo je obećanje Deklaracije o jednakosti.[45] Slučaj *Jik Vo protiv Hopkinsa* postavio je presedan za sudove koji su kasnije priznali da i negrađani imaju ustavna prava. Vrhovni sud je u

42 National Archives and Records Administration. (n.d.). *14th Amendment to the U.S. Constitution: Civil Rights (1868)*. https://www.archives.gov/milestone-documents/14th-amendment

43 U.S. National Archives and Records Administration. (n.d.). *Declaration of Independence: A transcription*. https://www.archives.gov/founding-docs/declaration-transcript

44 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf pg. 498

45 Ibid, 523.

ovoj odluci jasno stavio do znanja da Ustav štiti „sve osobe", a ne samo građane Sjedinjenih Država, prema Amandi Frost. Ovo je bilo u skladu sa osnovnim načelom Deklaracije o nezavisnosti da svi, a ne samo članovi određenih grupa, treba da imaju slobodu i prava.[46]

Ova odluka u slučaju *Jik Vo* nije bila jednokratan događaj, već je postavila ton za buduće slučajeve. Ista logika je primenjena u naknadnim sudskim postupcima. Na primer, *Plyler v. Doe* (1982) jeste još jedan značajan slučaj koji je potvrdio principe Deklaracije o nezavisnosti za negrađane. Teksaski zakon koji je pokušavao da uskati besplatnu javnu edukaciju deci bez dokumenata poništen je odlukom Vrhovnog suda u ovom slučaju. Sud je odbacio Teksaski argument da imigranti bez dokumenata nisu „osobe" u smislu Četrnaestog amandmana. Imigranti bez dokumenata, uključujući decu bez legalnog statusa, ipak su „osobe" sa pravom na jednaku zaštitu prema zakonu, prema mišljenju devet sudija. Vilijam Dž. Brenan Jr., istaknuti sudija Vrhovnog suda, poznat po snažnoj podršci individualnim pravima i građanskim slobodama, autor je mišljenja većine u slučaju *Plyler v. Doe*, u kome je naveo: „Bez obzira na njegov status prema imigracionim zakonima, stranac je sigurno 'osoba' u uobičajenom smislu tog termina".[47]

Ukratko, slučaj *Jik Vo protiv Hopkinsa* postavio je temelje i doprineo osiguranju da garancije Deklaracije o životu, slobodi i sreći važe ne samo za građane SAD već za sve koji žive u Americi. Sjedinjene Države se globalno percipiraju kao nacija u kojoj svako, pa čak i imigranti, može živeti slobodno zbog ovog principa, koji je postao osnovna komponenta američkog prava. Ispitivanje šireg uticaja Deklaracije na američko imigraciono pravo, naročito progresivno manje doktrine plenarnog ovlašćenja – gde su sudovi tradicionalno davali Kongresu široku diskreciju u pogledu imigracionih ograničenja – počinje sa ovim pravnim presedanom.

Evoluirajuća uloga Deklaracije: ka inkluzivnijoj ustavnoj viziji

Iako je pravni sistem odavno priznao ustavna prava negrađana

46 Ibid, 523.

47 Ibid, 500.

koji žive u Sjedinjenim Državama, tretman onih koji pokušavaju da se pridruže naciji išao je drugačijim pravnim putem. Prema tzv. doktrini plenarnog ovlašćenja, Savezna vlada je istorijski imala široku kontrolu nad odlukama koje se tiču prijema i deportacije negrađana. Ovo ovlašćenje je povremeno određivalo različite nivoe ustavne zaštite za osobe koje su na ivici ulaska u Sjedinjene Države u odnosu na one koji su već tamo.[48] Ali, umesto da predstavlja kontradikciju, ovo ilustruje kako posvećenost Amerike individualnim pravima i nacionalnom suverenitetu mora biti izbalansirana. Ohrabrujuće je što je Vrhovni sud počeo da prepoznaje važnost usklađivanja imigracionih praksi sa osnovnim idealima nacije. Sud je u nekim slučajevima, poput *Landon v. Plasencia* (1982) i *Zadvydas v. Davis* (2001), odredio prava na pravičan postupak za neke negrađane, kao što su povratni stalni stanovnici i oni koji se suočavaju sa dugotrajnim pritvorom.[49] Ove odluke pokazuju da sudstvo postaje osetljivije na principe iz Deklaracije o nezavisnosti, posebno na njenu potrebu za zaštitom „neotuđivih prava", kao što su „život, sloboda i težnja ka sreći".

Ovi uticaji se u pravnoj nauci nazivaju „fantomske norme" – principi koji usmeravaju sudove ka tumačenjima koja su u skladu sa univerzalističkom vizijom Deklaracije, iako često nisu izričito navedeni.[50] Ovi standardi ukazuju na sveobuhvatniji koncept pravde i dostojanstva koji vodi savremenu ustavnu interpretaciju. Profesor po imenu Hiroši Motomura primećuje da čak i u oblastima koje su obično predmet zakonodavne diskrecije, ti principi tiho utiču na odluke u vezi sa imigracijom. U suštini, čak i ako ustavna pravila direktno ne važe, njihovi principi i dalje utiču na način na koji sudovi tumače imigracione zakone.[51] Deklaracija nezavisnosti i dalje deluje kao moralni kompas, čak i kada Ustav daje Saveznoj vladi značajnu kontrolu nad imigracionom politikom. Ona podstiče SAD da usvoje politike koje podržavaju njihovu nepokolebljivu posvećenost slobodi, pravdi i ljudskom dostojanstvu. Ovo nasleđe doprinosi

48 Ibid, 524.

49 Ibid, 533–534.

50 Ibid, 538.

51 Ibid, 506.

globalnom ugledu Sjedinjenih Država kao nacije prilika i lidera u unapređenju ljudskih prava. Univerzalni principi Deklaracije mogu dalje usmeravati imigraciono zakonodavstvo ka inkluzivnosti kako se pravni sistem razvija, jačajući reputaciju zemlje kao gostoljubive i moralno ispravne demokratije.

Deklaracija nezavisnosti imala je suptilan ali značajan uticaj na imigraciono pravo, što je vidljivo kroz dosledne promene u pravnoj interpretaciji. Prema akademicima, njeni univerzalni principi i dalje služe kao „fantomske norme", podstičući sudije da štite prava negrađana i unapređuju pravdu.[52] Uprkos činjenici da doktrina plenarnog ovlašćenja i dalje postoji, postaje moguće primeniti inkluzivniji i na pravima zasnovan pristup migraciji zahvaljujući proimigracionim idealima Deklaracije i njenom naglasku na jednakosti. Dakle, iako je doktrina plenarnog ovlašćenja i dalje moćna, univerzalni principi Deklaracije nastavljaju da utiču i ukazuju na postepeni prelazak ka inkluzivnijem, na pravima zasnovanom okviru za imigraciju, koji potvrđuje američki identitet kao zemlje osnovane na slobodi, jednakosti i prilikama.

Imigraciona politika u 21. veku

Iako je Deklaracija nezavisnosti sastavljena kako bi podržala odvajanje američkih kolonija od Britanije, ona je ubrzo stekla univerzalni karakter koji prevazilazi njen prvobitni politički cilj. Njeno proglašenje „neotuđivih prava" služilo je i kao kamen temeljac za stvaranje Ustava SAD i kao vodič za ljude koji traže slobodu i prilike van svojih granica. Prema naučnicima, Deklaracija je „proglasila principe čiji domet se proteže daleko izvan okolnosti 1776. godine",[53] utičući na očekivanja ljudi koji su stigli na američko tlo, kao i na američko samoprihvatanje. Ovi principi služili su kao simbolični poziv za imigrante, posebno krajem 19. i početkom 20. veka. Masovna migracija bila je podstaknuta obećanjem SAD o slobodi i jednakosti, što je ovu zemlju izdvajalo od stroge klasne strukture i monarhija Evrope. Prema Vajtu, fokus Deklaracije na jednakost „delovao je kao kulturni magnet", uveravajući milione

52 Ibid, 538.

53 Ibid, 489

imigranata da Amerika može pružiti bolji život zasnovan na prilikama i pravdi.[54] Ipak, rani imigracioni i državljanski propisi nacije otkrivali su neusaglašenosti između temeljnih principa i političke stvarnosti, uprkos univerzalističkoj viziji jednakosti i prava Deklaracije nezavisnosti. Talasi migracije iz Evrope i šire podstaknuti su Deklaracijom, koja tvrdi da su „svi ljudi stvoreni jednaki", što je mnogim strancima ulivalo veru da su Sjedinjene Države mesto prilika i slobode.[55]

Međutim, afrički robovi, domorodački narodi, a kasnije i mnogi imigranti iz Azije praktično su isključeni iz naturalizacije kada je Kongres usvojio Zakon o naturalizaciji iz 1790. godine, prvi savezni zakon koji je utvrdio pravila državljanstva, a koji je ograničio naturalizaciju na „slobodne bele osobe" dobrog moralnog karaktera.[56] Uprkos isključenju, migranti su nastavili da dolaze zbog simbolične vrednosti slobode, jednakosti i težnje za srećom. Ova pravna barijera pokazala je koliko su obećanja Deklaracije moćna, iako je ona odražavala ograničeno tumačenje toga ko može imati pristup tim pravima. Prema Frostu, kako je svaki novi talas imigranata reinterpretirao značenje pripadnosti zemlji izgrađenoj na retorici univerzalnih prava, ovaj paradoks – između aspirativnih ideala i restriktivne prakse – stvarao je dinamičnu napetost koja je vekovima oblikovala američku imigracionu politiku.[57]

Deklaracija nezavisnosti i dalje utiče na pojmove jednakosti, slobode i ljudskih prava. Njeni ideali, koji prikazuju sliku društva koje poštuje život, slobodu i težnju ka sreći, motivisali su generacije migranata da se presele u Sjedinjene Države u potrazi za prilikama. Iako zakoni i politike povremeno nisu ispunjavali ove principe,

54 White, K. M. (2011). The Declaration of Independence and immigration in the United States of America. *Norteamérica, Revista Académica del CISAN-UNAM, 6*(3), 211–228. https://doi.org/10.22201/cisan.24487228e.2011.3.151 pg. 215

55 Ibid, 219-220.

56 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297

57 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf

Deklaracija i daljesluži kao simboličan priručnik koji oblikuje rasprave o socijalnoj pravdi, imigraciji i građanskim pravima. Prema naučnicima, njen univerzalni diskurs i dalje privlači ljude iz celog sveta i jača ideju da su Sjedinjene Države zemlja izgrađena na obećanju jednakosti i slobode.

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Eva Ristic

"Life, Liberty, and the Pursuit of Happiness": How the Declaration of Independence Inspired Migration to the United States.

Eva Ristich

Abstract

The Declaration of Independence, adopted in 1776, stands as one of the most influential political documents in modern history.[1] In order to defend the American colonies' independence from British authority, its most enduring assertion—that all people are "endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness"[2] was first put forth. However its principles soon went beyond that particular instance, becoming a universal representation of liberty, respect, and human rights. Rooted in Enlightenment thought and colonial experience, the Declaration justified breaking from Britain—but its most powerful and lasting idea was that "all men are created equal." It also served as a beacon for people worldwide who were fleeing oppression, poverty, and persecution. Over the centuries, these ideals have inspired countless migrants to seek a new life in the United States. For them, the United States represented more than just a destination; it was a promise of opportunity and protection. This essay examines how the fundamental principles of the Declaration—specifically, its emphasis on life, liberty, and the pursuit of happiness—have influenced immigration to the US over the years.

1 United States Department of State. (n.d.). *The Declaration of Independence, 1776*. Office of the Historian . https://history.state.gov/milestones/1776-1783/declaration#:~:text=By%20issuing%20the%20Declaration%20of,colonists'%20motivations%20for%20seeking%20independence.

2 Gwinnett, B., Hall, L., & Walton, G. et. al, (2025, August 7). *Declaration of independence: A transcription*. National Archives and Records Administration. https://www.archives.gov/founding-docs/declaration-transcript

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Introduction:

The Declaration of Independence, adopted on July 4, 1776, emerged from a period of profound unrest and revolutionary thought. Drafted primarily by Thomas Jefferson, it articulated the American colonies' justification for breaking away from British rule. The Declaration, which was based on Enlightenment principles, claimed that all people have "unalienable Rights," such as "Life, Liberty, and the Pursuit of Happiness," and that the consent of the governed gave governments their legitimacy. Although its initial goal was to mobilise support for independence, its message had an impact well beyond its immediate setting. The Declaration evolved into a symbol for those seeking freedom and opportunity as well as a representation of universal human rights. This essay argues that the Declaration's core ideals served not only as a symbolic promise but also a practical inspiration for migration to the United States. The expectation that these rights will be fulfilled has attracted people from all over the world to the United States from the colonial era to present day. This essay will demonstrate how the Declaration influenced America's reputation as a land of hope by providing a historical overview, analysing significant political leaders, examining the experience of immigrants, and analysing constitutional developments. Central to this discussion will be the case of Yick Wo v. Hopkins, a landmark decision that tested whether the nation's founding ideals truly extended to immigrants.

The Universal Appeal of the Declaration of Independence

The Declaration of Independence has influenced the world more than any other American document. Since it was the first to use the name the United States of America, the Declaration has been essential to American history. In this way, it served not only as the nation's birth certificate but also as its first immigration law.[3] Its language introduced a revolutionary vision of government rooted in universal human rights. The Declaration was initially a direct response to particular complaints against British authority before it could come to represent freedom and migration. King George III's anti-immigration policies, which frustrated the colonies more and more over the middle of the 18th century, are one of the crucial factors that led to the American Revolution. British regulations had started to impede colonial attempts to draw immigrants by the 1760s and early 1770s, which stunted the New World's economic growth and population expansion. In his Summary View of the Rights of British America, published in 1774,[4]Thomas Jefferson expressed his extreme disapproval of these limitations and denounced the King for stopping people from leaving their home nations and founding new civilisations in America. Two years later, in 1776, this sentiment was incorporated into the Declaration of Independence, where Jefferson specifically named the King's attempts to "prevent the population of these States"[5] by "obstructing the Laws for Naturalisation of Foreigners"[6] and "refusing to pass others to encourage their migrations hither"[7] as

3 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, pg, 489. https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf

4 Jefferson, T. (1774). A Summary View of the Rights of British America. The Avalon Project. Yale Law School .https://avalon.law.yale.edu/18th_century/jeff-summ.asp

5 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, pg, 489. https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf pg. 490

6 Ibid,490.

7 Ibid, 490.

one of his "injuries and usurpations."[8] These immigration limits were viewed as infringements on colonial autonomy and inherent rights, not only disagreements over policy. America would redefine political membership as a result of this ideological split over immigration control, which would also serve as one of the impetus for the country's declaration of independence. The Declaration essentially redefined political membership for the colonies by announcing a break with Britain and developing new national allegiances. It turned British subjects into citizens of the United States and established the principles of an inclusive democracy based on consent rather than heritage. In a symbolic sense, the act of declaring independence itself constituted an act of immigration, giving up one sovereign identity to join a new political group. Scholars have interpreted this symbolic rebirth as setting the first philosophical and legal precedent for an immigrant-friendly country.[9]

8 Ibid, 490.

9 Ibid, 490.

Natural Rights, Universal Ideals, and the Foundations of Migration

Thomas Jefferson played a pivotal role in shaping the ideals embedded in the Declaration of Independence, particularly the notion that migration is a fundamental human right in his 1774 pamphlet, A Summary View of the Rights of British America, Jefferson articulated this belief before the Declaration was adopted[10]. He claimed that people had the inalienable right "to depart from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies."[11] This powerful notion, that people are free to pursue liberty abroad and are not constrained by geography or place of birth, established the ideological framework for a new conception of America as a haven for those seeking freedom and a better life or in other words a country that would eventually become a global symbol of opportunity, hope, and a pursuit for happiness. With its universalist wording, the Declaration itself reinforced and broadened this concept. The statement asserts that "all men are created equal" and that they are "endowed by their Creator with certain unalienable Rights," such as "Life, Liberty, and the pursuit of Happiness." It further states that governments obtain "their just powers from the consent of the governed" in order to protect these rights. Importantly, this rhetoric was not limited to individuals with legal or political standing; the Declaration did not differentiate between citizens and noncitizens—or could not, since it was ratified in 1776, before the concept of a U.S. citizen existed.[12] Instead, it established a philosophical and moral framework that went beyond national boundaries and political classifications, reaffirming the rights that every human being has just by virtue of their existence. Generations of immigrants who regarded moving to the United States as their own shot at freedom and dignity were inspired by this universalism, which laid the conceptual foundation for extending the promise of rights and opportunity beyond future U.S. citizens. Together, Jefferson and the Declaration

10 Ibid, 493.

11 Ibid, 493.

12 Ibid, 493.

of Independence established the United States as a beacon for those wishing to start over as well as a breakaway nation by claiming the right to self-determination and the natural right to migrate, with this framework, the Declaration of Independence became an enduring source of motivation for immigration to the United States.

The Declaration of Independence offers the moral and philosophical framework upon which constitutional ideas were based, even though the U.S. Constitution is seen as the country's ultimate legal framework. Despite being more legalistic and structured, the Constitution frequently refers to "persons" rather than "citizens," especially in the Bill of Rights, implying that many of its guarantees are applicable to everyone under U.S. authority.[13] The universalist theme of the Declaration, which holds that "all men are created equal" and have "unalienable Rights" to "Life, Liberty, and the Pursuit of Happiness," has guided the evolution of constitutional interpretation. Previous Supreme Court rulings like Yick Wo v. Hopkins (1886), in which the Court reaffirmed that all Americans are entitled to constitutional rights regardless of their citizenship or country, are clear examples of this effect[14].This pivotal case will be covered in greater detail later in the paper to show how the principles of the Declaration have influenced American immigration law.

13 Ibid, 492.

14 Ibid, 497

The Declaration's Philosophical Roots and Global Reach

The Founders believed that legitimate government is based on the consent of the governed and exists primarily to protect individuals' natural rights. They embraced the idea of a social contract, in which citizens and government share mutual responsibility for preserving liberty and justice. One of the pillars of the American political system is the concept of the social contract. This concept refers to the idea that the state exists solely to serve the will of the people, since the people are the source of all political power the state holds. This power can be granted or withheld by the people.[15]

The Declaration argued that when a government becomes destructive of these rights, citizens have not only the right but the duty to alter or abolish it.[16] Citing a "long train of abuses" by King George III, the Founders justified independence as a necessary response to the violation of their fundamental human rights. They also believed that explaining this decision to the world was a moral obligation, grounded in a "decent respect to the opinions of mankind."[17] These ideas not only laid the foundation for American democracy but also echoed across borders, helping to shape modern international human rights discourse.

Additionally, the Declaration's impact quickly transcended international borders and influenced comparable founding texts in other nations. Jeffersonian principles were specifically referenced in France's Declaration of the Rights of Man and of the Citizen (1789), which echoes America's "self-evident" truths in its preamble, which states that "men are born and remain free and equal in rights."[18]

15 Kelly, M. (2025, April 28). *The social contract and its impact on American politics*. ThoughtCo. Retrieved August 24, 2025, from https://www.thoughtco.com/social-contract-in-politics-105424

16 National Archives and Records Administration. (n.d.). *Declaration of Independence: A transcription*. National Archives. Retrieved August 24, 2025, from https://www.archives.gov/founding-docs/declaration-transcript

17 Ibid.

18 Elysee. (2012, November 16). *The Declaration of the Rights of Man and of the*

The initial draft was penned by the Marquis de Lafayette with the assistance of Thomas Jefferson, and it was presented to the French National Assembly just days before the Storming of the Bastille.[19] Although individuals like Emmanuel Joseph Sieyès and the Comte de Mirabeau finished the final draft, it was later included in the French Constitution of 1791 and established the foundation for democratic reform by attempting to abolish monarchy and uphold people's sovereignty.[20] This document, which was greatly influenced by the American Declaration, became a model for the UN's Universal Declaration of Human Rights and influenced the global discourse on human rights.[21] Ho Chi Minh, who served as the founder and first president of the Democratic Republic of Vietnam used the exact words in Vietnam's 1945 proclamation of independence, beginning with "All men are created equal," to establish national self-determination and make a case for international recognition decades later in Asia.[22]

Foundations of Immigration: Naturalization, Citizenship, and the Mixed Legacy of Colonial Migration A brief history of the U.S. Immigration Policy

The complicated dynamics of colonial rule, forced migration, and changing ideas of political membership are the foundation of the history of American immigration, which dates back long before the United States was founded. European mercantilist nations, particularly Great Britain, regulated immigration, naturalisation, and political and

Citizen. elysee.fr. https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen

19 American Battlefield Trust. (n.d.). *Lafayette's draft of the Declaration of the Rights of Man and of the Citizen*.https://www.battlefields.org/learn/primary-sources/lafayettes-draft-declaration-rights-man-and-citizen

20 Ibid.

21 Ibid.

22 Menand, L. (2019, July 4). *The Declaration heard around the world*. The New Yorker. https://www.newyorker.com/news/daily-comment/the-declaration-heard-around-the-world

economic participation between 1607 and 1776.[23] Naturalisation laws in the British colonies were frequently more lenient than those in the home country; in order to draw in settlers, colonial governments offered land, debt relief, and quick naturalisation. Nonetheless, starting in 1700, the British Parliament started to restrict colonial power over naturalisation, which led to the Plantation Act of 1740, which placed more stringent requirements and religious examinations on foreigners wishing to become citizens of England after seven years of residency.[24] Through the process of naturalisation, immigrants,mostly Protestants from Europe, became British subjects and were granted rights like land ownership, voting , holding public office, and lawfully conducting business. It was significant because colonial legal, economic, and political life was exclusively open to British subjects.

Parliament also restricted colonial naturalisation by 1773, which exacerbated colonial frustrations. The King had "endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalisation of Foreigners; refusing to pass others to encourage their migrations hither,"[25] according to Jefferson's later writing in the Declaration of Independence. The colonies' conception of independence and self-governance had become heavily reliant on immigration and naturalisation, as evidenced by this direct critique of King George III. The colonies' right to prosper and govern their own fate was violated by the King's restrictions, which were viewed as more than merely administrative hassles. Therefore, the Declaration was a strong defence of free migration and self-determined nation-building in addition to being a public declaration of independence.

There were two different types of migration throughout the colonial era: forced migration and voluntary migration. Some immigrants were taken to the colonies against their will, but many came in search of economic opportunity, affordable land, and

23 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immigration policy from the colonial period to the present day* (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 Pg. 2

24 Ibid, 2.

25 HistoryHome. (2016, January 12). *The American Declaration of Independence: 4 July 1776*. https://www.historyhome.co.uk/c-eight/america/decind2.htm

religious freedom. Under British law, about 50,000 prisoners were sent to North America, frequently opting for forced relocation rather than execution.[26] Even worse, more than 388,000 Africans were enslaved and forced into servitude in the colonies.[27] Despite being a form of migration in theory, slavery was such a severe and dehumanising experience that it defies easy classification in migratory narratives. However, both of these legacies of aspiration and exclusion influenced the demographic underpinnings of America and hinted at the nuanced role that migration would play in defining freedom.

Following independence, one of the earliest questions the new nation faced was how to define citizenship. Jus soli (the right of the soil), jus sanguinis (the right of blood), and promised allegiance—a distinctive American understanding in which allegiance and voluntary civic engagement constituted a route to full membership in the nation—were the three fundamental concepts that arose.[28] The Founders stressed in the early years following the Declaration that a person's civic identity would be determined by their allegiance rather than their place of birth or ancestry. Citizenship became an issue of deliberate political alignment as the new nation worked to unite and defend itself.[29]

Despite this inclusive foundation, some Founding Fathers expressed concerns about the cultural and social makeup of the new nation. They were skeptical due to cultural, linguistic and religious differences. Nonetheless, Thomas Jefferson offered an alternative more liberal perspective, in which Jefferson felt that the United States needed to welcome immigrants in order to quickly increase its population if it was to develop and thrive. As he stated, "the present desire of America is to produce rapid population, by as great importations of foreigners as possible"[30] By providing workers,

26 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immigration policy from the colonial period to the present day* (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 Pg. 3

27 Ibid, 3.

28 Ibid, 4.

29 Ibid. 4.

30 Ibid, 5.

cultivating the vast tracts of land, and collecting taxes to help pay off the nation's debts, Jefferson and other advocates of free immigration thought that increasing the population would aid in the country's growth. This harmony between transparency and prudence was also represented in the U.S. Constitution. Importantly, it did not explicitly provide the federal government the ability to control immigration. Instead, it allowed the government the power to create a "uniform rule of naturalisation" under Article I, Section 8. This meant that immigration was first left to individual states, resulting in a decentralised system where local policies dictated who may settle inside each state, even while Congress controlled naturalisation and the path to citizenship.[31] This distinction is essential to comprehending the early American approach: admission and settlement decisions remained localised, while the path to citizenship was governed by the federal government. The fact that the Founders prioritised expanding the country over cultural diversity is an obvious representation of their priorities. The new republic needed more people to settle its land, develop its resources, and strengthen the economy. This practical need to expand the population often outweighed other worries and resulted in policies that encouraged immigration, helping to build America's image as a land of opportunity and fresh beginnings.[32] However, a number of early American leaders held the view that everyone residing in the United States should be entitled to the rights outlined in the Constitution, not just citizens. Democratic-Republicans, who maintained that immigrants who had not yet obtained U.S. citizenship, or noncitizens, should likewise be protected under American law, were particularly fond of this theory. They noted that rather than only referring to "citizens," the Constitution and the Declaration of Independence both utilize general phrases like "people" and "persons".[33] This wording made it very evident that everyone, regardless of legal status, was entitled to fundamental rights like life, liberty, and the pursuit of happiness.

