

UNCORRECTED PAGE PROOFS

PEACEFUL REVOLUTION

Constitutional Change and American Culture from
Progressivism to the New Deal

BY MAXWELL BLOOMFIELD

Harvard University Press
Cambridge, Massachusetts
London, England

September 2000

Peaceful Revolution

*Constitutional Change and
American Culture from
Progressivism to the New Deal*

Maxwell Bloomfield

RECEIVED
JAN 10 1999
HARVARD UNIVERSITY PRESS

HARVARD UNIVERSITY PRESS

Cambridge, Massachusetts, and London, England | 2000

S
R
L

These are uncorrected page proofs.
No part of these proofs may be
reproduced without the written
permission of Harvard University Press.
Not for sale.

PEACEFUL REVOLUTION
Constitutional Change and American
Culture from Progressivism to the New Deal
By Maxwell Bloomfield
Publication Date: September 2000
Price: \$35.00
ISBN: 0-674-00304-7
224 pages
Harvard University Press

For more information, please contact:
Rose Ann Miller
Phone 617.495.4714
Fax 617.496.2550
roseann_miller@harvard.edu

Visit our Web site
www.hup.harvard.edu

Preface

When I began the research for this book, I had the idea of exploring the ways in which supporters and opponents of the New Deal used the media to explain constitutional changes to depression audiences. The subject seemed made to order for critical inquiry, since the federal government sponsored a variety of cultural projects in the 1930s, to the dismay of conservative critics. And existing studies of New Deal culture provided merely a general survey of the period, with little attention to the constitutional aspects of governmental outreach programs.¹ I decided, therefore, that an assessment of cultural materials from a constitutional perspective would fill an important gap in the historical record.

As I immersed myself in the period and its background, however, it became clear that a separate volume would be needed to lay the cultural foundations for what many contemporaries termed the “constitutional revolution” of the 1930s. For one thing, the sheer bulk of the relevant, and largely neglected, material at the Library of Congress is overwhelming. Accordingly, this book will focus on the interplay between constitutional developments and media coverage from the turn of the century to the coming of the New Deal, with a backward glance at the beginning of Constitution worship in the early Republic. I do not attempt to discuss public reaction to every important constitutional issue that arose in those years. My aim is rather to demonstrate through representative examples the powerful appeal that constitutional values have always made to the American imagination. Novels, cartoons, plays, and movies, I argue, have often functioned as instruments of constitutional discourse, and both elite and marginalized groups in American society have employed such vehicles to promote constitutional agendas.

An introductory chapter describes the emergence of a popular cult of _____S
_____R
ix _____L

the Constitution in the Founding period, when the Federal Convention was hailed as a peaceful alternative to violent political upheaval. Issues of federalism and state rights dominated the popular consciousness in the antebellum years, as creative writers argued the merits of nullification, secession, and unionism to sectional audiences. Although constitutional solutions failed to resolve the moral dilemma of slavery, the Civil War—like the American Revolution a century earlier—was fought on constitutional grounds and resulted in the triumph of a more nationalist model of constitutionalism.

Chapters 2 through 6 explore the continuing importance of a constitutional legacy of “peaceful revolution” in modern America. Major themes include the Progressive critique of an outmoded Constitution at the turn of the century and fictional representations of an alternative constitutional order; the use of early silent films by suffragists and their opponents to influence the debate over a national woman suffrage amendment; the Wilson administration’s mobilization of the media to promote a program of “war socialism” and the efforts of dissenters to convey their views to the American people; the revival of Constitution worship and its cultural consequences in the 1920s; and the effects of the early depression years in discrediting governmental authority and encouraging a renewed public interest in constitutional utopias. Chapter 7 examines the revolutionary rhetoric of Franklin D. Roosevelt’s first inaugural address and relates his announcement of a New Deal to public demands for a peaceful revolution. In an Afterword I consider some implications of the study and of the use of popular culture materials as a supplement to more traditional approaches to problems of constitutional change in a pluralist democracy.

