

An Approach to American Historiography of the Revolutionary Period (Ⅱ)*

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"Our ancestors...were possessed of the knowledge of the laws and jurisprudence of England : but were free from any obligation of subjection to them. Their law was derived from the law of nature and of revelation...is near us...is within us, written upon the table of our hearts..."
(Jesse Root)

"The universal principle...has been, that the common law is our birthright and inheritance, and that our ancestors brought hither with them upon their emmigration all of it, which was applicable to their situation...It is on this account, that our law is justly deemed certain..."
(Joseph Story)

2. Legal Mind

As the history of religious conflict is not sufficiently accounted for in studies of American revolutionary political thought, so the history of support for and opposition to the common law, lawyers and judges is acknowledged but not integrated. Like the exponents of rational theology, defenders of trained lawyers and common law procedures were leaders of American resistance to England but tended to divide or become silent as independence approached.

In the four decades preceding the Revolution, American legal culture was increasingly adhering to English models : the influx and growing prestige of trained lawyers and judges, the increasing institution of strict English forms of pleading and the attempts to frame the bar on English models combined to change significantly the patterns established in many colonies in the 17th century.²¹⁾ Codification of civil law, the use of elected and lay judges, remarkably easy appeals procedures, simple forms of pleading, prohibition of lawyer's fees, rights to lay representation, the use of written evidence and, finally, the extraordinary power of juries all combined in the 17th and early 18th centuries to create political communities signally lacking the common law. ²²⁾ The resulting system of laws and procedures was "modern,"

containing many provisions that English legal reform did not achieve until the late 19th century. The more remarkable feature, however, was the extent to which many of these same modern elements were revived with such force in the American Revolution. As in England during the Puritan Revolution, the combined role of millennialist and radical legal reformer was explosively reborn in 1776.²³⁾

Common law, in fact, was being rapidly "received" in mid-18th-century America and, as a paradoxical result, the law became more archaic, more "feudal" and less accessible. Opposition was kept alive during this period by the very elements which powered the Great Awakening, but the nature of that opposition was ambivalent and ineffectual. The success of the system of precedent, procedures and pleading was symptomatic of religious and moral declension. The evangelical response was religious revival, not alternative legal and political institutions. In this pre-revolutionary period, the effect of evangelical opposition to the increasing reception of common law and trained lawyers was not to stop the process but was to prevent it from dominating the values of the society. To these spokesmen, claims of precedent, training, and tradition were part of the very "history" which American millennialist promise is to transcend. In the 1750's, the most famous of the itinerant preachers, George Whitefield, wrote in his journal that to become a lawyer was prob-

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ably "unlawful for a Christian, at least exceeding dangerous." Many awakened clergymen began their careers as lawyers, but opted instead for the hazards of itinerancy, expulsion and even imprisonment. As resistance to England began in the mid-1760's, those who remained lawyers confronted different hazards. Members of the newly established and highly restricted Suffolk County Bar (Boston) were among the first to confront the hazards of Loyalism: an overwhelming proportion of that bar did not support independence and was forced to flee.²⁴⁾ Immediate post-independence policies reflected the power and confidence of pietist culture. No compulsory bar association and no bar-controlled provision for legal training in America survived the Revolution. The reestablishment of purely voluntary bar associations without power over legal training was not achieved even in urban centers for another fifteen years. Even more damaging was the fact that specialized legal training was itself devalued because legal reform swept away complex forms of pleading and other highly technical court procedures.²⁵⁾ Those leaders steeped in English legal culture, on the other hand, made common cause with earlier opponents of the Great Awakening to prevent or at least to slow down what they saw as dangerous innovations in church polity and law after 1776.²⁶⁾

