

The Grievances and the Declaration of Independence

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"To prove this, let Facts be submitted to a candid World"

The bulk of the Declaration of Independence consists of what has come to be known as the grievances. These are the complaints the Founders made against the King, Parliament, and the people of England to justify their movement for independence. While often overlooked today, these grievances provide a window into understanding both the argument of the Declaration and the American Founding more generally.

One of the most unusual aspects of the Declaration of Independence comes from the famous words of the second paragraph, which articulate the principles and argument that form the basis of the American experiment. If you understand those principles, then you can understand why, for the Founders, the violations mentioned in the grievances violate the purpose and appropriate behavior of the government.

To illustrate with an example, take the very first grievance mentioned:

"He has refused his Assent to laws, the most wholesome and necessary for the public Good."

Here, we see a common frustration from colonial America: The King would not sign the laws passed by the various legislative bodies in the colonies, thereby preventing them from going into effect. This illustrates several violations of principles articulated earlier in the Declaration, the most obvious being against the consent of the governed. Let's make the connection even more explicit to show what we mean.

The consent of the governed requires both a kind of majority rule and protection for the rights of minorities. In early America, and still to this day, the most common form of consent and majority rule comes from elected, representative bodies, including Congress, state legislatures, or local city councils. So long as those bodies pass laws that do not violate the rights of individuals—what the Declaration calls "wholesome and necessary for the public Good"—then those laws appropriately uphold the principle of consent of the governed. So when the King refused to allow those acts to become laws, he violated that principle.

These grievances can be understood to be applications of the theory of government articulated in the Declaration of Independence. Each of them, in turn, can be traced back to

one or more principles articulated in the document. Just as we argue today about whether a policy or law is good or bad, there was much debate about each of these violations of principles at the time. As the Declaration lays out in its first paragraph, "A decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation."

When we understand both the principles and argument of the Declaration, as well as their application to particular situations through the grievances, we better appreciate the Founding as well as the American story today. The grievances also illustrate additional principles, whether articulated explicitly or implicitly, that can help us understand the Founders and how they approached government and policy. Among those we'll consider are the rule of law, freedom to trade, no taxation without representation, and the role of jury trials.

The Rule of Law

The grievances outlined in the Declaration of Independence are a series of claims regarding violations of the colonists' rights. We can understand these violations through both the principles outlined earlier in the document and other key principles from the English tradition of law, known as the common law, on which much of the colonial legal system and practices were based. Of the latter, perhaps none is more important than the rule of law.

In general, the rule of law requires that everyone in a society be equally subject to the same laws. Those laws must be made in a public way, in accordance with the idea of the consent of the governed, and they must be equally enforced and independently judged. This idea is often simplified to state that, under this principle, no one is above the law—not even a king or president. Though this principle is of ancient origin, the Founders were also heavily influenced by later ideas in the Magna Carta and the common-law tradition and by Enlightenment thinkers such as John Locke and Sir William Blackstone.

Many of the grievances articulated the ways in which the King and Parliament violated the rule of law. By examining each part of the rule of law in turn, we can see how the Founders perceived the King and Parliament's behavior as a systematic effort to deny the colonists their rights and protections under this principle. For example, the Declaration notes that the King "has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries." The King sent judges who answered solely to his power to the colonies, which was a direct violation of the idea of all being equally subject to the law.

Just as egregious were the King and Parliament's efforts to undermine the principle that laws should be publicly made and reflect the consent of the governed. To name only two violations of this provision, consider the following grievances:

- "He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only."
- "For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments."

In each of these cases, we see the King and Parliament working to deny representative government—the main form of consent of the governed practiced at the time—as well as the forms of known and promulgated law.

The final major components of the rule of law are the ideas of equal enforcement of the law and judgment by an independent judiciary. We have already seen that the King had made judges in the colonies dependent entirely upon his will. Additionally, the Declaration charges that the King deprived the colonists of “the Benefits of Trial by Jury,” one of the crucial protections for both equal enforcement of the laws and an independent judiciary. Further, we see in other grievances that the King and Parliament had refused to enforce laws against troops who had murdered colonists, “protecting them, by a mock Trial.”

Free Trade

The Declaration of Independence makes two points about trade. In the grievances, the King and Parliament are blamed for “cutting off our Trade with all Parts of the World.” Later, at the end of the document, the Declaration lists “establish[ing] Commerce” as among the things “Independent States may of right do.” Yet even though these references are limited, the colonists’ ability to trade freely with the world was among the most important issues to inspire the Declaration of Independence.