Portions of Chapters 1 and 2 previously appeared as articles in the *Journal of American Culture*: “Constitutional Values and the Literature of the Early Republic,” *JAC* 11 (Winter 1988): 53–58, and “Constitutional Ideology and Progressive Fiction,” *JAC* 18 (Spring 1995): 77–85. I am grateful to editor Ray B. Browne for permission to reprint this material.

The completion of the book has been greatly assisted by generous research and writing grants from the Columbus School of Law, whose faculty I joined in 1985. In particular, I would like to thank Dean Bernard Dobranski, former Dean Ralph J. Rohner, Associate Dean Veryl Miles, former Associate Dean George E. Garvey, and Assistant Dean Michael R. Kanne for their consistent support and encouragement. I am also indebted to my colleague in the History Department at the Catholic University of

S
R
L

America, Thomas R. West, who read the manuscript and offered valuable criticism. And special thanks to Gabrielle Fenlon, who typed the initial draft in its entirety, and to Judy Ann Blower and Darla Koenig, who typed successive revisions and additions. The staff at the Library of Congress deserves mention as well for helpful assistance over the years.

Contents

Preface *ix*

- 1 The Founders' Constitution and Republican Culture *1*
- 2 Modern Constitutionalism and Progressive Reform *19*
- 3 The Selling of War Socialism *43*
- 4 Constitutional Conservatism in a Decade of Normalcy *70*
- 5 Symbols of Authority in a Collapsing Economy *99*
- 6 Imagining a New Constitutional Order *124*
- 7 Inauguration Day, 1933 *158*

Afterword *167*

Notes *173*

Index *000*

The Founders' Constitution and Republican Culture

If from a vile assemblage of vagrants and rogues the wisest and most virtuous nation that ever existed deduced its origin, under the wise constitution and laws of Romulus—what may not be expected from an enlightened, virtuous and heroic people, . . . under a constitution formed by their free suffrages and the combined wisdom of all those who have gone before them?

—ENOS HITCHCOCK (1788)

Americans profess to revere their Constitution, although relatively few have read it with care and fewer still have understood it in more than a superficial way.¹ Its real importance for the average citizen has been symbolic. Like its counterpart, the earlier Declaration of Independence, it serves as an enduring reminder of the moral vision that shaped the nation's founding. Successive generations, confronted with new political problems, have sought to reaffirm a sense of national identity and purpose by appealing to constitutional norms. Those norms in turn have been defined for the public as a result of publicity campaigns carried out on two distinct levels. On an official plane, congressional debates over pending legislation, Supreme Court decisions, and presidential messages convey an institutional perspective on issues of constitutional change. Public support for such change, however, may depend more on a second level of communication—the commentary provided by the popular media.

Although scholars have tended to neglect cartoons, poems, novels, movies, and television dramas as instruments of constitutional discourse, these agencies have clearly contributed to popular understanding of complex policy matters. By personalizing abstract constitutional doctrines, writers and artists have encouraged the general public to reflect on controversial measures and to participate in organized efforts to promote or oppose them. No causative link between media presentations and voter behavior can be scientifically established, of course; but if constitutional change grows out of changing social needs and values, the earliest warning signs of serious disaffection are likely to be found in the popular press.

The interplay between official action and popular response was already evident at the time of the American Revolution, when a native constitutional tradition first took shape. During the decade of controversy that preceded the outbreak of actual fighting, insurgent leaders defined the issues for the public through courtroom arguments, legislative speeches, and newspaper essays. Again and again they charged that the taxes and commercial restrictions lately imposed by the British government violated the rights of colonial Americans, which were guaranteed to them by the common law and by their royal or corporate charters. In response to this constitutional challenge, the loyalist bar developed counterarguments justifying parliamentary supremacy in equally legalistic terms. While patriot attorneys organized protest meetings and drafted petitions to Parliament, other opponents of British “tyranny” erected “liberty poles,” published inflammatory broadsides and poems, preached libertarian sermons, and engaged in street demonstrations that often turned violent.² Since the revolutionary cause depended so strongly on constitutional grounds for its legitimacy, it is scarcely surprising that, when last-minute appeals for redress failed, the colonies took immediate action to regularize their new status as independent republics. A flurry of constitution-making on the state level succeeded the announcement of the Declaration of Independence, and the Continental Congress set up a committee to draft a written instrument of government for the new nation.³