Progressive historiography has pointed to this anti-lawyer policy and to the incredibly rapid changes in the courts as evidence of a kind of social revolution. The sudden invention and explosion of "democratic" values against "aristocratic" ones are asserted without seriously seeking to account for the intellectual and/or institutional origins of that invention and impulse. Viewed as an attempted recapture of 17th- and early 18th-century colonial values anchored in religious views, however, both the patterns of innovation and the distribution of political supports for those changes become clearer. Progressive histories, when stressing the role of ideas at all, point to enlightenment natural rights argument. This stress is explicable because that language was used to power legal reform efforts later in the 19th century. Missed in this formulation, however, is the appeal of this language to evangelical culture and the merging of secular and sacred images in the process. Such was the materialist thrust of millennialist doctrine in America that it is difficult to discern where religious images stop and secular-utopian hopes begin. In the writings of Jesse Root and Joel Barlow, the Christian liberty of the reborn

and the natural liberty of the American innocent is collapsed into a form of communal cement. The law which is to define one's duties is more a symbolic and didactic reminder of inner virtue than it is a harsh and external instrument of social control.

This conflict over law and lawyers continued after the adoption of the U. S. Constitution. At first centering on the question of whether the federal courts could claim common law powers of jurisdiction, the conflict culminated in the codification controversies in the 1830's. To recount the specific history and changing arguments of that conflict²⁷⁾ is less important than to note the systematically different perspectives of the role of law in America which this conflict reveals. Those who eventually came to favor codification as a declaration of freedom from the authority of British precedent harbored a vision of America as becoming less differentiated, less complex, more communal, in Joel Barlow's words, becoming as "if the state consisted of nothing more than one great society composed of all the people." External legal authority can never be a product of particular men's wills or knowledge, but can only rightfully flow from "the establishment of the citizens who rejoice in being ruled and governed by its laws, for the blessings it confers." These words, ironically from the first systematic *Reports* of Connecticut court cases in 1798, are given an even more anti-institutional thrust almost half a century later in Emerson's essay "Politics." The coming new man in America

.....needs no library, for he has not done thinking ;
no church for he is a prophet ; no statute book, for
he has the lawgiver ; no money, for he is value ; no
road, for he is at home where he is ; no experience,
for the life of the creator shoots through him, and
looks from his eyes.²⁸⁾

While codifiers and evangelicals were touting America's coming freedom from dependence on complex and differentiating legal forms, those defending the continuity of American and English law saw in complexity and differentiation the very foundation of social order. The defense of common law precedent and of complex and demanding traditions of legal education was tied in turn to a larger political theory. By 1821, Joseph Story placed the highly-trained upper bar as "faithful guardians" posted as "sentinels upon the outposts of the constitution." The first response to Jefferson's attack on the Judiciary Act echoed the response of generations of enlightened clergymen to evangelical demands for disestablishment.

The lawyer Jonathan Mason contemptuously inquired of the Jeffersonian Party, "Is the millennium so near at hand?" His view of the American future was the reverse of those who would write codes or rely on affection: "Is not our wealth increasing? And will not controversies arise in proportion to the growth of our numbers and property?" Without the anchors of common law tradition and the autonomy of its oracles, authority in an increasingly divided America would dissolve. In the words of a congressional speech of 1802, "Stripped of the common law, there would be neither Federal Constitution nor Government." Not surprisingly, the Massachusetts congressman who trumpeted those fears is in perfect harmony with the Unitarian clergyman, Phillips Payson, defending religious establishment in the Massachusetts election sermon in 1778. "Let the restraints of religion once broken down, as they infallibly would be, by leaving the subject of public worship to the humours of the multitude, and we might well defy all human wisdom and power, to support and preserve order and government....."²⁹⁾

By the third decade of the 19th century, the visions of both the codifiers and the advocates of common law were shattered. With the explosion of entrepreneurial activity in the Jacksonian period, the earlier Federalist hopes of a society led by statesmen-lawyers was fulfilled, but in the caricature of the ubiquitous politician-lawyer. The dream of republican simplicity and codified virtue was dashed on those same rocks. With the coming of Jackson, the alliance between evangelical culture and democratic reform was severely strained. The democratic individualism of that time created precisely the conditions predicted by an earlier Federalist: "there must be much law [and, presumably, many judges and lawyers] or there will be no justice."³⁰⁾

