THE ENLIGHTENED STATE

POWER, CULTURE, AND THE LAW IN THE EARLY AMERICAN REPUBLIC

1740 – 1840

BY

PIRMIN OLDE WEGHUIS

s1879316
I declare that this dissertation is my own work except where indicated otherwise with proper use of quotes and references
## Contents

Introduction  
I. Liberty and Otherness (1740 – 1776)  
   On the Ideal and Praxis of American Enlightenment Concepts  
II. Virtue and Rights (1776 – 1789)  
   On the Authority of the American Constitution  
III. Legacy and Change (1789 – 1840)  
   On the Disillusionment of the Founding Generation  
Conclusion  
Bibliography  
Illustrations
“The greatest function of the law is the following: to presuppose that insofar as all citizens can become members of the ruling class, all of them must freely accept the conformity set down by the law. In other words, the democratic utopia of the eighteenth century is implicit in modern law.”¹

- Antonio Gramsci

“One must therefore not seek in the United States uniformity and permanence of views, minute care of details, perfection of administrative procedures; what one finds there is the image of force, a little wild, it is true, but full of power; [the image] of life accompanied by accidents, but also by movement and efforts.”²

- Alexis de Tocqueville

“Let every American, every lover of liberty,” the young lawyer Abraham Lincoln declared in 1838, “swear by the blood of the Revolution, never to violate in the least particular, the laws of the country.”

Years before Lincoln would become president of the United States he warned his audience in Springfield against “highly dangerous” passion, and the destructive path to which it will inevitably lead.

Deeply concerned with the power of the mob in democracies, and confronted with deepening sectional divisions, made that he had many reasons to fear for instability of government. His concern for stability was the result of the political reality at the time, but there is an underlying conceptual ideal of America that was under threat. The construction of the United States as a nation, at the end of the eighteenth century, cannot be seen separately from the creation of the United States as a concept or idea. Political speechwriting from the Founding generation onwards has often been concerned with the ideal, or concept, of the American Revolution, and especially its application in contemporary society. This has led to an omnipresent conceptual version of the United States which is connected to liberty, equality, and reason. From John Quincy Adams, referring back to the Declaration of Independence in 1821, to Franklin D. Roosevelt or Barack Obama, all are confronted with a society in which these concepts are of continuing cultural relevance. As a result, these ideals have gained far-reaching importance in relation to any discussion of the political foundations of the United States.

---


4 Ibid.

Historian Gordon Wood argues that the Enlightenment concepts of universal liberty, equality, and reason presented the world a form of “cosmopolitanism.”

In *The Radicalism of the American Revolution*, he describes the formation of the nation, together with the associated values, as a breaking point in history. This interpretation has problematic implications, because it tends to neglect contemporary meaning of these values, and implies a fixed universal significance conceived during the American Revolution. Wood’s evidence for this cosmopolitanism can be found in writing of the Founders, and other radicals, who argued that “every Man whatever, without any partial distinction of Nation, Distance or Complexion, must be necessarily be esteemed our Neighbour and our Brother.” It is, however, difficult, if not impossible, to reconcile this evidence for cosmopolitanism with hatred for the British during the Revolutionary War, the existence of slavery, or the disenfranchisement of women and indentured servants. It is therefore of significant importance, in any analysis of the early American republic, to avoid romanticizing this historical period and assess a society in the light of eighteenth century culture. The relationship between various groups of different socio-economic standing should be taken into consideration, and then be connected to the dominant ideas in that specific society.

This dissertation will therefore investigate the role of liberty, equality, and reason and the material relationships that determined the character of early American society. It is difficult to identify the absolute boundaries of what can be considered the early American republic. In this timeframe, three important moments can be identified and these will be foundation for the chapters of this dissertation. The first chapter will concern itself with the texts produced, and which circulated, around the time of the American Revolution (1740 – 1776). The Constitutional Convention and various relating debates on the adoption of the Constitution

---

(1776 – 1789) will be analyzed in the second chapter of this dissertation. The third and last chapter will focus on the founding generation, and foreign observers, reflecting on their achievements and the newly formed state (1789 – 1840). Together these three points of reference will offer a broad perspective on the developments that took place in early American society, and the influence they had on notions such as liberty, equality and reason.

The first chapter of this dissertation, as mentioned before, will investigate texts from around the time of the American Revolution (1740 – 1776). The American Revolution, as one of the essential and arguably the most important, outcomes of the Enlightenment’s intellectual and philosophical discourse, is a prime example of sociopolitical ideals merged with material interests. However, it is important to note that the American Revolution and the Enlightenment are not just two historical events that happened to accidentally coincide. On the contrary, they are connected, and even today our understanding of either one of them determines our assessment of the other. Gordon Wood presents the American Revolution as the foundation of universal human rights, and argues that the foundations of the United States include the idea of complete and total equality.\(^8\) The major problem with this claim is that both eighteenth-century politics are not founded on a mere ideal, cut loose from its material foundations, but rather have firm roots in early American society.

Jack P. Greene argues that the role of socio-economic relationships between dominant group and, for example, Amerindians is of essential importance to our understanding of the American Revolution. The power relations in place at the time of revolution had a significant influence on political thought that became dominant in society. Power relations, resulting from socio-economic relations, defined the boundaries between those who could exercise liberty in

full equality, and those who were excluded from these privileges.\textsuperscript{9} The same is true for modern versions of liberty and equality, not in the least particular because their ‘universal’ application around the world has met enormous resistance, and is often confronted with conflict, terrorism, and war. The United States’ institutions and ideals acquire meaning not merely as ideas floating in universality, but they become significant only as a result of socio-economic relations. The human experience has to be part of the analysis of the early American republic, thus recognizing the exclusionary nature of Enlightenment concepts instead of only appreciating its seemingly universal pretentions.

As Michal Rozbicki has argued in \textit{Culture and Liberty in the Age of the American Revolution}, conceptual approaches to the United States are often too idealistic, and historians should refrain from qualifying certain “liberties inherent to human nature.”\textsuperscript{10} This challenges the idea that there is a theoretical premise to be found in human nature, and that this premise underlies the whole history of the American founding. Therefore, this first part of the dissertation will address the problem of idealism and the American Revolution. Liberty, equality, and reason will be analyzed through the analysis of prominent texts produced before and during the Revolution. Pivotal is the connection between the ‘dominant,’ and the ‘subordinate’ or ‘disenfranchised’ groups of society, because these relations shed light on the local, exclusionary, and limited meaning of Enlightenment concepts. The strength of concepts such as reason, liberty, and equality, is not embedded in their transcendental and universal appeal, but rather in their relation and opposition to unreason (or passion), slavery, and socio-economic inequality.


In the second chapter, the passage and ratification of the Constitution, and the firm emphasis placed on obedience to the law by the founders is analyzed. The process of written law replacing the rhetoric of the Revolution is of significant importance since it helped to shape the institutional structures of the American republic. Under the Constitution, the protection of property kept the historically disenfranchised classes still far away from political participation. Documents written by Hamilton, Madison, and Jefferson will be addressed to show the Founder’s deep commitment to the establishment of the principle of government. This foundational principle will then be compared to the ideas that were significant during the American Revolution. The constitutional debates were mainly focused on the reconciliation of power and the stability of the new government ruled by the same men that led the Revolution. Therefore, in this chapter the adoption of the Constitution will be analyzed as part of a process of institutionalization in the political system. This movement was set in motion by the events of the American Revolution, but, more importantly, continued in the foundational documents and institutional structures of the state.

The third chapter will deal with the impact of tensions between Federalists and Anti-Federalists, and the “de-gentrification” of the political domain which caused many of the original Founders to complain or become completely disillusioned by the results of their work. After the ratification of the Constitution, there is an alleged shift in the balance of power between various groups in American society. This shift would mean that the traditional powerful class had to give up its privileges for the sake of democracy. Gordon Wood presents this change as evidence for the brilliance and universal appeal of the language the Founders used. What is not taken into consideration is again the society that produced the concepts of liberty, equality, and reason. More specifically, it does not acknowledge that there was a group

---

11 Rozbicki, Culture and Liberty, 180.
that could exercise those rights, whereas there also was a large disenfranchised group of people. Michal Rozbicki notes that the Founders rhetoric of meritocracy was transformed, at the start of the nineteenth century, into the rhetoric of egalitarianism, adding that “once again, a symbolic representation preceded real changes in society.”

Rozbicki’s identification of preceding symbolic representations does not take into consideration that the foundations of liberty, equality, and reason did not significantly change. To exercise these rights still presupposed a strong socio-economic position, and disenfranchised groups did not have the means to acquire such a position. Both Rozbicki and Wood thus identify another break with the remnants of the hereditary system of rights. However, contrary to arguments made by these authors, this alleged break will be challenged. The Founders observed many changes to society in the closing decades of the eighteenth century. Although these changes may be very significant, they did not change the nature of the American state altogether.