31 Ibid,5.

32 Ibid, 6.

33 Ibid,5.

James Madison, who is frequently referred to as the "Father of the Constitution" due to his significant contribution to the draughting of the Constitution and the Bill of Rights, was one of the most ardent proponents of this concept.[34] Madison felt that noncitizens shouldn't be treated unfairly by the government just because they weren't born in the United States. He cautioned that depriving noncitizens of their rights might result in power abuse and repression by the government. Madison believed that in order to preserve freedom and stop the government from treating individuals unfairly, it was crucial to grant rights to everyone, not just citizens.[35] Building on Madison's logic, the United States' larger legal tradition upheld the idea that everyone living in the nation was entitled to the same fundamental rights, not just citizens. The Declaration of Independence's universal claims that "all men are created equal" and possess "unalienable Rights," such as "Life, Liberty, and the pursuit of Happiness," are directly reflected in this idea. This idea was strengthened by the U.S. Constitution, which granted citizens just a limited set of rights, namely the ability to vote and run for federal office, but leaving all other rights unrestricted.[36] Freedom of expression applied universally and equally to all Americans during Madison's presidency, regardless of whether the speech came from the general public or the media.[37] Madison opposed restricting free

34 Morgan, Richard E., "Book Review: James Madison: The Founding Father. by Robert Allen Rutland; James Madison on the Constitution and the Bill of Rights. by Robert J. Morgan; the Last of the Fathers: James Madison and the Republican Legacy. by Drew R. McCoy." (1990). Constitutional Commentary. 882. https://scholarship.law.umn.edu/concomm/882 pg.187

35 Baxter, A. M., & Nowrasteh, A. (2021, August 3). *A brief history of U.S. immigration policy from the colonial period to the present day* (Policy Analysis No. 919). Cato Institute. https://doi.org/10.36009/PA.919 pg. 6.

36 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297 pg. 370

37 Gaughan, A. J. (2020). James Madison, Citizens United, and the constitutional. *American University Law Review*, 69(5), 1161–1200 https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2165&context=aulr pg. 1491

speech to particular groups or identities because he understood that doing so may be a risky tool for governmental abuse, just as he argued that rights must extend to noncitizens under U.S. jurisdiction.

Furthermore, the Fifth and Fourteenth amendment refer to "persons " rather than "citizens," which guarantees that basic rights like equal protection and fair process are applicable to everyone under U.S. jurisdiction.[38] Moreover, "the accused" are granted rights related to criminal trials, including; public trial, a trial by jury, legal representation, and the ability to confront accusers. It is under these amendments that "the people" are granted freedoms of expression, religion, and privacy.[39] The Supreme Court has consistently maintained the position, stating that the Due Process Clause protects everyone, including noncitizens, regardless of whether their presence is legal or illegal, and that the Equal Protection Clause applies to "all persons within the territorial jurisdiction, without regard to differences of nationality".[40] In the end, American law adopted Madison's perspective, which emphasised that those who owe adherence to American laws should get their protections in exchange. "Aliens are not more parties to the laws, than they are parties to the Constitution; yet it will not be disputed that as they owe, on one hand, a temporary obedience, they are entitled, in return, to their protection and advantage."[41] America's distinctive position as a destination where rights are linked to personality rather than birthplace was made possible by this legal system, which was founded on the Declaration's natural rights doctrine. It emphasised the notion that human nature is the foundation of fundamental rights in the United States, a legacy that has continued to motivate migration.

38 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297 pg. 370

39 Ibid, 371

40 Ibid, 372

41 Ibid, 371

This early commitment to upholding the rights of noncitizens demonstrated that the United States was viewed as a country where foreigners receive fair and respectable treatment. It contributed to the perception of America as a free country where anyone, from anywhere in the world, could seek a better life. Later on in American legal history, this idea of protecting noncitizens would emerge as a crucial concern, particularly in situations when immigrants battled for their rights. The Supreme Court case Yick Wo v. Hopkins, which will be covered in the next section, is a significant illustration of this. It demonstrates how the Declaration of Independence's guarantees of equality, liberty, and life were upheld in court, even by non-citizens.

"Yick Wo V. Hopkins" The Declaration's Practice

The Supreme Court decision Yick Wo v. Hopkins (1886) is one of the most important instances of how the principles of the Declaration of Independence were converted into legal protections for noncitizens. In this case, the Court addressed whether noncitizens—specifically Chinese immigrants—were entitled to constitutional protections under the Fourteenth Amendment. In Yick Wo v. Hopkins, 118 U.S. 356 (1886)[42] The plaintiffs contested a San Francisco ordinance that, albeit being facially neutral, discriminated against individuals of Chinese heritage by essentially prohibiting them from running launderettes. The fourteenth amendment to the constitution states the following: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[43] This interpretation reflects the universalist philosophy first adopted in the Declaration of Independence, which states that "all men are created equal" and are "endowed by their Creator with certain unalienable

42 Yick Wo v. Hopkins, 118 U.S. 356 (1886) https://supreme.justia.com/cases/federal/us/118/356/

43 National Archives and Records Administration. (n.d.). *14th Amendment to the U.S. Constitution: Civil Rights (1868)*. https://www.archives.gov/milestone-documents/14th-amendment

Rights," including "Life, Liberty, and the pursuit of Happiness"[44] In Yick Wo, the Court explicitly cited these principles, stressing that citizenship status did not limit fundamental rights. According to the court, the discriminatory rule denied the Chinese laundromat owners "the means of living,"[45] depriving them of their "fundamental rights to life, liberty, and the pursuit of happiness."

Experts in law concur that the Supreme Court based its ruling in the Yick Wo case on the Declaration of Independence's concept of equality. The Court used or relied on the Declaration's well-known statement—"all men are created equal"—to demonstrate why the U.S. Constitution should protect everyone, not just citizens, according to Amanda Frost's article titled Independence and Immigration. In essence, the idea that noncitizens should likewise have legal protection regardless of their origins or immigration status was supported by the Declaration's pledge of equality.[46] The Yick Wo V. Hopkins established the precedent for courts subsequently acknowledging that noncitizens also have constitutional rights. The Supreme Court made it clear in this decision that the Constitution protects "all persons," not just citizens of the United States, according to Amanda Frost. This aligned with the Declaration of Independence's central tenet that everyone, not just members of particular groups, should have freedom and rights.[47]

This decision in Yick Wo was not a one time occurrence, but set the tone for future cases. The same logic was applied in subsequent

44 U.S. National Archives and Records Administration. (n.d.). *Declaration of Independence: A transcription*. https://www.archives.gov/founding-docs/declaration-transcript

45 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf pg. 498

46 Ibid, 523.

47 Ibid, 523.

court proceedings. For instance, Plyler v. Doe (1982) was another significant case that upheld the principles of the Declaration of Independence for noncitizens. A Texas statute that attempted to deny undocumented children free public education was overturned by the Supreme Court in this case. The Court rejected Texas' argument that undocumented immigrants were not "persons" as defined by the Fourteenth Amendment. Undocumented immigrants, including children without legal status, are nevertheless "persons" with the right to equal protection under the law, according to the nine justices. Justice William J. Brennan Jr., a prominent Supreme Court Justice known for his strong support of individual rights and civil liberties, authored the majority opinion in Plyler v. Doe to which he stated "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term." [48] To put it briefly, Yick Wo v. Hopkins laid the groundwork and contributed to ensuring that the Declaration's guarantees of life, liberty, and happiness extend beyond U.S. citizens to all Americans. The United States is regarded globally as a nation where everyone, even immigrants, can live freely because of this principle, which became a fundamental component of American law. Examining the Declaration's wider impact on American immigration law, particularly the progressive deterioration of the plenary authority doctrine—where courts have traditionally given Congress vast discretion over immigration restrictions—begins with this legal precedent.

The Evolving Role of the Declaration: Toward a More Inclusive Constitutional Vision

Although the constitutional rights of noncitizens living within the United States have long been acknowledged by the legal system, the treatment of those attempting to join the nation has taken a different legal course. Under the so-called plenary power doctrine, the federal government has historically had extensive control over decisions pertaining to the admission and deportation

48 Ibid, 500.

of noncitizens. This power has occasionally led to a different level of constitutional protection for people who are on the verge of entering the United States than for those who are already there[49]. But rather than being a contradiction, this illustrates how America's devotion to individual rights and national sovereignty must be balanced.

Encouragingly, the Supreme Court has begun to recognize the importance of aligning immigration practices more closely with the nation's founding ideals. The Court granted due process rights to some noncitizens, such as returning permanent residents and those facing extended imprisonment, in instances like Landon v. Plasencia (1982) and Zadvydas v. Davis (2001).[50] These decisions show that the judiciary is becoming more sensitive to the principles outlined in the Declaration of Independence, particularly its need for the defence of "unalienable Rights," such as "Life, Liberty, and the Pursuit of Happiness."

These impacts are referred to by legal academics as "phantom norms"—principles that direct courts towards interpretations that align with the universalist vision of the Declaration, even though they are not often stated openly.[51] These standards point to a more comprehensive conception of justice and dignity that guides contemporary constitutional interpretation. A Professor by the name Hiroshi Motomura notes that even in fields that are customarily subject to legislative discretion, such principles quietly influence immigration decisions. Basically even if the constitutional rules do not directly apply, their principles still influence how courts interpret the immigration laws.[52] The Declaration of Independence still acts as a moral compass even if the Constitution gives the federal government considerable control over immigration policy. It pushes the US to adopt policies that uphold its unwavering dedication to liberty, justice, and human dignity. This legacy contributes to the

49 Ibid, 524.

50 Ibid, 533–534.

51 Ibid, 538.

52 Ibid, 506.

United States' global reputation as a nation of opportunity and a leader in advancing human rights. The Declaration's universal principles may further direct immigration legislation towards inclusivity as the legal system develops, strengthening the nation's reputation as a hospitable and morally upright democracy.

The Declaration of Independence has had a subtle but significant impact on immigration law, as evidenced by this consistent change in legal interpretation. According to academics, its universal principles still serve as "phantom norms," urging judges to uphold the rights of noncitizens and advance justice.[53] Notwithstanding the fact that plenary power doctrine is still in place, a more inclusive and rights-based approach to migration is becoming possible as a result of the Declaration's pro-immigration ideals and emphasis on equality. Therefore, even though plenary power is still a potent doctrine, the Declaration's universal principles continue to have an impact and indicate a slow transition towards a more inclusive, rights-based framework for immigration that reaffirms America's identity as a country founded on liberty, equality, and opportunity.

Immigration Policy in the 21st century

It is evident to say that although the Declaration of Independence was drafted to support the American colonies' separation from Britain, it soon acquired a universal quality that went beyond its original political intent. Its declaration of "unalienable rights" served as both the cornerstone for the creation of the US Constitution and a guide for people looking for freedom and opportunity outside their borders. According to scholars, the Declaration "announced principles whose reach extended well beyond the circumstances of 1776,"[54] influencing the expectations of people who arrived on American soil as well as the American self-identity. These principles served as a symbolic call for immigrants, especially in the late 19th and early 20th centuries. Mass migration

53 Ibid, 538.

54 Ibid, 489

was fuelled by the United States' promise of liberty and equality, which set it apart from the strict class structures and monarchs of Europe. According to White, the Declaration's focus on equality "acted as a cultural magnet," persuading millions of immigrants that America could provide a better life based on opportunity and justice.[55] Nonetheless, the nation's early immigration and citizenship rules exposed the inconsistencies between the foundational principles and political reality, notwithstanding the Declaration of Independence's universalist vision of equality and rights. Waves of migration from Europe and beyond were spurred by the Declaration's assertion that "all men are created equal," which led many foreigners to see the United States as a place of opportunity and freedom.[56] However, enslaved Africans, Indigenous peoples, and later large numbers of immigrants from Asia were effectively excluded from naturalisation when Congress passed the Naturalisation Act of 1790, the first federal law to establish citizenship rules, which limited naturalisation to "free white persons" of good moral character.[57] Despite being excluded, migrants continued to migrate because of the symbolic value of liberty, equality, and the pursuit of happiness. This legal barrier demonstrated how powerful the Declaration's promises were, even though it reflected a limited interpretation of who could access them. According to Frost, as each new wave of immigrants challenged and reinterpreted what it meant to belong in a country built on the rhetoric of universal rights, this paradox—between aspirational ideals and restrictive practice—created a dynamic tension that shaped U.S. immigration policy for centuries.[58]

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55 White, K. M. (2011). The Declaration of Independence and immigration in the United States of America. *Norteamérica, Revista Académica del CISAN-UNAM, 6*(3), 211–228. https://doi.org/10.22201/cisan.24487228e.2011.3.151 pg. 215

56 Ibid, 219-220.

57 Cole, D. (2003). Are foreign nationals entitled to the same constitutional rights as citizens? *Thomas Jefferson Law Review, 25*(2), 367–388. https://scholarship.law.georgetown.edu/facpub/297

58 Frost, A. (2016). *Independence and immigration*. Southern California Law Review, 89, https://southerncalifornialawreview.com/wp-content/uploads/2018/01/89_485.pdf

The Declaration of Independence still influences concepts of equality, freedom, and human rights. Its ideals, which present a picture of a society that upholds life, liberty, and the pursuit of happiness, have motivated generations of migrants to migrate to the United States in search of opportunities. Despite the fact that laws and policies have occasionally failed to live up to these principles, the Declaration continues to serve as a symbolic manual that shapes discussions on social justice, immigration, and civil rights. According to scholars, its universal discourse keeps drawing people from all over the world and strengthens the idea that the United States is a country built on the promise of equality and liberty.

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Emilija Lukić

„Svi ljudi su jednaki”: analiza jednakosti u Deklaraciji nezavisnosti i njenom modernom tumačenju

Sadržaj

Uvod

„Postoji električna žica u Deklaraciji koja povezuje srca patriotskih i slobodoljubivih ljudi u jedno i koja će povezivati ta patriotska srca sve dok ljubav prema slobodi postoji u mislima ljudi širom sveta", rekao je Abraham Linkoln.[1]

Sveprožimajući koncept jednakosti, koji je ukorenjen u Deklaraciji nezavisnosti, stoji kao ideal koji je oblikovao političku misao, inspirisao generacije i društvene pokrete i podstakao nastojanja da se eliminiše nepravda, nastavljajući da zahteva priznavanje prava. U ovom eseju analiziraćemo pomenuti politički, filozofski i bazični dokument koji je postavio ideološke osnove koje su duboko uticale na ključni pravni razvoj kako globalno tako i nacionalno. Iako nikada nije kodifikovana kao zakon, Deklaracija ima ogroman simbolički i moralni autoritet.

Naredna diskusija istražuje njen doprinos pravnom sistemu, dok razmatra i njene nedostatke i izvesnu hipokriziju glavnog autora.[2] Uzećemo u obzir stavove nekoliko teoretičara i autora koji nude različita tumačenja kako bi se dodatno ispitala složenost akta.

Značajan aspekt obrade ove teme jeste suština samog principa jednakosti, koji je jedna od osnova akta, a tumačen je na različite načine. Ovaj esej tvrdi da, čak i unutar kontradikcija i osporavanog pretvaranja, genijalnost dokumenta leži u sadržaju reči koje su dosegle viziju veću nego što je to kontekst dopuštao. Dokument i njegova reinterpretacija pokrenuli su, kroz pravne, društvene i globalne pokrete, neosporiv napredak u proširivanju značenja i moći jednakosti. Ključno je prepoznati da je Deklaracija nezavisnosti

1 From "Electric Cord" Speech (1858), in Lincoln, The Collected Works of Abraham Lincoln, Vol. II, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 499-500.

2 *Thomas Jefferson: Hero or hypocrite*. (2021, December 22). [Video]. History Talks! Retrieved December 22, 2021, from https://www.youtube.com/watch?v=l5hGnBxBIx0

predstavljala neviđeni politički manifest samoupravljanja i slobode. Uticala je na ustavni napredak i kampanje za slobodu, što je dovelo do uspostavljanja legitimne vlade po prvi put. Da bi se u potpunosti shvatila važnost i nasleđe Deklaracije, neophodno je pratiti njeno istorijsko poreklo i ispitati kako su njeni principi tumačeni, osporavani i transformisani tokom vremena.

Pozadina i značaj

Sukob sa Velikom Britanijom zbog njenih imperialističkih stavova, oporezivanja i politike granica bio je okidač društvenih promena i otpora američkih kolonija. Bes koji je rastao zbog ograničenja trgovine, potkopavanja kolonijalnih pravnih interesa zajedno sa mešanjem u lokalne vlade proizveo je odbojnost pokoravanja autoritetu britanske Krune. Opoziciju su pružale neformalne samouprave, Kontinentalni kongres, koji je koordinisao bojkot, kao i obični građani, pamfletisti i pisci, koji su započeli čin revolucije. Nije slučajnost što je Abraham Linkoln opisao Deklaraciju nezavisnosti kao „ukor i kamen spoticanja tiraniji".[3]

Nacrt dokumenta napisao je Tomas Džeferson, treći predsednik Sjedinjenih Američkih Država, i predložio ga Kongresu 1776. godine. Akt je prvenstveno usvojen kako bi se trinaest američkih kolonija odvojilo od političkog uticaja Velike Britanije, praćeno željom da se sprovedu tri osnovna principa kao idealistički prikaz američkog verovanja. U vreme usvajanja postojao je kontrast u odnosu na tadašnje monarhijske i kolonijalne sisteme. Dakle, Deklaracija je smelo osporila vekovne tradicije i poimanja božanskog prava i aristokratske vlasti, a ujedno pokazala čistu političku hrabrost svojih autora. Štaviše, njihov snažan stav ohrabrio je američke kolonije i proširio se na Evropu i druge krajeve kao inspiracija za revoluciju.

3 Greenspan, J. (2025, May 28). *How the Declaration of Independence Was Printed—and Protected | HISTORY*. HISTORY. https://www.history.com/articles/declaration-independence-printed

Prvi rukopis Deklaracije štampan je u dvesta primeraka nakon što ga je odobrio Drugi kontinentalni kongres. Međutim, pošto na njima nije bilo potpisa delegata i korišćen je jednostavan font, započet je mukotrpan rad na novoj verziji, koja će biti napisana na životinjskoj koži i sadržati potpise svih delegata koji su odobrili akt. Iako bilo protivljenja nekih delegata, veruje se da je posao dovršio pisar Timoti Matlak do 2. avgusta, sa svih pedeset šest potpisa. Dokument je čuvan na više mesta: najpre u Filadelfiji, a zatim u Baltimoru, Nju Džerziju, Merilendu, Vašingtonu i dalje, zbog britanskih pretnji i mnogih ratova. Usled čestog premeštanja i odmotavanja, naborao se, umrljao i izbledeo. Izlagan je na raznim izložbama, kao što je Stogodišnja izložba u Dvorani nezavisnosti, a sva ta kretanja uticala su na mastilo i učinila ga starim i požutelim. Kako bi se dokument sačuvao za buduće generacije, danas se nalazi u Kongresnoj biblioteci, zaštićen od svetlosti i zagađenja vazduha.

Deklaracija tvrdi da su svi pojedinci stvoreni jednaki i da poseduju urođena, neotuđiva prava i upućuje na to da je, kada vlada prekrši ta prava, dužnost naroda da je promeni ili ukine i postavi novu, koja će delotvornije zaštititi njegovu dobrobit.[4]

Ovi ideali prožimali su strukturu dokumenta, koji se sastojao od tri dela.

Prvi – preambula, iako u to vreme zanemarena – postao je najpoznatiji deo, budući da sadrži najvažniji princip kao simbol uverenja. Sa upečatljivim frazama i artikulisanim tonom, ona predstavlja izraz američkog duha i opštu izjavu teorije prirodnih prava.

Drugi deo sadrži listu žalbi protiv britanskog kralja. Ovaj deo je napisan da podseti kolonije na tiraniju koju su trpele i da opravda borbu za pravdu.

Treći deo predstavlja samu Deklaraciju nezavisnosti, obraćajući se Vrhovnom sudiji sveta za opravdanje namere da se postigne sloboda od političke povezanosti sa britanskom Krunom. Na kraju, proglaše-

4 Jefferson, T. (1950) *The Papers of Thomas Jefferson. Vol. 1, 1760–1776*. Edited by J.P. Boyd. Princeton: Princeton University Press, pp. 243–247.

no je međusobno zavetovanje na bogatstvo, život i čast.

Jezik je prijemčiv i relevantan za široku javnost, omogućavajući primenu u mnogim bitkama za slobodu.

Možemo slobodno reći da su izuzetnost i zanimljivost dokumenta neoborive zbog njegovog elokventnog i pronicljivog izraza demokratskih principa koji i dalje odjekuju kod različitih publika u stalnoj težnji ka slobodi i pravdi.

Poreklo i implikacije čuvene fraze Tomasa Džefersona

„Svi ljudi (muškarci) su stvoreni jednaki" aludira na to da se prirodna ljudska prava primenjuju na svaku osobu i služi kao okvir za kasnija prava. Ova fraza odražava osnivačevu težnju ka ostvarenju principa individualne vrednosti, koji predlaže da se svaka osoba treba tretirati sa poštovanjem i dostojanstvom, u okviru svoje urođene vrednosti. Iako je izjava prilično razumljiva i koherentna, ona je zapravo pokazala nenameravanu nejednakost.

S jedne strane, percepcija jednakosti Tomasa Džefersona duboko je povezana sa idejom „očigledne istine",[5] istine o slobodnim i nezavisnim osobama sa moralno neosporivim pravima koja su neophodna za stvaranje legitimne vlade zasnovane na saglasnosti.

S druge strane, Deklaraciju je obeležila nekolicina kontradikcija. Sigurno postoji razlika između onoga što dokument kaže i onoga što bismo želeli da kaže. Očevi osnivači napravili su mali krug jednakih belih muškaraca koji poseduju imovinu, dok su žene, obojeni ljudi, muškarci bez imovine i druge marginalizovane grupe ostavljeni po strani.

Suprotno jednoglasnom priznanju i prihvatanju da je ropstvo ne samo nemoralan i nepravedan čin već i kršenje prirodnog prava i ljudskih prava, nekoliko Očeva osnivača nasledilo je i posedovalo robove.

5 Jefferson, T. (1776) *The Declaration of Independence*. https://www.archives.gov/founding-docs/declaration [Accessed 14 May 2025].)

Brojni autori vide očigledno licemerje glavnog autora, koji je propovedao slobodu dok je tretirao ljude kao predmete trgovine.

Kako je objasnio Edmund Morgan, koji je u svom radu istraživao navedeni paradoks, Američka revolucija nije bila revolucija protiv ropstva, već revolucija za očuvanje slobode za belce, i dalje sledeći raniju praksu porobljavanja crnaca.[6]

Istoričar Erik Foner takođe naglašava ovu kontradikciju, ističući da uzvišeni jezik Deklaracije o univerzalnoj slobodi stoji u kontrastu sa društvenom i političkom stvarnošću ropstva, isključenosti i nejednakosti u Americi 18. veka. U knjizi *The Story of American Freedom* (1998), Foner tvrdi da je sloboda proglašena 1776. gdine bila „privilegija malobrojnih", napominjući da je „jezik slobode, mada obuhvatan u teoriji, bio ograničen rasom, polom i klasom u praksi". On smatra da je, iako je Deklaracija inspirisala generacije, ona takođe „maskirala duboke nejednakosti pod retorikom jednakosti".[7]

S druge strane, Gari Vils zauzima daleko velikodušniji stav, tvrdeći da Deklaraciju treba ceniti kao revolucionarni politički dokument čiji ideali prevazilaze lične mane njenog autora. Po njegovom mišljenju, tekst je predstavljao radikalni otklon od tradicionalnih formi autoriteta i zaslužuje da bude ocenjen prema svojim filozofskim vrednostima, a ne prema Džefersonovim privatnim kontradikcijama.[8]

Štaviše, od rođenja nove nacije, istoriju borbe za pravdu i jednake mogućnosti vodili su oni koji su bili isključeni iz malog kruga muških protestantskih zemljoposednika. Unutrašnji krug je jasno stavio do znanja da oni, a ne narod, donose odluke. Ipak, postojali su izuze-

6 Morgan, E.S. (1975) *American Slavery, American Freedom*. New York: W.W. Norton & Company, p. 6. Available at: https://wwnorton.com/books/American-Slavery-American-Freedom/

7 Foner, E., 1998. *The Story of American Freedom*. New York: W.W. Norton & Company.

8 Wills, G., 1978. Inventing America: Jefferson's Declaration of Independence. New York: Doubleday.

ci. Na primer, uprkos kulturnim razlikama, belim bogatim muškarcima drugih nacionalnosti bilo je dozvoljeno da zauzmu mesto za stolom prividne demokratije, gde su se donosile odluke da se vlada svima koji se nalaze na američkom tlu, ali uz veliki nedostatak što nisu rođeni na njemu. Istorija Amerike kakvu poznajemo danas, kao i ona belih muškaraca sa imovinom, s pravom pripada ženama, pripadnicima radničke klase, osobama sa invaliditetom, imigrantima, verskim manjinama, LGBTQ+ osobama, obojenim ljudima i drugima. Glasovi ovih grupa borili su se da ne unište američko obećanje. Dakle, istorija Amerike pripada njenim autsajderima isto koliko i njenim insajderima, ljudima koji su insistirali da čuvena fraza Oca osnivača konačno mora značiti ono što kaže.

