

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 16:
The Founding of the
American Constitutional Order (I):
Repudiation of 1776

1st, FINISH Lecture 15 (American Revo II):

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Major Themes

I. Revolution

II. The Mixed Character of
Republicanism

III. The Declaration through Lens of
Republicanism

TODAY: IV. Fear of Executive Power
in the Creation of State Constitutions

IV. The Revolt Against Executive Power in the State Constitutions

1776-77: the “republican moment” in the states.

Most intensive outpouring of constitutional
creation in history to its time.

General feature: elevation of legislature,
diminution of executive. Status of judiciary
ambiguous.

All state constitutions were **written**, published and
distributed widely.

**Elevation of Legislative,
Emasculation of Executive**

PA, GA, VT: unicameral legislature
All states: executive councils/boards, sharing power with governor. These councils chosen by legislature.
Multiple executive, appointed by legislature.
Governor just the chairman of an executive board.
Annual election of executive, in all states but PA, SC, DE, NY.

**PLAN OR FRAME OF GOVERNMENT FOR
THE COMMONWEALTH OR STATE OF
PENNSYLVANIA (1776)**

SECTION 1. The commonwealth or state of Pennsylvania shall be governed hereafter by an assembly of the representatives of the freemen of the same, and a president and council, in manner and form following-

SECT. 2. The supreme legislative power shall be vested in a house of representatives of the freemen of the commonwealth or state of Pennsylvania.

SECT. 3. The supreme executive power shall be vested in a president and council.

SECT. 4. Courts of justice shall be established in the city of Philadelphia, and in every county of this state.

SECT. 5. The freemen of this commonwealth and their sons shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the general assembly shall by law direct, preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed.

Abolition of Plural Officeholding

Recall long tradition of concern about multiplication of office and plural office-holding. (E.g., Duke of Buckingham.)
New state constitutions proscribe this, and prevent multiple office holding.
VA Constitution (1776): Nor shall any person exercise the powers of more than one of them [powers] at the same time."
NC Constitution (1776): "no person in the State shall hold more than one lucrative office at any one time." (Art. 35)

John Adams' Views

Sees the essence of the historical moment [*Thoughts on Government* (1776)]:

You and I . . . have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children! When, before the present epoch, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?

Adams' Push for New Institutions

Congress in Philadelphia: Adams argues that if independence declared, colonists must form new and legitimate governments

Need conventions separate from the legislature.

Argues this again when Mass (1778, 1780) revisits its Constitution.

Adams:

Need Independent Judicial Power

Thoughts on Government (1776): The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law.

Major Themes

I. The Crisis of the Confederation

II. The Repudiation of 1776 in the States

III. The Emergent New Philosophy of
Republicanism

I. Crisis of the 1780s

Well before Shays's rebellion (1787), a sense of crisis.

John Quincy Adams, commencement address at Harvard College in July 1787. Worries of "this critical period," when the whole country was "groaning under the intolerable burden of accumulated evils." Wood (393)

...By the mid-eighties the oratory and writings were filled with talk of crisis to the point of redundancy:

"The present crisis is critical in the extreme."

"That a kind of despondency has gone through the continent, is evident from the public prints of every State."

[Quotations from 1783-1786]

I. Crisis of the 1780s

"But the complaints were far from imaginary...From the vantage of two hundred years later the Revolution by the 1780's seems to have been a glorious success. The war had been won and independence achieved; the peace with Britain is as much as could have been hoped for in 1775. Yet because the Revolution represented in fact a utopian effort to reform the character of American society and to establish truly free governments, men in the 1780's could actually believe that it was failing." [Wood, 395]

I. Crisis of the 1780s

“An excess of power in the people was leading not simply to licentiousness but to a new kind of tyranny; not by the traditional rulers, but by the people themselves – what John Adams had called in 1776 a theoretical contradiction, a democratic despotism.”

I. Crisis of the 1780s

“The confiscation of property, the paper money schemes, the tender laws, and the various devices suspending the ordinary means for the recovery of debts...were not the decrees of a tyrannical and irresponsible magistracy, but laws enacted by legislatures which were probably as equally and fairly representative of the people as any in history. Property admittedly could be taken from an individual with his consent or with the consent of his elected representative. Yet increasingly in the decade after Independence those who felt victimized by the actions of the various popular assemblies argued that men surrendered their natural rights to property only insofar as the surrender promoted the welfare of the whole society or conformed to what were variously and ambiguously referred to as ‘the eternal principles of social justice.’”