As small and largely agrarian economies separated by oceans from much of the world during their first century, the colonies in America relied heavily upon shipping and trade. Tensions with England began as early as the 1660s, specifically regarding the Navigation Acts, which limited the trade of the colonies to only British-owned ships that had to stop in England before engaging in any commerce with other countries. A century later, enforcement of these measures significantly expanded, first in response to the Stamp Act and related protests, and then especially in response to the Intolerable Acts, which effectively cut off Boston’s trade from the rest of the world.

In each of these cases, the Crown and Parliament limited or abolished the ability of the colonists to engage in free trade, whether by taxes, regulations, or outright blockades of ports. By 1774, colonial outrage over these acts spurred the formation of the First Continental Congress, which eventually achieved independence for the colonies. Thomas Jefferson was particularly moved by these efforts, writing in July 1774 as part of his tract “A Summary View of the Rights of British America” that “the exercise of a free trade with all parts of the world” was “possessed by the American colonists, as of natural right.”

While the presumption of free trade among people and nations broadly defined early colonial writings and policies, debates about the proper role of the government in commerce were widespread throughout the early years of the United States. Jefferson and Alexander Hamilton, for example, broadly disagreed about what powers the new national government had to regulate commerce. To this day, debates about duties, tariffs, and the regulation of commerce still drive the national policy conversation.

No Taxation Without Representation

No grievance from the American Founding is more famous than the idea that there should be no taxation without representation. From the time of the Boston Tea Party to the time of license plates in Washington, DC, that still bear this motto, this principle has been pervasive for centuries. This grievance demonstrates a straightforward connection between the principles articulated earlier in the Declaration and their application to the situation of the colonies.

Many of the first grievances outlined in the Declaration address the ways in which the King had violated the principle of the consent of the governed. By dissolving representative bodies, hindering their ability to convene, and even refusing to sign acts they passed, the King limited or violated the consent of the governed. To see only one explicit example, the Declaration charges him with keeping “among us, in Times of Peace, Standing Armies, without the consent of our Legislatures.” Later, the Declaration lists a particular charge against King and Parliament of “imposing Taxes on us without our Consent.”

To understand this double wrong, it's helpful to refer to some of the principles articulated earlier in the Declaration. There, the Founders argued that the purpose of the government is to secure people in their rights, such as life, liberty, and the pursuit of happiness. Furthermore, the actions of the government, particularly those that touch upon fundamental rights, must have the consent of the governed. Taxation, since it involves taking property from individuals and businesses, directly affects the very rights that governments are instituted to protect. Therefore, in matters of taxation, consent is absolutely crucial. According to the Founders, while the government may take property through taxation, it must be done for reasons that broadly protect rights, such as for national defense, and always by means that represent the people.