Iz svega navedenog jasno je da je, zaista, postojala filozofska kontradikcija. Naime, proglašeni univerzalizam imao je odlike prikrivenog partikularizma. Kao dva različita pogleda na vrednosti i standarde, prema univerzalizmu, individualne karakteristike, status i drugi faktori ne određuju ko zaslužuje ili dobija više, već naglašavaju jednakost među ljudima. To je objašnjeno u okviru američke filozofkinje Marte Nusbaum, koja podržava duh Deklaracije nezavisnosti i njen izraženi univerzalizam. Nusbaum tvrdi da univerzalni principi treba da štite individualizam i obezbede ljudsko dostojanstvo.[9]

Nasuprot tome, partikularizam tvrdi da okolnosti imaju uticaj na integritet i primenu kriterijuma i moralnog koda. Dakle, partikularizam razume etiku kao zadatak povećanja individualnih kompetencija i procenjuje situacije na osnovu njihovih specifičnosti.

Filozofska kontradikcija između istaknutih principa i isključive prirode društva otkriva se kroz njihovu partikularističku primenu u praksi. Ipak, upravo je ta kontradikcija omogućila da Deklaracija postane živi dokument, oblikovan istorijom, a ne ograničen njome.

U biti, snaga Džefersonove fraze leži u njenoj elastičnosti i sposobnosti

9 Nussbaum, M.C., 2011. *Creating capabilities: The human development approach*. Cambridge, MA: Harvard University Press.

da preraste ograničenja svojih autora. Generacije reformatora i revolucionara tumačile su ovu izjavu kao obećanje, a ne kao opis stvarnosti, i time podstakle američki pravni i politički okvir da postane inkluzivniji. Kako je Abraham Linkoln rekao, Deklaracija nije bila deklaracija savršene jednakosti 1776. godine, već moralni svetionik za ono što jednakost treba da postane. Rasprava između ideala i stvarnosti pretvorila se u akciju.

Martin Luter King mlađi bio je duboko pod uticajem obećanja datih u dokumentu, koja je prizivao da bi se zalagao za građanska i ekonomska prava i osporio rasnu nepravdu u Sjedinjenim Državama. Dr King se oslanjao i na Deklaraciju i na Ustav, kao i na Božju reč. U svojoj potrazi za društvenom pravdom, on se pozivao na aspirativni tekst ova dva dokumenta i nazivao ih bunarima (izvorima) demokratije.[10]

Dužnost reinterpretiranja fraze i stvarne primene željenih ideala ostavljena je budućim generacijama. Ipak, da li je danas svaka osoba zaista predstavljena izjavom jednakosti? Da bismo bolje razumeli napetost između univerzalnih tvrdnji Deklaracije i njene selektivne primene, neophodno je ponovo razmotriti filozofsku lozu iz koje su njeni ideali proizašli.

Filozofski koncept

Koncept Deklaracije nezavisnosti prvi put se pojavio kao skup filozofija prosvetiteljstva.

Neotuđiva prava su u početku korišćena u kontekstu verske slobode, a zatim su se brzo proširila i na druge sfere. To proširenje bilo je značajan korak u razvoju teorije liberalizma.[11]

10 American Constitution Society. (2018, June 13). *The Constitutional Vision of Martin Luther King, Jr.* | *ACS*. https://www.acslaw.org/expertforum/the-constitutional-vision-of-martin-luther-king-jr/

11 Smith, G. H. (2011, November 3). *Religious Toleration Versus Religious Freedom*. Libertarianism.org. Retrieved June 20, 2025, from https://www.libertarianism.org/publications/essays/excursions/religious-toleration-versus-religious-freedom

Na primer, Džon Lok je verovao da je svaka osoba rođena u anarhičnom prirodnom stanju i da sve stavove i razloge oblikuje društva. Vladu, da bi bila legitimna, mora odobriti narod. Shodno tome, Lok je tvrdio da svaki građanin treba da ima sopstveni stav o zakonodavstvu, izvršnoj i sudskoj vlasti i, ako sistem ne uspe da ispuni svoje odgovornosti, narod ima pravo na revoluciju. Pisanje ovog autora snažno je uticalo na Džefersona, koji je primenio njegovo shvatanje da su svi pojedinci rođeni sa prirodnim pravima – pre svega, pravom na život, slobodu i svojinu. Dizajn Ustava SAD takođe je prožet Lokovim radom i nastojanjima, kao što je podela na tri pomenute grane vlasti, u kojoj formi je i uspostavljen. Njegov rad sadržao je snažne argumente u korist verskog usklađivanja i protiv progona i netolerancije, što bi se danas smatralo uvredljivom praksom.

S druge strane, Ruso je naglašavao kolektivnu volju i građansku slobodu, tvrdeći da prava jednakost nastaje kada se pojedinci pokore „opštoj volji", koja predstavlja opšte dobro. Sa tim u vezi, on zagovara jednakost u društvu bez tvrdnje da je to ideal za društvo.[12]

Džeferson je selektivno pozajmljivao od obojice, fokusirajući se više na individualnu autonomiju nego na kolektivni suverenitet.

Imanuel Kant, pišući kasnije u 18. veku, učvrstio je univerzalističku tradiciju tvrdnjom da svako racionalno biće poseduje urođenu moralnu vrednost i da treba da se tretira kao cilj sam po sebi, nikada samo kao sredstvo. Njegov kategorički imperativ „Delaj tako da maksima tvoje volje može važiti kao princip opšteg zakonodavstva" usko se povezuje sa idejom da principi pravde moraju važiti za sve ljude, bez obzira na okolnosti.[13]

12 Weirich, Paul. "Rousseau on Equality." *History of Philosophy Quarterly*, vol. 9, no. 2, 1992, pp. 191–98. *JSTOR*, http://www.jstor.org/stable/27744014. Accessed 20 June 2025.

13 Johnson, R. and Cureton, A., 2024. *Kant's Moral Philosophy*. In: E.N. Zalta and U. Nodelman, eds. *The Stanford Encyclopedia of Philosophy* (Fall 2024 Edition). [online] Stanford University. Available at: https://plato.stanford.edu/archives/fall2024/entries/kant-moral/ [Accessed 22 Jun. 2025]

Kant je zastupao moralni egalitarizam bez obzira na obrazovanje, klasu i druge karakteristike, sugerišući da, ako prepoznamo moralni zakon kao izvor dužnosti, ta ideja nas vodi ka političkom univerzalizmu.

Iako različiti, ovi filozofski okviri i mišljenja uspostavili su etičku osnovu iz koje je proizašla Džefersonova fraza.

Neotuđiva prava proglašena u ovom dokumentu prikazana su kao ključne posledice ljudske prirode i znače da se određena prava i nečije moralno uvažavanje, razum i volja ne mogu preneti ni na druge ljude, niti na vladu. Snaga ovih ideja leži u njihovoj fleksibilnosti, jer su otišle daleko izvan filozofije, poprimajući novi oblik u rukama onih koji su se usudili da pitaju ko je zaista uključen u „Svi ljudi su stvoreni jednaki".

Konceptualna transformacija: od temeljnog ideala do moderne jednakosti

Ideja jednakosti se konstruiše pomoću složene grupe principa i višeslojnih koncepata (Temkin 1993, pogl. 2). Diferencijacija obuhvatnosti i tumačenje ideja, pojmova i sadržaja Deklaracije o nezavisnosti od njenog izdavanja do danas je važna, jer odražava kontinuirani napredak u pogledu svesti o ljudskim pravima u svim njenim nastojanjima da ispravi nepravdu u osnovnim idealima.

Sa evolucijom pravičnosti i ljudskih prava, kao i inkluzivnijim razumevanjem, definicija jednakosti u modernom društvu proširila se. Rano tumačenje je bilo ograničeno u opsegu, isključujući žene, porobljene Afrikance, domoroce, verske manjine i druge iz svojih obećanja. Međutim, uz primarno proklamovanu političku jednakost i prava na život, slobodu i potragu za srećom za svakog pojedinca, moderni, širi pogled uključuje rasu, pol, identitet, religiju, seksualnu orijentaciju i slično. Jedna od najsvetlijih pravnih prekretnica koja odražava ovaj prošireni pogled bio je Zakon o građanskim pravima iz 1964. godine. Ovaj zakon je zabranio diskriminaciju na osnovu rase, boje kože, religije, pola i nacionalnog porekla i direktno je iza-

zvao sistemske nejednakosti koje su dugo postojale uprkos obećanjima Deklaracije.[14]

Lideri pokreta za građanska prava, poput Martina Lutera Kinga mlađeg, otvoreno su koristili Džefersonove reči da ukažu na razliku između onoga što Amerika tvrdi da zastupa i onoga kako je zapravo tretirala ljude. Oslanjajući se na moralnu moć Deklaracije, pokazali su da ona ne treba da se vidi samo kao istorijski dokument već kao nešto živo, kao izvor stalne inspiracije i vodič za pravu pravdu. Ova živa osobina Deklaracije nastavlja da inspiriše moderne pravne i društvene borbe za inkluziju. Na primer, značajan slučaj Vrhovnog suda Obergefel protiv Hodžesa 2015. godine proširio je osnovna prava na brak i na istopolne parove širom zemlje, potvrdivši da ustavne zaštite slobode i jednakosti važe bez obzira na seksualnu orijentaciju.[15]

Ipak, dok takve pobede označavaju napredak, postoje slučajevi koji pokazuju kako društvo ne sme da ignoriše kontinuirane izazove. Kriza vode u Flintu primer je kako moderna nejednakost, posebno po rasnim i ekonomskim linijama, direktno izaziva ideale Deklaracije.[16] Poziv zajednice na pravdu prizvao je Džefersonove temeljne reči kao zahtev, a ne kao metaforu. Ovi primeri pokazuju da borba za jednakost nije ni približno završena i da ima mnoge oblike.

Jednakost u svom normativnom smislu neraskidivo je vezana za moral i pravdu, posebno distributivnu pravdu. Ipak, razumevanje jednakosti u vreme stvaranja Deklaracije razlikuje se od onoga što

14 National Archives, 2024. *The Civil Rights Act of 1964*. Available at: https://www.archives.gov/milestone-documents/civil-rights-act [Accessed 22 Jun. 2025].

15 Supreme Court of the United States, 2015. *Obergefell v. Hodges, 576 U.S. 644 (2015)*.Available at: https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf Accessed 22 Jun. 2025.)

16 EPA, 2024. *Flint, Michigan Drinking Water Response*. Environmental Protection Agency. Available at: https://www.epa.gov/flint Accessed 22 Jun. 2025.

sada smatramo jednakošću. Ali, ono što je proglašeno ispravnim i uklesano na pergamentu kao oblik teorije ne znači nužno da bi se primenjivalo u praksi. Očigledno je da je veliki zrak slobode pao na američki zakonodavni organ i narod pod njegovom upravom, ali je bacao senke na one koji su bili isključeni. Dakle, kako autor može uključiti univerzalne istine, ali samo za uski segment društva?

Ovo pitanje postalo je uzrok lavine drugih pitanja. Svaka generacija je postavljala nove verzije istog upita: „Kako se jednakost može zaista postići?". Aktivisti, u svetlu razvoja modernog društva, bazirali su svoje namere na obeshrabrivanju nepravednih praksi.

Jasno je da se čak i manjkavi ideali mogu povratiti. Diskutujući o problemu licemerja ugrađenom u ovaj dokument, važno je primetiti da ovo pitanje nije ostalo neizazvano i neprimećeno.

Sve u svemu, „svi ljudi su jednaki" obuhvata suštinu ideala da niko ne treba da vlada nad drugima. Ovde su „ljudi" eufemizam za „čovečanstvo", što su mnogi koji su posredstvom Deklaracije o nezavisnosti zagovarali jednako postupanje koristili da zauzmu istorijsku i moralnu visinu. Štaviše, ako sporna tvrdnja simbolizuje moralni temelj, mehanizam kroz koji se ona sprovodi, zakon, treba da bude usklađen sa njenim idealima.

S obzirom na to da zakon upravlja svakim pojedincem i određuje šta neko dobija, on sam bi trebalo da promoviše neki oblik jednakosti.[17] Uz to, principi na kojima su zasnovani zakoni i statut bi trebalo da budu pravedni i da utiču na pravni razvoj kako bi pratili tehnološki, ekonomski i društveni napredak.

17 O'Brian, W. E. (2010). Equality in Law and Philosophy. *Inquiry*, *53*(3), 257–284.

Nacionalni i globalni uticaj Deklaracije i njena uloga u stvaranju zakona

Iako nije važeći dokument u strogo pravnom smislu, pošto nije pravno obavezujući, Deklaracija se smatra jezgrom moralnih i političkih principa na kojima se zasnivaju američka demokratija, zakon i identitet. Njen uticaj odjekuje kroz brojne kasnije akte, koji su otelovili iste ideale. Ipak, kasniji akti su proširili listu i misli. Na primer, jedan od najuticajnijih akata, posebno u vezi sa ženama i njihovim oslobođenjem, jeste Deklaracija sentimenta i ženskih prava, koju je sastavila Elizabet Kejdi Stenton 1848. godine.

Ovaj dokument odražava prethodnu Deklaraciju i zagovara ukidanje ugnjetavanja, nepravde i elitizma, pozivajući se na pravne i društvene reforme,[18] te naglašava pravo žena da glasaju, poseduju imovinu i obrazuju se.

Nadalje, manifest konvencije *Seneca Falls* promenio je frazu „Svi ljudi su stvoreni jednaki" u inkluzivniju: „Svi ljudi (muškarci) i žene su stvoreni jednaki".[19]

Pravni reformatori su se zalagali za jednakost i osporavali državne zakone koji ženama u braku onemogućavaju posedovanje imovine, uključujući zaradu koju same ostvare. Pozivali su žene da odbace takvu vlast, koja je omogućavala čak i neukim i prostim muškarcima pravo glasa, a ne ženama. Vlada, koja je ženama uskraćivala pravo na obrazovanje, stavljala ih je po strani i osuđivala na imanenciju, isključivši ih iz svih segmenata života kao nebitne, nepotpune i osakaćene. Uskratila im je i jednakost u pogledu razvoda, poslovanja, pa čak i njihovog mesta u centru izvora visoko poštovanih prirodnih prava i spiritualnosti, crkve. Do usvajanja ove deklaracije pitanje

18 Branningan, G. B. (2014). *An Analysis of the Declaration of Independence* [A Senior Honors Thesis]

19 HISTORY.com Editors. (2025, April 15). *Seneca Falls Convention - Definition, 1848, Significance | HISTORY*. HISTORY. https://www.history.com/articles/seneca-falls-convention

pariteta smatralo veoma spornim i, nažalost, i dalje predstavlja aktuelan problem.

Pored toga, najvažniji deo sentimenta bio je na kraju. Zaključak sadrži „Rezolucije", koje objašnjavaju prava žena, odgovornosti i posedovanje prava datih od Boga. Deveta rezolucija, u vezi sa pravom glasa, bila je najizazovnija, jer su mnoge pristalice smatrale da je to revolucionaran potez koji bi društvo dočekalo neprijateljski. Uprkos nedostatku podrške, predlog je – doduše, jedva – prošao nakon upornog i snažnog argumentovanja aktivista za njegovu odbranu. Postao je temelj pokreta za žensko pravo glasa, konačno utičući na to da američke žene dobiju pravo glasa 1920. godine, kada je devetnaesti amandman dodat američkom Ustavu.

Dalje, Deklaracija je uticala na usvajanje akta koji je doveo do osnivanja Demokratske Republike Vijetnam, bivšeg Vijetnamskog carstva. Tako su u naporima za postizanje međunarodnog priznanja ciljevi usmereni prema vrednostima prosvetiteljstva i univerzalnim pravima proklamovanim u američkom dokumentu, te prema pokretanju revolucije protiv represivnih vladara i elitizma. Ova borba je bila uslovljena kolonijalnom vlašću Francuske, kada je narodu, politički i ekonomski eksploatisanom, uskraćena osnovna sloboda. Iako je autoritet kolonijalista kasnije oslabljen strogim militantnim pravilima Japana, patnja se nastavila zbog prisilnog rada i gladi unete u zemlju, kao i stroge industrijske i političke eksploatacije. Podsticaj za pokretanje revolucije dat im je kapitulacijom Japana na kraju Drugog svetskog rata. Na osnovu principa usvojenih na Zapadu i besmrtne izjave Tomasa Džefersona, koja je parafrazirana i shvaćena u širem smislu, Deklaracija nezavisnosti Demokratske Republike Vijetnam usvojena je 1945. godine.

Zemlja je procvetala sa novim liderima, koji su uspostavili nove lokalne administracije, preraspodelili deo imovine i otvorili silose da se suprotstave gladi.[20]

20 Declaration of independence of the Democratic Republic of Vietnam. https://historymatters.gmu.edu/d/5139/

Obe Deklaracije sada funkcionišu kao trajni izrazi nacionalnog identiteta i težnji ka slobodi, dok pružaju temeljne principe unutar svojih pravnih sistema.

Shodno tome, procvat globalnog uticaja je tek počeo. Naime, strast i motivacija proširili su se širom sveta, a ljudi su uglavnom entuzijastično dočekali. Sigurno je mnogi nisu bili pouzdani za takvu revolucionarnu ideju, ali uprkos tome, neporeciva je činjenica da je ona poslala snažnu poruku o temama predugo guranim pod tepih. Brojni pokreti su se osnovali u lancu društvenih promena, kao što su oni u Francuskoj, Haitiju, Latinskoj Americi, Poljskoj i Mađarskoj. Reformatori su se zalagali za nacionalnu nezavisnost, oslobađajući se od uzurpatora, moćnih predatora koji su ih držali u potlačenom položaju.

Dalje, dokument koji oslobađa zemlje koje su ga ratifikovale od pravne obaveze, ali služi kao snažna moralna i pravna referentna tačka u sudovima jeste Univerzalna deklaracija o ljudskim pravima. Sastavljena 1948. godine od strane Komiteta Ujedinjenih nacija, postavila je zajednički standard koji sve nacije treba da postignu.[21] Iz tog razloga, krajnji cilj je snažna zaštita slobode govora bez odmazde, uz garanciju poštovanja ljudskih prava, pošto je prezir prema njima rezultirao okrutnim ponašanjem.

Još jedan značajan primer kako su Ujedinjene nacije koristile principe ukorenjene u Deklaraciji nezavisnosti jeste usvajanje Međunarodnog pakta o građanskim i političkim pravima (ICCPR) 1966. godine. Ovaj ugovor se nadovezuje na temeljne ideale individualne slobode i jednakosti, pravno osiguravajući građanska i politička prava kao što su sloboda govora, religije i pravo na samoopredeljenje.[22]

21 UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217A (III), A/RES/217(III), 10 December 1948. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights (Accessed: 20 May 2025)

22 United Nations, 1966. International Covenant on Civil and Political Rights. Available at: https://www.ohchr.org/en/instruments-mecha-

Tako je zaštita osnovnih prava ključna za sprečavanje ustanka tiranije. Ujedinjene nacije nisu samo prepoznale potrebu za poboljšanjem životnog standarda i promocijom društvenih reformi kroz pravni napredak. Štaviše, potvrdile su verovanje u jednakost, pravičnost i dostojanstvo koje pripada svakom ljudskom biću kroz međunarodni dokument o ljudskim pravima.

Od svog usvajanja, američka Deklaracija nezavisnosti imala je različite uloge: začetnika, pokretača i inspiracije. Prvobitno okidač za promene u Evropi, na Dalekom istoku i tropskim zemljama, sada je utvrdila svoju poziciju kod kuće kao kreator.

Pravno nasleđe Deklaracije u SAD

Deklaracija nezavisnosti postavila je temelje za političku kulturu koja u suštini povezuje legitimnost vlasti sa ljudskim pravima. Iako nije pravno obavezujuća, njen sadržaj postao je primer kroz koji američka pravna tradicija ocenjuje druge akte, ali i kontekst same pravičnosti, posebno tokom značajnog ustavnog razvoja. U mnogim slučajevima Vrhovnog suda, vrednosti koje je proklamovala korišćene su kao potpora za proširenje građanskih prava. Na primer, *Rou protiv Vejda* (1973) takođe se oslanjao na naglasak Deklaracije na slobodu i ličnu autonomiju kako bi podržao reproduktivna prava. U novije vreme, slučajevi koji se bave afirmativnom akcijom, pravom glasa i imigracionom politikom slično su pozivali na njene ideale, želeći da ispituju da li pravne strukture odgovaraju temeljnim obećanjima o jednakom dostojanstvu.

Deklaracija je delovala kao seme iz kojeg su moderne američke demokratske ideje nastavile da rastu. Ishod napora da se postignu sloboda, pravičnost i autonomija za mnoge su bili Povelja o pravima i Ustav SAD, koji imaju ogroman značaj za strukturu američke pravne arhitekture. Određena obećanja ugrađena u manifest nezavisnosti

nisms/instruments/international-covenant-civil-and-political-rights (Accessed 30 June 2025).

postala su temelj normi za njihove naslednike, dokumente koji su težili slobodi, koji su ih primenili i učinili doslednim.

Važno je razlikovati Deklaraciju nezavisnosti i Ustav SAD. Dok Deklaracija artikuliše filozofski temelj američke demokratije tvrdeći inherentna prava pojedinaca, Ustav pruža pravni okvir kroz koji se ta prava regulišu i sprovode. Ova razlika je značajna, jer Deklaracija pruža moralno vođstvo, dok Ustav nosi obavezujuću pravnu vlast. Ipak, Deklaracija ostaje vitalni izvor moralnog rezonovanja. Sudije i pravni naučnici često se oslanjaju na njene principe prilikom tumačenja zakona sa aspekta pravičnosti i ljudskog dostojanstva čak i u odsustvu eksplicitnih pravnih mandata.

Uticaj Deklaracije takođe se direktno proteže na Povelju o pravima, ratifikovanu 1791. godine kao prvih deset amandmana na Ustav. Ovi amandmani čuvaju osnovne individualne slobode, kao što su sloboda izražavanja, religije, pravo na pravično suđenje i zaštitu od zloupotrebe od strane vlade, i odražavaju osnovno verovanje Deklaracije u neotuđivost ljudskih prava. Iako ih vremenski dele godine, ova dva teksta dele istu filozofsku DNK. Deklaracija je zapalila ideju da su prava inherentna i univerzalna, dok je Povelja o pravima želela da garantuje ta prava kroz pravno izvršne zaštite. Na ovaj način, moralna vizija Deklaracije nije napuštena, već institucionalizovana, transformisana iz revolucionarne izjave u konkretnu pravnu zaštitu lične slobode.

Vlada treba da obezbedi garanciju osnovnih prava svih ljudi, zasnovanu na ideji sadržanoj u Deklaraciji nezavisnosti, Povelji o pravima i Ustavu.

Dakle, dok Deklaracija nezavisnosti možda ne diktira zakon, ona nedvosmisleno animira duh u kojem se zakon tumači, reformiše i preispituje ga u potrazi za pravednijim društvom.

Zaključak

Deklaracija nezavisnosti je značajan dokument koji je uspostavio ideološki okvir za američku demokratiju, tvrdeći da vlade dobijaju svoju vlast od pristanka onih kojima se vlada i promovišući univerzalne ideale jednakosti i neotuđivih prava.

Mešavina pravnih tradicija i klasičnih liberalnih misli kao pravne osnove koja je oblikovala Deklaraciju nezavisnosti[23] spojila je običajno pravo sa univerzalnim principima prirodnog prava i postavila temelje za dalja unapređenja američkog ustavnog sistema.

