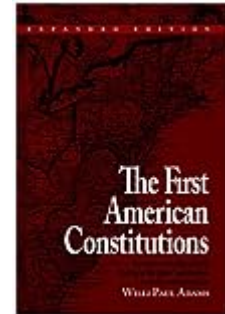


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Revisiting Revolutionary State Constitutionalism

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In 1973 Willi Paul Adams, now a professor of history at the Free University of Berlin, published his doctoral dissertation on the first American state constitutions. Three years later this dissertation was awarded a prize by the American Historical Association for being the best foreign-language monograph on the Era of the American Revolution completed since 1 July 1969. With the prize money, the book was translated into English and published in 1980 by the University of North Carolina Press for the Institute of Early American History and Culture. Almost twenty years later, Madison House Publishers commissioned Adams to produce an expanded edition of his book. In 2001, Rowman & Littlefield, which had purchased Madison House, reprinted Adams's monograph under the Madison House imprint. Adams added a second preface, two new chapters, and a supplementary bibliography; except for the revision of his two appendices, Adams did not alter his original text.

Adams's monograph examines the provisions of the first state constitutions and analyzes the political ideas and the imperial, colonial, and local experiences that

formed the basis of these provisions. The new governmental system created by these constitutions was republican, federal, and constitutional; in this system, the rights of the people were enforceable at law. Based on the principle of popular sovereignty, these constitutions could not be violated. The political ideas embedded in the constitutions were central to the creation of the Federal Constitution of 1787. Even though most Americans were republicans, much disagreement existed about the meaning of republicanism, the structure of government, and the extent of the people's role, thereby forcing Americans to make compromises. Americans developed a viable constitutional system because they struck a balance between their ideals and their pragmatism.

In his first three chapters, Adams considers "the organizational questions" raised by the break with Great Britain. In chapter 1, he describes how the early revolutionary movement was spearheaded by local committees and provincial congresses, with the latter acting as legislatures and executive committees. Although forwarding the movement and developing a strong sense of patriotism, these temporary bodies were too democratic,

causing considerable turmoil. Nevertheless, they laid the foundation for more permanent governments.

The First Continental Congress (1774), discussed in chapter 2, represented the formation of a government on the continental level, but it was the Second Continental Congress, which convened in 1775, that Americans saw as the ultimate source of authority. Simultaneously, in the spring of 1776 this body decided for independence and invited the colonies to draft new constitutions, thus replacing their colonial charters with governments based upon the concept of popular sovereignty. The Declaration of Independence embodied the new nation's political ideals and its justification for independence.

Chapter 3 sketches each of the eleven states that framed and adopted new constitutions between 1776 and 1780; some states drafted more than one constitution, whereas Rhode Island and Connecticut retained their colonial charters, revised to take account of independence. For the most part, these new constitutions were drafted by provincial congresses which considered themselves representative; some states convened constitutional conventions, but these conventions did more than draft constitutions. Only Massachusetts, when it launched its second attempt to frame a constitution in 1779, called a convention for the sole and express purpose of drafting a constitution. Massachusetts was also the only state that submitted the proposed constitution to the people for ratification. This action clarified the distinction between legislation and a constitution and was an excellent example of the development of the concept of "constituent power." Six of the eleven state constitutions included bills or declarations of rights. The public debate engendered by this constitution-making was intense and sophisticated, with dissent playing a "dynamic" role.

Chapter 4 demonstrates that in 1774 and 1775 Americans had not yet developed a systematic definition of what constituted a republican government. The Second Continental Congress had not asked the states to establish such a government, nor did it employ the term in the Declaration of Independence. Not until Thomas Paine's *Common Sense*, which first appeared in January 1776, did republicanism become "a publicly recognized body of principles and institutions" (p. 103). Between 1774 and 1780, republicanism and democracy were synonymous terms. By 1787, however, a distinction was made between the two, with republicanism being preferred to democracy, which was deemed dangerous since it represented popular turmoil and a leveling spirit.