To stress the evangelical and millennialist sources of opposition to the common law is to point to a tradition of ideas in America of much longer standing than the natural rights doctrines which later merged with that tradition. Progressive history points only to the "facts" of periodic democratic reform movements, as if each time they appear the ideas which powe them are newly invented or suddenly rediscovered. Whig history points to legal continuity to show that those movements soon become absorbed in enduring intellectual and institutional tradition.³¹⁾ To the progressive, then, complex laws and constitutions often appear as betrayals of American pur-

pose. To the Whig, for whom institutional tracks are the only safe trail of ideas, this complexity is proof of the power of intellect in American history. The origins of this conflict of perspective is most evident in constitutional theory before, during and after the American Revolution.

3. Constitutionalism

Two short but influential analyses of the American Revolution, both published in the 1920's, reflect the persistence of difficulty in understanding the relationship of constitutionalism to the political ideas of the revolutionary period. Charles McIlwain's *The American Revolution: A Constitutional Interpretation* is a masterful study of constitutional arguments, precedents and events utilized by both sides of the resistance struggle. The pivotal role of articulate political and legal ideas in the period from 1763-1776 is eloquently evidenced on every page. The meaning of Professor McIlwain's study, however, is enigmatic: he begins by saying "so long as American opposition to alleged grievances was constitutional it was in no sense revolutionary." He concludes that, with "the revolutionary pronouncement of the fifteenth of May, 1776," the entire intellectual edifice he has so painstakingly reconstructed became quite irrelevant. On that day, American leaders "have perforce become revolutionaries and are no longer constitutionalists.....They turn now to another audience and with another appeal."³²⁾

The second book, J. Franklin Jameson's *The American Revolution Considered as a Social Movement*, begins where McIlwain's ends, at once granting the power of sophisticated and articulate political ideas in the mere "political" (i. e., constitutional) aspects of the early resistance struggles while denying the guidance of those ideas in the political, social and economic reality created after independence. "The stream of revolution, once started, could not be confined within narrow banks, but spread abroad upon the land." The result is the destruction of the thin but "corrupting" artifice of the English mind, English institutions and English history. Democratic America finds itself. The conclusion of his study, however, is as thoroughly perplexing as McIlwain's. Entitled "Thought and Feeling," two-thirds of the chapter consists of a meandering discussion of the "constitutional" changes in the various *religious* denominations, the progress and

causes of disestablishment in the newly-formed states and the suggestion "that there is after all a certain unity in American church history, as well as a frequent connection between it and the civil history of the nation."³³⁾ This is as close as Jameson comes in linking pre-revolutionary ideas and post-independence changes in America. As if unconsciously replicating millennialist time modes, Jameson suggests two forms of the ideas of the American Revolution: that independence created *de novo* an entirely new and democratic intellectual world and that independence signalled a rebirth of ideas and values which had always been foretold for America.

Found in the writings of the revolutionary period is clear recognition of this tension between Jameson's progressive and prophetic views and McIlwain's Whig and institutionalist ones. John Adam's first published political writing, *A Dissertation on the Canon and Feudal Law* (1765), is an explicit statement and an attempted conflation of these two modes of defining America. His strategy is to pit the heritage of "our first ancestors" against the heritage of those more recently arrived descendants of "high churchmen and high statesmen" to discredit those who now threaten liberty in the colonies as they always had in England.

