

# Liberty's Hours: The Constitution in the Revolution

by W.B. Allen

© W. B. Allen 1987

The First Continental Congress, the Suffolk Resolves Congress, assembled fifty-five delegates from twelve colonies in Philadelphia in the fall of 1774. Little did anyone suspect, at that hour, that a like convention of fifty-five delegates from twelve states would assemble in Philadelphia thirteen years later to apply the capstone to the work they had begun. Nevertheless, that is what happened in 1787, when the Constitution became the capstone of the Revolution.

That capstone was carved out of a quarry of mixed elements—the considerations, the adaptations, the carefulness, and the frustrations—which eventually yielded an aspect of unity and permanence for the world's first new nation. It would be a mistake, however, to derive the meaning of the Revolution from the events of that thirteen-year period alone. The Revolution did not spring suddenly, and spontaneously upon the world. It did not even begin in 1760, as the prevailing strain of historical interpretation would incline us to believe.

The best method for grasping the meaning of the American Revolution is to apply a tool heretofore eschewed by scholars: to wit, unitary interpretation. What that means is, rather than seeking to force the events of that happy era to fit paradigmatic frames imported from later criticism (whether “country versus court parties,” “republican ideology,” “Lockean individualism,” “Scottish benevolence,” or anything else), one should first try to master the expression of the meaning of the Revolution in terms and explanations derived directly from the events themselves.

Pursuing that approach, one learns that the movement toward the Revolution began well in advance of the struggles with Britain in the 1760s and not merely as an imperial struggle. Indeed, its earliest manifestations took the form of criticism of *colonial* abuses of liberty. It was in the context of seeking out limitations on the colonial exercise of power that Americans so frequently invoked their ancient rights under the British Constitution. This process reached its peak in the use made of the work, *English Liberties*, by Henry Care. It was no accident, to be sure, that Care was probably the most radical of post-Settlement Whigs. Yet, he did not go far enough for the Americans. In the case of men like Sam Adams, his virulent anti-popery survived far better than his scholarly reliance on English law.

Contemporary scholarship errs in asserting that Americans did not meaningfully divide over questions of rights and liberties prior to the Revolution. They are also wrong to minimize the influence of modern political philosophy in the direction that debate ultimately took. Not only was it the case that the British constitution ceased to offer adequate authority from the moment the imperial power itself came into question (the evidence for which may be gleaned from the Massachusetts General Court's instructions to its British agent, Jasper Mauduit, in 1762, which instructions elevated John Locke above immemorial usage).

Well before this Americans (in small groups to be sure) began to search for a more express articulation of the foundations of liberty. In the late 1740s, a small group in Massachusetts, Sam Adams at its center, had already opened the quest. They published a short-lived but frankly political journal, taking North America and Americans, not just Massachusetts, as the object and subjects of their attentions. One member of this group, Daniel Fowle, provides the most dramatic evidence of the direction in which their thoughts turned. His *A Total Eclipse of*

*Liberty* bridged the old and new worlds; aimed at exposing abuses of power in Massachusetts; it celebrated the English constitution and English liberties. At the same time, however, Fowle explicitly introduced reason and the “poor dim light of nature” as the standards of political judgment. It is therefore no accident that his short essay contains all the essential forms and objectives of Revolutionary rhetoric, including the robust version of the consent of the governed and an express assertion of the right of revolution.

Fowle derived his principles from the broad tradition of defenses of liberty in the west, including the work of Montesquieu. The latter is significant because of the fact that Fowle quotes from Montesquieu within less than two years of the appearance of that philosopher's work in an English translation in London. He used those passages in the *Spirit of the Laws* which defined liberty (the famous sixth chapter of Book XI), the same passages which recur throughout the founding era, culminating in *Federalist* 47 in 1788. Fowle brought out the apocalyptic and revolutionary nature of Montesquieu's teaching: Where liberty (Montesquieu had said “political” liberty, but Fowle altered it) is not assured, man must fear man; without the separation of powers, laws will be tyrannically framed and executed; without the separation of powers, judges act with all the violence of an oppressor (he corrected the translator's “violence and oppression”); and, everything would collapse if the different powers were exercised by the same man or men.

What is of great interest in this story is the fact that Montesquieu was also the last Enlightenment thinker on the continent who could have left such a legacy. American liberty alone preserves historical evidence of the path not taken by Europe. Fowle's approach brought the light of nature to the support of law. Following the citations from Montesquieu a lengthy citation from Henry Care entered, and in which Fowle fastened on those “Rights that from age to age have been deliver'd down to us from our Renown'd ForeFathers...” (Let us not forget that the “national” holiday before Fourth of July was “Forefathers Day”). Needless to insist, it would be a miracle if the “poor dim light of nature” concurred in every bequest from the past. Still, the singular freedoms enumerated by Care all eventuated in “this Truth, that when Liberty is once gone, even *Life itself grows insipid*, and loses all its Relish.”

*A Total Eclipse* divides into four parts, after the “Preface.” The last part is an appendix, entitled, “The Original of Civil Government, the Rights of the People, etc.” In the final section Fowle recurred to the ultimate foundation of government, the right of consent, rather than to immemorial usage. He took as his authoritative model, Roman Liberty, and the subjection of the “chief rulers” to the will of the people. This democratic sentiment flew in the face of British tradition, which entertained a notion of an original contract only as a point of departure and to which no return was conceivable. Under English principles, as Blackstone was later to codify, the people's original authority, once alienated, was alienated for good.