Combining the analysis of these three moments, this dissertation will argue that it is pivotal to recognize the process of institutionalization in the early American republic. The Revolution cannot be viewed merely in terms of universality of ideals, but has strong foundations in an unequal society. In 1787, with the adoption of the Constitution, institutionalized law ensured the stability of government and set the parameters for acquisition of political power. The United States should therefore not be viewed as a nation founded on liberty and equality, but a nation founded on liberty and equality before the law. The laws of the nation set normative standards for liberty, equality, and socio-economic position. As a result, in the newly formed Republic there was still little space for full political participation by all groups of society. Therefore, the early American republic, at the start of nineteenth century, should not be considered as a sharp break from revolutionary society and its ideals. On the contrary, the start of the American nineteenth century state is the result of a continuation of

material relations, and aligned ideals, which also had given the Revolution its initial momentum. In the same speech as mentioned at the start of this introduction, Abraham Lincoln, facing fierce populist sectional rhetoric, attempted to consolidate the authority of the Constitution and government, by arguing law should “become the political religion of the nation.”14

14 Lincoln, “Lyceum Address”
I.

VIRTUE AND OTHERNESS

ON THE IDEAL AND PRAXIS OF AMERICAN REPUBLICANISM

“Every single empire in its official discourse has said

that it is not like all the others,

that its circumstances are special,

that it has a mission to enlighten, civilize, bring order and democracy,

and that it uses force only as a last resort.”\(^\text{15}\)

- Edward W. Said

The Founders of the American Republic have passed into history as the most eloquent proponents of modern liberty. Their authority as protectors of liberty and equality is nearly unsurpassed by any other statesman since and the authority vested in these ‘universal’ concepts has continuing relevance within the context of United States’ culture. Gordon Wood praises the Founders for their genuine attempt to establish modern liberty and equality, and he argues that “the United States became the most egalitarian nation in the history of the world, and it remains so today, regardless of its great disparities of wealth.”\(^\text{16}\) However, to assume that disparities of wealth have no significant influence on equality, as an idea and as a practice, is to close the door for critical analysis of power relations in the early American republic. The American Revolution was not an event that accidentally coincided with a broader philosophical movement of Enlightenment, but it was rather a result of societal changes in the American colonies. The


most prominent leaders of the revolutionary era had acquired powerful positions in colonial
society, and were not mere equals to everyone. They did not ‘naturally’ become the rulers, and
main economic and ideological authority, of society. It is, however, vital to acknowledge that
this does not make the Founders into villains that have corrupted liberty, equality, and reason.
In order to analyze early American society, it is necessary to leave out any modern normative
or qualitative judgment, because it is impossible to compare modern liberty with the cultural,
political and economic reality during Jefferson’s lifetime.

When the first settlers came to the American continent their hearts were filled with both
fear and hope. The fast wilderness full of savages, disease and natural disasters were obstacles,
but the promise of a better life instilled a deep conviction that there was a chance to better their
condition. As Jack P. Greene notes, in The Intellectual Construction of America, the promise
of a better life has caused “systematic subjugation of African or Amerindian slaves,” but that
this “was never an explicit concern in the literature of promotion.”¹⁷ The ‘others’ on the
continent were part of a world that became increasingly more European, and their subjugation
was essential to the concept of uniqueness and the assumed “cultural superiority” of the
European colonizer.¹⁸ When Amerindians, Afro-Americans, indentured servants, and women
are disenfranchised in society, the meaning of liberty and equality becomes “primarily local”
and it “exists only as a relation between people in a given society, with its network of
interdependencies.”¹⁹ The relationship between the dominant and the subordinate makes
evident that liberty and equality were devices that specially served a certain class. This class

¹⁷ Jack P. Greene, The Intellectual Construction of America: Exceptionalism and Identity from 1492 to 1800
¹⁸ Jack P. Greene, The Intellectual Construction of America: Exceptionalism and Identity from 1492 to 1800
¹⁹ Michal Jan Rozbicki, Culture and Liberty in the Age of the American Revolution (Charlottesville: University
had had the economic power and social authority to determine the premises on which one could enter the dominant group in society.

In his *Observations on the Increase of Mankind*, Benjamin Franklin shows the importance of this definition of the self, through the ‘swarthiness’ of the ‘other.’ He expresses his wish for a white America, excluding all blacks from the continent. The *Observations* presents us the idea that white Americans should not miss the truly exceptional opportunity of creating a completely exclusionary country. Although Amerindians are not targeted specifically, from the way in which the argument is construed it becomes evident that mixture of Anglo-Saxons and Amerindians is unacceptable to Franklin. Once all people of “swarthy Complexion” and all “black or tawny” peoples are removed from the continent the “lovely White and Red” can live and increase in numbers.20 From a modern perspective these observations by Dr. Franklin would be considered racist, but Franklin’s contemporaries often stressed the importance of the exclusion of Afro-Americans. Thomas Jefferson, for example, wanted to transport blacks to the African coast at Sierra Leone, because of injuries committed to them in America.21 His hope, that they would be introduced to “the arts of cultivated life, and the blessings of civilization and science,” seems humanitarian, but there is an inherent qualification of blacks being less cultured.22 The argument thus, was certainly not a humanitarian argument for equality, but it rather served to completely exclude blacks from civil society, and even to remove them physically from the continent. These descriptions stress the

---

importance of exclusion and inclusion, and reassert Anglo-American identity in terms of civilization and all others as savagery.23

The preceding paragraphs of this chapter were chiefly concerned with the relations between the different races that made up the continents demography in the early American republic. In this society inclusion and exclusion have a significant impact on seemingly universal concepts, such as liberty, equality and reason. Their preeminence in written documents and speeches of the founding generation demands further investigation of their contemporary meaning. The Founders used enlightened language of liberty, equality and reason to make a case against the alleged tyranny of British monarchy. As a result, the American Revolution is supposed to be the great resistance movement for liberty and against human inequality. However, as early as 1823, a South Carolinian described it as a simple “family quarrel among equals.”24 He observed that to the revolutionary generation any group of people, that was somehow dependent on others, simply “had no concern” in civil society and was therefore excluded from it. The difference between people belonging to the ‘family’ and all the others in society has consequences not only at the level of ideas. Its foundations can be unearthed from descriptions of everyday life in America and referential political rhetoric aimed at people of the middle class.

The Letters on the Spirit of Patriotism, by the British aristocrat and leader of the Tories Henry St. John, Viscount Bolingbroke, is a relatively early piece on the values of republicanism and contains many anti-monarchical sentiments. In 1749 it was being reprinted and sold in Philadelphia “at the post office, near the market,” by Benjamin Franklin and David Hall, and

---

had significant influence on the political thought of the Founders.\textsuperscript{25} Franklin was thus involved in printing the letters, and Thomas Jefferson even defended and praised the work of Henry St. John, Viscount Bolingbroke as “a style of the highest order.”\textsuperscript{26} The first reason why the letters could have become so popular among the Founders is because it exactly appealed to their concerns and quarrels with the British hereditary aristocracy. In the opinion of Viscount Bolingbroke, the government of Britain had been “brought back to their primitive principles,” leading to tyranny, and was therefore destined to fall into ruin.\textsuperscript{27} He rejected the divine rule of kings at the outset and instead argued for “limited government,” where the right to rule is derived from the people.\textsuperscript{28} However, there is a strong secondary motive that appealed not to the level ideas, but rather invokes comparisons to everyday life in the colonies. The resistance to arbitrary decisions and rejection of dependency to others is manifested in two directions.\textsuperscript{29} The middle class colonists held attitudes of rejection to, on the one hand, the hereditary aristocracy of Britain, and, on the other hand, to the large group of disenfranchised people. It was specifically because the Founders were so dedicated to dependence in their own societies that they so fiercely opposed dependency on the British government.\textsuperscript{30}

The language used by Henry St. John, Viscount Bolingbroke invokes strong cultural meaning in revolutionary American society. In a society that is firmly based on exclusionary rights, references to the body and health imply that liberty has a physical manifestation next to

\begin{flushleft}
\end{flushleft}
a political or ideological one. “Liberty is to the collective body, what health is to every individual body. Without health no pleasure can be tasted by man; without liberty no happiness can be enjoyed by society.”

The collective body of the middle class is compared to the individual body; to live in liberty is to be healthy. The body is made a direct part of the political world and subjected to the relations of power, just as it is a part of the biological world. The body becomes a symbol and integral part of the system of power relations. Hereditary aristocracy, tyranny, inequality, all opposed to liberty, are presented in such a way that they will lead to physical unhealthiness. It is thus not only of consequence in the world of ideas, but it has consequences in the ‘real’ or ‘natural’ world. The fact that this world consists of many ‘others,’ who live outside the framework of liberty, contributes to the idea that some people are not fit for liberty. The expression of liberty in the physical world leads to a stronger rhetoric against hereditary aristocracy and monarchy, but it also further establishes a relationship of dependency between the dominant class and ‘others,’ such as blacks, Amerindians, women, and other disenfranchised groups. On the other hand, rhetorical usage of health and liberty would not have been possible, or would not have become significant, if there was not first a material reality, in which this connection was already established.