Nepobitno, ona je potpuno preokrenula prethodni paradigmu o vladi, rezultirajući značajnim promenama kako globalno tako i istorijski.

Iako se u eri globalnog razvoja ljudskih prava i jednakosti primećuje mnogo nedostataka, trajan simbolički značaj dokumenta svakako se ne može poreći. Uz to, kontinuirana je odgovornost društava da reinterpretiraju i primenjuju pravedna rešenja i principe, ali na pravičniji i nediskriminatoran način. Ovaj kontinuirani zadatak da se njeni ideali reinterpretiraju samo potvrđuje trajnu relevantnost Deklaracije i njenu neuporedivu moć da pokreće društva napred.

Uprkos nedostacima, Deklaracija ostaje bezvremenski izvor inspiracije i nade, paleći revolucionarne ideale koji su odjeknuli daleko izvan njenog originalnog konteksta. Njen vizionarski duh i dubok moralni autoritet pokrenuli su borbu za slobodu i pravdu širom sveta, pokazujući kako dokument napisan pre više od jednog veka i bez pravne snage može postati izvrstan katalizator za promene.

Današnja misija Deklaracije jeste da služi kao model za način razmišljanja, ne u kontekstu 18. veka već u skladu sa razvijajućim vrednostima i potrebama modernih zajednica. Ona predstavlja nesavršen ali moćan prikaz istorijskog napretka, koji ne bi trebalo da

23 Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (University of North Carolina Press, 1969

bude zamrznut u vremenu, već korišćen kao vodič. U svetu koji se još uvek bori sa nejednakošću, nesigurnošću i nepravdom, moramo se vraćati njenom duhu i kanalisati njenu hrabrost. Deklaracija bi trebalo da inspiriše kontinuirane napore ka globalnom miru, društvenoj pravičnosti i ljudskom dostojanstvu, u skladu sa principima međunarodnog prava i moderne pravde.

Smatramo da njen istorijski značaj i trajan uticaj i te kako nadmašuju sve nedostatke, čineći je jednim od najvrednijih dokumenata u ljudskoj istoriji, kao i istinskim svedočanstvom o težnjama i dostojanstvu čovečanstva.

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Emilija Lukic

‘’All men are equal”: An Analysis of Equality in the Declaration of Independence and Its Modern Interpretation

Table of contents

Introduction

‘’There is the electric cord in the Declaration that links the hearts of patriotic and liberty-loving men together, that will link those patriotic hearts as long as the love of freedom exists in the minds of men throughout the world”, Abraham Lincoln.[1]
The all-pervading concept of equality that is rooted in Declaration of Independence stands as an ideal that shaped political thought, inspired generations and social movements, as well as encouraged further efforts to eliminate injustice and continues to demand the recognition of rights. In this essay, I will analyze the aforementioned political, philosophical and foundational document which laid the ideological groundwork that deeply influenced crucial legal developments both globally and nationally. Although it was never codified as law, the Declaration holds immense symbolic and moral authority.

The following discussion explores its contribution to the legal system while also addressing its limitations and somewhat hypocrisy of the principal author. [2] In this paper, I will consider the views of several theorists and authors who offer differing interpretations to further examine the act’s complexity.
A significant aspect of covering this topic is the essence of the very principle of equality, which is one of the act’s foundation, interpreted in various ways. This essay argues how even within the contradictions and debated pretense, the genius of the document resides in the content of words that reached the vision greater than its context allowed. This essay highlights how the document and its reinterpretations, through legal, social and global movements,

1 From “Electric Cord” Speech (1858), in Lincoln, The Collected Works of Abraham Lincoln, Vol. II, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press. 1953). 499-500.

2 *Thomas Jefferson: Hero or hypocrite*. (2021, December 22). [Video]. History Talks! Retrieved December 22, 2021, from https://www.youtube.com/watch?v=l5hGnBxBIx0

have led to undeniable progress in expanding the meaning and power of equality. It is crucial to recognize that the Declaration of Independence represented an unprecedented political manifesto of self-governance and liberty. It influenced constitutional progress and freedom campaigns leading to the establishment of the legitimate government for the first time. To fully appreciate the importance and legacy of the Declaration, it is essential to trace its historical origins and examine how its principles have been interpreted, contested, and transformed over time.

Background and Importance

The confrontation with Great Britain regarding their imperialistic views, taxation and frontier policy was the ignition button that started the engine of social change and the resistance of American colonies. Anger that grew over the restriction of trade, the undermining of colonial legal rights along with the interference in local government, produced the refusal to submit to the authority of the British Crown. The opposition was provided by informal self-governments, the Continental Congress that coordinated the boycott, including ordinary citizens, pamphleteers and writers, who began the act of revolution. No coincidence that the Abraham Lincoln referred to the Declaration of Independence as '' a rebuke and a stumbling-block to tyranny".[3]

The document's blueprint was drafted by Thomas Jefferson, the third president of the United States, and was proposed to the Congress in 1776. The act was primarily adopted in order of thirteen American colonies to detach from political influence of Great Britain, followed by the desire to implement three basic principles as the idealistic depiction of American creed. At the time of its adoption, there was a contrast to the prevailing monarchic and colonial systems.

3 Greenspan, J. (2025, May 28). *How the Declaration of Independence Was Printed—and Protected | HISTORY*. HISTORY. https://www.history.com/articles/declaration-independence-printed

Therefore, the Declaration boldly challenged the centuries-old traditions and notions of divine right and aristocratic rule while also demonstrating sheer political courage of its writers. What's more, their strong stance emboldened the American colonies and spread to Europe and other places as an inspiration for a revolution. The first manuscript of the Declaration was printed in two hundred copies after approval by the Second Continental Congress. However, since there were no delegates' signatures on the copies and a simple font was used, painstaking work began on a new version that will be written on animal skin and contain the signatures of all the delegates who approved of the act. Although there was opposition from some delegates, the work is believed to have been completed by scribe Timothy Matlack by August 2, with all fifty-six signatures. The document changed places where it was kept, firstly Philadelphia and then Baltimore, New Jersey, Maryland, Washington and more, due to British threats and many wars. Considering the frequent transfer and unwrapping, it became wrinkled, stained and faded. The document was displayed at various exhibitions, such as the Centennial Exhibition at the Independence Hall, and all the movement affected the ink and made it old and yellow. Considering that, in order to preserve the document for future generations, it currently resides in the Library of Congress, protected from light and air pollution.

The Declaration asserts that all individuals are created equal and possess inherent, inalienable rights and holds that, when a government violates them, it is the duty of the people to change or abolish it, as a new one, with more effective protection of their well-being.[4]

These ideals permeated the structure of the document, which consisted of three divided parts.

4 Jefferson, T. (1950) *The Papers of Thomas Jefferson. Vol. 1, 1760–1776*. Edited by J.P. Boyd. Princeton: Princeton University Press, pp. 243–247.

The first-preamble, although being overlooked at the time, indisputably became the well-known part, given that it holds the most important principle as the emblem of beliefs. With memorable phrases and articulate tone, it represents the expression of the American mind and a general statement of natural rights theory.

The second section contains the list of grievances against the British King. This section was written to remind the colonies of the tyranny they suffered and to justify the fight for justice.
The third part represents the actual declaration of independence, appealing to the Supreme Judge of the world for justification of the intention to reach freedom, from allegiance and political connection to the British Crown. At the very end, a mutual covenant for fortune, lives, and honor was proclaimed.

The language was such that it was receptive and relevant to a wide public, allowing the application in various battles for freedom.
We can freely say that the excellence and interestingness of the document is completely irrefutable due to its eloquent yet perceptive expression of democratic principles which continue to resonate with diverse audiences in the ongoing pursuit of liberty and justice.

Orginis and Implications of Thomas Jefferson's notable phrase

‘’All men are created equal” alludes that natural human rights apply to every person and serves as the frame for subsequent rights. The phrase reflects the founder's endeavor towards the realization of the individual worth principle, which proposes that each person should be treated with respect and dignity, within their inherent value. Although the statement is rather understandable and coherent, it veritably showed the unintended heterogeneity.

On one hand, Thomas Jefferson's perception of equality is profoundly implicated in the idea of ''self-evident truth"[5] a truth of free and independent persons with morally undeniable rights which is a necessity for creation of legitimate government based on consent.
On the flip side, the Declaration was marked by a few contradictions. There is certainly a difference between what the document says and what we want it to say. The founding Fathers made a small circle of equal white men of property, while leaving women, people of color, men who do not possess any assets and other marginalized groups outside of it.

Contrary to the unanimous acknowledgment and acceptance of the slavery as not only immoral and unfair practice, but also violation of natural law and human rights, several Fathers inherited and owned slaves.
Numerous authors see the blatant hypocrisy of the primary draftsman, who preached liberty while treating humans as objects of trade.
As explained by Edmund Morgan, who in his work explored the paradox in question, American Revolution was not the revolution against slavery, but rather the one to preserve liberty for whites, still following the previous practice of black enslavement.[6]
Historian Eric Foner also emphasizes this contradiction, pointing out that the Declaration's lofty language of universal freedom stands in contrasts with the social and political reality of slavery, exclusion, and inequality in 18th-century America. In his book ''The Story of American Freedom" (1998), Foner argues that the freedom proclaimed in 1776 was "a privilege of the few," noting that "the language of liberty, while expansive in theory, was bounded by race, gender, and class in practice." He contends that while the Declaration inspired generations, it also "masked profound inequalities under

5 Jefferson, T. (1776) *The Declaration of Independence*. https://www.archives.gov/founding-docs/declaration [Accessed 14 May 2025].)
6 Morgan, E.S. (1975) *American Slavery, American Freedom*. New York: W.W. Norton & Company, p. 6. Available at: https://wwnorton.com/books/American-Slavery-American-Freedom/

the rhetoric of equality."[7]

On the other hand, Garry Wills takes a far more generous view, arguing that the Declaration should be appreciated as a groundbreaking political document whose ideals transcend the personal flaws of its author. In his view, the text marked a radical departure from traditional forms of authority and deserves to be judged on its philosophical merits rather than Jefferson's private contradictions.[8]

Furthermore, since the birth of the new nation, the history of the battle for justice and equal opportunities has been led by those who got excluded from the small circle of male, Protestant landowners. The insiders made it obvious that they, not the people, make the decisions. Still, there were exceptions. For instance, despite the cultural differences, white, wealthy males of other nationalities were given a seat at the table of a sham democracy, where decisions were made to govern all those who were on American soil, yet, mostly with a big flaw of not being born on it. The history of America, as we know it today, as well as to white men of property, deservedly belongs to women, working-class individuals, people with disabilities, immigrants, religious minorities, lgbtq+ individuals, people of color and more. Voices of these groups, fought not to destroy American promise. Therefore, the history of America belongs to its outsiders as much as to its insiders, the people who insisted that the famous phrase of the founding Father must finally mean what it said.

From the above, it is evident that, veraciously, there was a philosophical contradiction. What I mean is that the proclaimed universalism had traits of covert particularism. As two different perspectives on values and standards, according to universalism, the individual characteristic, status and other factors do not determine which person deserves or gets more, but emphasize equality among humans. that is explained in framework of American philosopher, Marta Nussbaum, which upholds the spirit of the Declaration of

7 Foner, E., 1998. *The Story of American Freedom*. New York: W.W. Norton & Company.

8 Wills, G., 1978. Inventing America: Jefferson's Declaration of Independence. New York: Doubleday.

Independence and its expressed universalism. Nussbaum claims that universal principles should protect the individualism and ensure human dignity.[9]

Contrary, the particularism argues that the circumstances have the influence on integrity and applications of criteria and moral code. Therefore, the particularism understands the ethics as a task for increasing individual competency and it evaluates certain situations based on their specificities.
The philosophical contradiction between the asserted principles and exclusionary nature of society is revealed through their particularistic application in practice. Yet, it is precisely the contradiction that allowed the Declaration to become a living document, reshaped by history rather than confined by it.

Nonetheless, the strength of Jefferson's phrase lies in its elasticity and capacity to outgrow the limitations of its authors. Generations of reformers and revolutionaries interpreted this statement as a promise rather than a description of reality, and in doing so, pushed the American legal and political framework to become more inclusive. As Abraham Lincoln famously argued, the Declaration was not a declaration of perfect equality in 1776, but a moral beacon for what equality ought to become. The discussion between the ideals and reality transformed into action.
Martin Luther King Jr. was profoundly influenced by the promises made in the document that he invoked those messages to advocate civil and economic rights and challenge racial injustice in the United States. Dr. King relied on both the Declaration and the Constitution, as well as the word of God. In his quest for social justice, he referred to the aspirational text of these two documents and called them ''wells of democracy".[10]

9 Nussbaum, M.C., 2011. *Creating capabilities: The human development approach*. Cambridge, MA: Harvard University Press.

10 American Constitution Society. (2018, June 13). *The Constitutional Vision of Martin Luther King, Jr. | ACS*. https://www.acslaw.org/expertforum/the-constitutional-vision-of-martin-luther-king-jr/

The duty of reinterpreting the phrase and the actual application of the desired ideals is left to the future generations.

Still, is every person today, indeed, represented by the statement of equality? To better understand the tension between the Declaration's universal claims and its selective application, it is essential to revisit the philosophical lineage from which its ideals emerged.

Philosophical concept

The concept of the Declaration of Independence first appeared as a set of Enlightenment philosophies.
The inalienable rights were used in the context of religious freedom in the beginning, and then quickly broadened on the other spheres. That expansion was a significant step in developing the theory of liberalism. [11]
For example, John Locke believed that each person is born in anarchic state of nature and that all the opinions and reasons are later shaped by the society. The government, in order to be legitimate, must be approved by the people. Provided that, Locke argued that every citizen should have their own view on the legislation, execution and judiciary and if the system fails to fulfill the responsibilities, the people have the right to revolt. The author's writing heavily influenced Jefferson, who applied his thought that all individuals are born with natural rights, first of all, life, liberty, and property. The design of the U.S. Constitution was as well permeated with Locke's work and efforts, such as the separation of three aforementioned ''branches" of government, in which form it was established. His work had strong arguments in favor of religious conformity and against persecution and intolerance, what today would be considered numerous offensive practices.

11 Smith, G. H. (2011, November 3). *Religious Toleration Versus Religious Freedom*. Libertarianism.org. Retrieved June 20, 2025, from https://www.libertarianism.org/publications/essays/excursions/religious-toleration-versus-religious-freedom

On the other hand, Rousseau emphasized the collective will and civic freedom, claiming that true equality arises when individuals surrender to the "general will" that represents the common good. With that said, he advocates equality in society without the assertion that it is the ideal for society. [12]

Jefferson borrowed selectively from both, focusing more on individual autonomy than collective sovereignty. Immanuel Kant, writing later in the 18th century, reinforced the universalist tradition by asserting that every rational being possesses inborn moral worth and should be treated as an end in themselves, never merely as a means. His categorical imperative: "Act so that the maxim of your will may be valid as a principle of general legislation", aligns closely with the idea that principles of justice must apply to all people, regardless of the circumstances.[13] Kant advocated moral egalitarianism regardless of education and class and other characteristics, suggesting thatif we recognize the moral law as the source of duty, that idea leads us to political universality.

Although different, these philosophical frameworks and opinions established the ethical ground from which Jefferson's phrase emerged.

The unalienable rights declared within this document, were depicted as being crucial repercussions of man's nature, and mean that certain rights and one's moral regard, reason and volition cannot be transferred, not to the other men, nor to the government. The power of these ides lies in its flexibility since they traveled far beyond philosophy, taking a new form in the hand of those who dared to ask: Who is truly included in "All men are created equal?"

12 Weirich, Paul. "Rousseau on Equality." *History of Philosophy Quarterly*, vol. 9, no. 2, 1992, pp. 191–98. *JSTOR*, http://www.jstor.org/stable/27744014. Accessed 20 June 2025.

13 Johnson, R. and Cureton, A., 2024. *Kant's Moral Philosophy*. In: E.N. Zalta and U. Nodelman, eds. *The Stanford Encyclopedia of Philosophy* (Fall 2024 Edition). [online] Stanford University. Available at: https://plato.stanford.edu/archives/fall2024/entries/kant-moral/ [Accessed 22 Jun. 2025]

The conceptual transformation: From foundational ideal to modern equality

The idea of equality is constructed by means of complex group of principles and multifaceted concepts (Temkin 1993, chap. 2). Differentiation of comprehensiveness and interpretation of the ideas, notions and content of Declaration of Independence from its issuance to date is important, because it reflects the continuous progress regarding human rights awareness in all its efforts to correct injustice in underlying ideals.

With the evolution of fairness and human rights as well as a more inclusive understanding, the definition of equality in modern society is extended. Early interpretation was limited in scope, excluding women, enslaved Africans, Indigenous people, religious minorities and others from its promises. However, along with the primarily proclaimed political parity and rights to life, liberty and pursuit of happiness for every individual, the modern, broader view, includes race, gender, identity, religion, sexual orientation and such. One of the clearest legal milestones reflecting this broadened view was the Civil Rights Act of 1964. This act prohibited discrimination based on race, color, religion, sex, or national origin, and directly challenged the systemic inequalities that had long persisted despite the Declaration's promises.[14] Leaders of the civil rights movement, like Martin Luther King Jr., openly used Jefferson's words to point out the difference between what America claimed to stand for and how it actually treated people. By relying on the moral power of the Declaration, they showed that it should not be seen as just a historical document, but as something alive, such as a source of ongoing inspiration and a guide for real justice. This living quality of the Declaration continues to inspire modern legal and social battles for inclusion. For instance, the landmark Supreme Court case Obergefell v. Hodges in 2015., extended the fundamental rights to marry to same-sex couples nationwide, affirming that constitutional protections of liberty

14 National Archives, 2024. *The Civil Rights Act of 1964*. Available at: https://www.archives.gov/milestone-documents/civil-rights-act [Accessed 22 Jun. 2025]

and parity apply regardless of sexual orientation.[15] Yet, while such victories mark progress there are cases that show how the society must not disregard the continuing challenges. The Flint water crisis exemplifies how modern inequality, especially along racial and economic lines, directly challenges the ideals of the Declaration.[16] The community's call for justice invoked Jefferson's foundational words as a demand, not a metaphor. These examples show that the fight for equality is far from over and takes many forms. Equality in its normative sense is inextricably tied to morality and justice, particularly distributive justice. Yet, the understanding of equality in the time of Declaration's creation varies from what we consider it to be now. With that said, what is declared correct and engraved on vellum[17] as the form of theory, does not necessarily mean it would be applied in practice. It is evident that a great ray of freedom fell upon the American legislature and the people under its administration, yet casted shadows upon those excluded. With that said, how can the author include universal truths, yet for only a narrow segment of society?

This question became the cause of an avalanche of others. Each generation posed new versions of the same inquiry: how can equality be truly achieved?" The activists, in the light of development of modern society, based their intentions on discouraging unjust practices.

It is clear that even flawed ideals can be reclaimed. While I previously discussed about the problem of hypocrisy that is embedded within this document, it is important to observe that this particular issue did not go unchallenged and unnoticed.

All things considered, "all men are equal" captured the essence of the

15 Supreme Court of the United States, 2015. *Obergefell v. Hodges, 576 U.S. 644 (2015)*.Available at: https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf Accessed 22 Jun. 2025.)

16 EPA, 2024. *Flint, Michigan Drinking Water Response*. Environmental Protection Agency. Available at: https://www.epa.gov/flint Accessed 22 Jun. 2025.

17 Vellum is a parchment sheet made from clafskin on which the Declaration was printed.

ideal that no one should rule over the other. Furthermore, the ''men" in the aforementioned phrase serves as the euphemism for ''humanity", which many people who utilized the Declaration of Independence to advocate equal treatment, used to seize both the historical and moral high ground. Moreover, if the contentious assertion symbolizes moral foundation, the mechanism through which it is put into practice, being the law, should coordinate with its ideals.

Since the law governs each individual and determines what one gets, the law itself should promote some form of equality.[18] Having said that, the principles on which laws and statutes are based on should be fair and influence legal development to keep pace with technological, economic and social development.

The Declaration's National and Global impact and its role in creating laws

Despite not being a valid document in a strict sense, since it is not legally binding, the Declaration is considered expedient, as a core to the moral and political principles which the American democracy, law and identity are based on.

The impact of the document can be seen as it resonates with numerous latter acts, that embodied the same ideals. However, posterior ones expanded the list and the thought.

For instance, one of the most influential acts, particularly regarding women and their emancipation, is the Declaration of Sentiments and Women's rights.

Crafted by Elizabeth Cady Stanton in 1848., the Declaration mirrors the prior one as well as advocates for eradication of oppression, injustice and elitism by invoking legal and social reforms.[19] The document emphasizes women's rights to vote, own property, and receive education.

18 O'Brian, W. E. (2010). Equality in Law and Philosophy. *Inquiry*, *53*(3), 257–284.

19 Branningan, G. B. (2014). *An Analysis of the Declaration of Independence* [A Senior Honors Thesis]

Furthermore, the Seneca Falls Convention's manifesto changed the old ''All men are created equal" phrase to more exclusive one: ''All men and women are created equal".[20]
Legal reformers have been advocating equality and contesting state laws that prevented married women from owning property, including the wages they earned. They called on women to reject such a government, which allowed even ignorant and lowbrow men the right to vote, rather than women. The government, which denied women the right to education, placed them in boxes and doomed to immanence and interiority while excluding from every segment of life as irrelevant, incomplete and cripple. The government, which deprived them the equality in terms of divorce, business and even regarding their place in the source-center of the immensely respected natural rights and spirituality, the church. Until the adoption of this declaration, the question of parity was a much contentious one and, unfortunately, is the ongoing issue.

Additionally, being modeled closely upon its predecessor of almost a century, the sentiment's most important part was at its very end. The conclusion contains the ''Resolutions" which explain women's rights, responsibilities and the likewise ownership of God-given rights. The ninth resolution, regarding suffrage, was the most challenging one, since many proponents saw it as revolutionary move which would be met with ill-grace in society. Despite the lack of support, the proposal, although barely, passed after persistent and strong arguments made in its defense by the activists. It went on to become the cornerstone in women's suffrage movement, ultimately influencing that American women gain the right to vote in 1920., when the Nineteenth Amendment was added to the U.S. Constitution.
Furthermore, the Declaration shared similarities and influenced the adoption of the act that led to the establishment of the Democratic Republic of Vietnam, the former Vietnamese Empire. Thus, in the efforts to achieve international recognition, the goal is directed towards

20 HISTORY.com Editors. (2025, April 15). *Seneca Falls Convention - Definition, 1848, Significance | HISTORY*. HISTORY. https://www.history.com/articles/seneca-falls-convention

the values of the enlightenment and universal rights proclaimed in the American document, as well as the launch of a revolution against repressive rulers and elitism. This battle was conditioned by colonial rule by France, when the people were denied basic freedoms and were politically and economically exploited. Although the authority of the colonialists was later weakened by Japan's strict militant rules, the suffering continued due to forced labor and famine brought into the country as well as harsh industrial and political exploitation. The impetus to start the engine of the revolution was given to them with the capitulation of Japan at the end of World War II. Based on the model of the principles adopted in the West and the immortal statement of Thomas Jefferson that was paraphrased and understood in the broader sense, the Declaration of Independence of the Democratic Republic of Vietnam was adopted in 1945.

The country flourished, with its new leaders establishing new local administrations, redistributing some properties, and opening granaries to combat the famine.[21]

Both Declarations now function as enduring expressions of national identity and aspirations for freedom, while also providing foundational principles within their respective legal systems.
Consequently, the blooming of global impact only started. To give an illustration of what I mean, the passion and motivation had spread all over the globe, being mostly enthusiastically welcomed by the people. Certainly, many were untrustworthy for such a revolutionary idea, but in spite of that, the indisputable fact was that it sent a strong message about topics swept under the carpet for too long. Numerous movements were set off in the chain of social change, such as the one in France, Haiti, Latin America, Poland and Hungary. The reformers were pushing for national independence, breaking free from usurpers, powerful predators that kept them in an oppressed position.

21 Declaration of independence of the Democratic Republic of Vietnam. https://historymatters.gmu.edu/d/5139/

Furthermore, the document that exempts the countries that ratified it from legal obligation, yet serves as strong moral and legal reference point in courts, is the Universal Declaration for Human Rights. Crafted in 1948. by committee of the United Nations, it set a common standard that all nations should achieve.[22] For that reason, the ultimate goal is, primarily, the strong safeguard for free speech without the reprisal with the guarantee of respect for human rights, since the disdain towards them resulted in cruel behaviors. Furthermore, another significant example of how the United Nations have utilized the principles rooted in the Declaration of Independence is through the adoption of the International Covenant on Civil and Political Rights (ICCPR) in 1966. This treaty builds upon the foundational ideals of individual liberty and equality by legally securing civil and political rights such as freedom of speech, religion, and the right to self-determination. [23]

Thus, the protection of basic rights is crucial for preventing uprising of tyranny. The United Nations not only recognized the necessity for improvement in living standards and promotion of social reforms through legal progress. Moreover, they reaffirmed their belief in equality, equity, and dignity that belongs to each and every human being with international human right document.
From its adoption onward, the American Declaration of Independence has had various roles, as originator, mover and inspiration. Initially a trigger for change in Europe, the Far East, and the tropical countries, it has settled on its home turf as a creator.