The settlement of America must be seen within the larger framework of the Reformation, Adams says, and the Reformation must be seen as the liberation of men's minds and bodies from the shackles of canon and feudal law. "It was not religion alone.....but.....a love of universal liberty" which peopled America. America heritage is two-sided, for the first settlers combined revelation with reason, religious enthusiasm with respect for learning, and reliance on the prophetic Word with common sense. Instead of attempting to restate those religious and prophetic elements which would give colonial America uniqueness and importance, however, Adams transposes them into "a great *spirit* of liberty." This abstract "spirit," stripped of all ideational content, leaves only secular and constitutional marks. Indeed, the zealously destructive Calvinism of Adams' ancestors builds Whig versions of British constitutional history, becoming part of that same English spirit "which denounced hostilities against John till Magna Carta was signed" and continued its workings through the Glorious Revolution of 1688. It is this constitutionalist tradition which is to benefit from the heritage of reason, respect for learning and common sense. Adams' *Disertation*, like Jonathan Mayhew's 1750 sermon,

concludes on a cautionary note, lest a legacy of prophetic belief and millennialist hope be taken too literally. Unless shaped and disciplined by knowledge, this legacy "would be little better than a brutal rage." The institutional tradition constitutes the usable intellectual past :

Study the law of nature ; search into the spirit of the British constitution ; read the histories of ancient ages.....In such researches as these, let us all in our several departments cheerfully engage — but especially the proper patrons and supporters of law, learning and religion!³⁴⁾

Whig constitutional theory in 18th-century England and America rested on a secular history no longer containing apocalyptic elements. Even "real Whigs," who might recall "God's Englishmen" in recounting events of the 17th century, had no intention of emulating them — any more than Jonathan Mayhew did in the 1750's.³⁵⁾ If not exactly on May 15, 1776, many of those who, following Adams' advice, formulated the most sophisticated historical and constitutionalist arguments to justify colonial resistance fell silent. John Dickenson, James Iredell and James Wilson, for example, seemed unable to shift their perspectives and their language rapidly enough to encompass a happy prospect of independence. John Dickenson viewed that possibility following the Townsend Act of 1767 by asking "if once we are separated from our mother country, what new form of government shall we adopt, or where shall we find another Britain to supply our loss?" James Iredell, later a justice of the United States Supreme Court, could remark with astonishment in June, 1776, that some men of his acquaintance "are inflamed enough to wish for independence." To speak and act from within this constitutionalist framework was to proclaim an identity and character which often met a hostile reception in America before, during and after the revolutionary period.³⁶⁾

Those who began outside of this framework utilized a language which combined millennialist and nationalist images. As early as 1765, Stephen Johnson, a Connecticut evangelical preacher, recalled the fate of Charles I and contemptuously rejected all theories of indirect representation. More than a decade before independence, he professed a wholly American and not an imperial loyalty: "I am an American born, and my all in this world is embarked with yours, and am deeply touched at heart for your distress, *O my country ! My dear distressed country !*To save your invaluable rights and freedom I would

willingly die."³⁷⁾

Resistance spokesmen who were tied to even the more radical versions of constitutional history and theory found it difficult to think of combining religious enthusiasm and intelligent care for ordered liberty, thus reiterating an argument repeated for more than thirty years by opponents of the Great Awakening. James Chalmers's *Plain Truth*, a 1776 pamphlet addressed against Paine's *Common Sense*, pictured this 17th-century combination as purely fortuitous then, and dangerous now. Knowing well the audience most receptive to the argument and "plain style" of *Common Sense*, the author of *Plain Truth* even raises the spectre of an invasion of Philadelphia by recently settled Connecticut "Saints" who had earlier created deep conflicts in Pennsylvania politics.³⁸⁾

Plain Truth — especially in its scathing contempt for Paine's use of Old Testament example against monarchy — was attacking one of two intellectually coherent and long-standing means of escaping the equation of liberty with British constitutionalism. Sacred or prophetic history, as one alternative, held that, at crucial times in the past and in the promised future, prevailing laws, institutions and reasonings of men must be set aside and transcended. Thought and action must be tailored expressly for these extraordinary times. The second means of transcending the categories of constitutionalism and secular history was to use English history against itself, to identify a benchmark period — Jefferson used both a state of nature and 8th-century Saxon England — as a measure of future America. This pre-Conquest and "Norman Yoke" history was utilized in 18th-century England to buttress the claims of Lords and Commons against the king and his "kings men" in Parliament and not to power a domestic revolution against monarchy, Lords and Commons altogether. In America, images of Saxon democracy, agrarian innocence, and the restoration of a vastly expanded 17th-century body of saints combined explosively to weaken severely the prestige of even ideal forms of British constitutional balance and the deference paid its American spokesmen.