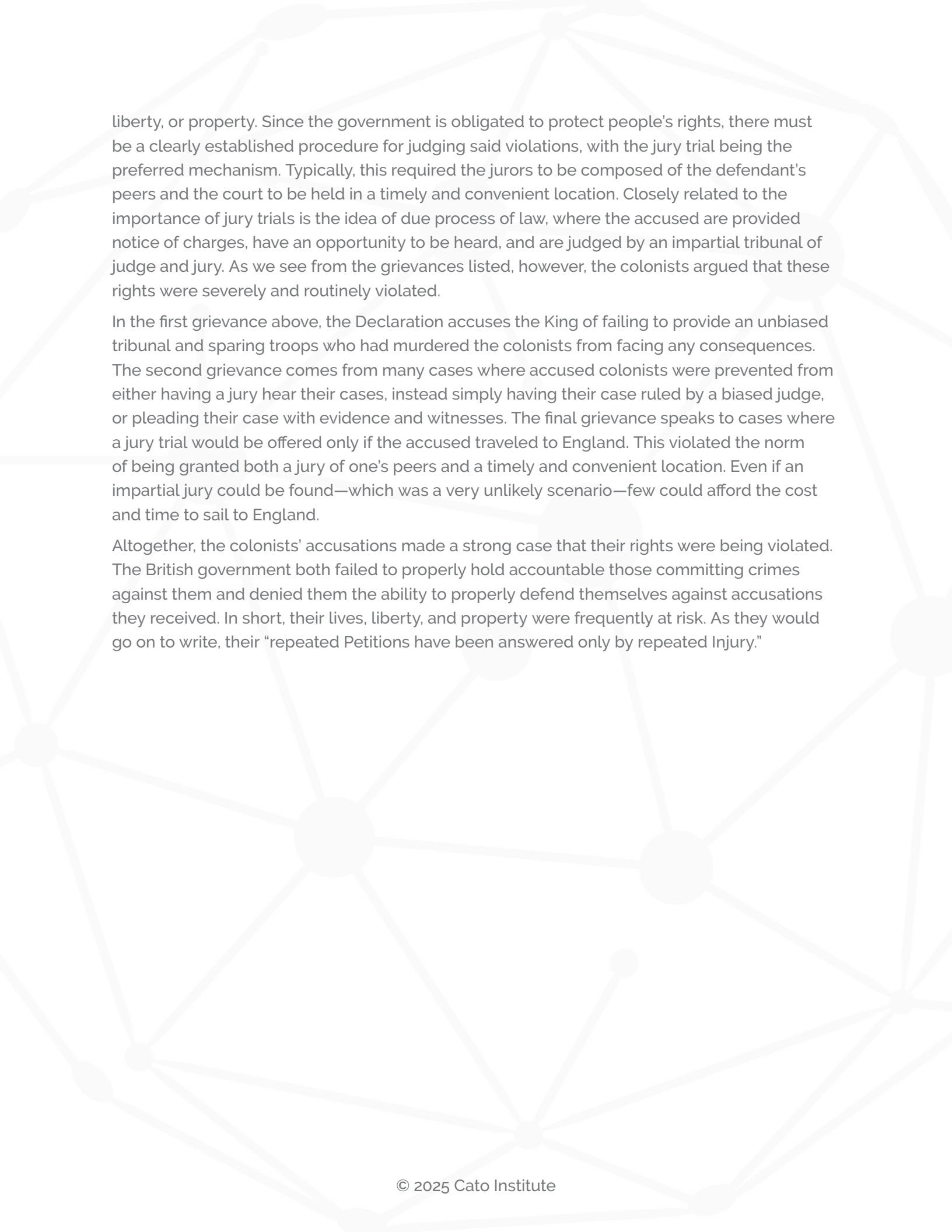
Jury Trials

Among the most important features of English common law brought over to the colonies was the legal procedure of jury trials to settle criminal cases. This idea has ancient origins, but the modern form traces its roots back to the Magna Carta and was practiced as early as the 1630s in Massachusetts. Later, with the adoption of the Constitution, jury trials and related criminal procedures occupied almost half the Bill of Rights. To understand why, let's look a little closer at the text and argument of the Declaration of Independence.

The Declaration lists three examples of the violation of the right to jury trials, more than any other violation except for the representation and consent of the governed. They are:

- “For protecting [Armed Troops], by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States.”
- “For depriving us, in many Cases, of the Benefits of Trial by Jury.”
- “For transporting us beyond Seas to be tried for pretended Offences.”

Following the common-law tradition, the Founders viewed jury trials as a civil right—an important procedural process owed to the accused before they could be deprived of their life,



liberty, or property. Since the government is obligated to protect people's rights, there must be a clearly established procedure for judging said violations, with the jury trial being the preferred mechanism. Typically, this required the jurors to be composed of the defendant's peers and the court to be held in a timely and convenient location. Closely related to the importance of jury trials is the idea of due process of law, where the accused are provided notice of charges, have an opportunity to be heard, and are judged by an impartial tribunal of judge and jury. As we see from the grievances listed, however, the colonists argued that these rights were severely and routinely violated.

In the first grievance above, the Declaration accuses the King of failing to provide an unbiased tribunal and sparing troops who had murdered the colonists from facing any consequences. The second grievance comes from many cases where accused colonists were prevented from either having a jury hear their cases, instead simply having their case ruled by a biased judge, or pleading their case with evidence and witnesses. The final grievance speaks to cases where a jury trial would be offered only if the accused traveled to England. This violated the norm of being granted both a jury of one's peers and a timely and convenient location. Even if an impartial jury could be found—which was a very unlikely scenario—few could afford the cost and time to sail to England.

Altogether, the colonists' accusations made a strong case that their rights were being violated. The British government both failed to properly hold accountable those committing crimes against them and denied them the ability to properly defend themselves against accusations they received. In short, their lives, liberty, and property were frequently at risk. As they would go on to write, their "repeated Petitions have been answered only by repeated Injury."