22 UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217A (III), A/RES/217(III), 10 December 1948. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights (Accessed: 20 May 2025)

23 United Nations, 1966. International Covenant on Civil and Political Rights. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Accessed 30 June 2025).

Declarations's Legal Legacy in U.S.

The Declaration of Independence laid the groundwork for a political culture that essentially bonds the legitimacy of power with human rights. Although it is not legally binding, its content became the example through which the legal tradition of America evaluates other acts, but also the context of fairness itself, especially during landmark constitutional development. In many Supreme Court cases, the values it proclaimed were used to argue for expanding civil rights. For example, Roe v. Wade (1973), also drew upon the Declaration's emphasis on liberty and personal autonomy to support reproductive rights. More recently, cases addressing affirmative action, voting rights, and immigration policy have similarly invoked its ideals to question whether legal structures align with the founding promise of equal dignity.

The Declaration acted as the seed from which modern American democratic views continued to grow. The outcome of efforts to achieve liberty, fairness and autonomy, among many, were the Bill of rights and the U.S. Constitution, that have immense merits for the structure of the American law architecture. Certain promises built into the manifesto of Independence became the cornerstone of the norms to their successor freedom-seeking documents who implemented them and made cogent. It is important to distinguish between the Declaration of Independence and the U.S. Constitution. While the Declaration articulates the philosophical foundation of American democracy asserting the inherent rights of individuals, the Constitution provides the legal framework through which those rights are governed and enforced. This distinction matters, as the Declaration offers moral guidance, while the Constitution carries binding legal authority. Still, the Declaration remains a vital source of moral reasoning. Judges and legal scholars often turn to its principles when interpreting laws with the aspect of fairness, and human dignity even in the absence of explicit legal mandates. The influence of the Declaration also extends directly to the Bill of Rights, ratified in 1791 as the first ten amendments to the Constitution. These amendments

preserve essential individual liberties such as freedom of expression, religion, fair trial, and protection against government abuse and are reflecting the Declaration's core belief in the inalienability of human rights. Although drafted years apart, both texts share the same philosophical DNA. The Declaration ignited the idea that rights are inherent and universal, while the Bill of Rights desired to guarantee those rights through enforceable legal protections. In this way, the Declaration's moral vision was not abandoned but rather institutionalized, transformed from a revolutionary statement into a concrete legal protection of personal freedom.
The government's ought to secure the assurance of the fundamental rights all people are entitled to, based on the idea brought in Declaration of Independence, Bill of rights and the Constitution.

Thus, while the Declaration of Independence may not dictate law, it undeniably animates the spirit in which law is interpreted, reformed, and reimagined in pursuit of a more just society.

Conclusion

The Declaration of Independence is a significant document that established the ideological framework for American democracy by arguing that governments obtain their power from the consent of the governed and promoting universal ideals of equality and unalienable rights.
The mixture of legal traditions and classical liberal thought as legal ground that shaped the Declaration of Independence[24] united the common law with universal principles of natural law and set the groundwork for further American constitutional system improvement.
Indisputably, it completely upended the previous paradigm regarding government, resulting in meaningful changes both globally and historically.

24 Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (University of North Carolina Press, 1969

Although many flaws are noticed in the era of global development of human rights and equality, enduring symbolic power of the document certainly cannot be denied. Provided that, it is an ongoing responsibility of societies to reinterpret and apply just solutions and principles, but in a more fair-minded and nondiscriminatory manner. This ongoing challenge to reinterpret its ideals only proves the Declaration's lasting relevance and unmatched power to move societies forward. What I find truly extraordinary is that, despite its imperfections, the Declaration remains a timeless source of inspiration and hope, igniting revolutionary ideals that have resonated far beyond its original context. Its visionary spirit and profound moral authority have initiated movements for freedom and justice across the world, showing how a document written over century ago and without legal force, can become an excellent catalyst for change.

The ongoing mission of the Declaration today should be to serve as a model for how we think, not in the context of the 18th century, but in alignment with the evolving values and needs of modern communities. It represents an imperfect, yet powerful depiction of historical progress, one that should not be frozen in time, but used as a guiding light. In a world still grappling with inequality, insecurity, and injustice, we must return to its spirit and channel its boldness. The Declaration should inspire ongoing efforts toward global peace, social equity, and human dignity, in harmony with the principles of international law and modern justice. In my view, its historic significance and enduring influence far outweigh any shortcomings, making it one of the most remarkable documents in human history as well as a true testament to the aspirations and dignity of humanity.

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Milica Kukanjac

Prirodna prava (*natural rights*) u Deklaraciji nezavisnosti i njihova uloga u američkom ustavnom pravu

Sadržaj

Uvod

Uverenje da svaka individua, ljudsko biće, ima lična, rođenjem stečena prava, koja su univerzalna i neotuđiva, danas je rasprostranjeno širom sveta i zajemčeno svim modernim ustavima. Ono je temelj svetskog liberalnog poretka, koji je, još uvek, dominantan. Teorija o ovim subjektivnim pravima začeta je u teoriji justnaturalizma, jednoj od najznačajnijih pravnih teorija još od XVII veka.

Postojale su različite varijacije teorije justnaturalizma, koja je sazrevala kroz vreme, ali osnov je u svim varijantama isti. Sve one ukazuju na postojanje tzv. prirodnih prava, koja su nepromenljiva, univerzalna i neotuđiva, koja su iznad pozitivnog prava. Odnosto, prirodna prava zahtevaju da im se ono podredi. U suprotnom, kada suveren, tj. onaj koji pozitivno pravo donosi i sprovodi, direktno ili indirektno pojedinca liši ovih prava, njegova vlast gubi legitimitet i narod više nije obavezan da mu se pokorava.

Deklaracija nezavisnosti SAD doneta je 4. jula 1776. godine, u jeku Američkog rata za nezavisnost od britanske krune. Ovaj dokument je predstavljao odlučujući korak u osamostaljenju SAD. Vrlo je primetan snažan uticaj prirodnog prava, s obzirom na to da su neka od osnovnih načela (jednakost, ravnopravnost, pravo na život, slobodu i sreću, kao i pravo na pobunu) inkorporirana u prvi deo Deklaracije nezavisnosti.[1] Njen tvorac Tomas Džeferson oslanjao se na stavove Džona Loka i Žana Žaka Rusoa, koji su se posebno bavili teorijama justnaturalizma i društvenog ugovora.

O evidentnom uticaju prirodnog prava na Deklaraciju nezavisnosti, ali i na američku ustavnost uopšte, svedoče sledeće rečenice: „Mi smatramo očiglednim istinama da su ljudi stvoreni jednaki, i da ih je njihov Tvorac obdario neotuđivim pravima, među koja spadaju život, sloboda i traženje sreće. Da bi osigurali ta prava, ljudi ustanovljavaju među sobom države koje svoju pravednu vlast crpe iz pristanka onih kojima se vlada.

1 United States Declaration of Indepenndence (1776)

Pravo je naroda, kada neka forma vladavine postane štetna po te ciljeve, da izmeni, ukine i ustanovi novu vladu, osnivajući je na takvim principima, i organizujući njenu vlast u takvom obliku, da mu najverovatnije osiguraju bezbednost i sreću".[2]
S obzirom na to da je Deklaracija nezavisnosti, pored Ustava SAD iz 1787. godine, temelj današnje američke države i vrednosti koje ona propagira, vrlo je važno razumeti poreklo i istorijske okolnosti pod kojim je doneta, kao i pravne teorije koje su pretežno uticale na njenu sadržinu, kako bi se razumeo i sam dokument i njegov pravno-istorijski značaj.

Prirodna prava
Pojam i poreklo

Pojam prirodnog prava evoluirao je kroz vreme. Različiti filozofi i pravni teoretičari pripisivali su mu različita značenja, mada je osnov teorije pretežno ostajao isti.
„Prirodno pravo je skup nepromenljivih, objektivnih i večitih pravila ljudskog ponašanja koja su u tom smislu slična pravilima prirodnih zakona".[3]
Prirodno pravo je smatrano „višim" pravom u odnosu na pozitivno: često se isticala neophodnost da se pozitivno pravo uskladi sa načelima prirodnog prava, koje je sveopšte i postojano nezavisno od vremena, države ili zakonodavca. O ovom konceptu svedoči i Ciceron: „ne mogu postojati različiti zakoni u Rimu i u Atini, ili različiti zakoni u sadašnjosti i budućnosti, već će jedan večan i nepromenljiv zakon važiti za sve narode i sva vremena, i postojaće samo jedan gospodar i vladar, a to je Bog nad nama svima, jer je on kreator ovog zakona, njegov donosilac i sudija koji ga sprovodi".[4]
Bilo je različitih mišljenja o poreklu prirodnog prava. Neki mislioci, poput Tome Akvinskog, smatrali su da prirodno pravo proističe iz božanskog proviđenja, dok su drugi, poput Džona Loka i Žana Žaka

2 Jovanović, M. Dajović, G. Vasić, R. (2015), *Uvod u pravo*, 2. izdanje, Pravni fakultet Univerziteta u Beogradu
3 *Ibid*.
4 Bix, B. (2010), 'Natural Law Theory', *Academia Edu,* p. 212

Rusoa, verovali da ono izvire iz same prirode.[5] Neki teoretirčari su išli tako daleko da su smatrali da, ukoliko pozitivno pravo krši osnovna načela prirodnog prava, ono uistinu i nije pravo, odnosno građani nisu dužni da ga poštuju. *Lex iniusta non est lex* – nepravedan zakon nije zakon.

Po Tomi Akvinskom, pravedan zakon je onaj koji je saglasan sa prirodnim pravom. To podrazumeva:
1) da je zakon donet „zarad opšteg dobra";
2) da zakonodavac nije prekoračio svoja ovlašćenja;
3) da je teret zakona pravedno nametnut građanima.[6]
To bi u praksi značilo da svaki zakon koji nije potpuno moralno ispravan automatski ostaje van snage, a građani nisu dužni da ga poštuju, niti bi sudije trebalo po njemu da sude. Međutim, evidentno je da ovakvi stavovi ulaze u zonu relativizma, jer ne postoji tačan kriterijum na osnovu kog bi se moglo oceniti da li je neki zakon u skladu sa prirodnim zakonom, odnosno da li je moralno ispravan (pre svega, zato što se ne vode svi ljudi istim moralnim načelima, a pravda i opšte dobro su krajnje neodređeni pojmovi). Zbog ovoga bi se moglo reći da su ovakva shvatanja prirodnog zakona ekstremna, a tome doprinosi i činjenica da su ona danas gotovo potpuno napuštena.
Teorija prirodnog prava postojala je još u antičko doba. Međutim, procvat je doživela u XVII i XVIII veku. Dva su značajna preokreta u razvoju ove teorije.
Prvi značajan momenat može se pripisati Hugu Grocijusu, holandskom pravniku i filozofu. Zahvaljujući njegovom delu *O pravu rata i mira*, konačno su odvojili pravo i religija. Taj raskid personifikuje rečenica: „Prirodno pravo bi važilo čak i ako pretpostavimo [...] da nema Boga ili da on nema upliva u ljudskim stvarima".[7]
Ljudski razum postaje osnovni izvor prirodnog prava, odnosno –

5 Avramović, S. Stanimirović, V. (2023), *Uporedna pravna tradicija*, 18. izdanje, Pravni fakultet Univerziteta u Beogradu
6 Bix, B. (2010), 'Natural Law Theory', *Academia Edu,* p. 213
7 Jovanović, M. Dajović, G. Vasić, R. (2015), Uvod u pravo, 2. izdanje, Pravni fakultet Univerziteta u Beogradu

stav da čovek razumom može pojmiti osnovna načela prirodnog prava postaje dominantan.

Hugo Grocijus, osim što je jedan od najznačajnijih predstavnika justnaturalizma, doprineo je i osnivanju međunarodnog prava. On ističe da se međunarodno pravo može ustanoviti samo na višim načelima, koja su iznad država i njihovih zakona.[8] Iako je njegovo delo objavljeno 1625. godine, ovakvo viđenje međunarodnog prava i danas je dominantno i dovodi u delikatan položaj suverenitet države, kao jedno od osnovnih ustavnih načela modernih demokratija.

Drugi značajan momenat može se pripisati talasu racionalizma, tj. racionalizaciji teorije justnaturalizma. Ovim se akcenat stavlja na pojedinca, individuu. Uslov za ovaj preokret bilo je rađanje građanskog društva. Razvoj trgovine zahtevao je uspostavljanje slobodne najamne radne snage, koja je mogla slobodno da prodaje i naplaćuje svoj rad. Ukidanje ropstva i feudalnih odnosa stvorilo je mogućnost da se ljudska bića pravno izjednače. Samim tim, prirodno pravo sve manje podrazumeva dužnosti i pravila koja pojedinac mora da poštuje, a sve više se okreće ka njegovim ličnim, urođenim i subjektivnim pravima. Tako se izdvaja termin *prirodna prava*, dobivši značenje kakvo ima i danas: skup univerzalnih, nepromenljivih i neotuđivih prava koja svaki pojedinac stiče rođenjem. Ova distinkcija se najbolje može prepoznati u engleskoj terminologiji: fokus više nije na prirodnom pravu (*natural law*), koje podrazumeva dužnosti i pravila, već na prirodnim, subjektivnim pravima (*natural rights*), koja u moderno doba dobijaju naziv *ljudska prava*. Upravo je Hobs ukazivao na neophodnost razlikovanja ova dva termina.[9]

8 Avramović, S. Stanimirović, V. (2023), *Uporedna pravna tradicija*, 18. izdanje, Pravni fakultet Univerziteta u Beogradu

9 Vukadinović, D. (2020), 'Od antičke teorije prirodnih prava do savremene teorije ljudskih prava', *Perspektive implementacije evropskih standarda u pravni sistem Srbije', knjiga 10, Pravni fakultet Univerziteta u Beogradu, p. 71*

„*Četiri su polazišta ove teorije prirodnih prava:*

1. Postoje prirodna (subjektivna) prava koja se mogu spoznati razumom i racionalno dokazati. Ta prava su večna i univerzalna.
2. Prirodno pravo (objektivno) jeste korpus, zbir pravila koja se mogu utvrditi razumom i kojima se savršeno obezbeđuju sva ta prirodna prava.
3. Politička zajednica (država) postoji samo da bi ljudima zajemčila ostvarivanje tih prirodnih prava.
4. Pozitivno pravo je sredstvo kojim država ispunjava taj svoj zadatak i ono je obavezno samo u meri u kojoj je usaglašeno sa prirodnim pravom, a svaki pojedinac (to jest njegov razum) je sudija u pogledu ove usaglašenosti".[10]

Ovakvo shvatanje prirodnih prava prvu praktičnu primenu dobija u Deklaraciji nezavisnosti SAD iz 1776. godine. Danas se na njemu temelji čitava američka ali i globalna ustavnost.

Najznačajnija prirodna prava jesu pravo na život, slobodu, sigurnost, svojinu, dostojanstvo, jednakost pred zakonom itd. Konkretno, u Deklaraciji nezavisnosti SAD pominje se pravo na život, slobodu i težnju ka sreći.

Džon Lok i njegov pogled na prirodna prava

Džon Lok (1632–1704) bio je engleski filozof i lekar, jedan od najuticajnijih mislilaca svog doba, a često je smatran ocem liberalizma. Njegov rad je značajno uticao na razvoj epistemologije i političke filozofije, koju je zasnovao na teoriji justnaturalizma, a njegovo najznačajnije delo iz političke filozofije jesu *Dve rasprave o vladi*. U ovom delu je, između ostalog, napravivši korelaciju između teorije prirodnog prava i teorije društvenog ugovora, dao svoje viđenje o ispravnom načinu funkcionisanja pravednog političkog društva.

U njegovoj percepciji prirodnog prava vidljive su religiozne primese, te on zastupa stanovište da prirodni zakoni izviru iz božje volje, ali da ih svaki čovek može spoznati razumom. Po Loku, svi ljudi u

10 Jovanović, M. Dajović, G. Vasić, R. (2015), Uvod u pravo, 2. izdanje, Pravni fakultet Univerziteta u Beogradu

prirodnom stanju (fiktivnom stanju bez državnog uređenja) rođeni su slobodni i, po prirodnom zakonu, imaju pravo na život, slobodu i svojinu. Ova prava čoveku pripadaju samom činjenicom da je ljudsko biće; ona su neotuđiva. Sloboda postoji dokle god ljudi poštuju prirodne zakone, koji su potpuno logični i pojmljivi razumom. Kako bi očuvali ova prava, ljudi dobrovoljno sklapaju društveni ugovor i odriču se dela svojih prava u korist institucije vlade, koja im zauzvrat garantuje da će poštovati i, još važnije, zaštititi njihova prava. Tako je pravedna vlast ona koja vlada uz saglasnost onih kojima vlada, koja je uspostavljena samo da bi štitila i poštovala prirodna prava pojedinca. Čim vlada prekorači svoja ovlašćenja, kada pozitivni zakoni postanu protivrečni prirodnim, društveni ugovor se raskida, a takva vlada gubi svaki legitimitet, pa je pravo svakog građanina da je svrgne i uspostavi novu.

„[P]olitičko društvo i postoji jedino tamo gde se svaki član društva odrekao svoje prirodne vlasti i predao je u ruke zajednice u svim slučajevima kada može, radi zaštite, da se obrati zakonu koji je ona uspostavila".[11]

Kada Lok govori o prirodnom pravu kao nečemu što je logično svakom razumnom čoveku i što postoji nezavisno od pozitivnog prava, može se izvesti zaključak da je prirodno pravo inherentno moralu. Međutim, takođe su apostrofirana prava na život, slobodu i svojinu, kao osnovna ljudska, odnosno prirodna prava čoveka.

Postoji nekoliko indikatora Lokovog neupitnog uticaja na Američku revoluciju i Deklaraciju nezavisnosti. Njega su poštovali i često čitali Džejms Medison, Aleksander Hamilton, Tomas Džeferson i drugi Očevi osnivači. Tomas Džeferson, tvorac Deklaracije nezavisnosti SAD, jednom prilikom je izjavio: „Bejkon, Lok i Njutn... Ja smatram da su to tri najveća čoveka koja su ikada živela, bez bilo kakvih izuzetaka, i da su položili temelje tih superkonstitucija koje su podignute u fizičkim i moralnim naukama".[12]

U *Dvema raspravama o vladi* Lok propisuje ograničena ovlašćenja

11 Lok, Dž. (2002), 'Dve rasprave o vladi', 2. izdanje, Beograd: Utopia

12 Džeferson, T. (1789), Pisma 1743-1826, dostupno na: From Revolution to Reconstruction: Presidents: Thomas Jefferson: Letters: BACON, LOCKE, AND NEWTON

zakonodavne vlasti u svakoj državi: „Prvo, oni treba da vladaju na osnovu ustanovljenih zakona, a ne da budu nedosledni u pojedinačnim slučajevima, već da imaju jedno pravilo za bogatog i siromašnog, za miljenika na dvoru i seljaka za plugom.
Drugo, ovi zakoni takođe ne treba da budu konačno namenjeni ni jednom ni drugom cilju osim dobru naroda.
Treće, oni ne treba da udaraju poreze na svojinu naroda bez saglasnosti naroda, koju je dao on sam ili su je dali njegovi predstavnici. A ovo se upravo tiče samo takvih vlada gde zakonodavno telo stalno postoji, ili bar tamo gde narod nije namenio neki deo zakonodavne vlasti za predstavnike koje bi s vremena na vreme birao.

Četvrto, zakonodavno telo niti mora niti može da prenese vlast donošenja zakona na nekog drugog, ili da je postavi negde drugde, a ne tamo gde je to narod učinio".[13]
Imajući u vidu društvenopolitičke okolnosti pred Američku revoluciju, kao i sam tekst Deklaracije nezavisnosti, evidentan je uticaj Lokove filozofije na ishod ovih istorijskih događaja. Njegova razmišljanja su implementirana u samoj Deklaraciji, a stavovi o pravu na pobunu i revoluciju verovatno su bili jedan od pokretača borbe za nezavisnost američkih kolonija.

Tomas Džeferson i njegov pogled na prirodna prava

Tomas Džeferson (1743–1826) bio je jedan od osnivača Sjedinjenih Američkih Država, tvorac Deklaracije nezavisnosti SAD i treći predsednik SAD.
Koliko je bio nadahnut teorijom prirodnih prava, svedoči sama Deklaracija nezavisnosti, ali i dve godine ranije objavljen *Sažeti prikaz prava Britanske Amerike*. U ovom eseju Džeferson poziva britanskog kralja da ravnopravno tretira sve britanske kolonije i podseća ga na neotuđiva prava svakog pojedinca. Ovaj dokument može se smatrati uvertirom pred Američku revoluciju, kao poslednje upozorenje britanskoj kruni: „Otvorite svoje grudi, gospodine, liberalnoj i proširenoj misli. Neka ime Džordža III ne bude mrlja na

13 Lok, Dž. (2002), 'Dve rasprave o vladi', 2. izdanje, Beograd: Utopia

stranici istorije. Okruženi ste britanskim savetnicima, ali zapamtite da su to stranke. Nemate ministra za američka pitanja, jer nemate nikoga uzetog među nama, niti podložnog zakonima o kojima vam oni trebaju dati savete. Valja vam, dakle, misliti i delovati za sebe i svoj narod".[14]

Kao čvrsti zastupnik ideologije liberalizma, pod snažnim uticajem Lokove filozofije, verovao je i proklamovao jednakost. Pojam jednakosti diferencirao je na dva principa: jednake prilike za sve i moralnu jednakost.

Princip jednakih prilika za sve pravi razliku između ljudi na osnovu njihovog socijalnog statusa, obrazovanja, nadarenosti itd., ali pokušava da te razlike anulira tako da svaki pojedinac ima jednake šanse da napreduje i pronađe svoju sreću. Put ka ostvarenju tog cilja Džeferson vidi u obezbeđivanju neprikosnovenosti prirodnih prava, konstitucionalizaciji vlasti, ukidanju primogeniture, uspostavljanju slobode veroispovesti i sl.

Princip moralne jednakosti kaže da svako ljudsko biće zaslužuje jednaka lična i građanska prava.[15]

Ovakvo razmišljanje je u to vreme bilo revolucionarno i utrlo je put svetskom liberalnom poretku, koji je opstao vekovima kasnije.

Još jedno važno pravo koje Džeferson ističe jeste pravo na revoluciju. Ono je sadržano u Deklaraciji, a može se protumačiti kao opravdanje za nasilno rušenje vladajućeg režima zarad očuvanja prirodnih prava svakog pojedinca. Neki tvrde da se i celokupan dokument Deklaracije nezavisnosti može posmatrati kao izvesno opravdanje za Američku revoluciju.

„Slobodan narod [pretenduje] na svoja prava kao izvedena iz zakona prirode, a ne kao dar svog glavnog magistrata".[16] U ovoj rečenici može se naslutiti Lokov model teorije društvenog ugovora u korelaciji sa

14 Džeferson, T. (1774), 'Summary view of the rights of British America', dostupno: GLC00962_OS.pdf

15 Holowchak, M. Andrew, "Thomas Jefferson", *The Stanford Encyclopedia of Philosophy (Winter 2018 Edition)*, Edward N. Zalta (ed.), dostupno: https://plato.stanford.edu/archives/win2018/entries/jefferson/>.

16 Džeferson, T. (1774), 'Summary view of the rights of British America', dostupno: GLC00962_OS.pdf

prirodnim pravima – vlast kao takva postoji samo da bi obezbedila postojana prirodna prava onima koji su tu vlast na prvom mestu uspostavili.
Tomas Džeferson se s pravom može smatrati jednom od najznačajnijih ličnosti u američkoj istoriji. Dan donošenja Deklaracije nezavisnosti u SAD i danas se slavi kao nacionalni praznik, a njegove ideje o jednakosti, prirodnim pravima i pravdi nastavljaju da žive u celokupnoj američkoj ustavnosti.

Uloga prirodnih prava u borbi američkih kolonija za nezavisnost od britanske Krune

Prva stalna britanska kolonija uspostavljena na tlu Severne Amerike bio je Džejmstaun, koji je u sastav Britanske imperije konačno ušao 1607. godine. On će kasnije prerasti u Virdžiniju. U narednih nekoliko decenija, Velika Britanija će brojati 13 koloniija na tlu Severne Amerike.
Tokom čitave svoje vladavine, Britanija na čelu sa Džordžom III ophodila se nesavesno prema svojim kolonijama, naročito onim u Americi. S obzirom na to da je trebalo finansirati mnogobrojne ratove, sredstva su crpljena iz kolonija u vidu visokih poreza i carina. Američke kolonije su mogle da trguju samo sa Britanijom, porezi i carine na razna dobra povećavani su u skladu s potrebom Kraljevstva, a bez preteranog obzira prema kolonijama. Stoga su kolonije pretežno živele u siromaštvu.