This widespread resort to formal constitutions by the revolutionary generation had some deeper implications as well. Independence meant not only the absence of royal governors and parliamentary decrees but also the loss of unifying cultural symbols and traditions. Living in a pluralistic society that lacked ancient and authoritative folkways, Americans turned to the law to define themselves as a modern republican nation. Thomas Paine captured the ideal well in his rabble-rousing pamphlet, *Common Sense* (1776), when he observed that the rebellious colonists had no need of kings or other Old World icons of order because “in America THE LAW IS KING.”⁴ Through wise and humane laws, and especially through the fundamental principles established by their new constitutions, Americans hoped to create a model society based on reason and the consent of the governed.

Republican ideology called for a society of self-reliant freeholders, who should be encouraged to pursue wealth and status with a minimum of governmental interference. The most important function of law, accord-

S
R
L

mobility by releasing private entrepreneurial energies. Competition and self-help were to replace the colonial ideals of paternalism and security, as the nation moved from a ruler-subject model of social organization to one based on the principle of free exchange between equals. Philip Freneau echoed this libertarian ethic in a poem of the 1790s:

COLUMBIA, hail! immortal be thy reign;
Without a king, we till the smiling plain;
.
Without a *king*, the laws maintain their sway,
While honour bids each generous heart obey.
.
So shall our nation, form'd on Virtue's plan,
Remain the guardian of the Rights of Man,
A vast Republic, famed through every clime,
Without a king, to see the end of time.⁵

But responsible government proved difficult to achieve in practice. The first state constitutions adhered to a rigorous theory of separation of powers and conferred dominant authority upon the most popular branch of government, the legislature, at the expense of the executive and the judiciary. Within a few years this system of legislative supremacy came under sharp attack from creditor and propertied interests in almost every state. Populistic laws, these critics charged, were encouraging inflation and creating a dangerous climate of political unrest and instability. The outbreak of Shays's Rebellion in the fall of 1786 intensified conservative fears, as essayists and poets filled New England newspapers with denunciations of insurgent Daniel Shays and his ragtag army of impoverished Massachusetts farmers.

The Shaysites, protesting high taxes and a depressed economy, forcibly closed the courts in several Massachusetts counties to prevent further debt collections and mortgage foreclosures. Eventually they attacked the federal arsenal at Springfield, but the state militia quickly dispersed them and ended the rebellion. The episode, insignificant in itself, captured the popular imagination because it provided a dramatic illustration of the evils of unrestrained liberty.⁶ "In a free government, the reality of grievances is no kind of justification of rebellion," commented Fisher Ames, writing for Boston's *Independent Chronicle*. "Besides," he added, "our constitution is

the free act of the people; they stand solemnly pledged for its defense, and

S
R
L

treason against such a constitution implies a high degree of moral depravity.”⁷

Poets likewise condemned Shays and his followers for resorting to the violent tactics of the prerevolutionary years, and for attempting to replace a government of popularly enacted laws with mob rule. One anonymous versifier adopted the persona of a backwoods Shaysite to emphasize the anarchic individualism encouraged by the rebellion:

Constitutions and oaths, sir, we mind not a rush,
Such trifles must yield to us lads of the bush.⁸

The interstate press coverage of Shays’s Rebellion stressed the general weakness of the new nation and helped to focus public attention on the need for sweeping constitutional changes in the national government. That government, formally established in 1781 under the Articles of Confederation, had institutionalized the revolutionary model of constitutionalism that prevailed in the states. A one-house Congress, to which each state elected delegates annually and in which each state had an equal vote, formulated all national policies. There were no countervailing executive or judicial branches, and democratic power-sharing was assured through a rotation requirement that prevented a delegate from serving more than three years in any six-year period. Fearful of creating a potentially oppressive American Parliament, the framers of the Articles left the most important legislative powers in the hands of the states. Congress could not tax, or regulate commerce, or guarantee that individual states would obey the treaties it negotiated with foreign powers. Under these conditions congressional prestige soon declined, and the genuine accomplishments of the central government in such areas as federal land policy were overshadowed by its mounting debts and ineffectual efforts at substantive reform. When delegates proposed amendments to increase congressional power, for example, they found they could never obtain the consent of all thirteen states, as required by the Articles.⁹