The tension between constitutionalist and antinomian and communalist political perspectives is evident in the first state constitutions. Most remarkably, Connecticut and Rhode Island functioned for decades after the Revolution with charters framed in the 1660's. These religiously inspired charters combined annual elections, a

weak judiciary and legislative dominance over the executive — in short, many of the so-called "radical" features stressed by progressive historians as proof of the post-independence "explosion" of democratic impulses and enlightenment philosophy. All of the other ex-colonies reconstituted their frames of government: those documents recreating these 17th-century features were criticized then and now as being products of haste and inexperience because they lacked clearly structured separation of powers.³⁹⁾

Neither newly invented democratic-majoritarian principles nor contagion from Whig resistance to democratic revolution can account for the intellectual and ideological sources powering opposition to independent judicial and executive power so important to notions of balanced government. Combined with and inseparable from this opposition were two related perspectives: first, a stress on the primary importance of the values, beliefs and opinions shared by the people at large and, secondly, an indifference toward complex governmental forms. Indifference, premised on the assumption that governmental forms did not necessarily threaten the unity of the community, turned to hostility when those forms signalled a theory which presumed the legitimacy of permanent division in the community. Hostility to an independent judiciary and the power of trained judges; fear of executive patronage, veto powers and extended terms of office; insistence on annual elections and rotation of office; the insertion of oaths of allegiance and religious tests; equality of religious sects; loquacious and didactic prefaces, preambles and bills of rights; and, most crucially, the studied indifference to the niceties of clear distinctions among powers, duties and rights are found to some degree or another in most of the constitutions framed in the period 1776-1780.⁴⁰⁾ These features express tradition, not oversight, haste or thoughtless enthusiasm. In the 1677 *Concessions and Agreements of West New Jersey*, the third provision of a chapter titled "The Common Law, or Fundamental Rights" stipulated that the document "be writ in fair tables, in every common hall of justice within this Province, and that they be read in solemn manner four times every year, in the presence of the people, by the chief magistrates of those places."⁴¹⁾ The constituting elements in these 17th-century documents were found in the preambles and bills of rights, not in the distributions and relations of governmental powers. This perspective, not majority-rule doctrine or legislative centralism, con-

stituted the core of democratic beliefs in colonial and post-independence America.

That the enlightened Thomas Jefferson did not begin systematically to articulate this view of constitutions until after his presidency — the constitutional theory in his 1781 *Notes on Virginia* is rather conventionally Whig — should not blind both progressive and Whig students of American political thought to the strength and longevity of a constitutional theory shaped by millennialist values. To be ignorant of that tradition is implicitly to reject many powerful 17th-century colonial constitutional ideas, to miss important and lasting features in most early state constitutions and, finally, to ignore the dominant constitutional theory which arose with the victory of Jeffersonian Republicanism in the early 1800's.

To see only "agreement on fundamentals" in American political thought as constitutional law is symbolically to see only "where Paine went wrong." To picture him as outside of American intellectual tradition because "he never accepted the theory of separation of powers" is to ignore the ways in which Paine's vision, because it was tied to a separate tradition of popular sovereignty, went from victory to victory, encompassing and absorbing the theory of separation of powers and relegating it to second place.⁴²⁾ This perspective, moreover, leaves unexplored the deep intellectual and political differences which so quickly developed after the adoption of the federal constitution and the remarkable shifts in theoretical perspective by men such as Jefferson and Madison in one direction and John Adams in the other.