In chapter 5, Adams asserts that the American Revolution was not a doctrinaire one. Americans experimented with their ideals to see if they passed the test of practicability. They adapted new principles to traditional forms of government, thereby wedding their moral and political values to their British-American experiences. In this respect Americans followed the teachings of John Adams in preference to Thomas Paine's emphasis on principles. These two revolutionaries, representing strikingly different points of view, appear far more often in this book than any other men.

Chapter 5 includes a discussion of an extraordinary document drafted in 1779 by the inhabitants of Stoughton, Massachusetts, that outlines in detail the principles of republican government. Adams deftly uses this document to introduce chapters 6 through 8, in which he analyzes "the debate concerning the basic principles of the American variant of republican government ... progressing from popular sovereignty to liberty, equality, property, the common good, representation, and the separation and balance of powers, to the development of a federal form of government that came to be the key to American success in nation building" (p. xvii).

The principle of popular sovereignty,[1] the subject of Chapter 6, was an American innovation; all other principles were included under this one. State constitutions declared that all powers were vested in and derived from the people. Americans formalized the right of the people to change their constitutions, a right that made revolutions unnecessary. They also provided for constitutional conventions and the popular ratification of constitutions. But popular sovereignty had its limits. Declarations of rights, which placed certain prohibitions on governments and majorities, were intended to ensure that the people would not become tyrannical.

In Chapter 7, Adams asserts that "liberty was the pre-eminent goal of political action" (p. 147). Americans fought the Revolution to achieve independence and liberty.[2] In erecting state governments, they joined liberty to republican government, thereby establishing the notion of "political liberty as the right to self-direction" (p. 153). They made certain that their governments would protect certain rights of individuals. such as the right to life, liberty, and property, but Americans were required to obey their own laws. Most important, liberty meant that Americans could conquer the continent on their own terms.

The principle of equality, the focus of Chapter

8, was advanced without qualms by Americans, even though slavery existed in all thirteen states and suffrage was based on property qualifications. Moreover, many Founders believed in the rule of an educated elite. Nonetheless, the principle of equality was employed, in particular, by the Continental Congress to justify colonial resistance to Great Britain, which had denied the colonies equality in the British Empire. In time, the growing middle class turned the Founders' rhetoric against them and demanded greater equality. However, few people saw the principle of equality as a means of obtaining radical social and political reforms.

Chapter 9 emphasizes the importance of the idea of property as a natural right. Americans broke with Great Britain to protect their property and liberty. The right to property was the "great unifying factor" in the Revolution and after the war it was part of "the canon of the highest social values" (p. 191). Some state constitutions declared the right to be inalienable and most of them linked suffrage and property. There was opposition to property qualifications for voting, but it was a long time before they were all removed. A strong belief prevailed that anyone who could not acquire enough property to vote would not be a useful member of society.

The common good (chapter 10), a popular idea in the colonies, was supported and promoted by virtuous people. Since the common good was the most important function of a government, "the state constitutions, naturally, incorporated the common good as the guiding value for the exercise of legitimate government" (p. 220). But Americans never reached agreement on a definition of the common good. They thought that competing interest groups could exist if they gave up some of their interests for the good of the whole. In this way, conflicts could be avoided.

The principle of representation—the concern of chapter 11—was another means (perhaps the best means) of resolving conflict. Legislatures had existed since the earliest colonial days and the history of their development was well known to the Founders. Conflicts over the nature of representation, as old as the legislatures themselves, were revisited by the Founders, who fashioned a number of compromises in an effort to have legislatures represent a multiplicity of interests. The compromises—in which principles of representation and balanced government (checks and balances) overlapped—included two-house legislatures; short-terms of office; annual elections; instructions for legislators; rotation in office; declarations of rights; redistricting and censuses; and proce-

dures for amending constitutions.