Jeremy Belknap, in a popular satire titled *The Foresters* (1792), traced the defects of the Confederation to a utopian ideology that grew out of the struggle for independence. Intoxicated by their newly won freedom, the American “families” (i.e., states) in Belknap’s tale resolve to create a partnership of complete equality like that of the industrious beavers, who “carry on their operations with peace and unanimity, without even the appearance of a *master*.” Unfortunately, humans prove to be less cooperative than beavers, and the “perfect republic” soon collapses for want of effec-

S
R
L

tive governmental sanctions. To illustrate the harmful effects of uncontrolled state power on national policy-making, Belknap employed an apt mechanical metaphor:

In the club room, among a number of ingenious devices, there was a clock, of a most curious and intricate construction, by which all the common concerns of the partnership were to be regulated. It had *one* bell, on which *thirteen* distinct hammers struck the hours. Each hammer was moved by independent wheels and weights, each set of wheels and weights was enclosed in a separate case, the key of which was kept, not as it ought to have been, by the person who represented the family at club, but in each mansion house; and every family claimed a right either to keep the key at home or send it to club, when and by whom they pleased.

Such institutional arrangements in time cause a complete breakdown in the club's operations, as members "knew neither the hour of the day, nor the day of the month; they could not date their letters nor adjust their books, nor do business with any regularity."¹⁰

Belknap's humorous attack on the weakness of the Confederation government formed a late addition to a body of more sober constitutional criticism that appeared in newspapers and magazines in the 1780s. From the beginning of the Confederation, prominent businessmen, landowners, and professionals had urged the expansion of federal power as a means of strengthening public credit and preventing radical economic experimentation by the states. Through interstate commercial conferences, such as the Annapolis Convention of 1786, these nationalists publicized their views and finally proposed that the states send commissioners to a general meeting at Philadelphia to revise the Articles. A dispirited Congress issued a call for such an extraconstitutional gathering "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal Constitution adequate to the exigencies of government and the preservation of the Union."¹¹ Deliberations were scheduled to begin in May 1787.

The advocates of a strong central government employed a variety of popular literary forms to mobilize public support for the impending Philadelphia Convention. Royall Tyler linked constitutional reform to the survival of republican government in his play *The Contrast*. First per-

the earliest commercially successful play by an American author—deftly contrasted the artificialities of the English caste system with the democratic mores of postrevolutionary America. Behind the witty dialogue and comic stereotypes, however, lay a serious political message. Tyler's hero, the virtuous Henry Manly, is a revolutionary patriot whose experience in helping to suppress Shays's Rebellion leads him to reflect at length on the future of the Confederation. Using historical analogy, a favorite device of eighteenth-century moralists, Manly draws an ominous parallel between the American Union and the Amphictyonic League of ancient Greece:

The various [Greek] states engendered jealousies of each other; and, more unfortunately, growing jealous of their great federal council, the Amphictyons, they forgot that their common safety had existed, and would exist, in giving them an honourable extensive prerogative. The common good was lost in the pursuit of private interest; and that people who, by uniting, might have stood against the world in arms, by dividing, crumbled into ruin. . . . Oh! that America! Oh! that my country would, in this her day, learn the things that belong to her peace!¹²

The implied endorsement of the approaching Philadelphia Convention could scarcely have escaped Tyler's audience.