By the time Adams had completed his *Defence of the Constitution of the United States* (1789), he had created an anachronistic political world premised on social differences externally marked by wealth and family and on the assumption of the progressively increasing importance of "rivalry in the orders of society." In contrast to 1776, Adams despaired of discovering political order in annual elections and in legislatures which "think, feel, reason and act ... like the people at large." Conversely, by the turn of the century, Jefferson and Madison were formulating in systematic and wholly secular ways the ideas and styles of an earlier pietist tradition. Increasingly, they gave up reliance on constitutional and legal mechanics — what John Taylor contemptuously called the unreal world of "political numerology"—and planted themselves on the solid ground of realism which Taylor, without irony, termed "moral elements." If, in Jefferson's

words of 1799, "The whole body of the nation is the sovereign legislative, judiciary and executive power for itself," then the health of that body and not the boundaries of institutions becomes of central importance. Indeed, the two "institutional" innovations which we associate most prominently with Jeffersonian democracy — Jefferson's ward system proposal and the popularly-based political party — were in express opposition to institutional reasoning and the intellectual tradition which powered it.

Jefferson's "ward" or "hundreds" system was at once the most radically antinomian proposal in American secular political thought and a haunting reminder of earlier Great Awakening sermons on what America would be like during the thousand-year reign of justice and community.⁴³⁾ In each ward rulers and ruled, authority and liberty are merged and indistinguishable. This is the pure fountain from which higher assemblies and broader governing powers flow. In this hierarchy, there is no lateral entry : to rise in power and distinction, every man must first be selected in the ward and prove his capacity to earn the trust of his peers in an environment without structure and differentiation.

The obvious reply to Jefferson's ward scheme is that it had no chance of success in America. Like the theory behind it, the scheme was too utopian, too levelling, too Painian. The less obvious reply to that objection is that Jefferson's ward scheme is an almost exact description of political party organization as it took shape from the 1820's onward. In 19th-century America, political office was the source of distinction and power ; no important office was attainable outside of the party. Party itself was a hierarchy of assemblies which began with the locality. With party, popular sovereignty notions dominated constitutional office as it already had defined constitutional theory. By 1819, the author of *Federalist Papers* # 10 and # 51 said, "When the individuals belonging to political parties are intermingled in every part of the Country, they strengthen the union of the Whole, while they divide every part." The energy, loyalty, discipline and power which party was able to generate was a cruel revenge on those who saw in the U. S. Constitution both a vindication and a culmination of a long philosophical and legal tradition. These increasingly harried men were forced to rely on the defenses of learning, status and state repression. The Federalist Party was first demoralized, then overwhelmed, and finally conquered.⁴⁴⁾

John Taylor's *Inquiry into the Principles and Policy of the United States* (1814) reveals the cultural dimension of the constitutional debate. The first 130 pages are addressed to the fallacies of British constitutional theory. Taylor's intent, quite simply, was to destroy at the outset any reliance on a tradition which did not begin with popular sovereignty defined as community bound together by rights. "To contend for forms only, is to fight to shadows," Taylor stated in his next book, *Construction Construed, and Constitution Vindicated*. "If the acts of a monarchy, aristocracy and democracy are the same, these forms of government are to a nation essentially the same also." Taylor's primary fear was of popular corruption encouraged by false theories of politics. The most corrupting theory in the American context was the assumption that "intermediate orders between an individual and a nation" are constitutionally necessary and desirable: "Pecuniary, civil, religious, or military" establishments corrupt the society because they stand "between a nation and a government" dividing interests and loyalties.⁴⁵⁾

The tradition to which Taylor repaired was neither the Enlightenment nor the French Revolution. He begins *Construction Construed* by calling for a rededication to the spirit of Republican "puritanism" exemplified in the English Revolution, the colonial settlements and the American Revolution. Taylor urges his readers to emulate these earlier "civil and religious patriots" who knew "that a despotic power over the mind will absorb a despotic power over property." To structure a "combination of corporations, exclusive privileges and pecuniary speculations" is to tempt all men, even political majorities, to exchange their liberties "for the garbage of aristocracy, and compromise with venality."⁴⁶⁾ Political thought in America must be moral theory and natural rights, not constitutional law. Abraham Lincoln caught the antinomian voice and savored its cultural echoes when he proclaimed in his first Inaugural Address, "The Union is much older than the Constitution."