After the French and Indian War (1754-1763), the American colonies were subject to an increase in taxation by the British crown, as part of a plan to cover the costs of defense and warfare. When in 1765 the Stamp Act was passed by the British, Samuel Adams, and many other prominent revolutionary writers, resisted the law with inflammatory rhetoric invoking the opposition between liberty and slavery:


“These are the men who formed and pushed to the utmost of their power, the late detested Stamp Act: These are the men, who have been forging chains and manacles; and when they could not, after the most impudent attempt, force them upon the people, have with intolerable insolence endeavor’d to perswade them that they had better put them on themselves: But your Press has sounded the alarm; or to use the words of a minion, ‘rung the alarm bell’: Your Press has spoken to us the words of truth: It has pointed to this people, their dangers and their remedy: It has set before them Liberty and Slavery; and with the most perswasive and pungent language, conjur’d them, in the name of GOD, and the King, and for the sake of all posterity, to chuse Liberty and refuse Chains: Go on, for you have been already prosper’d.”

It becomes evident from Samuel Adams piece in the Boston Gazette, and Country Journal that again liberty is opposed to another concept that has is represented both in the ‘real’ as the ‘idea.’ Slavery was of course, a reality with which the dominant American class was very much familiar. Although slavery was more present in the southern part of the colonies, it was still an important aspect of early American society. In the social reality of the colonists “Chains and Manacles” and slavery are strongly connected to each other. The physical non-freedom associated with the slave population (comparisons with indentured servants can also be made) is very much reflected in this text aimed at the dominant class of society. It is because of the fact that the dominant class is confronted, in the real world, with these social constructions that they find an audience at the level of ideas. This leads to the conclusion that difference is essential in order to understand concepts of liberty, and the same is true for equality or reason.

Liberty should be seen through its relation to non-freedom, equality to inequality and reason to unreason. “The origin of liberty,” as Michal Rozbicki argues, but also equality, reason, and

---


other universal rhetoric of the Founders, is to be “located in privilege.” The norms of humanist modernity do not apply to the more limited and strict sense of liberty that the Founders had. However, their use reveals, as shown with the examples above, the (socio-economic) power structures, their representation on the level of ideas, and, when combined, the way in which they engage in an overdetermined relationship of mutual reinforcement.

Inequality was thus a central premise that defines early American culture and society. However, personal relationships concerning private business or the everyday organization of society are just one sphere in which these observations can be made. Radical revolutionaries, such as the Bostonian Samuel Adams, made use of a relatively new medium to convince their equals of their public opinions. The press became the central means of communication in public or political affairs for the American middle class. It is thus not surprising that Sam Adams, and many others, defended the liberty of the press during the Stamp Act crisis with such vigor, branding anyone who opposed it as tyrants and opponents of human liberty. The liberty of the press served their purposes, and not all interests that could be found at every level of society.

In *The Structural Transformation of the Public Sphere*, Jürgen Habermas presents an argument on how wealthy families dominated the press, and thus the most important means of public communication. The bourgeois class of society made up the “public sphere of civil society,” because it was specifically a reading public. This is especially true for American society where the positions of printer, journalist, publisher, and postmaster were often confined to one person. Benjamin Franklin might be the most prominent exponent of that group which had influence over almost all aspects of mediation through printed materials. Through the press, a

---


36 Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, tr. by Thomas Burger and Frederick Lawrence (Cambridge, MA: The Massachusetts Institute of Technology Press, 1989), 23.

situation had emerged where private people of the propertied class could communicate in public. This specific form of communication, beyond the limits of the mere private, contributed to the establishment of, what Benedict Anderson calls, “imagined political communities.” In appearance the press seems to be rather inclusive, because it opens up the private to the public and creates a sense of national unity. However, mediation was produced by, and directed to, a privileged class of property owners. The press was thus exclusionary rather than a symbol of emerging universal democracy, because a small group controlled the complete discourse of print.

In *The Letters of the Republic*, Michael Warner argues that technology has no “ontological status prior to culture,” and print, therefore, is not outside of “the political-symbolic order.” Instead, the relationship of the private and the public, and corresponding republican virtue, should be traced back to the material conditions of society. The public good and virtue are not valueless principles, but rather imply the dominance of a certain class consciousness. Just as certain groups of people were viewed as unequal in the daily course of affairs, they were also not able to participate in public life. Property ownership was a necessary premise for economic independence and only through economic independence could political participation be acquired. The print discourse was essentially dominated by a propertied middle class, and the ideas and concepts presented by this medium contain the values of this class. Through print, the middle class of early American society was able to define itself in public life. Many revolutionary authors were printed in newspapers or their writing was published as a pamphlet. Their work was widely distributed by printers in colonial villages, that

38 Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, tr. by Thomas Burger and Frederick Lawrence (Cambridge, MA: The Massachusetts Institute of Technology Press, 1989), 27.
now outnumbered the number of printers in Britain, and after the 1720s print was even growing faster than the population. For example, Thomas Paine’s *Common Sense*, written as a defense of the Revolution, sold over 100,000 copies in four months. Through the widespread dissemination of print, the middle class authors were able to define the fundamental premises and dominant discourses of the newly formed imagined community. With far-reaching influence over the press, the middle class could control “symbolic meanings,” and thereby “assign [to] their own class certain qualifying characteristics” legitimizing their own dominant position of power. The American Founders made use of a medium, to express their ideas, that was not value neutral, but it was rather defined by the same socio-economic circumstances as were the ideas presented through this medium.

The discourse of the print medium fits carefully within the broader pattern of exclusion in American society. The use of a verbal and written vocabulary by the middle class and its control over the production of texts reveals that the print medium is not as ‘objective’ as a technology. Education was necessary to be able to write and read, disenfranchising blacks, Amerindians, the poor, and, to a large extent, women. “Black illiteracy was more than a negation of literacy for blacks,” Michael Warner argues, because it was rather “the condition of a positive character of written discourse for whites.” The use of a specific verbal and written language helped to establish a separate and distinguished class that had prevalence over all disenfranchised groups. The monopolization of print by the middle class was part of their socio-economic position in society, and stresses the exclusionary qualities of written language. In *The Letters of the Republic*, an example of Alexander Hamilton observing a conversation between

---

his slave Dromo and a black woman illustrates the function of language as a means of dividing classes:

“Dromo, being about 20 paces before me, stopte att a house where, when I came up, I
found him discoursing a negroe girl who spoke Dutch to him. ‘Dis de way to York?’
says Dromo. ‘Yaw, dat is Yarikee,’ said the wench, pointing to the steeples. ‘What devil
you say?’ replys Dromo. ‘Yaw, mynheer,’ said the wench. ‘Damme, you, what you
say?’ replys Dromo again. ‘Yaw, yaw,’ said the girl. ‘You a damn black bitch,’ said
Dromo and so rid on.”

He observed the two black persons having problems understanding each other, because they
spoke different languages. Warner notes that for Hamilton this “lack of mastery in their own
languages” is “a natural sign of the condition of servitude.” On a secondary level, however,
there is a difference between the “inclusive universality” of Hamilton’s writing, and his
presentation of the “blind particularity” of Dromo’s speech. In other words, the fact that
Hamilton could present the inferiority of black speech in writing to a white middle class
audience signifies the deep divisions between them. The authority of language becomes clear
in these observations; language is a sign of class, and has the power to exclude others from full
civil emancipation and maintain conceptions of inferiority. In fact, written language is
fundamentally exclusionary, and this is evident in the writing of Hamilton. Liberty of the press,
the liberty to write, all were exclusionary rights for the middle class in colonial America. The
printing press, just as written language itself, operated perfectly as a vehicle of liberty and
equality as it did in disenfranchising groups. This is not a paradox, but rather a result of the
socio-economic circumstances in colonial America, and it should be viewed in this light.

Another aspect of a public sphere created through by the press and written language is the way in which authors presented themselves to their audience. In aristocracies the personal relationship to the other is the determining factor for either hatred or friendship. However, the press opened up a new sphere for communication that was public in character. On the one hand it forced the reading public (which was white middle class) to start thinking in common causes, problems, and solutions. “JOIN, or DIE!” Benjamin Franklin wrote in an attempt to create unity in the colonies and remove French presence from the North American continent.49 However, there was also a strong conviction that personal interest should be left out of political writings. To be ‘desinterested’ was to be virtuous, and this was again a response to both the hereditary aristocracy as well as disenfranchised groups in society. It opposes arbitrary personal rule of the aristocracy, but also demands independence from the struggles of everyday life in order to become without interest. Of course, the language used by the Founders, as shown before, is not without meaning beyond the textual analysis, since it rather implies the existence of significant socio-economic differences and cultural structures. However, the de-personification of language through written discourse is important in relation to the early American Republic. The printing of texts made language less personal and perfectly fits the idea of disinterested authorship.50 Written discourse could in this way acquire significant authority, far beyond the power of personal opinion, especially because it was considered to be elevated above any passion or personal interest. The prominence of written language has important implications for the position of law in the new republic. The formation of law demands strong believe in impersonal and disinterested authorship, and will therefore be further investigated in the next chapters.