Britanija je postavljala svoje guvernere na čelo svake kolonije, što je stanovnike stavljalo u veoma nepovoljan položaj, s obzirom na to da postavljeni guverneri nisu bili upućeni u način života u kolonijama, pa su im nametali svoje zakone, koji nisu odgovarali kolonizovanom narodu.
Džordž III ni u jednom trenutku nije dozvolio da kolonije steknu ozbiljniji vid autonomije, niti da zahtevaju dodatna prava, uprkos neprestanim zahtevima američkih kolonija da imaju svog zastupnika u Britanskom parlamentu. Nakon što se odnosi zaoštrili, po iskrcavanju britanske vojske na američko tlo i povišenju carina i poreza, situacija je

eskalirala i pretvorila se u oružani sukob 1775. godine.[17]
Godinu dana kasnije, objavljena je Deklaracija nezavisnosti SAD, nakon čega će uslediti rat i borba za nezavisnost američkih kolonija, sve do konačnog stvaranja SAD Pariskim mirom 1783. godine.

Međutim, istorija često previđa ono što je potencijalno igralo ključnu ulogu u oslobađanju SAD od britanske Krune. Teorija o prirodnim pravima jedan je od vodećih uzročnika Američke revolucije kao takve. Evidentno je da je među stanovnicima kolonija godinama vladalo nezadovljstvo zbog teških uslova života. Međutim, artikulacija tog nezadovoljstva kroz sveopštu pobunu i borbu za nezavisnost mora se pripisati prirodnim pravima. Da stanovnici kolonija nisu osvestili ideju neprikosnovnih prava koja bi trebalo da pripadaju svima, da se nisu vodili idejama jednakosti i teorijom društvenog ugovora, bilo bi veoma diskutabilno da li bi do revolucije uopšte došlo. Shodno tome, neke zasluge mora preuzeti Džon Lok, ali i mnogobrojni njegovi savremenici koji su u to vreme obrazovali jednu potpuno novu i revolucionarnu političku misao. Otelotvorenje te političke misli jeste upravo Deklaracija nezavisnosti, ali je važno naglasiti da je ona samo zaokružila i uobličila liberalne ideje slobode, jednakosti i pravde, mada su one zapravo bile postojane godinama pre njenog donošenja, kao jedan od glavnih faktora revolucije.

Povelja o pravima (1791)

Povelja o pravima (*Bill of Rights*) predstavlja prvih deset amandmana na Ustav Sjedinjenih Američkih Država, usvojenih 1791. godine. Ovi amandmani garantuju osnovna prava građana, poput slobode govora, veroispovesti, prava na pravično suđenje, privatnost, zaštitu od mučenja itd. Iako se često govori o njima kao o temeljima američke slobode, oni su zapravo rezultat političkog kompromisa i filozofske borbe koja je vođena u samim počecima američke države.

17 Avramović, S. Stanimirović, V. (2023), *Uporedna pravna tradicija*, 18. izdanje, Pravni fakultet Univerziteta u Beogradu

Pozadina donošenja Povelje o pravima

Godine 1787. sazvana je Ustavna konvencija u Filadelfiji, gde je napisan Ustav SAD, koji je predviđao snažnu, centralizovanu saveznu vladu. Međutim, ovakav predlog Ustava odmah je izazvao žestoke rasprave. Federalisti, koji su podržavali novi Ustav, tvrdili su da je snažna centralna vlast neophodna za stabilnost zemlje. Nasuprot njima, antifederalisti su strahovali da će takva vlast postati slična tiranskoj britanskoj Kruni protiv, koje se i bore.
Glavna zamerka antifederalista bila je što Ustav ne sadrži garancije osnovnih prava građana – prava koja bi štitila pojedinca od državne zloupotrebe moći. Da bi se obezbedila ratifikacija Ustava u pojedinim državama, federalisti su napravili kompromis i obećali da će, čim Ustav bude usvojen, u njega biti uključena Povelja o pravima. Tako je Džejms Medison, iako prvobitno skeptičan prema potrebi za amandmanima, preuzeo zadatak da ih napiše. Kongres je 1789. predložio 12 amandmana, a 10 je ratifikovano do 1791. godine.[18]

Veza sa prirodnim pravima

Filozofska osnova za Povelju o pravima leži u prosvetiteljskim idejama, naročito u teoriji prirodnih prava. Ta prava postoje nezavisno od države, vlast ih ne daje građanima, već ih samo priznaje i obezbeđuje njihovo poštovanje. Moglo bi se reći da je Povelja o pravima svojevrstan nastavak Deklaracije nezavisnosti SAD, u kojoj se proširuje katalog Ustavom zajemčenih prava, dok se nastavlja prožimanje teorije prirodnih prava kroz američku ustavnost.

Uska povezanost sa prirodnim pravima može se uočiti površnom analizom prvih deset amandmana:

Prvi amandman štiti slobodu izražavanja, veroispovesti i okupljanja. Četvrti amandman štiti pravo na privatnost. Peti i šesti

18 History.com Editors (2009) 'The Bill of Rights – Drafting, Constitutional Convention & Amendments', *History*, dostupno na: https://www.history.com/articles/bill-of-rights

amandman obezbeđuju pravičan postupak i zaštitu slobode. Deveti amandman garantuje zaštitu prava koja nisu izričito navedena u Ustavu. Sve ovo je koherentno s prirodnim pravima kao takvim.[19] Povelja o pravima je proizvod političkog kompromisa, ali i dubokih filozofskih uverenja o prirodi čoveka i njegove slobode. Ona osigurava da američka vlast, ma koliko moćna bila, ne može gaziti osnovna prava pojedinca. Time je američki Ustav dobio svoj najvažniji dodatak, koji ga pretvara ne samo u pravni dokument već i u temelj zaštite ljudskog dostojanstva. Povezanost Povelje o pravima sa prirodnim pravima dokazuje da sloboda nije poklon države, već neotuđivo pravo svakog čoveka.

Načela sadržana u Povelji o pravima nisu ostala ograničena na normativni okvir Ustava, već su s vremenom dobila svoje puno značenje kroz sudsku interpretaciju. U nastavku će biti analizirani pojedini sudski slučajevi koji su doprineli razvoju ustavnopravne misli i konkretnom definisanju odnosa između prirodnih prava pojedinca i ovlašćenja državne vlasti.

Slučaj *Calder v. Bull*

O slučaju

Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798) jeste slučaj Vrhovnog suda SAD koji je bio od velikog značaja za razvoj američke ustavnosti. Osim što se bavi osnovnim pitanjem *ex post facto* zakona, značajan je i zbog toga što je u njemu sadržana interpretacija Ustava SAD kao društvenog ugovora, što je veliki doprinos za ovu teoriju i teoriju prirodnih prava uopšte.

Ovaj spor je prevashodno pokrenut zbog pitanja o nasleđivanju Normana Morisona, odnosno validnosti njegovog testamenta. Prema testamentu, njegovu imovinu bi trebalo da nasledi bračni par Bul. Međutim, ako se ispostavi da testament nije validan, Normanov zakonski naslednik bila bi porodica Kalder.

19 United States Bill of Rights (1791)

21. marta 1793. godine, Ostavinski sud u Hartfordu u državi Konektikat poništio je testament Normana Morisa, pa je imovina pripala porodici Kalder. U početku, a i tokom ovog suđenja, zakon savezne države Konektikat zabranjivao je podnošenje žalbe ili pravnog leka po isteku roka od 18 meseci od dana donošenja presude. U ovom slučaju, to bi za porodicu Bul značilo da ne može da izjavi zakonitu žalbu višem sudu na presudu da je testament nevažeći, zato što je rok za podnošenje pravnog leka istekao. Međutim, Generalna skupština Konektikata, u maju 1975. godine, donela je zakon kojim se ukida prethodno važeći zakon o zabrani podnošenja žalbi nakon 18 meseci, što je omogućilo porodici Bul da uloži žalbu i direktno promenilo ishod slučaja.

Porodica Kalder uložila je žalbu tvrdeći da je ovaj zakon *ex post facto,* tako da samim tim krši član 1, odeljak 10 Ustava SAD. Slučaj je stigao pred Vrhovni sud SAD 1798. godine.

Glavno pitanje u ovom slučaju je da li se sporni zakon može smatrati *ex post facto* zakonom, na osnovu čega se može zaključiti da li je protivustavan.

Vrhovni sud SAD doneo je odluku da nema osnova za tvrdnju da je sporni zakon države Konektikat protivustavan, odnosno da krši gorepomenutu odredbu Ustava o zabrani donošenja *ex post facto* zakona.

Značaj za američko pravo i zaključna razmatranja

Osim preciznijeg definisanja i tumačenja jednog značajnog domena prava – retroaktivni i *ex post facto* zakoni – ovaj slučaj je izuzetno značajan za američko pravo uopšte. U nekoliko navrata, sudije Vrhovnog suda afirmišu stavove iz Povelje o pravima i Deklaracije nezavisnosti SAD koji se direktno odnose na teoriju prirodnih, neprikosnovenih prava i teoriju društvenog ugovora.

„Narod Sjedinjenih Država je uspostavio svoj Ustav ili oblik vladavine da bi uspostavio pravdu, unapredio opštu dobrobit, osigurao blagodeti slobode i zaštitio svoju ličnost i svojinu. Ciljevi zbog kojih ljudi ulaze u zajednicu odrediće prirodu i uslove društvenog ugovora, a pošto je on

temelj zakonodavne vlasti, odlučiće i koji su njeni pravi ciljevi".[20] Ovde se društveni ugovor eksplicitno pominje, ali i primenjuje, što je velik iskorak u američkoj sudskoj praksi.

Osim toga, ovaj slučaj sadrži prve interpretacije Povelje o pravima – konkretno, Petog amandmana. Peti amandman propisuje život, slobodu i svojinu kao tri osnovna neprikosnovena dobra koja nikome ne mogu biti oduzeta bez propisnog sudskog postupka,[21] što se takođe nadovezuje na prirodna prava i priznaje ih.

„Akt legislative (pošto ga ne mogu nazvati pravom) koji je suprotstavljen osnovnim principima društvenog ugovora ne može se smatrati zakonitim vršenjem zakonodavne vlasti".[22]

Konačno, može se izneti zaključak da je ovo jedan od značajnijih presedana u američkom pravu, koji je u velikoj meri oblikovao dalji put i razvoj američke ustavnosti i doprineo negovanju tradicionalnog poimanja i značaja prirodnih prava i društvenog ugovora, onakvih kakvi su sadržani u Deklaraciji nezavisnosti.

Slučaj *Dred Scott v. Sandford*

O slučaju

Slučaj *Dred Scott v. Sandford, 60 U.S. (19 How.) 393* (1857) smatra se jednom od najlošijih odluka koju je Vrhovni sud SAD ikada doneo.

Iako su ideje o prirodnim pravima, slobodi i jednakosti sadržane u Deklaraciji nezavisnosti SAD i Povelji o pravima bile revolucionarne, a danas se smatraju temeljima svetskog liberalnog poretka, jedno pitanje je vešto izbegavano, a ostalo je i te kako sporno. Ono se nameće samo: za koga su sve (ili nisu) važila ova neprikosnovena,

20 *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798), dostupno na: U.S. Reports: Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798).
21 Constitution of the United States (1787)
22 Chase, S. (1789), *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798), dostupno na: U.S. Reports: Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798).

rođenjem stečena prava? Iz perspektive današnjice, verovatno bi logičan,i sa liberalnom ideologijom saglasan odgovor bio – za sve. Međutim, društvenopolitička stvarnost u Americi u vreme donošenja ovih značajnih doknumenata, a i decenijama kasnije bila je drugačija. Rasna segregacija i ostaci robovlasničke tradicije imali su snažan uticaj na tadašnje američko pravo i sudsku praksu. Pitanja opravdanosti robovlasničkog društva, rasne segregacije i relativizovanja prirodnih prava sredinom XIX veka podrivala su temelje Sjedinjenih Američkih Država i vrednosti na kojima su one počivale. Upravo ta pitanja su svoju kulminaciju doživela tokom Američkog građanskog rata 1861–1865. godine.

Jedan od presudnih događaja koji su prethodili Američkom građanskom ratu i koji se mogu smatrati direktnim povodom za njegovo izbijanje jeste Slučaj *Dred Scott v. Sandford*.

Činjenice

Sredinom XIX veka, prema zakonu nekih država SAD ropstvo je bilo ilegalno, ali postojale su i one čiji zakoni to ne zabranjuju. U ovom slučaju, radi se o Dredu Skotu, koji je rođen kao rob u državi Misuri (gde je ropstvo u to vreme bilo legalno). Njegovi gospodari su ga odveli u Ilinois, gde je prebivao 10 godina (1833–1843). Po povratku u Misuri, on je podneo tužbu Državnom sudu Misurija tvrdeći da je slobodan čovek, na osnovu toga što je odveden u državu gde je ropstvo zabranjeno (Ilinois). Slučaj je stigao pred američki Vrhovni sud 1856. godine.

Osnovno pitanje u ovom sporu jeste da li je Dred Skot slobodan čovek, odnosno da li on, kao pripadnik negroidne rase, može i treba da uživa prirodno pravo na slobodu. Pitanje koje se ovde postavlja, a koje prevazilazi okvire samo ovog slučaja, jeste da li stanovnici SAD koji su afričkog porekla treba da imaju pravo na američko državljanstvo, odnosno status američkog građanina, što implicira sva ostala Ustavom zajemčena prava.

Vrhovni sud SAD doneo je odluku 1857. godine da Dred Skot nije

državljanin SAD, niti da on državljanstvo može steći; prema tome, ne može tužbom saveznim sudovima nastojati da ostvari svoja prava. Stanovište suda je da nikada nije postojala namera Ustava da dodeli državljanstvo pripadnicima negroidne rase koje su kao robovi deportovani iz Afrike u SAD.

„Mislimo [...] da oni [crnci] nisu uključeni, niti je bilo namera da budu uključeni pod reč *građani* u Ustavu i stoga ne mogu zahtevati nijedno od prava i privilegija koje taj instrument predviđa i obezbeđuje građanima Sjedinjenih Država. Naprotiv, oni su u to vreme [osnivanja Amerike] smatrani podređenom klasom bića potčinjenih dominantnoj rasi i, bez obzira na to da li su emancipovana ili ne, ipak ostaju podložna njenoj vlasti i nemaju nikakva prava ni privilegije osim onih koje vlast i Vlada odluče da im dodele".[23]

Značaj za američko pravo i zaključna razmatranja

Ovim slučajem dodatno je uzburkana javnost po pitanju robovlasništva u SAD, što je kasnije eskaliralo u Američki građanski rat. Države u kojima je robovlasništvo bilo ilegalno oštro su odreagovale na ovakvu presudu, a Sever i Jug su se još više polarizovali.

Ovaj slučaj je značajan u pogledu uzročno-posledične veze sa donošenjem Trinaestog i Četrnaestog amandmana. Ovakvom presudom, baziranom isključivo na rasističkoj i robovlasničkoj ideologiji, apostrofiran je ovaj problem u društvu i, samim tim, utkan je put njegovom rešavanju.

Uzevši jednu od opštih odredbi Deklaracije nezavisnosti SAD – da su svi ljudi „stvoreni jednaki i imaju neotuđiva prava, među kojima su život, sloboda i potraga za srećom"[24] – izvodimo zaključak da ova presuda direktno krši osnovna načela akta na kome se zasniva čitava američka ustavnost. Mislimo da je ovakva presuda zasnovana na teoriji pravnog pozitivizma, koja daje prednost važećim zakonima bez obzira na njihovu sadržinu i moralnost, ne priznajući prirodna

23 Tany, R. (1857), *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), dostupno: U.S. Reports: Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

24 United States Declaration of Independence (1776)

prava kao ona koja stoje iznad pozitivnog prava.
Takođe, ova presuda pruža drugačiji pogled na prirodna prava i to kako su ona *de facto* izgledala u SAD. Vladavina prava i jednakost još uvek su bile krhke i relativizovane, često dostupne samo povlašćenoj klasi – belim muškarcima. Prema tome, iako je osmišljavanje i inkorporiranje prirodnih prava u svakodnevni život civilizacijsko dostignuće, neophodno je bilo vreme, ali i borba da bi ona dostigla nivo na kojem su danas.

Slučaj *Lochner v. New York*[25]

O slučaju

Lochner v. New York, 198 U.S. 45 (1905) još je jedan slučaj Vrhovnog suda SAD koji se ubraja u kontroverzne. Po njemu je nazvan čitav jedan period američke pravne istorije, od 1897. do 1937. godine. U takozvanoj Lohner eri Vrhovni sud se u velikoj meri mešao u ekonomsku politiku pojedinačnih država, poništavajući njihove propise na osnovu sopstvene procene, a po pitanju mera za koje je sud smatrao najprikladnijim kako bi se ostvarila željena ekonomska politika država članica. Sud je ponekad poništavao državne i savezne zakone koji sprečavaju poslovanje ili na drugi način ograničavaju slobodno tržište, uključujući zakone o minimalnoj plati, savezne (ali ne i državne) zakone o dečijem radu, propise o bankarstvu, osiguranju i transportu.[26] Danas je popularno stanovište da u tom periodu sud nije tumačio pravo, već ga je u velikoj meri stvarao. To bi se moglo reći i za ovaj slučaj.
Ovaj spor je usko povezan sa njujorškim Zakonom o pekarama (1895). Godine 1988. nemački imigrant Jozef Lohner, vlasnik jedne njujorške pekare, optužen je za kršenje gorenavedenog zakona. Naime, zakon propisuje da radnik u pekari ne može raditi više od 60 sati nedeljno, odnosno 10 sati dnevno.

25 *Lochner v. New York*, 198 U.S. 45 (1905), dostupno: U.S. Reports: Lochner v. New York, 198 U.S. 45 (1905).
26 Brodie, J. M. (1990). *The Lochner Era: A Reexamination Around 100 Years Later. Law and History Review*, p. 313–350

Osuđen je prvostepenom presudom, nakon čega je uložio žalbu, tvrdeći da, na osnovu Četrnaestog amandmana, država nema pravo da se meša u privatnopravne odnose – u ovom slučaju, u ugovor o radnom odnosu. Prvostepenu presudu potvrdili su svi sudovi viših instanci. Slučaj je stigao pred Američki Vrhovni sud 1905. godine.
Pitanje od značaja u ovom sporu odnosi se na to da li je njujorški Zakon o pekarama (1895) u suprotnosti sa normama Četrnaestog amandmana, odnosno da li on krši klauzulu o uskraćivanju slobode (*Due Process Clause*).
Vrhovni sud SAD presudio je u korist Jozefa Lohnera. Na osnovu konačne odluke, navodi se da Zakon o pekarama krši Četrnaesti amandman – preciznije, klauzulu o uskraćivanju slobode – time što narušava pravo slobodnog ugovaranja.
Sud nije našao validno opravdanje za donošenje ovakvog zakona, jer država Njujork nije uspela da dokaže njegovu usku povezanost sa javnim zdravljem i javnim interesom, pa ga, shodno tome, proglašava neustavnim.

Značaj za američko pravo i zaključna razmatranja

Ovaj slučaj pre svega ukazuje na opasnost preširoke sudske interpretacije ustavnog prava bez demokratske kontrole. Poništivši zakon izglasan u interesu radnika i javnog zdravlja, sud je na neki način uskratio demokratski legitimitet i integritet zakonodavnoj vlasti. Takođe, on je znatno usporio uspostavljanje radničkih prava i socijalne sigurnosti.
Ipak, vrlo je značajno suprotstavljeno mišljenje sudije Holmsa, koje je postalo primer za buduće ustavotvorce, a tiče se stava da Ustav ne treba u potpunosti da određuje ekonomsku politiku države, već da ostavi prostor zakonodavnoj vlasti pri odlučivanju.
Upadljiv je značaj pravilne sudske interpretacije Ustava. U ovom slučaju, klauzula o uskraćivanju slobode tumačena je preširoko i bez obzira na kontekst i njenu svrhu. Osnovna svrha Četrnaestog amandmana jeste zaštita prava i sloboda, kao i jednakost svih građana pred zakonom. Sloboda ugovaranja kotirana je više nego socijalna prava, koja se implicitno tiču prava na zdravlje i, u krajnjoj instanci,

prava na život kao prvog i najznačajnijeg prirodnog prava.
Iz slučaja *Dred Scott v. Sandford* (1857) može se izvući pouka da bi, pri donošenju i tumačenju pravnih akata, trebalo uzeti u obzir njihovu moralnost, što može sprečiti niz nepravdi koje bi potencijalno usledile. S druge strane, slučaj *Lochner v. New York* (1905) svedoči o tome da ni prenaglašenost u tumačenju prirodnih prava nije ispravno rešenje. Prirodna prava neminovno mogu doći u sukob sa kolektivnim, socijalnim pravima, kao što je ovde bio slučaj. Kada do toga dođe, važno je uzeti u obzir društveni kontekst. U vreme kada su uslovi rada bili naročito teški, ovaj zakon je štitio interes poslodavaca, a ne radnika. Moglo bi se reći da je teorija prirodnih prava tu zloupotrebljena i da je zanemaren smisao prirodnih prava kao takvih.
Ova odluka praktično je poništena u slučaju *West Coast Hotel v. Parrish* (1937), kada je sud priznao legitimnost zakona o minimalnoj plati.

Slučaj *Loving v. Virginia*[27]

O slučaju

Loving v. Virginia 388 U.S. 1 (1967) jeste još jedan poznat slučaj u kojem je sadržana interpretacija Četrnaestog amandmana na Ustav SAD. On se bavi rasnom diskriminacijom i bio je važan faktor u njenoj eliminaciji iz američkog prava.

Dvoje stanovnika savezne države Virdžinije, Ričard Laving (belac) i Mildred Džeter (crnkinja) osuđeni su zbog kršenja člana 20–58 Zakonika Virdžinije, koji zabranjuje mešovite brakove. Par se venčao u Distriktu Kolumbija u skladu sa tamošnjim zakonima. Međutim, pošto su se nastanili kao bračni par u okrugu Kerolajn u Virdžiniji, protiv njih je pokrenut krivični postupak. Oni su uložili žalbu na ovu odluku, tvrdeći da su zakoni koje su navodno prekršili protivustavni. Slučaj je stigao do Vrhovnog suda Sjedinjenih Američkih Država 1966. godine.
Uprkos odlukama nižestepenih sudova, Vrhovni sud Sjedinjenih

27 *Loving v. Virginia,* 388 U.S. 1 (1967), dostupno: U.S. Reports: Loving v. Virginia, 388 U.S. 1 (1967).

Američkih Država proglasio je zakonodavni okvir države Virdžinije protivustavnim, jer predstavlja povredu klauzula o jednakoj zaštiti i o dužnom pravnom postupku iz Četrnaestog amandmana. Sud je sporne zakone ocenio diskriminatornim i shodno tome zaključio da oni nikako ne mogu biti u saglasnosti sa Četrnaestim amandmanom. Bračni par Laving lišen je slobode bez zakonitog postupka, što direktno predstavlja kršenje klauzule o obaveznom pravnom postupku iz Četrnaestog amandmana. Pravo da se neko venča ili da se ne venča spada u osnovna prirodna prava. Oduzimanje tog prava isključivo na osnovu rasne pripadnosti nikako ne može biti u skladu sa Četrnaestim amandmanom.

S obzirom na to da je svrha Četrnaestog amandmana bila upravo da ukine diskriminaciju po svakoj osnovi i da svima obezbedi zaštitu prirodnih prava i jednakost pred zakonom, kada je utvrđeno neosporno prisustvo diskriminatornog elementa u zakonodavnom okviru Virdžinije, amandman je proglašen protivustavnim.

Značaj za američko pravo i zaključna razmatranja

Slučaj *Loving v. Virgina* predstavljao je prekretnicu u američkom putu ka jednakosti. Ovom odlukom srušeni su rasistički zakoni, potvrđeno je dostojanstvo svih brakova i učvršćena je ideja da građanska prava pripadaju svima, bez obzira na rasu. Sud je ovom presudom potvrdio načelo da država ne može ograničavati individualne slobode i pravo na jednaku pravnu zaštitu bez obzira na rasnu pripadnost – što je osnovna vrednost demokratskog i pravednog društva, ali i pravi smisao ideje o prirodnim pravima. Presuda je, takođe, postala ključna u razvoju prava na privatnost i slobodan izbor partnera, što će kasnije uticati i na druge slučajeve, poput *Obergefell v. Hodges* (legalizacija istopolnih brakova).