4. Whigs and Progressives

In cultural politics in America the meaning of what is said often depends upon the identity of the speaker, the style in which he speaks and the audience whom he addresses. This is as true in deciphering the Reverend Jonathan Mayhew's seemingly commonplace condemnation of licentiousness in 1750 as it is in Senator Barry Gold-

water's seemingly commonplace call for extraordinary risks in defense of liberty in 1964. Insofar as the writing of history in America has always been a part of cultural and political conflict, the meaning of those histories can be clarified by seeing historical writing in these same lights.

Twentieth-century progressive (more exactly, populist) historiography is the often unwitting image and carrier of evangelical and millennialist political thought in America. Like Jonathan Edwards and John Taylor before them, the informing perspectives of progressive historians are that institutions, establishments and even intellectual tradition are forms of "works"—idolrous products of declension which must periodically be destroyed or remade. Whether the ultimate cause of these anti-institutional triumphs be an endless frontier, biblical prophecy or simple and innocent hatred of privilege, each victory is a conquest of native faith which smashes institutional idols as it redeems and reconstitutes the community. This conflict is pictured by both 18th-century Jeremiahs and 20th-century progressive historians as the defense of American uniqueness against imported corruptions. Writers in this tradition have been astutely termed "historians against history." Reliance on apocalyptic moments, charismatic leadership and symbolic victories, however, blinds progressive history to its intellectual and cultural origins. The success of this history in the popular mind is achieved at the cost of making articulate democratic ideas appear as if they were immaculately conceived for the birth of each democratic movement. Time in between these movements is, in the view of this history, a form of declension. In the perspective of Whig history, these same times denote institutional consolidation and intellectual tradition rather than corruption. Rigid periodization helps to quiet the quandries if not to resolve the problem of the history of ideas:

Truly democratic ideas, defending a concentration of power in the hands of the people, are difficult to find prior to 1774. Most articulate colonials accepted the Whig theory in which a modicum of democracy was balanced by equal parts of aristocracy and monarchy.⁴⁷⁾

Vernon Parrington's *Main Currents of American Thought* is the classic example of periodic reliance on Whig versions of intellectual history even as it stresses the political battles between American democratic virtue

and foreign aristocratic corruption. In his discussion of religious freedom, Parrington has such proto-democrats as Charles Chauncy and Janathan Mayhew doing enlightened battle against Jonathan Edwards, "the last of the royal line of puritan mystics" standing as "the last great defense of the conservatism that was stifling the intellectual life of New England." Fittingly, it was only "a curious irony of fate" that this "reactionary Calvinist...became the intellectual leader of the revolutionaries [in church polity and religious freedom]." ⁴⁸⁾

The most effective progressive solution to this difficulty of relating political ideas to political actions was to bypass history of ideas entirely. To Frederick Jackson Turner, the frontier — flowing, purifying, equalizing and unifying — washes back and redeems the ideas, manners and institutions of a people always threatened by declension. On this reading, Turner's frontier thesis is more a desperate escape from entrapment in "eastern" and Whigish intellectual tradition than it is the daring introduction of geography and economics in historical explanation. The result in either case is an indirect affirmation of a redical Calvinist heritage, enabling Turner to celebrate the political and cultural power of the one intellectual tradition he barely acknowledged. ⁴⁹⁾