49 Benjamin Franklin, “Join or Die,” The Pennsylvania Gazette (May 9, 1754), in Benjamin Franklin, Writings: The Autobiography, Poor Richard’s Almanack, Bagatelles, Pamphlets, Essays & Letters, ed. by J.A. Leo Lemay (New York: Library of America, 1987), 377. [emphasis in the original]
The creation of an American class identity involved many struggles against both hereditary aristocracy and the inferior groups of society. This situation, often negatively described as a paradox, where liberty and equality in language have a direct relation to disenfranchisement of large parts of society, cannot be resolved with comparative modern discourse analysis. Fiction and reality always have a peculiar bond in the creation of a sense of unity that underlies the formation of American identity and culture. Edmund S. Morgan stressed the need for fictions in order to establish society, and that these fictions are partly real and partly imaginary. This social cohesion can only be established when there are common principles on which that society can rely. However, the American imagined community is not composed of all groups in society, but rather established by a specifically white middle class, and defined by its relation to ‘others’. The Founders established freedoms for the middle class, expressed their uniqueness and asserted their rights, and they used “grand fictions and representations” in order to achieve this goal. The opposition that seemingly is evident in their writing, however, is not the central focus for analysis of early America. Instead, fictional language that creates a sense of unity, and is able to transfer values and carry meaning should be investigated. The fact that the fictions of the middle class did not correspond with the actual material reality of society “need not reduce the power of language to shape social space.” It was Alexis de Tocqueville who in Democracy in America already understood that “a newspaper can only exist on condition that it reproduce a doctrine or a sentiment common to many men.” It reveals that universal language can function through fiction and still be accepted by a specific group of

54 Michal Jan Rozbicki, Culture and Liberty in the Age of the American Revolution (Charlottesville: University of Virginia Press, 2011), 98.
55 Alexis de Tocqueville, Democracy in America, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 495.
people, which is in the case of print language the propertied middle class. Although parts of the language invoked might not be in correspondence to reality, this does not make this fiction less real to the audience of a certain printed discourse. As shown in earlier paragraphs, it is exactly because the dominant group was so aware of their real material condition and position in society that they were able to accept the language of liberty, equality and reason.

Early America is defined by these relationships between the dominant and the subordinate, and this lead to the creation of a culture that represents these material conditions. Although this culture penetrates into all parts of cultural and ideological production, it is not “a demeaned or denigrated thing,” but it simply created a hegemonic system which stimulates cultural production. In order to understand and be able to see how culture, society and history are produced in the age of the early American republic analysis of relations of power are necessary. The dominant and subordinate relationship between the aristocracy, American middle class, and the disenfranchised groups has far-reaching implications for conceptual liberty, equality, reason. The conditions of production produced the dominant ideas of American society, and this can be traced in the later movement for the American Revolution and the institutionalization of virtue, and prominence of written law. Power thus should not be described in terms of negativity: “it ‘excludes,’ it ‘represses,’ it ‘censors,’ it ‘abstracts,’ it ‘masks,’ it ‘conceals,’” because, “in fact, power produces; it produces reality; it produces domains of objects and rituals of truth.” In other words, the result of that particular colonial society becomes embedded in the Declaration of Independence, The Constitution, The Bill of Rights, and all other textual production. It would become a result of the social structures in the society that produced them. These texts appeal to an audience exactly because that audience understands the dominant values and cultural practices disseminated by those same texts.

Jefferson’s audience understood what was meant by liberty and equality, because in among his contemporaries, “every free inhabitant was, ‘de facto as well as de jure, equal, in his essential inseparable rights… to any other Individual.’”\footnote{Thomas Pownall, A Memorial Addressed to the Sovereigns of America (London, 1783) in Jack P. Greene, The Intellectual Construction of America: Exceptionalism and Identity from 1492 to 1800 (Chapel Hill: The University of North Carolina Press, 1993), 148.} This is exactly why these values are so self-evident to the middle class of early American society and why they were to be represented in almost every aspect of the early American state.
II.

RIGHTS AND COERCION

ON THE AUTHORITY OF THE AMERICAN CONSTITUTION

“The universal equality among human beings in the state as subjects of the same
is perfectly consistent with the greatest inequality
in the quantity and degree of their possessions,
be it with regard to physical or intellectual superiority over others
or with regard to riches external to them
and rights in general (of which there can be many) with respect to others.”

- Immanuel Kant

In the *Federalist* no. 84, Alexander Hamilton, while trying to convince the State of New York to ratify the Federal Constitution, wrote a vigorous essay in opposition to demands for a Bill of Rights. Those in favor of a bill of rights argued for its addition to the Constitution because they feared for encroachment on their freedoms if no provisions were made to either protect these freedoms, or to explicitly restrict their abridgment. A citizen from the city of New York himself, Hamilton considered a bill of rights “not only unnecessary,” but he thought that it “would afford a colourable pretext to claim more [rights] than were granted.” In other words, Hamilton found an enumeration of personal rights problematic, because it implies that there is some authority that, in the state of nature, has power of the distribution of these rights. He

---

opposed a conception of law, which he calls “the doctrine of constructive powers,” that has become central in the early republic, and even defines American constitutional law up to today. For Hamilton the rights of citizens were inherent to republicanism and the nature of the newly formed government. He did not want “the sacred rights of mankind… to be rummaged for, among old parchments, or musty records,” exactly because then they would be open to the interpretations of men. Instead, the general spirit of the law should guard the principles on which the government is founded. Hamilton’s remarks on a bill of rights are significant in an analysis of proponents and opponents of the Constitution, and it also gives valuable insight in Hamilton’s personal political convictions. However, the most important observation that can be made is on Hamilton’s suggestion that there is a kind of principle inherent to republican government, and from this principle are all rights derived. He thought the “Constitution is itself, in every rational sense, and to every useful purpose, a BILL OF RIGHTS,” and therefore it could supersede the daily political deliberations of men and the consecutive changes in administration of the nation.

Continuing Hamilton’s argument, the principle law of the nation, being the Constitution, becomes the sole capable guardian of the spirit and intent of republican government. It has the authority to act as such exactly because it is an act founded on natural law (which guarantees the fruits of one’s own labor, which is in other words property), and it transforms virtue into a system of right. It becomes the sole (written) expression of the totality of the people, although, as shown in the previous chapter, there are many disenfranchised groups. The Constitution transforms, as its ultimate representative, the dominant class interests into ideas on the level of


the abstract. “We ought not to address our arguments to the feelings and passions,” James Madison argued, because more moderate arguments should prevail since “these were selected by the people of this country.” Madison appeals to a unity that is present in society that supersedes mere individual opinion and interest. This transcendent unity is the same as the principle that Hamilton defines as inherent to republican government. However, it is not an appeal to a culture that can fulfill universal aspirations, but it rather points out a very specific class interest. It reveals that society, with all its disparities in wealth and social positions, precedes the formation of the state. During the ratification debates on the Constitution an appeal was made to culture, the social make-up of society, and to establish a state that represents those values. Culture, as a result of the socio-economic conditions in early American society, is the determining factor for the establishment of the state through law. Molded in the format of disinterestedness, knowledge, professionalism, and objectivism; the law thus acquired status as the protector of right, virtue, natural law, but also of the interests of a specific, predominantly white, middle class of propertied men. The law is elevated to the level on which it is put on equal footing with this inner unity of the state.

This is supported by Louis Althusser’s observations on the political thought of Montesquieu in *The Spirit of Laws*. Montesquieu’s observations on the possibilities of establishing a government modeled after the trias politica doctrine were highly influential on the political thought of the Founders and the United States Constitution. However, Althusser credits Montesquieu for more far-reaching observations than the work on the separation of powers and their division into three branches of government. According to Althusser, Montesquieu hypothesized and evidently proofed “that the State is a real totality,” it is a coherent whole, and it will not change in its nature by changes in administration or as a result

---

of partisan political faction. Instead, he argued that “all the particulars of its legislation, of its institutions and its customs are merely the effect and expression of its inner unity.” It is, however, important to note that this can never be seen separately from the origin of this totality, because the state is the result of “the political expression of the concrete behavior of men.” In other words, the ideas and convictions of the dominant class, founded on the material divisions and their socio-economic positions in society, have a primary and determining influence on the nature of the state, and thus its principle law. Both Hamilton and Madison too expressed this general principle of society, and they managed to see their class interests represented in law. The idea of virtue is inherently connected to the state for the bourgeois class, and they saw to it that the law was fashioned in such a manner that it converted virtue into right. This common culture was thus not based on mere ideals of the Enlightenment for humanitarian reasons of liberty and equality, but it was rather an effort to reconcile social positions and relative inequality into the institutions of the state. The formation of the state on basis of written law is a continuation of the expansion of the state, and its power to regulate society. Just as Jean-Jacques Rousseau called the first man, who called a certain piece of land his, “the real founder of civil society,” such is the formation of the American state, through law, a reconciliation, by means of that same law, of the division between the dominant and the subordinate in society, or in other words, a legitimization of inequality in possessions.