Even more pointed were the recommendations for constitutional change made by Lemuel Hopkins and his fellow "Connecticut Wits" in *The Anarchiad*. Published in fourteen installments in the *New Haven Gazette* during 1786 and 1787, this mock-heroic poem celebrates an epic struggle between two primordial forces for the control of the New World. On one side stands the Anarch, the spirit of misrule and destruction; opposing him is Hesper, the godlike defender of order and rationality. As lawless mobs rise within the states, Hesper convenes his "principal counselors and sages" at Philadelphia to plan a constitutional counterattack. Invoking the spirits of the revolutionary dead, whose vision of a republican nation has been betrayed, Hesper calls for a new constitutional order that will be strong enough to check the "giddy rage of democratic States." His nationalistic prescriptions are quite explicit:

But know, ye favor'd race, one potent head
Must rule your States, and strike your foes with dread,
The finance regulate, the trade control,
Live through the empire, and accord the whole.¹³

S
R
L

The delegates who attended the actual Philadelphia Convention more than fulfilled the expectations of their literary well-wishers. Meeting in closed sessions, they early agreed to ignore their prescribed agenda and to frame a completely new constitutional system. In place of the rudimentary national Congress provided by the Articles, they constructed a central government composed of three separate, but interlocking, branches. Congress now had the power to tax individuals, to regulate interstate commerce, and to maintain its own military and naval forces. Although the states retained control over their internal affairs, they could no longer impair contractual obligations or engage in other specified inflationary practices. The framers provided that the new federal system should take effect when approved by nine states, acting through specially convened ratifying conventions.¹⁴

After some debate Congress transmitted the proposed constitution to the states without comment, and for ten months (September 1787 to July 1788) publicists argued the pros and cons of the document to a nationwide audience through the newspapers, the most popular medium of communication in the late eighteenth century. One series of essays—*The Federalist Papers*—became a classic of constitutional commentary. Written by Alexander Hamilton, James Madison, and John Jay under the collective pseudonym of “Publius,” *The Federalist* defended the new constitution on logical and philosophical grounds that appealed to the rationalistic temper of the time.

The Philadelphia Convention had successfully reconciled power with liberty, Madison urged, by creating a self-regulating system of structural checks and balances.¹⁵ Within the national government, each house of a bicameral legislature checked the other; the president checked Congress through his veto over legislation; and an independent judiciary checked both president and Congress through its interpretation of constitutional norms. Since the national government could exercise only those powers enumerated in the Constitution, the states provided a further external check against any federal encroachments on their sphere of sovereignty. Hamilton suggested that the overall arrangement resembled the Newtonian solar system, in which the states, like planets, revolved in their separate orbits around the central government as their sun.¹⁶ The image, with its mechanistic overtones, aptly described for eighteenth-century readers a government of laws. For just as natural law—the law of gravitation—controlled the movement of celestial bodies, so did the Constitution—an

Opponents of the new system, forced to adopt the label of “Antifederalists,” were at an obvious disadvantage, since they had to defend an existing constitutional order that most of them agreed was defective. Lacking an alternative plan of their own, they sought to discredit the centralizing provisions of the proposed constitution by arguing that they would reestablish tyrannical government on the English model. As a South Carolinian critic put it:

In five short years of Freedom weary grown
We quit our plain republics for a throne;
Congress and *President* full proof shall bring,
A mere disguise for Parliament and King.¹⁷

In a related vein, other Antifederalists noted that the Constitution contained no Bill of Rights and thus left the federal government free to invade the most cherished liberties of the individual. They particularly deplored the absence of any federal guarantees of free speech and press or of jury trial in civil cases, and worried about the vaguely defined (and therefore menacing) power of the federal judiciary. Publicists not wedded to conspiracy theories feared that a powerful national government might destroy the pluralism of American society and encourage the development of an irresponsible federal bureaucracy, thanks to those intricate checks and balances so prized by the Federalists.¹⁸

While it is impossible to determine how many people read these newspaper polemics, they clearly did help to shape the thinking of those who attended the state ratifying conventions. The same issues tended to appear in debate after debate, and most of them had received prior consideration in the press. Coverage was far from evenhanded, however. From the beginning most papers favored the cause of constitutional revision and sought to “sell” the Philadelphia Convention to the public through adroit news management. Editors suppressed reports of conflict among the delegates, praised their patriotism and integrity, and urged readers to approve in advance whatever plan of government the group might devise. Once the details of the new Constitution became known, opponents often found it difficult to publish their arguments in major papers. Nevertheless, they did manage to communicate their objections, with sometimes striking results. The ratifying vote was close in such key states as Massachusetts, Virginia, and New York, where Antifederalists forced their adversaries to approve proposed amendments that would establish a federal Bill of