Whig historiography in America has always been the more convincing and respectable vehicle for conveying the importance of systematic political ideas. Such is the long-standing relationship between this mode of history and cultural-political conflict in America, however, that the political "ideas" which seem to loom so large often disappear to become laws, constitutions, institutionalized interests and establishments. This transposition has always had the intended political effect of attaching the prestige of intellect and reason to dominant institutions in America. As persuasive history, however, the cost is often to disconnect ideas from political action and actors. To equate ideas and institutions can tag opponents as "anti-intellectual," but the equation is considerably less effective in distinguishing, for example, a Loyalist from a patriot if both praise mixed government. ⁵⁰⁾ A second politically effective but historically implausible result is the habit of Whig historiography to attribute to institutional elites the source of all political ideas which eventually come to dominate — even at the expense of those institutional elites. Thus, the teachers of principles of religious equality and freedom in America are those who in fact supported religious

establishments; resistance arguments voiced by many who became Loyalists taught colonists to fight for independence; English radical Whigs fighting for increased powers of Parliament at home taught resistance to Parliament and fealty to the king to North American colonists. Insofar as the history of American political ideas is closely tied to a formal and mechanistic story of institutional evolution and debate, this history becomes solidly consensual, marching above the turbulence of political battle and human motive as an enlightened legion of coherence, rationality and tradition. The threads connecting constitutionalist resistance literature, McIlwain's *Constitutional Interpretation* and Bernard Bailyn's *Indeological Origins* are more than a common denial of the importance of Tom Paine's ideas. The common perspective is that political speech not tied to institutional and legal evolution is more fustian than a part of a durable history of ideas. And when this rhetoric is tied to major institutional changes (e. g., independence or disestablishment), the preference of Whig history is for contagion: that rhetoric is viewed as the enthusiastic and often irrational extension of institutional ideas. Understandably, an inordinately large proportion of the major contributors to American political ideas — before, during and after the Revolution — have suffered grievous political losses. Their consolation is the histories written to show the victors under the intellectual influence of the vanquished.

The split intellectual legacy of the American Revolution stands in clearer relief when viewed against the conflicts over religion, law and constitutionalism surrounding and informing that era. This division continues to live abstractly and symbolically in the split between Whig and progressive historiography. The former tends to dominate American intellectual history, the latter, American political history. If history is the major source and vehicle for American political education, the Americans have always had available two quite different lessons bridged only, perhaps, by providence or luck.

Notes

- 21) W. Nelson, *The Americanization of the Common Law* (Harvard, 1975), Chaps. 2-4.
- 22) A. Chroust, *The Rise of the Legal Profession in America* (Oklahoma, 1965), Vol. I
- 23) See R. Stevens and B. Abel-Smith, *Lawyers and Courts* (London, 1967); R. L. Perry, *Sources of our Liber-*

- ties (American Bar Foundation, 1979), p. 185.
- 24) G. W. Gewalt, "Sources of Anti-Lawyer Sentiment in Massachusetts," 14 *American Journal of Legal History*.
- 25) Nelson, *op. cit.*, Chap. 5.
- 26) See Nelson, *Ibid.*, Chaps. 6, 7.
- 27) P. Miller, *The Life of the Mind in America* (Harcourt, Brace and World, 1965), Books, I, II.
- 28) J. Barlow, *Advice to the Privileged Orders in the Several States of Europe* (Cornell, 1956), p. 93.
- 29) J. Story, in P. Miller, ed., *The Legal Mind in America* (Anchor, 1962), p. 71.
- 30) Quoted from L. Kerber, *Federalists in Dissent, Imagery and Ideology in Jeffersonian America* (Cornell, 1970), p. 135.
- 31) See G. Wood, "Rhetoric and Reality," *op. cit.*
- 32) C. McIlwain, *The American Revolution: A Constitutional Interpretation* (Cornell, 1958), pp. 1, 191-92.
- 33) J. F. Jameson, *The American Revolution Considered as a Social Movement* (Princeton, 1967), pp. 9, 95.
- 34) J. Adams, *The Political Writings of John Adams* (Bobbs-Merril, 1954), pp. 7-9, 18-20.
- 35) J. G. A. Pocock, *The Maciavellian Moment* (Princeton, 1975), Chaps. XIII, XIV.
- 36) J. Dickenson, in Max Savell, *Is Liberalism Dead and Other Essays* (Univ. of Washington, 1967), p. 102.
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