Worries about Luxury and Virtue

1780s saw heightened religious and social concern about “luxury”: “that important social product and symptom of extreme selfishness and pleasure-seeking.”

Pamphlet: “Whenever democratic states degenerate from those noble republican virtues which constitute the chief excellency, spring, and even basis of their government, and instead of industry, frugality, and economy, encourage luxury, dissipation and extravagance, we may justly conclude that ruin is near at hand.” [418]

II. Repudiation of 1776

Starts in the States

Wood [409]: “In the 1780s the Americans’ inveterate suspicion and jealousy of political power, once concentrated almost exclusively on the Crown and its agents, was transferred to the various state legislatures.”

Recall: 1776 was important not only for Declaration, but also for state constitutions.

II. Repudiation of 1776

Starts in the States

Franklin: “We have been guarding against an evil that old States are most liable to, excess of power in the rulers, but our present danger seems to be defect of obedience in the subjects.”

Wood’s reading: “The liberty of the people in the traditional mixed government must be lessened, and the power of the monarchical and aristocratical elements must be strengthened.”

II. Repudiation of 1776

Starts in the States

“The early state constitutions had rendered government too feeble. “The principal fault,” constitutional reformers agreed, “seems to be, a want of energy in the administration of government.” In nearly all of the states there were growing demands that the libertarian bias of 1776 be corrected, that the apparent licentiousness of the people be offset by an increase of magisterial power in order to provide for the “execution of the laws that is necessary for the preservation of peace, justice and internal tranquility.”

Massachusetts Constitution of 1780

Written by John Adams, Samuel Adams, James Bowdoin.
Long process of drafting, revision and ratification.

Huge effect on subsequent state constitutions (NH
[1784], VA[1784] and federal constitution of 1787

Other trend: enlargement and empowerment of judiciary.

Massachusetts Constitution of 1780

Bicameral legislature (House, Senate of 40 members, apportioned
by tax burden)

Property qualifications for office-holding, ascending in House →
Senate → Governor.

Bill of rights preceded Constitution

Governor directly elected by people

Gubernatorial veto power, with 2/3rds override provision

Full gubernatorial appointment powers (civil & judicial officers)

Fixed gubernatorial salary

<http://www.nhinet.org/csc/docs/ma-1780.htm>

http://press-pubs.uchicago.edu/founders/print_documents/v1ch1s6.html

Federal-Level “Crisis”

Shays’s Rebellion – important b/c of admiration
for Massachusetts

Actions of PA legislature [confiscation,
disenfranchisement]

Most Concerned: Hamilton, Madison, John
Adams

Hamilton, *Federalist* #15

To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national **disorder, poverty, and insignificance** that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

Hamilton, *Federalist* #15: We Are Humiliated

We may indeed with propriety be said to have reached almost the last stage of **national humiliation**. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge.

Reference to debts: mainly revolutionary war claims (soldiers and supply). A pre-eminent distributive issue of Founding period and of Early Republic.

Hamilton, *Federalist* #15

Have we valuable territories and important posts in the possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed.

British still hold land, still post troops. As do the French and Spanish.
Still palpable fear of another British invasion.

Hamilton, *Federalist* #15

Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty.

Remember LA Purchase still to come: Mississippi not U.S. territory.

Hamilton, *Federalist* #15

HAMILTON'S CENTRAL PROBLEM: Lack of confidence in institutions, which is partially reflected in depressed land values.

Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from the scarcity of money.

Federalist #15: Need Government of Law, which means courts & executive power

“Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. ...

This penalty... can only be inflicted in two ways, by the agency of the courts, and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms.” [Rossiter ed., 78]

Note Montesquieu's influence here: Republic of liberty is founded in law. Magistracy (non-legislative actors) needed for law's success.

Courts not just interpreters of law, but also agents of it. Put differently, magistracy is not only “judicial,” but also “executive.”