In chapter 12, Adams shows how balanced or mixed government merged with separation of powers into "one concept of limited government" (p. 273). Checks and balances and the separation of powers were necessary because the Founders held a cynical view of human nature. All state constitutions except those of Pennsylvania and Georgia (and later the "independent republic of Vermont") established two-house legislatures. The Virginia and Massachusetts constitutions specifically called for separation of powers among the three departments of government—legislative, executive, and judicial. Legislatures, however, were the dominant branch; judicial review of legislation was not yet established and most legislatures elected the governors.

Chapter 13 takes on the issue of federalism—the relationship of the state governments to a central authority. Under the Articles of Confederation, the balance of power between the states and the central authority favored the states, although the issue of ultimate sovereignty lacked clarification. Unhappy with economic conditions and Congress' inability to raise money in the 1780s, some prominent political leaders (later called Federalists) sought to create a strong central government that would act to make America a great commercial empire. They succeeded in 1787 when a new Federal Constitution provided for an enlarged central government with three distinct branches and numerous restraints upon the state governments, thereby shifting the balance of power to the central government.

Adams maintains that the Federal Constitution did not represent a counterrevolution, as some scholars believe, because centralizing tendencies began with the Continental Congress, which had prosecuted the war for independence and managed the subsequent period of peace. The combination of government on the state and national levels, "the American variant of federal government, largely fulfilled" the Federalists' "idea of a modern nation-state founded on the principles of free republican government or, as [Alexander] Hamilton had called it, representative democracy" (p. 289).

Adams asserts in chapter 14 (one of the two new chapters), that the state constitutions, both negatively and positively, were reference points for the framers of the Federal Constitution. "Without considering the first state constitutions any reconstruction of the nation building phase of American constitutionalism is incomplete" (p. 300). Among other things, the state constitutions showed the way in the creation of the U.S.

Senate, the office of the President, and two-house legislatures. The sole and express use of a constitutional convention for framing the Constitution owed a debt to Massachusetts, whose unpleasant experience with its plebiscite to ratify its state constitution also taught the Founders to avoid a conditional ratification of the Constitution. From their experience with the Articles of Confederation, the Founders avoided the use of unanimous votes to ratify and amend the Constitution.

In chapter 15 (the second new chapter),^[3] Adams explores the recent historiographical controversy pitting republicanism against liberalism in the era of the Revolution, using state constitution-making as a test case. He concludes that neither set of ideas clearly prevailed in constitution-making, as the various state constitutions all contain elements of democracy, republicanism, and liberalism. For these reasons, Adams recommends that scholars seek another guiding interpretative framework that might explain why Americans rebelled against Great Britain and established new forms of government at state and national levels. He suggests the historical sociologist Reinhard Bendix's "sweeping systematic comparative survey of the changes from monarchical to republican government" (p. 313).^[4] Bendix analyzed five long-term developments that contributed to this shift: (1) the growth of a sufficient population to mobilize economic resources, (2) the creation of urban centers with political, commercial, and cultural functions, (3) technological innovations in transportation, finance, and communication, (4) "the Christian belief in the equality of all believers under God" (page 313) and its impact on economic and political cooperation, and (5) an "intellectual mobilization" that created a well educated public and leadership. Adams believes that these conditions existed in America.

Appendix I compares the property qualifications in the first state constitutions with those found in colonial, revolutionary, and post-revolutionary election laws. Appendix II illustrates the principle of rotation in office as shown by various officers in the state constitutions from 1776 to 1780.

Now as on its first English-language appearance in 1980, this monograph is a well-organized and well-reasoned introduction to the making of state constitutions and to the state of the political mentality of the Founding Generation. Adams has read widely in the secondary literature and printed primary sources and familiarized himself with American colonial, revolutionary, and early national history and to a lesser extent British

constitutional and imperial history. His book is thus a fine synthesis of the literature up to 1980, the year of its first edition. His book is most valuable for its thoughtful analysis and definitions of such political concepts as constitutionalism, republicanism, and federalism. Especially good are chapters 4 and 5, where Adams grapples with the meaning of "republic" and "democracy" in the rhetoric of the late eighteenth century and where he demonstrates how Enlightenment ideas were adapted to Anglo-American institutions. Adams also has a fine discussion of the concept of "constituent power," a concept invented by Americans who also gave it a name.