Smatramo da je ovo jedan od revolucionarnih presedana u američkom pravu. Ovakvim tumačenjem Četrnaestog amandmana, prirodna prava (u ovom slučaju – pravo na brak) priznata su svim državljanima SAD nakon višedecenijske borbe sa diskriminacijom,

naročito po rasnoj osnovi. Time je, osim što je učvrstio i ojačao primenu Četrnaestog amandmnana, ovaj slučaj postao i simbol borbe protiv institucionalnog rasizma.

Četrnaesti amandman
Istorijska pozadina

Četrnaesti amandman na Ustav SAD usvojen je 1868. godine, neposredno nakon Građanskog rata (1861–1865) i ukidanja ropstva, u periodu poznatom kao Rekonstrukcija. Kongres je više puta raspravljao o pravima bivših robova oslobođenih Proklamacijom o emancipaciji iz 1863. i Trinaestim amandmanom iz 1865. godine, koji je formalno ukinuo ropstvo. Zabrinuti da bi južne države mogle da koriste afroameričke stanovnike da prošire svoju zastupljenost u Kongresu, istovremeno kršeći građanska prava ovih oslobođenika, republikanci su nastojali da obeshrabre takvo uskraćivanje prava glasa. Zbog povećanog broja oslobođenih robova (crnačkog stanovništva iz južnih država), postojala je potreba da im se obezbede osnovna prava i spreči dalje učvršćivanje diskriminacije.[28]

Sadržina

Četrnaesti amandman štiti važna prirodna prava kao što su već pomenuto pravo na jednaku zaštitu i pravo na Ustavom garantovane slobode i pravičan sudski postupak (*Due Process* i *Equal Protection Clauses*). Osim ovih klauzula, amandman obuhvata i odredbe o državljanstvu, državnoj akciji, pravu na privatnost, diskvalifikaciji zbog pobune i slično.
Član 1 obuhvata klauzulu o državljanstvu, privilegijama ili imunitetu, klauzulu o pravičnom postupku i klauzulu o jednakoj zaštiti.
Član 2 se bavi raspodelom predstavnika u Kongresu.
Član 3 zabranjuje svakome ko je učestvovao u pobuni protiv Sjedinjenih Država da obavlja saveznu funkciju.

28 Curtis, M. K. (1990) *No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights*. Durham, NC: Duke University Press, Chapter 2: The Historical Background of the Fourteenth Amendment.

Član 4 se bavi saveznim dugom i odbacuje dugove koje je nakupila Konfederacija.
Član 5 izričito ovlašćuje Kongres da sprovodi Četrnaesti amandman „odgovarajućim zakonodavstvom".[29]
Značaj ovog amandmana ogleda se pre svega u garantovanju američkog državljanstva svim stanovnicima rođenim na tlu Amerike. Ovom odredbom konačno je *de jure* ukinut svaki vid rasne segregacije. Za izopštavanje diskriminacije po rasnom osnovu *de facto* ipak je bilo potrebno vreme, o čemu svedoči slučaj *Loving v. Virginia* (1967), kojim je zvanično ukinuta zabrana međurasnih brakova.
Četrnaestim amandmanom zaokružena je i upotpunjena priča o prirodnim pravima u američkoj ustavnosti. On je konačno obezbedio pravnu zaštitu svim građanima Sjedinjenih Američkih Država i ukinuo selektivnu primenu prirodnih prava. Shodno tome, ona su dostigla svoj potpun oblik i počela da služe onoj svrsi koju im je namenila još Deklaracija nezavisnosti 1776. godine.

Zaključak

Kroz ovaj rad moglo se videti evolutivno prožimanje prirodnih prava s američkom ustavnošću. Utvrđeno je da su prirodna prava neprikosnovena, univerzalna, neotuđiva i individualna prava koja svaki pojedinac stiče rođenjem, a da su ona osnovna pravo na život, slobodu, jednakost, svojinu. Ona su srž američke i svetske ustavnosti danas, a svakako su jedan od temelja liberalnodemokratskog poretka. Njihov razvoj uočljiv je od Deklaracije nezavisnosti SAD (1776), kao prvog pravnopolitičkog akta novonastale države. Tu se javlja sama ideja o neprikosnovenim prirodnim pravima, preko onog opsežnijeg obima koji su dobila u Povelji o pravima (1791), pa sve do Trinaestog i Četrnaestog amandmana, u kojima su ta prava upotpunjena i u velikoj meri dobila izgled kakav imaju i danas. Ona su, kao temelj Deklaracije nezavisnosti SAD, takođe imala presudan uticaj na osamostaljenje amerčkih kolonija od britanske Krune, uglavnom zahvaljujući osvešćivanju prava na revoluciju kada vladar ne vlada u skladu sa prirodnim pravima njemu potčinjenih.

29 Constitution of the United States, Fourteenth Amendment, 1868.

Kroz mnoge slučajeve iz prakse Vrhovnog suda SAD, ali i drugih sudova, može se primetiti diskontinuitet u tumačenju odredaba Ustava SAD koje se direktno tiču prirodnih prava, o čemu svedoče slučajevi poput *Dred Scott v. Sandford*, *Lochner v. New York*, ali i mnogi drugi. U tom smislu, bilo je potrebno vreme da se prirodna prava ustale u sudskoj praksi, odnosno da se oscilacije u njihovom tumačenju svedu na minimum.

Fascinantno je koliko američki građanin danas može uzimati ljudska, odnosno prirodna prava zdravo za gotovo, kao nešto što se podrazumeva, a bila su neophodna dva rata, tri veka, bezbroj rasprava i sudskih presuda i više od deset amandmana na Ustav SAD da bi ona izgledala onako kako danas izgledaju.

Pojava ideje o prirodnim pravima u Deklaraciji nezavisnosti u tim društvenopolitičkim okolnostima zaista je revolucionarna i s razlogom se obeležava svakog 4. jula. Time je postavljen temelj sasvim nove i drugačije društvene realnosti, koju živimo i danas. To nije zasluga samo velikih mislilaca kakvi su bili Džon Lok i Tomas Džeferson, već društva u celosti, koje je razumelo važnost ovog koncepta i vekovima se borilo za njegov opstanak.

Prirodna prava su prevazišla granice Sjedinjenih Američkih Država. Danas su zastupljena skoro u celom svetu, a uticala su na gotovo svakog pojedinca na planeti, čiji je život bez njih praktično nezamisliv.

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Deklaracija nezavisnosti i rađanje modernog pojma nezavisne sudske vlasti: iskustvo koje funkcioniše u praksi

I Uvod

Istorija pamti mnogo država koje su pravno-politički nastale na deklaracijama nezavisnosti, kao što pamti mnoštvo deklaracija nezavisnosti. Pa ipak, kada tu sintagmu upotrebimo u bilo kom kontekstu, naš sagovornik će znati da zapravo mislimo na američku Deklaraciju nezavisnosti od 4. jula 1776. godine. Zašto je taj dokument toliko važan ne samo za američku već i svetsku istoriju? Kako to da za Deklaraciju nezavisnosti znaju i oni koji nikada nisu čuli za *Magna Carta Libertatum*, Univerzalnu deklaraciju o pravima čoveka i građanina ili Povelju UN? Da li je to slučaj samo zato što su SAD velika svetska sila ili postoje još neki razlozi? I šta je to što opravdava takvu istorijsko-političku nadmoć ovog dokumenta u odnosu na, primera radi, proklamaciju Narodne Republike Kine iz 1949. godine ili deklaraciju Južnoafričke Republike iz 1961. godine? Odgovor na ovo pitanje je svakako slojevit, a razloga je mnoštvo. Ali kada bismo morali da izdvojimo onaj ključni zbog koga je Deklaracija nezavisnosti zauzela tako važno mesto u svetskoj istoriji, prostora za dvoumljenje gotovo da nema. Deklaracijom nezavisnosti nije samo stvoren praktični obrazac moderne demokratije već je stvorena i prva država koja je tu modernu demokratiju primenila u praksi. Zato je baš američka Deklaracija svetski unikat.

Svesni smo da smo već u uvodnim pasusima otvorili prostor ako ne za napade, a ono za uvređenost Evropljana. Mnogi će se pitati šta je sa evropskim vrednostima koje se baštine na kontinentu. Nisu li SAD stvorene na idejama francuskih filozofa Rusoa i Monteskjea; nisu li američka kultura i, uostalom, pravo poreklom engleski; nisu li Havmajerovi Nemci, a Vanderbiltovi Holanđani, nije li špansko nasleđe u nazivima gradova San Dijego i Los Anđeles? Sve ovo jeste nesporno, ali baš to jedinstvo u različitosti oduvek odlikuje Ameriku i predstavlja preduslove za samo donošenje Deklaracije. Koliko god da je američko nasleđe multikulturalno i izvorno evropsko, činjenica je da su obrasci demokratije na kojima Evropa danas počiva izvorno američki i da su ih evropske države preuzele iz Amerike. Drugim rečima, evropski narodi (i ne samo oni) jesu svoje kulturne obrasce

ugradili u američko društvo, ali su za model funkcionalne pravne države svetionik morali da traže u Americi. Jer je Amerika ta koja je od samog svog osnivanja uspela da implementira u praksu ono što je u Evropi ostajalo u sveskama i mislima filozofa, a ponekad i kao mrtvo slovo na papiru u pravno obavezujućim dokumentima koji su nekonzistentno primenjivani u praksi (ili nisu nikako).
Zaista, ukoliko pogledamo dva i po veka unazad i analiziramo razvoj SAD u odnosu na ostale evropske države, možemo uočiti razliku koja, iako ne tako očigledna, ipak jeste značajna.

II Ustavni akti SAD u svetskoj pravnoj baštini – Deklaracija nezavisnosti kao temelj umetnosti vladanja

Malo je onih koji će osporiti da Ustav SAD iz 1789. godine i Povelja o pravima iz 1791. godine imaju i više nego doslednu primenu, i to od samog usvajanja do današnjih dana. Bivši predsednik Vrhovnog suda SAD Renkvist[1] sa pravom napominje da je, u vreme kad su Očevi osnivači stvarali tekst Ustava, to u potpunosti bio novi koncept i da je stvaranje instituta ustavnog suda „najznačajniji pojedinačni čin kojim su SAD doprinele umetnosti vladavine (prava)".[2] U svojim razmatranjima Renkvist poredi primenu američke Povelje o pravima i francuske Deklaracije o pravima čoveka i građanina i nalazi da je, iako su ova dva dokumenta doneta u isto vreme i po svojoj sadržini su gotovo identična, njihova primena u praksi i te kako različita. Dok je u Francuskoj nakon donošenja Francuske deklaracije ustanovljena „vladavina terora" uz jedinstvo vlasti i kršenje gotovo svih garancija ljudskih prava, dotle su SAD u praksi primenjivale svoje ustavne akte. Štaviše, nezavisnost pravosuđa u SAD u istoriji je imala tek tri ozbiljna izazova i sva tri puta im je odolela.[3]
Formalno gledano, Deklaracija nezavisnosti sa Ustavom SAD nema

1 https://en.wikipedia.org/wiki/William_Rehnquist
2 Wiliam Rehnquist, Judicial Independence, 38 U. Rich. L. Rev. 579 (2004)
3 Idem

direktnu vezu. Za razliku od Ustava, ona je u prvom redu politički, pa tek onda pravni dokument. Iako se u tekstu Deklaracije mogu naći pravna načela, njena svrha se uglavnom crpla u opravdanju proglašenja nezavisnosti, a ne u regulaciji ponašanja, što je primarna svrha prava. Čak su i političke okolnosti u vreme donošenja Ustava bile značajno promenjene, ne samo usled protoka vremena već i zbog promene odnosa između ključnih političkih ličnosti. Članci konfederacije (*Articles of Confederation*), koje je doneo isti II kontinentalni kongres koji je usvojio i Deklaraciju nezavisnosti i ratifikovao 1781. godine, pre predstavljaju dokument koji prethodi Ustavu, pa se ni u tom smislu ne može odrediti direktna veza između Deklaracije i Ustava. Pa ipak, prilikom tumačenja Ustava, Vrhovni sud SAD upravo je Deklaraciju nezavisnosti konzistentno koristio kao jedan od alata za utvrđivanje stvarne volje ustavotvorca. Razlog je jednostavan: Deklaracija nezavisnosti predstavlja otelotvorenje vrednosti na kojima su stvorene Sjedinjene Američke Države i svojevrsnu ustavnu preambulu u skladu sa kojom se te vrednosti tumače.

Sa druge strane, između Deklaracije nezavisnosti i Ustava SAD postoji i značajno preklapanje istih normi. Neke norme Deklaracije našle su svoje mesto u ustavnom tekstu i amandmanima, neke u Povelji o pravima, a neke, opet, u tumačenjima Vrhovnog suda. Primera radi, u svom izdvojenom mišljenju (*dissent*) u predmetu Olmsted iz 1928. godine, kojim je suštinski razvijen koncept prava na privatnost na način na koji danas to pravo razumemo, sudija Luis Brendajs[4] koristi koncept težnje za srećom[5] iz Deklaracije nezavisnosti kao izvor na kojem gradi pravo na privatnost, odnosno čovekovo pravo da bude ostavljen na miru.[6]

Na sličan način, takođe u izdvojenom mišljenju u predmetu Troksel iz 2000. godine, sudija Antonin Skalija[7] u kontekstu neotuđivih prava citira

4 https://en.wikipedia.org/wiki/Louis_Brandeis

5 https://en.wikipedia.org/wiki/Life,_Liberty_and_the_pursuit_of_Happiness

6 Olmstead v. United States, 277 U.S. 438(1928), dostupno na https://supreme.justia.com/cases/federal/us/277/438/

7 Dostupno na https://sh.wikipedia.org/wiki/Antonin_Scalia

Deklaraciju kao vrednosno merilo i podvlači da ona ipak nije pravni propis na kojem se može zasnovati odluka.[8] U svom čuvenom eseju *Pitanje tumačenja* (*Matter of Interpretation*), Skalija pravi jasnu razliku između Ustava i Deklaracije, nalazeći da, iako Deklaracija nezavisnosti, kao, uostalom, i Deklaracija o pravima čoveka i građanina, proklamuje jednakost i neotuđiva prava koja uključuju život, slobodu i težnju za srećom, ova dva dokumenta nemaju „pragmatični i praktični" aspekt povelje vladanja kakav ima Ustav.

Iako originalista kao i sudija Skalija, sudija Klarens Tomas Deklaraciju nezavisnosti posmatra kao osnovu Ustava. Po njegovom shvatanju, Deklaracija je stvorila nov poredak koji je Ustav implementirao. To jest, da je osnovna intencija Ustava bila da usmerava na primenu ideala Deklaracije na način na koji su ih razumeli Očevi osnivači.[9] U kontekstu ove Tomasove premise, posebno poglavlje ovog eseja biće posvećeno vrednostima Očeva osnivača.

Možemo, dakle, zaključiti da je Deklaracija nezavisnosti ustavni dokument koji, bez obzira na to da li se smatra izvorom prava u formalnom smislu ili ne, nesporno predstavlja „originalnu pisanu izjavu o nacionalnim principima, svrsi i suverenitetu" i kao takva je sredstvo tumačenja Ustava SAD[10].

Za naša razmatranja od posebne važnosti je odnos između pojma nezavisnog pravosuđa u današnjem smislu i tog istog pojma u kontekstu Deklaracije nezavisnosti. Razlog zbog koga ćemo analizu usmeriti na duž koju je moguće povući između ova dva pojma vrlo je praktičan. Ukoliko principi i duh Deklaracije nezavisnosti predstavljaju temelj

8 Troxel v. Granville, 530 U.S. 57(2000), dostupno na https://supreme.justia.com/cases/federal/us/530/57/

9 R.A. Rossum, Understanding Clarence Thomas: The Jurisprudence of Constitutional Restoration, University Press of Kanzas, 2014, str.19

10 Alexander Tsesis, The Declaration of Independence and Constitutional Interpretation, dostupno na https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1590&context=facpubs

današnjeg pojma nezavisnog pravosuđa, onda nema razloga da se ti principi primenjuju i van granica SAD, bar kada se tumači pojam *nezavisno pravosuđe*, kako u odnosima prema drugim granama vlasti tako i kroz prizmu razvoja ove pravne vrednosti. Drugim rečima, ako je nezavisno pravosuđe kao institut vladavine prava svoj načelni sadržaj i formu poprimilo u samom trenutku proglašenja nezavisnosti, potrebno je odrediti taj sadržaj i formu.

Svesno ćemo tom određivanju pristupiti u smislu Holmsove[11] premise da je pravo zaista plod iskustva, a ne plod logike[12] i ka „iskustvu" usmeriti predmet istraživanja. Kada se utvrdi na čemu je pojam *nezavisno pravosuđe* zasnovan u svom nastanku, relativno je jednostavno pronaći refleksije u kasnijim zakonodavnim i sudskim rezonima. U tom smislu, identifikacija ključnih tačaka na kojima je Deklaracija nezavisnosti formulisala sentiment njenih tvoraca predstavlja temelj svih kasnijih rezona. Neke od tih ključnih tačaka sentimenata vezuju se za pojam *nezavisno pravosuđe* i u Srbiji, neke pretpostavljeno ne. Naš zadatak je da otkrijemo one koje nedostaju i ponudimo ih na razmatranje sudskoj vlasti u Srbiji, kako bi razmotrila na koji način funkcionalno može osnažiti svoj pojam nezavisnosti pravosuđa i eventualno ispraviti greške u shvatanju pojma – pod uslovom da postoje.

III Sentiment osnivača u Deklaracije nezavisnosti

Da bismo se odredili prema tekstu Deklaracije nezavisnosti, potrebno je da imamo predznanje o njenom karakteru. Pre nego što je postala dokument, Deklaracija je, kao, uostalom, i Ustav SAD, bila iskustvo, osećanje i želja njenih tvoraca. Bila je njihovo viđenje vrednosti i njihovo htenje budućnosti. Iz tog semena sentimenata nikli su ustavni

11 O.W. Holms je jedan od najznačajnih a svakako istorijski najpoznatiji pravnik i sudija Vrhovnog suda SAD, detaljnije na linku https://en.wikipedia.org/wiki/Oliver_Wendell_Holmes_Jr.

12 Oliver Wendell Holmes Jr., The common law, Boston, 1881

dokumenti koji su odredili pravac razvoja Amerike, a kad su u pitanju funkcionalna podela vlasti i nezavisno pravosuđe, i šire. Nas za potrebe ovog teksta na prvom mestu interesuje njihov sadržaj.

Da bismo to razumeli, logika nalaže da se okrenemo Komitetu petorice,[13] koji je od II kontinentalnog kongresa ovlašćen da izradi tekst Deklaracije i dostavi ga Kongresu na usvajanje. Ali logika u ovom slučaju ne može dovesti do rezultata koji nam je potreban. Zato je naš cilj da razumemo značaj, domete i ulogu svake pojedinačne ličnosti u samom Komitetu, kao što je veoma važno da te ličnosti ne posmatramo samo kao predstavnike kolonija, a kasnije država koje su ih delegirale u Kongres.

Komitet petorice su činili predstavnici Masačusetsa, Pensilvanije, Njujorka, Konektikata i Virdžinije.

Konektikat je predstavljao Rodžer Šerman, jedini od generacije Očeva osnivača koji je potpisao sve velike dokumente tog vremena: kao član Kontinentalnog kongresa bio je potpisnik Članaka o asocijaciji i Peticiji kralju, zatim potpisnik Članaka o konfederaciji, Deklaracije nezavisnosti i Ustava SAD. Međutim, interesantno je što je sa nacrtom Deklaracije Šerman upoznat tek kad su tekst odobrila tri člana Komiteta. Šerman, dakle, jeste imao značajnu ulogu u stvaranju teksta Deklaracije, ali je ona u okviru Komiteta ipak bila blago epizodna.[14]

Slično je i sa predstavnikom Njujorka, Robertom Livingstonom,[15] koji nije potpisao tekst zbog dvoumljenja oko trenutka za proglašenje nezavisnosti. Čini se da je Livingstonova uloga značajnija u promociji ustavnog teksta u Njujorku, gde je učestvovao zajedno sa tvorcima

13 O Komitetu petorice više na linku https://en.wikipedia.org/wiki/Committee_of_Five
14 Dostupno na https://www.dsdi1776.com/signer/roger-sherman/
15https://en.wikipedia.org/wiki/Robert_R._Livingston

Federalističkih spisa,[16] Hamiltonom,[17] Džejom[18] i Medisonom.[19]
Džon Adams, predstavnik Masačusetsa, i Tomas Džeferson, predstavnik Virdžinije, jesu suštinski tvorci nacrta Deklaracije nezavisnosti, a Bendžamin Frenklin[20], kao najstariji član Komiteta petorice i predstavnik Pensilvanije, ključni autoritet koji je sa prethodnom dvojicom potvrdio kvalitet ovog teksta pre nego što ga je Komitet jednoglasno usvojio i prosledio II kontinentalnom kongresu na usvajanje.
Zato ćemo iskustvenu podlogu ovog dokumenta, koja čini njegov duh, prvenstveno tražiti u ličnim sentimentima Adamsa i Džefersona, koji su verovatno dve najznačajnije figure ne samo tog vremena već u prvih pola veka postojanja nezavisne Amerike. U tom smislu, čak je i simbolika neumoljiva. I Džon Adams i Tomas Džeferson preminuli su na isti dan: 4. jula 1826. godine, na pedestogodišnjicu usvajanja Deklaracije nezavisnosti.

IV Džon Adams i Tomas Džeferson kao ključni utemeljivači američkog modela vladavine prava

Ne bi bilo preterano primetiti da su Masačusets i Virdžinija odigrali ključne uloge u stvaranju Amerike. Virdžinija je u to vreme bila

16 Federalistički spisi su zbirka od 85 članaka u kojima su, pod kolektivnim pseudonimom Publius, Aleksander Hamiloton, Džon Džej i Džejms Medison objasnili svrhu i značaj ustavnih instituta za potrebe ratifikacije. Najviše eseja je napisao Hamilton i on svakako ima najznačajniju ulogu u ovom veoma važnom dokumentu za ustavnu i pravnu istoriju SAD. Više o tome na linku https://en.wikipedia.org/wiki/The_Federalist_Papers
17 Aleksander Hamilton, jedan od najznačajnih Očeva osnivača, više na linku https://en.wikipedia.org/wiki/Alexander_Hamilton
18 Džon Džej, prvi predsednik Vrhovnog suda SAD, više na linku https://en.wikipedia.org/wiki/John_Jay
19 Dostupno na https://research.colonialwilliamsburg.org/pf/signers/bio_livingston.cfm
20 https://en.wikipedia.org/wiki/Benjamin_Franklin

najveća od svih kolonija, ali se za Masačusets može reći da je bio najnapredniji kad su u pitanju zahtevi za nezavisnošću.
Prvi predsednik SAD i glavnokomandjući kontinentalne armije Džordž Vašington bio je Virdžinijac, dok je prvi potpredsednik i drugi predsednik SAD Džon Adams iz Masačusetsa. Džeferson i njegovi sledbenici Medison i Monro, sva trojica iz Virdžinije, jesu naredna tri predsednika SAD, dok je šesti predsednik sin Džona Adamsa, Džon Kvinsi Adams, ponovo iz Masačusetsa. Republikanci su uporište imali u Virdžiniji, a federalisti u Masačusetsu.

Veličina Virdžinije i naprednost Masačusetsa, kao ključni činioci u značaju pojedinih kolonija prilikom stvaranja nezavisne Amerike, pre svega su bili Adamsova i Džefersonova percepcija. Kada je Adams predložio Džefersonu da on bude taj koji će sastaviti nacrt Deklaracije nezavisnosti, Džeferson je tražio razloge. Adams ih je objasnio sledećim rečima: „Prvi razlog je što si iz Virdžinije, a Virdžinija treba da vodi ovaj posao. Drugi razlog je to što sam ja ljudima odvratan, sumnjiv i nepopularan. Ti si sve suprotno. I treći razlog je to što znaš da pišeš deset puta bolje od mene".[21]
Adams je ipak sebe smatrao boljim čovekom od Džefersona, a Masačusets dominantnom državom u sticanju nezavisnosti. Džefersonov talenat za pisanje Adams će smatrati manom koja utiče na mogućnost rasuđivanja. U vremenima koja će nastupiti, Adams će Džefersonovu odbranu Francuske revolucije tretirati kao nedoslednost i nedostatak vrline. Zameraće mu i to što je u stanju da u ime demokratije uništi institucije koje ljude drže u okviru prihvatljivih granica.[22] Politički sukob i rivalitet koji će po sticanju nezavisnosti nastupiti između njih dvojice obeležiće taj deo američke istorije. Pa ipak, čini se da je upravo to rivalstvo između Adamsa i Džefersona i bilo pravi putokaz za razvoj demokratije. To buduće vreme doći će kroz kolosek koji je oivičila Deklaracija nezavisnosti.
Ono što je spajalo Adamsa i Džefersona i na čemu je njihovo međusobno poštovanje bilo zasnovano jeste, pre svega, kvalitet

21 H.W. Brands, Founding Partisans, New York 2024, str. 4
22 Idem

njihovih ličnosti. I Adams i Džeferson bili su visoko obrazovani i visoko moralni ljudi. Adams je bio više tradicionalista sa čvrstim puritanskim uverenjima, a Džeferson mnogo otvoreniji prema novim idejama koje su pristizale iz Francuske. U službi moralnih načela, Adams je bio krut, Džeferson daleko fleksibilniji. U odnosu ka vladavini prava i potrebi za nezavisnim pravosuđem, može se reći da su bili istomišljenici.