It is only after the establishment of law in society that it starts to exert coercive power, and becomes established as a regulating force of civil society. In his fifth essay Of the Origin of Government, David Hume, argues that all men will be willing to submit to “justice to

---

maintain peace and order,” and that they will be equally inclined to submit to “peace and order,” because it maintains society.\textsuperscript{71} These assumptions are often used in rhetoric to explain the necessity of a state regulated by law. Jefferson too wanted to see “law and order preserved,” “equality of rights maintained,” and specifically that the “state of property, equal or unequal, which results to every man from his own industry” be guaranteed.\textsuperscript{72} President Jefferson’s Second Inaugural Address reveals why the Founders and Enlightenment philosophers deemed law and order a necessity for the maintenance of society. This need to reconcile absolute liberty in law and the state was considered necessary because it protects the socio-economic positions and the power relations that emerge from it. Furthermore, both Hume and Jefferson (and with them significant numbers of modern commentators) imply an objectivism embedded in law, which should be refuted from the outset, because it can only be justified by appealing to natural rights. A discussion of the universalism in natural rights leads back to the world of ideas, and disregards the social constructions in society as a result of material inequality. Law is a construct that merely reflects the dominant culture of that specific society, and it should not be considered a nefarious effort to subjugate others. The Founders should be given credit for their own cultural values, just as modern observers should be credited for their morals and values. However, we cannot hold the Founders accountable for the imperfections to our modern understanding of liberty, equality, and reason.

The importance of law as a part of a specifically written discourse should not be underestimated when analyzing its contemporary relevance, but also the enormous authority that is derived from it. The United States Constitution is a document that quickly gained enormous prominence in the early Republic and was regarded by many as the great achievement

\textsuperscript{71} David Hume, \textit{Essays and Treatises on Several Subjects}, vol. 1 (Basil: J.J. Tourneisen, 1793), 33.
of young nation. As exemplified in the previous chapter, textual discourse had gained enormous prominence, as a means of political communication, over verbal communication, and the printing press was essential for this development. The Constitution, which was written and defended by men with a clearly identifiable class interest, was however a written declaration in name of, seemingly, all the people.\textsuperscript{73} Just as rhetoric invoked the people as a means to resist the British during the Revolution, so did the people give that essential authority to the Constitution. With no specific author, and with a strong representative government, it is no wonder that Alexis de Tocqueville concluded that “power exists, but one does not know where to find its representative.”\textsuperscript{74} The Founders, who definitely represented authority and power, were generally not men of one profession. For example, Franklin was printer, politician, and a scientist, Thomas Paine inquired into science as well as in politics, and Jefferson was a politician, lawyer, and architect. The example of these three men ties them into the Enlightenment, which professed that reason was founded on knowledge and truth. Their endeavor to acquire as much knowledge as possible in the sciences in order to be better statesmen and citizens justifies this argument. This knowledge could be collected, written down, and most significantly disseminated by means of the printing press. The printing press functions in a similar fashion as it did during the Revolution, it enables the dominant class to control the means of publication and the texts produced; in other words, they could constitute objectivism, truth and knowledge.

Dominance over the definition, meaning, and value of knowledge and its relation to the object and absolute truth is essential to have the authority to say what law is. “There is no such thing as a delivered presence” in written language argues Edward Said, “but a re-presence, or a


\textsuperscript{74} Alexis de Tocqueville, \textit{Democracy in America}, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 68.
representation.”

Reality is thus not directly delivered to the consumer of the written text, but it is rather a specific version of reality, as perceived and experienced by the author, that is mediated. This also holds true for objectivism, truth, and knowledge as much as it does for a deliberately fictional authorship. Written texts, such as the Constitution, therefore should not be placed on the altar of the universal or transcendental truth. However, it is rather this objective knowledge expressed through reason that gives force to the Constitution, and elevates it from the material conditions of society to the level of the idea. The form of knowledge that is the foundation of the law in the American state, that leads to exclusion of many others. Reason and knowledge have the ability to set the parameters for who qualifies for citizenship and participation in society as a citizen. Women, blacks, Amerindians, indentured servants, and various other groups were denied participation in the political realm, because they did not qualify for participation. In other words, they were held unfit for political participation exactly because they were thought unfit to reason. Thomas Jefferson, in a letter to Thomas Turpin, explains that it is essential to be learned if one wants to become active in the legal profession. His comment that “a lawyer without books would be like a workman without tools,” reveals the connection between knowledge and power in combination with the professionalization of the state through law. Knowledge on part of the dominant group creates a power position over the subordinate; it defines both propertied middle class men as well as the disenfranchised people of various other backgrounds. However, it is the “element of truth” that enabled the particular values of a bourgeois class to be raised to the level of the universal, or, as Jürgen Habermas wrote, it is “ideology above ideology itself.”

---

Once law is established in society, and simultaneously the formation of the state is completed, there emerges an implicit need for the enforcement of the laws of that state. The political leaders of the early republic faced the same problem when they had to transform a revolutionary society back to a calm and organized society. The Founders had to calm down the revolutionary spirit, and reconcile general claims to liberty and equality with their interests as a class. The formation of law and the state is, in this respect, of great significance as shown in the previous paragraphs. The state, founded on legal documents, combines political society with civil society, or in other words, it is “hegemony protected by the armor of coercion.”

The dominant class of society finds its power position not only evident in culture, the general assignment of values, meaning and truth, but it is now also protected by the coercive power of the state. Popular debates in the field of constitutional law address the deep commitment of the Constitutional Convention to prevent usurpation of power by a person or minority, but this does not address the issue of empowerment in first instance. The Founders enumerated the powers of all three branches of government they had established, and made sure that they interacted in the political realm. Designed to prevent the dominance of either the legislative, executive, or judiciary branch over the others and society, they showed strong commitment to the prevention of domination. However, they were only convinced that their equals could not dominate each other by statutory right, and groups that were disenfranchised in the first place were not considered because they were deemed to have no concern or stake in political society.

Of course, there were debates, and inflammatory language may have been used by both opponents and proponents of the new federal Constitution, but the debate was held among equals, and not,

---

as some insist, by a broader group of people that was selected solely on basis of their exceptional personal traits and qualities.

The coercive power of the state also has major implications for the right to resistance and revolution. The American Revolution, by British law, was an unconstitutional act, but it was justified only because it has succeeded. The old order was replaced by a new order that searched for means of justification of the established power positions. However, opposition against the new established state had to be reconciled, and consecutive revolutionary movements suppressed. This would guarantee to the dominant middle class, which replaced the traditional hereditary aristocracy, that their property was secure and that the socio-economic positions would not change again over night by means of a revolution. In his book *The Life of George Washington*, Chief Justice of the United States Supreme Court John Marshall describes the political convictions of the republic’s first President. Marshall argued that Washington, just like himself, believed that “real liberty, …, was to be preserved only by upholding the authority of the laws, and maintaining the energy of government.”80 There is a significant emphasis on the continuation and preservation of the newly established liberties that secured their social positions. For the Founders, authority of the law is the pivotal concept that is able to preserve certain established dominant societal structures. It is an attempt to exert control over the general cultural structures of society, which Foucault phrased as the disciplining of society. It established a norm that would be obeyed without it being a visible agent of oppression. Discipline, through law, is a means of normalization which is only possible because of the seemingly inherent connection between Enlightenment concepts and objective truth.81 Law is


broadly accepted as a means of coercion because it has the appearance of being disinterested, objective and a guardian of justice (which is virtue and morality in the guise of truth). Its textual form signifies continuity and permanence, the appeal to truth ensures its authority and power.

The balance between liberty, equality and the stability of the state was not only a political problem, but was broadly investigated upon in philosophy. Observing the consequences of republicanism on the stability of the state, Immanuel Kant argues that an individual has no right to overthrow a republican government, because he is already represented in the government. For Kant there is no legal option to revolt against the system of government in a democratic republic, because it would lead to lawlessness.\footnote{Immanuel Kant, \textit{Toward Perpetual Peace: and Other Writings on Politics, Peace, and History}, ed. by Pauline Kleingeld and tr. by David L. Colclasure (New Haven and London: Yale University Press, 2006), 55.} Kant sees equality, similar to the Founders’ understanding of the concept, as a situation in which everyone is equal before the law. Once entered in the state one becomes subject to laws and therefore automatically subject to the coercive powers of that state. This is justified by the proposition that everyone is equally a subject to the state, and therefore formal equality is established separately from “inequality in the quantity and degree of their possessions.”\footnote{Immanuel Kant, \textit{Toward Perpetual Peace: and Other Writings on Politics, Peace, and History}, ed. by Pauline Kleingeld and tr. by David L. Colclasure (New Haven and London: Yale University Press, 2006), 46.} The fact that inequality in possessions lead to dominance of a specific class interest as the main interest of society is left out of this conception of equality. Everyone has a right to coerce another person, and on this potential power equality is founded. It signifies again how a specific understanding of equality, far from our modern understanding of the concept, defines and determines the concept of lawfulness in philosophical discourse. This holds true for the American republic as well since the Founders did not concern themselves with inequalities in wealth either when they established law and the state. The Enlightenment concepts of liberty, equality, and reason produced a legal system that is a reflection of a contemporary understanding of those concepts.
These concepts are, as shown before, thoroughly rooted in the cultural and socio-economic divisions that define the fabric of that society.