Because Adams relied so heavily on secondary literature, however, gaps exist in his monograph because significant gaps occur in this literature, a fact that Adams himself recognizes. In several instances, he notes that more work has to be done on a particular state constitution or a political concept. Because his study is so broad, Adams was unable to delve into the intricacies of state politics or the roles of the many players (only a few appear), so that his presentation of the political context in which state constitutions were written lacks depth. He weighted his inquiry in favor of the large states of Massachusetts, Pennsylvania, and Virginia, all of which offer abundant primary and secondary sources. The innovating state of Massachusetts, in particular, gets the most space. Oddly enough, even though Adams realizes the importance of the state declarations of rights, he slights them in his analysis and critique.

The two new chapters (14 and 15) are comparatively cursory treatments. The reader wishes that Adams had compared the Federal Constitution and the state constitutions in greater detail and depth.^[5] In his discussion of the controversy pitting republicanism against liberalism, Adams (perhaps inevitably) does not begin to cover the vast literature, but it is unfortunate that he does not address more fully the conclusions of many recent scholars who have seen a blending of republicanism and liberalism in American political institutions and thought.^[6]

Adams's supplementary bibliography is substantial and conveniently organized by general works, state studies, and the book's chapters. Nevertheless, it does not indicate how these newer works might complement or contradict aspects of his study, nor does it give the reader a clear picture where Adams's work fits into the historiography of state constitution-making. In particular, Adams offers no opinion about the general works on state constitution-making by Donald S. Lutz and Marc W. Kruman, which appeared after his own book was first

published, even though their books appear in both the preface to this edition and in the supplementary bibliography. Lutz is very good on the colonial origins of the state constitutions, the Americanization of English Whig thought, and origins of American constitutionalism.[7] Kruman is strong on the state declarations of rights and the extent of suffrage.[8]

These criticisms aside, this book is a splendid contribution to the study of the early American state constitutions. The publishers ought to be commended for returning the book to print, especially as it is bound to assist the growing number of practitioners in the burgeoning field of state constitutional law, some of whose works are found in Adams's supplementary bibliography.

Notes

[1]. On the concept of popularity sovereignty, see the chapter on James Wilson, perhaps America's most profound theorist on the concept, in James H. Read, *Power versus Liberty: Madison, Hamilton, Wilson, and Jefferson* (Charlottesville and London: University Press of Virginia, 2000), 89-117.

[2]. On liberty, see Read, *Power versus Liberty*; and M. N. S. Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law* (New York: New York University Press, 1998).

[3]. An earlier and longer version of this chapter appeared in A. E. Dick Howard, ed., *The United States Constitution: Roots, Rights, and Responsibilities* (Washington

and London: Smithsonian Institution Press, 1992), 3-22.

[4]. Reinhard Bendix, *Kings or People: Power and the Mandate to Rule* (Berkeley: University of California Press, 1978).

[5]. See also the brief but suggestive "Conclusion," in John Phillip Reid, *Constitutional History of the American Revolution: Abridged Edition* (Madison: University of Wisconsin Press, 1995), in which Reid traces principles codified in provisions of state and federal constitutions to the Americans' heritage from the unwritten English constitution.

[6]. See especially Herman Belz, Ronald Hoffman, and Peter J. Albert, eds., *To Form a More Perfect Union: The Critical Ideas of the Constitution* (Charlottesville: University Press of Virginia [for the United States Capitol Historical Society], 1992).

[7]. Donald S. Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early States Constitutions* (Baton Rouge and London: Louisiana State University Press, 1980); and *The Origins of American Constitutionalism* (Baton Rouge and London: Louisiana State University Press, 1980). See also Donald S. Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (Indianapolis: Liberty Fund, 1998).

[8]. Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill and London: University of North Carolina Press, 1997).

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