Adamsovu ličnost možda najbolje dočarava događaj od 5. marta 1770. godine, poznat kao *Bostonski masakr*.
Sam događaj za naša razmatranja i nije toliko važan koliko Adamsova uloga u epilogu te sage. Reč je o incidentu između mladića koloniste i britanskog vojnika koji je, kako to obično biva, prerastao u sukob između britanske vojske i lokalnih kolonista. U jednom trenutku su vojnici pod komandom kapetana Tomasa Prestona otvorili vatru na demonstrante, ubivši Krispusa Ataksa i još četvoro kolonista. U pozadini nemira bilo je nezadovoljstvo užara i njihove „pritužbe da im britanski vojnici otimaju poslove".[23] Ovo je, posledično, izazvalo eksploziju gneva kolonista, da bi guverner Tomas Hačinson, rešen da smiri tenzije, naredio hapšenje kapetana Prestona i još osam vojnika odgovornih za masakr.[24] I onda je na scenu stupio veliki Džon Adams. Adams je još od donošenja Zakona o pečatima iz 1765. godine (*Stamp Act*), kojim je britanski Parlament kolonijama uveo značajne namete, bio poznat kao borac za pravdu. Autor je *Brajantri peticije* (*Briantree Instructions*),[25] kojom je inicirao institucionalni otpor prema ovom zakonu. Njegovi patriotski tekstovi, objavljivani pod pseudonimom *Humphrey Ploughjogger*, imali su mnogo uticaja na oblikovanje patriotske svesti i rađanje američkog integriteta. Adams je bio oličenje otpora prema britanskom omalovažavanju kolonija.
Zato je mnoge iznenadilo što je kapetan Preston zatražio baš od Adamsa, koji je u to vreme obavljao advokatsku praksu, da preuzme njegovu odbranu pred sudom. Još je čudnije bilo to što je Adams ne

23 H. Zinn, Narodna istorija SAD, Beograd, 2013, str.88
24 Dostupno na https://www.nps.gov/articles/000/boston-massacre.htm
25 Adams je živeo u Brajantriju.

samo prihvatio da brani Prestona već i da ga odbrani, i to na tezi da je upotreba sile od strane britanskih vojnika u datim okolnostima bila legitimna.[26] Sam Adams je ovo zastupanje okarakterisao kao jedan od najvelikodušnijih poteza u životu i kao jedno od najvećih dobročinstava koja je učinio za svoju zemlju.[27] Na sličan način, stihom „pomalo je takijeh junaka, ka što bješe Strahiniću bane" srpska narodna epika pozicionirala je sličan postupak kao najviši nivo viteštva.

Međutim, ovde nije bilo u pitanju samo viteštvo. Adamsov čin je, u biti, bio najbolja promocija načela da svako ima pravo na odbranu, kao i prva moderna demonstracija osnovnih etičkih principa advokature u praksi. Kasniji događaji ne samo američke već i svetske istorije doneće mnogo iskušenja poznatim advokatima koji su imali priliku da u izazovnim i politički nepopularnim trenucima demonstriraju svoju privrženost pravima okrivljenog bez obzira na njihovu prošlost i da na oltar principa podnesu neki vid lične žrtve. Istorija nije zapamtila mnogo takvih advokata. U tom smislu, ono što je Adams uradio u vezi sa Bostonskim masakrom zaista jeste jedinstveno.

Sa druge strane, ovaj Adamsov gest ipak jeste predstavljao žrtvu u političkom smislu. Patriotsko okruženje nije ga razumelo na pravi način, kao što ni u današnje vreme javnost nije u stanju da razume principe advokatskog poziva. I sam Adams je toga bio svestan, ali je na ličnu žrtvu zarad principa ipak pristao. Ona, međutim, nije bila uzaludna: može se reći da je utkana u temelj nove države. Nije preterano primetiti da su Adamsovo zastupanje i odbrana Prestona svojevrsna armatura u temelju pravosudnog sistema Amerike, kojoj principi i položaj sudske vlasti duguju i konzistentnost i dugovečnost i otpornost prema izazovima.

Džeferson, koga je Adams opisao kao „najveću gumu od prašine koju je sreo",[28] imao je mnogo izraženiju filozofsku crtu. *Pravna opšta*

26 Dostupno na https://en.wikipedia.org/wiki/John_Adams

27 Dostupno na https://www.famous-trials.com/massacre/199-diaryentry

28 L. H. Butterfield and others, eds., Diary and Autobiography of John

knjiga, koja u suštini predstavlja Džefersonove zapise uglavnom vezane za pravo, pokazuje da u 1776. godini Džeferson istražuje funkcionisanje federacija Holandije i Švajcarske, što ukazuje na pristup koji teži ka originalnosti i otvorenosti za funkcionalna rešenja.[29] Moć argumentacije i formulacije principa koju je Džeferson nesporno imao ipak nije samo plod čistog talenta već stalnog nadograđivanja uma i razumevanja institucija. Ne manje važno, njegovi principi možda jesu u svom pojavnom obliku bili elastičniji od Adamsovih, ali je njihova čvrstina neupitna.
Iako je mlad ostao udovac, Džeferson se više nikada nije oženio, zbog obećanja koje je dao svojoj supruzi Marti. Sebe je smatrao apsolutistom kada su u pitanju ljudska prava i verovao je da se sve može postići dogovorom razumnih ljudi. Njegova vizija o ljudskim pravima, koja su čuvar naroda od vlade, postala je temeljno načelo moderne demokratije. U sedištu Džefersonove principijelnosti bio je pluralizam ideja.[30] Možemo zaključiti da je svoju nespornu kreativnost i impozantno obrazovanje Džeferson u potpunosti usmerio ka ostvarivanju ideala.

Prva politička diferencijacija u nezavisnoj Americi, koja je izrodila republikance i federaliste, dovela je do jednog od najupečatljivijih citata koji prikazuje Džefersona kao pravog lidera okrenutog ka okupljanju, a ne podelama. Kako je primetio, koliko god da su bili podeljeni u poslednjoj deceniji osamnaestog veka, ipak „razlike u mišljenjima nisu bile razlike u principima. Braća istih principa su nazvana različitim imenima. Mi smo svi republikanci. Mi smo svi federalisti."[31]
Sličan ton moguće je primetiti i u pismima koja je Džeferson nakon smrti svoje kćerke Meri razmenjivao sa Adamsovom suprugom Ebigejl. Iako pogođen teškom tragedijom, u vreme kada je sa

Adams, 4 vols. (Cambridge, 1961)
29 Detaljnije na linku https://assets.press.princeton.edu/chapters/i17247.pdf
30 Founding Partisans, str.152.
31 K. R. C. Gutzman, The Jeffersonians: the visionary presidencies of Jefferson, Madison and Monroe, New York, 2022, str.10

Adamsom bio u otvorenom političkom i ličnom sukobu, Džeferson prihvata izraze saućešća. Ebigejl Adams kroz dirljivu prepisku objašnjava svoju poziciju prema suprugu.[32] Uostalom, i sama opisuje odnos njih dvojice kao džentlmensku razmenu suprotstavljenih mišljenja,[33] pokazujući nesporno poštovanje prema obama autoritetima.

U svom kapitalnom delu *Uzori hrabrosti*,[34] za koje je dobio Pulicerovu nagradu, Džon F. Kenedi[35] primećuje da je i Džon Kvinsi Adams, Adamsov sin i šesti predsednik SAD, imao sličan senzibilitet kao i njegov otac. Kvinsi Adams je Džefersona smatrao podmuklim jer je prema njegovom ocu „postupio na dvoličan, pretvoran i veroloman način preko svake mere". Kenedi dalje primećuje da Kvinsi Adams nije razumeo da ono što on smatra mahinacijama predstavlja aspekt Džefersonove genijalnosti uspešno primenjene u veštini vladanja. I na tom polju Džeferson je zaista bio genijalan.

Ako je Deklaracija nezavisnosti od Adamsa nasledila doslednost i principijelnost, od Džefersona je dobila originalnost, dinamiku i idealistički naboj. Ako je u pravnom i političkom smislu Kvinsi čuvao tradiciju, Montičelo je doprinosio modernizaciji i kreaciji.[36] Bez jedinstva u različitosti, teško je zamisliti tako funkcionalnu i državu i demokratiju kakva je kroz celu svoju istoriju bila Amerika.

Upravo to jedinstvo u različitosti u vreme usvajanja Deklaracije i jeste njena glavna karakteristika. U svojoj suštini, Deklaracija je institucionalni izraz duha američke nacije, odnosno, kako je to sam Džon Adams definisao, „radikalne promene u principima, mišljenju, osećanjima i naklonosti naroda, koji je predstavljao pravu američku

32 Detaljnije na linku https://founders.archives.gov/documents/Jefferson/01-43-02-0472

33 Detaljnije na linku https://www.monticello.org/research-education/thomas-jefferson-encyclopedia/abigail-adams/

34 Uzori hrabrosti, Beograd, 2017, str. 51

35 Trideset peti predsednik SAD; detaljnije na linku https://en.wikipedia.org/wiki/John_F._Kennedy

36 Adamsov posed se nalazio u Kvinsiju u Masačusetsu, a Džefersonov u Montičelu u Virdžiniji.

revoluciju”[37]. Tada je, po Adamsovim rečima, „13 satova usklađeno tako da otkucavaju istovremeno – savršeni mehanizam koji nijedan umetnik nikada ranije nije izradio”[38].

Nezavisnost pravosuđa u Deklaraciji nezavisnosti

Instituti koji se danas smatraju osnovama sudijske nezavisnosti bili su jedna o važnih vrednosti koje su kolonisti branili od samovolje britanskog kralja i prvog monarha Ujedinjenog Kraljevstva[39] Džordža III.[40] Deveta od 27 optužbi protiv Džordža III iz Deklaracije nezavisnosti odnosila se na to što je sudije u kolonijama učinio zavisnim od svoje volje u odnosu na držanje funkcije i u odnosu na zaradu. Ona spada u prvih dvanaest optužbi, koje su vezane za postupanje Džordža III prema kolonijama pre otpočinjanja sukoba i, kao takva, nosi manji naboj naspram sledećih deset, a posebno poslednjih pet optužbi.[41]

Da bismo razumeli značaj ovih optužbi, potrebno je da se podsetimo na zakonodavni okvir koji je tada postojao u Britaniji.

37 John Adams to Hezekiah Niles, Quinsy, Massachusetts, February 13, 1818
38 Parkinson Robert G., Thrteen Clocks: how race united the colonies and made the Declaration of Indenpendence, Williamsburg, Virginia and Chapel Hil, North Carolina, 2021, str. 1
39 Velika Britanija i Irska su ujednijene Zakonima unije iz 1800. godine. Više o tome na linku https://en.wikipedia.org/wiki/Acts_of_Union_1800
40 https://en.wikipedia.org/wiki/George_III
41 Parkinson u citiranom delu Thirteen Clocks iznosi svoja zapažanja o redosledu optužbi i klasifikuje na sledeći način. One koje su mekše u biti predstavljaju zloupotrebu izvršne vlasti i odnose se na postupanje Džordža III deceniju i više pre sukoba (prvih dvanaest). Sledećih deset se odnosi na zakone za koje svesno okrivljuje Džordža III, dok poslednjih pet predstavlja vrhunac naboja i nosi najveću težinu; idem, str. 155.

Naime, od 1701. godine, kada je britanski Parlament usvojio Zakon o poravnanju (*Act of Settlement*), sudije su mogle biti razrešene dužnosti samo uz saglasnost Parlamenta, u slučajevima koji se ne mogu podvesti pod „dobro ponašanje". Iako je i pre donošenja ovog zakona to bio standard, i to po tzv. *letters patent*, postojali su slučajevi kada su sudije razrešavane suprotno tom standardu, kao što je primer sudije Džona Voltera,[42] koga je Čarls I razrešio 1630. godine zbog toga što se protivio zakonima o izdaji. Nakon donošenja Zakona o poravnanju, standard nezavisnosti sudija primenjivao se u Britaniji.
Ubrzo po krunisanju, u decembru 1761, Džordž III je izdao kraljevski edikt kojim je odredio da sudije u kolonijama moraju suditi po volji Krune (*at the pleasure of the crown*). Ovo je bio povod za prvi deo devete optužbe.

Godine 1772. u Masačusetsu je primljena vest da će sudije ubuduće biti plaćati Kruna, a ne kolonije. U to vreme, čuveni lojalista koji je podržavao Zakon o štampi iz 1865. godine Piter Oliver postavljen je za predsednika Visokog suda Masačusetsa. Sve sudije osim Olivera odbile su da primaju zaradu od Krune. Zbog toga je Džon Adams pokrenuo opoziv Pitera Olivera, što su jako dobro prihvatili kolonisti. Optužbe su bile zasnovane na navodima da prijem 1000 funti od Krune, koji je Oliver prihvatio, predstavlja mito koji je primio da bi prekršio svoju zakletvu. Guverner Tomas Hačinson odbio je da se uopšte izjasni o ovim optužbama i izjavio je da Oliver neće biti opozvan. Međutim, kako su porotnici odbijali da učestvuju u suđenjima, suštinski je otpočela blokada sudova.[43]
Iza ova dva događaja ostaće Adamsova izjava da je Džordž III sudije učinio zavisnim od hleba i službe,[44] koja će suštinski činiti devetu

42 Detaljnije na linku https://en.wikipedia.org/wiki/John_Walter_(judge)
43 Više o tome N. Sankovitch, It Wasn't All About Taxes: Royal Tampering With the Colonial Courts and the American Rebellion; dostupno na linku https://www.thehistoryreader.com/us-history/it-wasnt-all-about-taxes-american-rebels/
44 https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf

optužbu iz Deklaracije nezavisnosti.
Koliko je deveta optužba iz Deklaracije nezavisnosti uopšte važna za definisanje i razumevanje pojma nezavisnog pravosuđa? Smatramo da je ovo pitanje ključno ne samo za naše razmatranje već i za implementaciju nezavisnog pravosuđa u državama gde potreba za postojanjem takvog pravosudnog sistema predstavlja problem, odnosno interes javnog poretka. Verujemo da nije potrebno detaljno obrazlaganje zašto Srbiju smatramo takvom državom.

V Nezavisnost sudija kao vrednost Deklaracije i imperativ moderne demokratije

Vreme je da se vratimo na uvodna razmatranja i tezu da Deklaracija nezavisnosti nije stvorila samo Ameriku već i model moderne demokratije. Ključna karakteristika tog modela jeste funkcionalnost. Da društvo zaista može istovremeno biti i funkcionalno i demokratsko, dokazala je sama Amerika tokom dva i po veka postojanja. Nezavisnost pravosuđa je u samoj klici demokratije zasnovane na podeli vlasti. Razlog za to je vladavina prava, bez koje demokratija ne može postojati, a vladavine prava nema bez sudske vlasti.

Koliko god da je podela vlasti propisana ustavom, prirodna tendencija svih izvršnih vlasti jeste da sebi podrede i zakonodavnu i sudsku vlast. Ako se zakonodavna vlast podredi izvršnoj, onda se kroz zakone može osigurati da izvršna vlast ima značajne prednosti u odnosu na demokratske konkurente prilikom svakih narodnih izbora. Ako se sudska vlast podredi izvršnoj, onda zakonodavna vlast nema nikakvu mogućnost da osigura da se doneti zakoni zaista i primenjuju. Zato je sudska vlast u izvesnom smislu značajnija od zakonodavne vlasti, pošto ona ne primenjuje samo zakone već i ustav. Sudija Skalija je često podvlačio da je ustav izuzetak od demokratije. Demokratija podrazumeva donošenje odluka većinom glasova, ali ni u kom slučaju van ustavnog okvira. To je razlog što svaki zakon, ma

koliko da je izraz volje suverena, podleže kontroli ustavnosti.
Na prvi pogled, čini se da se podela vlasti i, s tim u vezi, značaj sudske vlasti razume identično i u SAD i na evropskom kontinentu, pa i u Srbiji. Pravna istorija nam, međutim, govori da to nije slučaj. Štaviše, koliko god da to možda zvuči neuverljivo, spremni smo da pružimo nekoliko argumenata koji će Renkvistovu paralelu između stanja u SAD i Francuskoj u vezi sa funkcionisanjem nezavisne sudske vlasti i garancijama osnovnih ljudskih prava u praksi sa kraja XVIII veka učiniti stvarnom u novijoj istoriji i u današnje vreme.

Ako, naime, uporedimo praksu američkih sudova u vreme pozlaćenog doba (*Gilded Age*)[45] sa kraja XIX veka i praksu evropskih sudova, možemo da uočimo značajnu razliku. Koliko god da je praksa, primera radi, Fulerovog suda[46] izrodila neke kontroverzne odluke, toliko je praksa evropskih sudova u isto vreme gotovo nepostojeća kad su u pitanju civilizacijski pomaci.
Mi tako danas znamo za ulogu Džona Maršala Harlana[47] i njegova značajna izdvojena mišljenja koja su kasnije poslužila za promenu zakona i sudske prakse,[48] ali ne znamo za velike evropske sudije koje su na sličan način prkosile sistemu u borbi za progresivne vrednosti. Harlan je, primera radi, bio ličnost od koje su mnogi pojedinci i društvene grupe očekivali različite odbrane vrednosti na kojima je Amerika zasnovana. Sigurno je da, bar kad je u pravosudni sistem u pitanju, u Evropi u istom periodu ne postoji nijedan sudija sa sličnim uticajem. Razlog za to možda i nije nepostojanje takvih sudija – mada je i to upitno, ali svakako jeste njihov skromni doprinos društvenim promenama koje će uslediti.

45 Period između kasnih 70-ih i kasnih 80-ih godina XIX veka, nazvan po noveli Marka Tvena.
46 Misli se na period od 1888. do 1910. godine, kada je Melvil Fuler bio predsednik Vrhovnog suda SAD.
47 Sudija Vrhovnog suda SAD; dostupno na https://en.wikipedia.org/wiki/John_Marshall_Harlan
48 Primera radi, odluke Vrhovnog suda Plessy v. Ferguson 163 US 537(1896), United States v. E.C.Knight Co 156 U.S. 1(1895), Pollock v. Farmers Loan & Trust Co 157 U.S. 429(1895)

Na potpuno isti način možemo da posmatramo i poruke sudijske nezavisnosti, koje su u to vreme stizale iz Amerike i iz Evrope. Iako ga je predsednik Ruzvelt imenovao kao progresivnog sudiju, očekujući da doprinese razbijanju kartela, čuveni Oliver Vendl Holms već je u prvoj godini i u velikom slučaju *Northern Securities*,[49] koji je baš u tom pravcu okrenuo praksu, napisao izdvojeno mišljenje. Poruka koju je na taj način Holms poslao usmerena je baš prema nezavisnosti sudije: sudija mora da prati pravo kako ga razume, kakve god lične posledice snosio zbog toga.[50]

Evropa, makar ne ona kontinentalna, takve heroje u togama nije imala, niti ih je mogla imati. Tome postoji jednostavan razlog. Sudije su sve do druge polovine 20. veka, a negde i kasnije, u većini evropskih država smatrane kao državni službenici i deo izvršne vlasti. Tu prostora za demonstriranje sudijine nezavisnosti, onako kako je to Holms mogao i hteo da uradi, jednostavno nije bilo. A ako bi neko od sudija i pokušao nešto slično, vrlo teško bi sačuvao funkciju i izbegao sankciju.

Da li bismo u bilo kojoj evropskoj državi mogli da zamislimo situaciju sličnu onoj gde predsednik Taft, zbog popularnosti među kolegama, za predsednika Vrhovnog suda imenuje Edvarda Daglasa Vajta,[51] koji se u Građanskom ratu borio na strani Konfederacije i svoje stavove nije menjao ni tokom sudijske karijere? I da se to imenovanje dogodi u trenutku dok su članovi Vrhovnog suda takvi velikani poput Harlana, Holmsa ili Hjuza.[52] Da li bismo uopšte mogli da zamislimo političkog neistomišljenika na vrhu sudske vlasti? I da li to i danas možemo da zamislimo?
Srbija je od ponovnog uspostavljanja državnosti u XIX veku

49 Northern Securities v. United States 193 U.S. 197(1904)
50 Više o tome Catherine Pierce Wells, Oliver Wendell Holmes, A Willing Servant to an Unknown God, Cambridge University Press, 2020
51Dostupno na https://en.wikipedia.org/wiki/Edward_Douglass_White
52 Čarls Evans Hjuz, sudija i kasniji predsednik Vrhovnog suda SAD; dostupno na https://en.wikipedia.org/wiki/Charles_Evans_Hughes

sledila evropski model. Bez obzira na to da li je svetionik tražen u Austrougarskoj, Nemačkoj, Francuskoj ili Sovjetskom Savezu, taj svetionik je uvek u dubokoj senci ostavljao nezavisnu sudsku vlast. Pa čak i u današnje vreme, sudije sebe smatraju delom državnog aparata, koji u velikoj većini doslovno tumači i izvršava ne samo naloge izvršne vlasti već i ono što izvršna vlast od sudija očekuje. Bez ustezanja možemo primetiti da se pravosuđe zaglavilo u samoupravnom socijalizmu i da se iz te zamke još uvek nije izbavilo. Čak i kad u okviru svoje ustavne obaveze primenjuju standarde iz prakse Evropskog suda za ljudska prava, sudije u Srbiji ih prečesto primenjuju na pogrešan način. Dovoljno je pogledati set pitanja kojima se prilikom prvog izbora za sudijsku funkciju testiraju kandidati, pa zaključiti da čak ni oni autoriteti koji su ta pitanja sastavljali od budućih sudija i ne očekuju da razumeju primenu i mesto Evropske konvencije o zaštiti ljudskih prava u pravnom poretku Republike Srbije. Osim ukoliko ni sami sastavljači pitanja nemaju minimalna znanja o značaju i primeni prakse Evropskog suda za ljudska prava, što nije isključeno.[53]

Zato je odgovor na pitanje šta bi to sudska vlast mogla da nauči iz američkog modela apliciranja nezavisne sudske vlasti u praksi prilično jednostavan: sve. I to sve ispočetka. Od Deklaracije nezavisnosti pa do danas.

53 Dostupno na https://vss.sud.rs/jedinstvena-baza-pitanja-za-pisani-test

VI Zaključna razmatranja

Autor je pokušao i makar u tehničkom smislu uspeo da svoja zapažanja o Deklaraciji nezavisnosti i nezavisnoj sudskoj vlasti u Americi simbolički sažme na 13 strana. Ako je 13 kolonija uspelo da stvore model nezavisne sudske vlasti koji je odoleo svih iskušenjima vremena i postao bolji od svih postojećih, onda i ovih 13 strana predstavlja prvi korak ka približavanju srpskih pravnika idealima Deklaracije nezavisnosti i duhu američkog pravnog sistema, nastalog na tim idealima. Ideja eseja se nije sastojala u doprinosu naučnom i stručnom diskursu u vezi sa Deklaracijom nezavisnosti, već je pre svega bila usmerena ka upoznavanju sa jednim svetionikom koji bi srpskim pravnicima mogao da proširi vidike i oslobodi ih okvira u kojem je nezavisna sudska vlast nedostižni ideal. Američki pravni sistem je dokazao suprotno. Zato ćemo svaku kritiku koja bi na ovaj rad bila upućena shvatiti kao uspeh, jer cilj rada nije pohvala – već razmišljanje. Između ostalog, i razmišljanje o tome zašto je proslava 250. godišnjice Deklaracije nezavisnosti toliko važna i za SAD i za svet.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

342.221(73)"1776"(082)
342.4(73)"17/20"(082)
342.7(73)"17/20"(082)

OGLEDALO mogućnosti : američko pravosuđe i Deklaracija nezavisnosti /
[urednica Ivana Matić]. - Beograd : Centar za američko pravo, 2025 (Beograd
: Politika). - 224 str. ; 21 cm

Tekstovi na srp. i engl. jeziku. - Tiraž 200. - Str. 7-9: Predgovor / Ivana
Matić. - Napomene i bibliografske reference uz tekst. - Bibliografija uz
svaki rad.

ISBN 978-86-908632-0-4

а) Декларација о независности 1776 -- Зборници б) САД -- Државно-правни
положај -- 18в-21в -- Зборници

COBISS.SR-ID 182001417