Coercive powers of the state, through law, were therefore not experienced in the same way, by the Founders, as were the dictates of the pre-revolutionary British government. This is due to the fact that in the discourse of republicanism coercion is tightly connected to the idea of freedom and rights. Kant observed that “the spirit of freedom” is necessary to maintain obedience to a state constitution, because otherwise a paradox between freedom and coercion would become present and dominant. Therefore, he argued that everyone in a particular state should “be convinced by reason that this coercion is consistent with one’s rights.” Kant’s observations and argument reveal that state coercion through law was not thought of as a concept that was explicitly marked by domination and tyranny. On the contrary, the system of law was a guardian against oppressive and arbitrary rule. In his First Inaugural Address, Thomas Jefferson touches upon the same problem as Kant when he argued for the protection of minorities. Jefferson thought that equality, before the law, would guarantee the protection of the rights of citizens, and prevent the emergence of oppression. There is no tyrant or despot who personifies this coercion, but coercion acquires its authority status since it appeals to reason and truth. Authority of the law had become “virtually indistinguishable from certain ideas it dignifies as true, and from traditions, perceptions, and judgments it forms, transmits, reproduces.” It should be concluded that the emergence of equality in law therefore did not fundamentally change the conceptions of equality and liberty. It was rather that specific conception of liberty, equality, and reason, which excluded large groups of people, that was

---

embedded in written law and the Constitution. The fact that the Founders conceived a system of law, that protected their liberties against infringement from both disenfranchised classes and the hereditary aristocracy, is not a result of nefarious schemes. It was a continuation and consolidation of specific cultural positions in that society, which were now protected and coerced by the foundational premises of the state and its law. Its appeal universal, its references to truth and objectivism, are not necessarily mischievous, but are to be found in the socio-economic conditions of society. Authority, power, and coercion, produce and reinforce the dominant structures and ideas, which included liberty, equality, and reason, in the early American republic.

At the time when the United States was formed, by means of the Constitution, the principle laws of the nation did not change significantly nor did conceptions of liberty, equality, and reason. The political and intellectual leaders of the Revolution saw their interests represented in the new Constitution. The principles of the new republic, established by law, were not different from revolutionary era since they still excluded the disenfranchised, and provided a discourse that legitimized the authority and dominance of white propertied men. “The idea of rights,” de Tocqueville notes in Democracy in America, “is nothing other than the idea of virtue introduced in the political world.”88 The conceptual idea of virtue, which included exclusionary liberty and equality, had entered the political world as the conceptual idea of right, represented in law. The law was able to both represent the ideas of the dominant class in the fabric of the state, and to legitimize coercion and obedience. The objectivism attached to law, however, conceals its inner morality. Placing the Constitution at the heart of the new republic as its founding document, the pre-existing socio-economic and cultural conditions can no longer be questioned. The law deals in absolutes and establishes a truth that represents the values of the dominant class. Brilliant in his observations, de Tocqueville argues that “the Constitution

88 Alexis de Tocqueville, Democracy in America, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 227.
of the United States resembles those beautiful creations of human industry that lavish glory and goods on those who invent them, but that remain sterile in other hands."\textsuperscript{89} The relationships of dominant and subordinate, of power and servitude, are at the heart of early American culture, and this material reality determines the constitution of the state. It presents a continuation of the political world of Enlightenment in which pre-existing cultural values are attached to the basic foundations of the state. After its establishment, the law, in the guise of transcendental concepts, is able to coerce that same society to obey its principle laws. The idea of rights in law always introduces a need for coercion and obedience, as is the result of any other judiciary system. Coercion could not be based on hereditary right, but coercion could nonetheless be used as a means of protecting liberty, equality, and reason. In order words, law determined what constituted and assigned meaning to concepts such as ‘man,’ an ‘individual,’ ‘liberty,’ ‘equality,’ and therefore enforced the differences already present in that society. It is this strong ability of law, that it is able to create its own legality, which makes it such a significant institution. Through this process, the American Constitution acquired a strong authority position in the early republic, which safeguarded continuation of the political thought of the Founders, and thereby the interest of the propertied class.

\textsuperscript{89} Alexis de Tocqueville, \textit{Democracy in America}, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 156.
THE INDIVIDUAL AND THE STATE
ON THE RADICALISM OF THE FOUNDER’S DISILLUSIONMENT

“The modern state is a compulsory association which organizes domination.
It has been successful in seeking to monopolize
the legitimate use of physical force as a means of domination within a territory.
To this end the state has combined the material means of organization
in the hands of its leaders, and it has expropriated all autonomous functionaries of estates
who formerly controlled these means in their own right.
The state has taken their positions and now stands in the top place.”

- Max Weber

At the start of the nineteenth century the American republic was still considered the product of the Revolution. However, in the first decades of the century the Founders more often expressed their disillusionment with the developments in government and politics. It is therefore often assumed that this represents a break with the political thought of the founding generation, because “ordinary Americans came to believe that no one in a basic down-to-earth and day-in-day-out manner was really better than anyone else.” However, to assume such a position is to neglect the large groups of people that were disenfranchised, and that the rules for becoming part of the dominant group were still the same. The intense struggles for power, between Federalists and Anti-Federalists, that dominated the politics of the early republic, were mere

---

quarrels between different groups of propertied men. These groups might have expanded in numbers, but its qualifications did not change, since money still was the defining factor and basis for social influence. Beliefs and principles founded in the realm of socio-economic relationships and culture remained therefore largely unchallenged. Hamilton was, as shown in the previous chapter, a firm believer in the strength of the principles of the American state. In *The Federalist* no. 30, he argued that money and propriety are together the “vital principle of the body politic.” The principle is the result of a common cultural heritage and founded in a specific socio-economic identity. Jefferson too, appealed to this common cultural heritage in his *First Inaugural Address*, when he stated that “every difference of opinion is not a difference of principle.” The principle was embedded in the fabric of the nation, and the general class interest superseded the individual differences within that class. Jefferson had a strong identity as a propertied man, but in order to do justice to all political opinions expressed by him, he should be called an “Agrarian Commercial Industrial Democratic Federalist.” To put it differently, the temporary political struggles should be regarded of secondary importance in contrast to the general principle by which the early republic was organized. The principle of the Founders was firmly embedded in the laws of the nation, and it was the law that provided for continuation of the republican state. The law provided the state with both the ideological and coercive powers to secure its continuation as a republic of equality, in which men had the liberty to acquire and secure property, thereby disenfranchising all groups with no interest in society.

From the American Revolution to the ratification of the United States Constitution the politics of interest were, as shown in previous chapters, at the heart of the early Republic. The

---

establishment of the state created various new challenges for the Founders, and they were deeply committed to make a lasting effort. In *The Radicalism of the American Revolution*, Gordon Wood identifies the Founder’s deep concern with the limits of freedom and how to manage its borders. However, his analysis still uses the same universal concept of liberty that neglects the socio-economic foundations of the Enlightenment. The fact that Wood identifies a break with revolutionary language of liberty and equality at the start of the nineteenth century makes this evident. The disillusionment of Adams, Jefferson, and many others is undoubtedly present in their writings at the end of their respective lives. However, to assume that they were disillusioned with a failure of universal, timeless, and transcendental liberty, equality, and reason elevates the Founders completely and unjustly from their material existence. It negates all critical analysis of the relation between the dominant and the subordinate, or disenfranchised. Furthermore, it is an example of modern romanticism to elevate previous times to the level of the ideal, thereby giving unlimited options to assign meaning to the original. However, this original version did not exist merely in the world of ideas in the first place, but was rather rooted deeply in the social fabric of American culture. The start of the nineteenth century should be viewed in the same light as the decades before since the social structures, dividing the dominant and subordinate, were equally present as they were before. Slavery was a strong institution, and women, young people, Amerindians, and indentured servants were still disenfranchised as before. In other words, property was still the determining factor that organized society along the lines of interest, and it was still a prerequisite for access to the political realm.

Michal Jan Rozbicki identifies a similar break after the consolidation of power, and the establishment of the propertied class as the new ruling class. In *Culture and Liberty in the Age of the American Revolution*, he argues that liberty expanded significantly during the decades

---

after the Revolution, although the Founders saw themselves still as the “necessary intermediaries between the republican system and the yet unenlightened masses.” Rozbicki concludes that liberty and equality did become more available to previously disenfranchised groups. The fact that increased public debate, at the start of the nineteenth century, made the dominant group “give up some of their hitherto privileged freedoms to accommodate the newcomers” does not inquire into the preconditions on which one could enter the domain of the dominant, and the political. The law had carefully outlined how the interests of property ought to be protected by the judiciary. The essential positions in government were occupied by propertied men closely linked to the Founders, and the first presidents of the United States were part of the founding generation themselves. The political language of the era should thus be considered within the frameworks and institutions established in that society. It is pivotal to understand that the combination of the language of freedom, equality, and reason with a condemnation of passion was professed during both the revolutionary era, the ratification debates, but it was also continued into early nineteenth century. Early European commentators identified this as well stating that “every American democrat believed himself working for the overthrow of tyranny, aristocracy, hereditary privilege, and priesthood.” When the conditions for becoming part of the dominant group in society are continued, the actors and the type of rhetoric stay the same; it is difficult, if not impossible, to identify a break from socio-economically influenced revolutionary thought on basis of mere political debate within the dominant group.