Rights. Gradually, as the ratification process gained momentum, the rancor and paranoia that had characterized debate on both sides tended to wane.¹⁹

By the end of July 1788, when the eleventh state had endorsed the new Constitution, it had already begun to assume the status of a sacred text, comparable in importance to the Declaration of Independence as a symbol of national unity. Parades and other civic rituals celebrated the accession of each new state to the Union, and the festivities grew in size with each announced ratification. A high point occurred with Philadelphia's "grand federal procession" on July 4, 1788, which brought together all social classes and occupational groups in a massive demonstration of support for the new system. One float, titled *The Constitution*, featured three judges of the state supreme court in their official robes, sitting "in a lofty ornamental car, in the form of a large eagle, drawn by six horses, bearing the constitution, framed, and fixed on a staff, crowned with the cap of liberty. The words, '*the people*,' in gold letters, on one staff, [appeared] immediately under the constitution."²⁰ Ministers from various faiths, including a rabbi, marched together in one division. The entire procession, noted Catherine Albanese, constituted "liturgy in the fullest sense," as Americans expressed a shared faith in the "religion of the republic and the Constitution, its most cherished sacrament."²¹

To Fourth-of-July orators, the adoption of the new Constitution provided an occasion for reassessing the legacy of the American Revolution. Populist violence was no longer a necessary or legitimate means of bringing about important political change, speakers now asserted. The work of the Philadelphia Convention offered an alternative model of "peaceful revolution" that better reflected the values of a free republican society. As Simeon Baldwin told a New Haven audience in 1788, the new system owed its establishment to an unprecedented exercise of popular sovereignty:

Revolutions in government have in general been the tumultuous exchange of one tyrant for another, or the elevation of a few aspiring nobles upon the ruins of a better system. Never before has the collected wisdom of any nation been permitted quietly to deliberate and determine upon the form of government best adapted to the genius, views and circumstances of the citizens. Never before have the people of any nation been permitted candidly to examine and then deliberately adopt or reject the Constitution proposed.²²

Other speakers similarly applauded peaceful constitutional change as a remedy for social unrest, sounding a theme that had already appeared in some journals during the suppression of Shays's Rebellion.

The mood of euphoria that greeted the installation of the new federal government in 1789 proved short-lived, however. Divisive issues of domestic and foreign policy soon arose to spur the formation of political parties and to rekindle the old debate between Federalists and Antifederalists. From the 1790s to the Civil War two major groups of constitutional commentators sought to influence public opinion through their writings. Legally trained publicists from New England and the middle states espoused a national-will theory of government to justify the expansion of federal power, while southern lawyers and statesmen formed a state-compact school of constitutional interpretation that championed decentralization and state sovereignty. Each group approached constitutional issues in a formal and mechanistic way, and relied on close textual analysis to support its position.²³

Joseph Story became the preeminent spokesman for the nationalists following the publication of his magisterial *Commentaries on the Constitution of the United States* in 1833. An associate justice of the United States Supreme Court, Story argued that the American people, acting collectively, had divided sovereign power between the nation and the states and established the Constitution as the supreme law of the land. While the states retained control of their internal affairs, Congress might properly draw upon a broad range of implied powers in carrying out its authorized functions. The Constitution, moreover, had created a permanent Union, whose basic features could be changed only by resort to a prescribed amending process. In the absence of such amendment, the Supreme Court remained the final arbiter of federal-state disputes through its power of judicial review. Story's nationalist model of constitutionalism, which influenced lawyers and judges through the rest of the century, reached a wider antebellum audience as well through several abridged editions aimed at students and general readers.²⁴

By the time Story's *Commentaries* appeared, southern constitutionalists had refined and hardened their defense of state sovereignty. In their view, the Constitution was a compact entered into by equal and sovereign states for limited purposes. The federal government, as agent of the states, could exercise only those powers expressly granted to it. If Congress should enact a law that exceeded its constitutional authority, argued the South Carolina statesman John C. Calhoun, a state might call a special convention

S
R
L