Fowle was forced to go beyond English traditions; he was forced to argue for enforceable limits on all delegated authority. In the course of his argument he adduced all of the principles which were later to coalesce in the ideas expressed in the Declaration of Independence. He envisioned two contracts, an original and an operational or ongoing contract, identifying the people as the true sovereign. He did not overthrow the divine right of kings; he added to it a superior divine right of the people. He plainly conceived a written constitution as the organic tie between rulers and communities. And he sought some form of election of rulers by the whole society, albeit unspecified.

At the heart of Fowle's view of the origin of civil government, then, is a view of representation which itself reposes on a principle of right conceived as deriving from the nature of things—human equality (“there is no middle state betwixt *Slavery* and *Freedom*”). That is precisely the point which Fowle drew from his reading of the *Spirit of the Laws*. What seems to have prevented Montesquieu's plunge into the European abyss was a view of government as

conditional, not total, itself deriving from a view of the individual man, of human equality as the fundamental datum.

Montesquieu made liberty rather than virtue the fundamental organizing principle of political life and completely altered the modern conception of politics. As virtue required a comprehensive, all-powerful state, so liberty called into being the idea of a state limited by the superior prerogatives of citizens. That teaching inspired on the North American continent a new English constitution, one in which the roles of the people and their parliament had been reversed. The people became for the first time in history the exclusive guardians of their constitution, conformably to the vision of Daniel Fowle. The new theory of representation had become the concrete form of the idea of liberty in the modern world.

Given the immensity of the transition required, it is not to be wondered at that it took a long time, nor that it could not be consummated merely by declaring the Revolution. What the *Federalist Papers* called the establishment of good government by “reflection and choice” required two conditions to be fulfilled: first, the right to reflection and choice (assured by success in the Revolutionary War) and, second, the opportunity for reflection and choice. George Washington led the way toward the second when, in 1783, he sent forth his call to the nation to fulfill the Revolution by the deliberate construction of adequate governing institutions. The ultimate Constitutional Convention formally responded to Washington’s calls. It also responded substantively, as a review of its deliberations will disclose.

No one apart from the delegates and their secretary listened to the debates of the Constitutional Convention. They resolved upon secrecy for their proceedings in order to foster a spirit of openness and accommodation—a willingness to change opinions (and *votes*) without fear of public embarrassment. Although some hints leaked from the Independence Hall conclave, in the main the secrecy succeeded. We, however, are fortunate to possess the scrupulously preserved notes of James Madison, which unlock the doors of the Convention. It was half a century after the event before Madison’s notes were made public. We now stand at two centuries remove—able to peer in and marvel at the work that was wrought. In 1787, no one else listened in, but we know from the ratification of the Constitution that the people ultimately heard what was urged upon them.

In addition to the personalities of the framers, all of the essential themes are found there: natural rights, national power, federalism versus nationalism, separation of powers, representation, electoral mechanisms, the idea of a written constitution, virtue versus self-interest, presidential powers, the power to tax and to regulate commerce, judicial review, and the idea of republicanism—among others.

In sum, the Constitutional Convention stands as an event of urgent importance and also provides means for each of us to ponder those enduring questions about the American constitutional order which are rooted in our lives yet. Of these last, none are more important than the question, Does the Constitution fulfill or derail the promises of the Declaration of Independence, that organic symbol and expression of the spirit of the American Revolution.

To constitute a genuine capstone of the American founding, the Constitution must fulfill the promises of the Declaration. James Madison and Alexander Hamilton claim within the pages of *The Federalist Papers* that it does so. Essayists from Georgia to Massachusetts, debating ratification, said it had to do so. Benjamin Rush urged:

PATRIOTS of 1774, 1775, 1776—HEROES of 1778, 1779, 1780 come forward! your country demands your services!—Philosophers and friends to mankind, come forward! your country demands your studies and speculations! Lovers of peace and order, who declined taking part in the late war, your country forgives your timidity, and demands

your influence and advice! Hear her proclaiming, in sighs and groans, in her governments, in her finances, in her trade, in her manufactures, in her morals, and in her manners, 'THE REVOLUTION IS NOT OVER!'

The Declaration required the Constitution. If the Revolution was not over in February, 1787, it lacked the capstone of a Constitution and lasting government to ensure its promises.

The problem, however, was whether the Declaration's standard of equality and consent was preserved in the Constitution. To that end what was necessary was a Constitution truly reposing on the consent of the governed—one which recognized in the acknowledgment of equality that no human being had a title to rule over any other human being without his consent. The Constitution's response to this challenge was a limited government, operating by just majority rule fashioned out of the restraints of separation of powers and checks and balances, an extensive territory, and a Constitution placed beyond the capacity of mere representatives (including justices) to alter.

What made such qualifications of governmental power necessary was nothing less than the determination to fulfill the promises of the Declaration. In that way alone can we see the Constitution as the capstone of the founding. Did the founders succeed? Every careful reader must consider that question—and judge. Abraham Lincoln read carefully, which led him to conclude,

The Union is much older than the Constitution. It was formed in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured ... by the Articles of Confederation in 1778. And finally, in 1787 ... the Constitution was 'to form a more perfect union.'

The Constitution a capstone, set in place by fifty-five men from twelve states, meeting in Independence Hall, in Philadelphia, declares the modern story of liberty.