Alexander Hamilton was a strong proponent of a well-regulated society under the law. In the *The Federalist* no. 30, he argues again that the principle of the state is that which governs its actions. It supersedes faction, because it appeals to that which all men of power have in common. “Money is, with propriety, considered as the vital principle of the body politic,” Hamilton argues, as it is “that which sustains its life and motion, and enables it to perform its most essential functions.” Property and the virtues of the dominant class are therefore protected by the law of the United States. It is the essential principle on which everything rests, and that which protects liberty, equality, and reason for those who have it. It creates boundaries that cannot easily be transgressed, it fixes the relation of power between the dominant and subordinate, and determines the conditions on which one can enter the dominant class. In the *The Federalist* no. 10, James Madison famously outlines the differences between a republic and a pure democracy. His main concern is the containment of faction in society without destroying the liberty on which it is founded. Madison deems a pure democracy unfit for the American state, because the right to property would not be secure, because of “spectacles of turbulence and contention.” On the contrary, a republic accommodates a system in which prominent men of property are to be elected by the rest. Madison sees this as the main check on faction in government, because this would mean that government consists mainly out of men that have the similar interests. In this respect Hamilton and Madison do not differ much since they both seek for opportunities to protect the principle of government. The American Constitution, as the supreme law of the nation, offers the propertied class a means to protect their interest from


hereditary aristocracy, but it also protects their position of power from encroachments of the
disenfranchised groups in society.

If the nineteenth century presents us with a continuation of political thought, founded
on socio-economic and cultural differences, it becomes necessary to inquire into sociopolitical
spaces where it was continued and the checks that kept the system in place. In the early republic,
the law had become the central regulating force of the state, enforced by the Constitution. This
important position of the law in American society was reaffirmed by the majority opinion of
the Supreme Court in Marbury v. Madison (1803).103 The case that came before the Marshall
court has a lasting influence on United States constitutional law and introduced the doctrine of
judicial review firmly into American legal tradition. In the majority opinion, Marshall wrote
that the Constitution is the “paramount law” of the nation and that “it is emphatically the
province and duty of the Judicial Department to say what the law is.”104 It completely transfers
the power to decide on the principles of the Constitution to the judiciary branch of government.
Objectiveness, truth, and knowledge were monopolized by the Court, making it only possible
to be overturned by supermajorities in the representative parts of the government. President
Jefferson fiercely opposed such a doctrine, but not merely because he was opposed to the nature
of the doctrine itself. Instead, as Henry Adams alludes to, Jefferson did not want to publicly
fight it because “the quarrel was personal.”105 Again, the political differences might have been
fierce, but Jefferson’s opposition to judicial review was not the radical opposition as it is
sometimes seen. It was rather a difference of opinion within the same class on the workings of

Marbury was denied his commission as Justice of the Peace in the District of Columbia, because President-elect
Thomas Jefferson did not want to acknowledge former president John Adam’s last minute appointments.
Marbury filed suit against Secretary of State James Madison in order to get a writ of mandamus issued by the
Supreme Court, which would secure his appointment. John Marshall wrote in his majority opinion that, although
Marbury was right, it was not within the powers of the Supreme Court to issue such a decree. However, the most
famous part of the Court’s decision is Marshall’s outline of the doctrine of judicial review.
105 Henry Adams, History of the United States during the Administrations of Thomas Jefferson (New York:
Library of America, 1986), 403.
government, and its consequences for their own influence and social position. Jefferson had a quarrel with Samuel Chase and John Marshall, but they were his equals, and enjoyed the same liberty as he did. None of them was actively advocating for popular sovereignty in the strict sense, involving all disenfranchised groups. All were convinced, as they were before, that the state and its law should be guarded against passion and unreason, because “where law is uncertain, partial or arbitrary, where justice is not impartially administered to all; where property is insecure, and the person is liable to insult and violence without redress by law, - the people are not free.”

In order to fully understand the position of the Founders as representatives of a dominant class, and the continuation of their political thought, it is pivotal to examine America’s most prominent Founder, George Washington. Washington served the republic during the War of Independence, and was held in high regard because he refused political power in first instance. However, after the adoption of the Constitution Washington became president of the new state. He started the preparation of his *Farewell Address* already during his first term as president, and James Madison and Alexander Hamilton had helped him preparing the manuscript. After the completion of his second and last term as president, the address was intended as a lasting piece of political and moral advice to his audience. Washington was a firm believer in the strength and unity of government, which he calls “a main pillar…of that very liberty which you so highly prize.”

“The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause fought and triumphed

---


together. The independence and liberty you possess are the work of joint councils and joint efforts, of common dangers, sufferings, and successes.”

Washington too, calls for unity within the dominant class, and for the continuation of liberty, equality, and reason, through law, in the principle on which the government is founded. During Shay’s Rebellion (1786-1787), he called for strong government, and obedience to the law to strike down the rebellion in Massachusetts, and prevent future resistance to the authority of government. Reason alone was not capable of maintaining the system of government, but it had to be supported and continued through the ideological and coercive powers of the judiciary system of the state. Washington’s legacy is exemplary of the dominant group of early American society, in which property, and power positions, ought to be protected through law. The principle of government, embedded in law, was essential for the continuation of the state, and this supersedes all political affiliations within the ruling class itself.

In his most renowned book, *Democracy in America*, Alexis de Tocqueville describes his observations on societal organization in the United States at the start of the nineteenth century. The French government had sent him, together with Gustave de Beaumont, to report on the American prison system. In 1831, they travelled through the United States and de Tocqueville would later publish his observations on the American republic. In *Democracy in America*, he argues that, in the U.S. the aristocracy has vanished almost altogether, and that society was not founded and organized on basis of hereditary titles. For de Tocqueville the American Revolution therefore presents a break with history, since it introduced liberty, equality, and reason as the leading principles of the state. However, it is important to notice that he thought that “the Revolution in the United States was produced by a mature and reflective taste for freedom, and not by a vague and indefinite instinct of independence,” because “it was

---

not supported by passions of disorder; but, on the contrary, it advanced with a love of order and
of legality.\footnote{Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 67.}

De Tocqueville’s argument offers a valuable perspective since it reveals that the
law was one of the central aspects of the American state, and that it was so unique that it seemed
almost miraculous to a European observer. In the United States the law was “absolute,” it
ensured social cohesion and made “it a reflective and lasting sentiment.”\footnote{Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 67-68; Ibid., 89.} These observations
offer valuable insight in the dominant structures of American society. De Tocqueville might
have observed, to some extent, a democratic revolution in which broad equality was established,
but, on the other hand, he acknowledges that only a certain group reaps the profits from this
new situation.\footnote{Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 152; 153; 156.}

The American republic, at the start of the nineteenth century, was to de
Tocqueville an evidently different place from the European nations. The aristocracy had
vanished, but this did not mean that there were strong divisions in wealth and power. The
interests of the dominant group of propertied men were protected in the United States, and
property was the defining factor whether or not one could become part of the ruling class. The
law protected these divisions, and is the most striking exponent of the American republic and
the intentions of its Founders.

The judiciary is the branch of government that is burdened with this task of protecting
the established powers against the passionate mob, and the full democratization of
government.\footnote{Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 98.} Antonio Gramsci described this systematical protection of the structures of the
the state, and it is both a visible power and a power that is not conceived. The Constitution is
very present in public conception, it contains enumerated rights and powers, but it also
determines the boundaries of objectivism. And this accepted objectivism, results in the cultural
unification of American society, and a continuation of the divisions of power, founded in law.
The objective or universal thus presupposes an interest just as much as the subjective represents
interest. Therefore, the emergence of equality under the law does not simply represents broader
equality, or the start of the modern, perceived to be universal, liberty, equality, and reason. The
law, and with it the lawyer, are created and empowered by the dominant group of society. “In
America,” de Tocqueville observed, “man never obeys man, but justice or law.”

However, justice and law are not valueless concepts, but rather the most important exponents of the early
American republic. The United States Supreme Court is even an essential and integral part of
the government, which makes its function specifically political, and therefore ideological. It is
instituted by the same class that led the Revolution and has the power to participate in the
political realm. Law should therefore not be regarded as a universal scheme that leads to
absolute equality, but rather as the protector of property, the regulator of mores, and the
restrictive power that determines relations between the dominant and the subordinate or
disenfranchised. The fictional aspects of the legal system are important for its acceptance and
its dominant role in early American society. De Tocqueville describes that “it is necessary that
all minds of the citizens always be brought and held together by some principle ideas” and that
they therefore need “to receive a certain number of ready-made beliefs.”

To take it even a step further, he states that although this would put a man’s “mind in slavery;” it is necessary to
maintain and make use of freedom altogether. For de Tocqueville, and as shown in previous
paragraphs, for the Founders as well, authority is always legitimized as it is necessary to

115 Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop
116 Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop
117 Alexis de Tocqueville, *Democracy in America*, ed. and tr. by Harvey C. Mansfield and Delba Winthrop
(Chicago: The University of Chicago Press, 2000), 408.
maintain the principle of the state. Liberty, equality, and reason, thus serve to universalize the particular in the minds of the public, and this makes critical analysis of its socio-economic and cultural aspects difficult, but all the more necessary. It leads to the identification of moments when ‘real’ equality and democracy had started, but such a moment cannot possibly be identified, since it supposes the full synthesis of the idea and the material praxis, in other words a level of perfectibility, that cannot be achieved.

It therefore cannot be said that language of meritocracy at the start of the nineteenth century was not meant to be egalitarian, but that it has become so in modern times. Symbolic representations do not precede shifts in societal organization, nor do they offer universal frameworks that necessarily will lead to more liberty, equality, reason. This would suppose, in a strictly teleological manner, the ever progressing development of the human race. A framework of equality might be used by previously disenfranchised groups in order to acquire political rights, but this always has to be preceded by significant changes in socio-economic relationships. The state and the law prescribe the rules for entering the dominant class, and it is endowed with the coercive power to maintain these laws. The law had become the principle guardian of the principle of government of the American republic. Property was to be protected, and every propertied man was equally free as one another. In this respect the United States presented something entirely different from Europe, since the old bonds of feudalism and the hereditary rights were not present, but it did not entail full equality, nor did it offer a framework for universal equality. French aristocrat, Alexis de Tocqueville, was struck by this equality between the people of the dominant class, but only in comparison to still feudally organized Europe, or more specifically France. He did not come across a fully equal society were the principles of the Founders were abandoned and mob rule had become standardized practice. It therefore should not be argued that the social structures of American society had thus entirely

---

changed from Revolution to the start of the nineteenth century. On the contrary, the same dominant class was still in power, and would remain to be so, since it was embedded in the word of the law, and in its transcendental appeal within the realm of the unwritten rules of culture.

The disappointment of the Founders with the results of the early republic should therefore not be as prominent as they are presented. Their concern with mob rule was not new in the nineteenth century, and their political differences of opinion were already present, from the drafting of the Declaration of Independence to the Constitutional Convention. The state still protected the principle of government, and it effectively determined the conditions for the possession of liberty, equality, and reason (even reason is determined by the establishment of objectivism and truth, and not value neutral). The right to property was respected, the notion that Afro Americans constituted property was continued far into the nineteenth century, and their respective claims to full liberty and equality as property owners remained largely exclusive, since all previously disenfranchised groups remained powerless. Liberty, equality, and reason functioned as vehicles for the continuation of the American state. They provided for social cohesion, and a uniformity of principle that was unique to the world. The aristocracy had gone, and those who reaped the fruits of their own labor could profit from its benefits. Property ownership preceded the emergence of a class consciousness, which universalized truth and knowledge. This led to the strengthening and consolidation of socio-economic power relations in the early American republic, and has a lasting influence on the principle values of government and assignment of meaning to cultural practices. American society became a place where men of property enjoyed liberty, equality, and reason, as much as any other propertied man. The law protected property and the political realm from the mob, thereby establishing a specific ruling class that would organize society according to law. This picture of American society at the start of the nineteenth century does not differ much from the society generally
envisioned by the Founders at the time of the American Revolution. It was perhaps therefore that Thomas Jefferson put his confidence in the emergence of a “natural aristocracy” prevalent among men.\textsuperscript{119} Exactly because it is this ‘natural aristocracy’ that is the epitome of the propertied class that became the ruling elite through the establishment of law.

\textsuperscript{119} Michal Jan Rozbicki, \textit{Culture and Liberty in the Age of the American Revolution} (Charlottesville: University of Virginia Press, 2011), 219. [CHECK ORIGINAL REFERENCE TO JEFFERSON!]
CONCLUSION

The United States will always continue to be a fascinating object of study to all scholars alike who are interested in the development of the world of ideas, and its role in the conception of the United States as both an idea and praxis. The role of the United States as a dominant world power in the twentieth century, and the effects it produces on the conception of the ideals it is supposedly founded on, makes continuing inquiries, and research, an absolute necessity. The previous chapters have tried to show that general understanding of the principles of the Enlightenment represented in the early American state are often misguided by modern conceptions of liberty, equality, and reason. It is the result of a teleological need to explain that makes that these conceptions are so important in modern western political thought and creates these misconceptions. “The process of historical development is a unity in time,” Antonio Gramsci brilliantly observed, “which is why the present contains the whole of the past and what is ‘essential’ of the past realizes itself in the present, without any ‘unknowable’ residue that would constitute its real ‘essence’.”120 It is therefore impossible to use the present as a critical reflective tool for the past. Instead, the past should be put back in its place, and its particularities studied as such, without simply connecting the dots to balance the equation and establish historical unity. The world of ideas, although undeniably of significant influence, is not the sole determining factor in development of societies. On the contrary, the cultural aspect becomes very important to our understanding of historical events such as the American Revolution. The investigation and questioning of the contemporary meaning of ideas and principles is essential in order to explain their emergence in the political world of the Americas.

The meaning of the conceptual foundations of the American republic can only be unearthed through investigation of the socio-economic relationships that determine that society. Through analysis of these relations the dominant cultural values can be explained and put into the right perspective. Liberty, equality, and reason have a specific contemporary meaning to the Founders, and to suppose transcendental intentions is to deny the relationship between dominant ideas and the socio-economic foundations of society. The development of these concepts took place in a society that knew various forms of disenfranchisement, and even slavery. Disenfranchisement and slavery are equally important to the development of the ideals of republicanism as is the opposition to absolutist rule and hereditary aristocracy. It created a sense of unity for a newly established class of propertied men that soon would dominate the (predominantly printed) debate over the meaning of liberty, equality, and reason. The foundations of the American state are to be found in the specific class interests of this white middle class of propertied men. Their opinions were not an appeal to universalism, but rather an attempt to attain political influence. The Founders were convinced that they were equally entitled to power as the members of the traditional aristocracy, because they were also propertied. It is this conviction that possession leads to interest in society, leads to a demand for political power, which was the driving force behind the American Revolution. Liberty was thus liberty for propertied men, the same holds true for equality, and reason was only objectively established if it met the values of that dominant class. These specific values did also transfer into the foundations of the American state. The United States Constitution is the most important consolidation of the values of the revolution into the fabric of the newly formed state.

The Constitutional Convention was an affair dominated by men with equal standing in society. All were relatively prosperous property owners, and therefore they were each other’s equal and could they enjoy similar liberty and freedom. However, their notion still did not include all other groups that supposedly had no interest in society and were for that reason
disenfranchised. The development of law in the new state is essential to guard and continue this system which combines social influence, political power with the possession of property. Objectivity and truth were embedded in law and ensured its continuation in the early nineteenth century. The political leaders of the republic were therefore predominantly occupied with the consolidation of their power as a constituted class. Their efforts to strengthen the position of law, and via their authority embolden its authority, are sign of this central importance of law. Liberty, equality, and reason, are the foundations of the United States Constitution, but also its result. Therefore, their contemporary meaning is continued in the institutions of the state, and their conceptual value always bound to the material or socio-economic conditions of that society. The Founders might feel disappointed with the democratization of American society, but the distinctions between the ‘self,’ as propertied men, and the ‘other,’ all enslaved or disenfranchised groups, is continued in the structures of the state. Property and socio-economic relations are not a part of critical investigation of notions like liberty, equality, and reason. For a group to become part of the dominant it therefore becomes necessary to accept the cultural values of the dominant in order to acquire any political power. In other words, the only way to acquire political power is to acquire property, thereby acknowledging that it is the defining factor for exclusive use of liberty and equality.

Some last words on the political implications of this conclusion, because, as mentioned in the introduction, this thesis does not charge the Founder’s as betrayers of universal liberty and equality. On the other hand, their conception of Enlightenment notions is not a universal appeal to absolute truth or the ideal. Liberty, equality, and reason in the eighteenth and nineteenth century are inherently different from our modern version of the same concepts. The relevance of American republicanism, political thought, and continuing relevance can thus only be unearthed through careful analysis of contemporary society and culture. After the American Revolution, the American Founders were concerned with the continuation of the newly
established system of government and societal organization. In his oration at the celebration of
the fourth of July, John Quincy Adams, emphasized that law was very important to the founding
of the American state, because “they were bound by all the beneficent laws and institutions,
which their forefathers had brought with them from their mother country, not as servitudes but
as rights.”

The American state is thoroughly founded on the socio-economic circumstances,
accompanied by a specific cultural organization, already present in colonial society. The break
with England and the institutionalization of the new power equilibrium are thus not conceived
first at the level of the idea, but have strong connections to divisions of the dominant and the
subordinate. These values were represented in the newly formed institutions of the state, the
Constitution, and in cultural heritage and common cultural memory of American society. When
Abraham Lincoln spoke to the Young Men at the Lyceum in Springfield, he was making an
appeal to this common cultural heritage. Continuation of the law, as an objective guardian of
truth, is essential to protect the organization of government and society. It ensures the security
of property, and maintains power relations between the dominant and the disenfranchised. It is
an appeal, facing the same problems as the Founders, to ensure continuation of government.

Lincoln’s “political religion of the nation,” as it is situated at the very heart of early American
republic, will “require the people to be united with each other, attached to the government and
laws.” It is this political religion, which is strongly represented in law, that is the real
achievement of the founding generation, and that determines its contemporary relevance.

121 John Quincy Adams, “Speech on Independence Day” (July 4, 1821),
122 Abraham Lincoln, “Address before the Young Men’s Lyceum of Springfield, Illinois” (January 27, 1838)
BIBLIOGRAPHY


(accessed May 9, 2013).


