



## Declarations, Cobb Houses and constitutions



By Robert J. Brink



“This Day,” John Adams wrote from Philadelphia to a friend in Boston, the Continental “Congress has passed the most important Resolution, that ever was taken in America.”

Two days later, Adams wrote that it was

a declaration of “total absolute Independence.” He likened himself to Moses, the lawgiver leading his oppressed people to freedom in the Promised Land.

“I feel Awe upon my Mind,” he confessed to his wife, Abigail.

Several days after that, Adams witnessed 4,000 people in Philadelphia rallying for a new state constitution, an essential step in America’s long march to independence.

### Actions speak louder than words

No, the liberating document that so animated Adams was not the *Declaration of Independence* that we celebrate today with fireworks and fanfare.

Rather, it was a two-paragraph statement that Adams had harangued the Continental Congress to pass, and was finally, but narrowly, adopted on May 15, 1776, two months before the more famous July 4th Declaration.

Actions speak louder than words. Establishing new governments was, for Adams, the definition of independence.

Toward that end, the Congress on May 10 unanimously agreed on the Resolution’s first paragraph, which — without a hint of the painfully obvious hostilities — freed the colonies to set up new governments.

Such an apolitical statement was not acceptable to Adams.

### In one stroke

So he drafted a preamble that charged “his Britannic Majesty” with ignoring the “humble petitions ... for redress of grievances and reconciliation with Great Britain,” and, worse, with exerting the “whole force of that kingdom ... for the destruction of the good people of the colonies.”

Allegiance to Great Britain was therefore “irreconcilable to reason and good Conscience.” Adams went further, asserting that the Crown’s authority should be “totally suppressed.”

“In one stroke,” as G. Edward White put it, “Adams had proposed the end of monarchy and the beginning of republicanism in America.”

### Cobb Houses

On July 7, Adams exclaimed that the colonies were engaged in “erecting Governments, as fast as Children build Cobb Houses.”

By the end of 1776, eight colonies had already adopted new constitutions, followed in 1777 by two more, and another in 1778.

“Nothing in the years surrounding the Declaration of Independence — not the creation of the Articles of Confederation, not the military operations of the war, not the making of the French alliance — engaged the interest of the Americans more than the formation of their separate state governments,” Gordon Wood explains of that wondrous time.

“A situation similar to the present,” Thomas Paine marveled in *Common Sense*, “hath not happened since the days of Noah until now. The birthday of a new world is at hand.”

Although Paine’s imagery of a new world was inspiring, his ideas for new constitutions were anathema to the colonial aristocracies distrustful of democracy.

There were two waves of state constitutions, the first of which was led by the influential Pennsylvania Constitution, adopted

in September 1776. It was premised on the alluring, but simplistic, advice of Paine (a prominent inhabitant of Pennsylvania) to create uncomplicated governments with universal suffrage and unicameral legislatures.

But the result in Pennsylvania, as Robert J. Taylor recounts of this leading wave of American constitutionalism, was “the most dangerously democratic constitution of the Revolutionary period” — a tsunami that threatened to crash ashore in other states, including Massachusetts.

“The rich having been used to govern, seem to think it is their right,” the *Pennsylvania Evening Post* wrote of elites whom the state constitution suddenly marginalized, leaving the supreme legislature susceptible to the mob mentality of the masses.

To have no checks and balances to curb possible mobocracy was abhorrent to Adams.

A month before the Continental Congress passed his May 15 Resolution, Adams wrote *Thoughts on Government* as a rebuttal to Paine’s radicalism. “I think a people cannot be long free, nor ever happy,” Adams warned, when a “single Assembly, possessed of all the powers of government, *make* arbitrary laws for their own interest, *execute* all laws arbitrarily for their own interest, and *adjudge* all controversies for their own favor.”

### Berkshire Constitutionalists

The radicals who won control of Pennsylvania’s new state government were dubbed “constitutionalists” — a term associated with disruptive militants whose movement migrated to other states.

The constitutionalist creed was especially influential in western Massachusetts, where the “Berkshire Constitutionalists” bedeviled the conservative ruling class in Boston.

Their leader, the Rev. Thomas Allen from Pittsfield, frequently quoted Paine’s *Common Sense* in his fiery sermons throughout

the western counties. He was willing to risk life and limb to prevent a constitutional coup d'état by the old colonial ruling class.

Among his populist demands was the formation of a constitution by the people, not the General Court, proclaiming that "a representative body ... cannot impose said fundamental constitution upon a people, as they, being but servants of the people, cannot be greater than their masters."

Following the standard practice in other states, whose elite legislatures "enacted" new constitutions, the General Court refused to concede to revolutionary demands that might lead to a populist unicameral legislature.

Such intransigence inflamed the constitutionalists to rise up in revolt.

They "all curse the government [and] say they are abused more by the General Court than the Parliament," a conservative aristocrat complained of uppity commoners with "no education, character, estate, breeding or family."

There are two sides to every story. Both had merit. But neither was interested in mediation, which led to a series of violent showdowns that Adams worried might escalate into civil war.

### **Woe is me if I preach it not**

John Adams' initial delight in the formation of new state governments quickly turned to dismay once he saw the influence of the Pennsylvania Constitution and the incipient rebellion at home.

"No Country, ever will be long happy, or ever entirely Safe and free, which is thus governed," Adams lectured in one of his many letters lambasting both Paine and the Pennsylvania Constitution.

So he did an about face. Although Adams initially had "encouraged other states to proceed quickly with the drafting of their constitutions," John Ferling notes, he "offered no such advice to his friends at home."

Quite the contrary: Advance "slowly and

deliberately," Adams repeatedly warned, while, at the same time, working to change the political climate in Massachusetts for an eventual constitution more to his liking — a conservative constitution based on little appreciated theories of "separation of powers" and "checks and balances" as bulwarks of liberty.

"There are So many Persons among my worthy Constituents who love Liberty better than they understand it," Adams lamented in 1777, "that I expect to become unpopular by my Preaching. But Woe is me if I preach it not. Woe will be to them, if they do not hear."

### **Epocha**

It took four tense and tumultuous years, from 1776 to 1780, before Massachusetts adopted its constitution.

It was the last constitution of all the original colonies, but today, as the oldest constitution in the world, the most lasting.

It was, in many ways, a "win/win" for both constitutionalists and conservatives.

The constitutionalists and like-minded reformers finally forced the General Court to relinquish all control. An independent Constitutional Convention, composed of delegates selected by the towns and with criteria based on that era's most enlightened notions of universal suffrage, controlled the drafting process.

"It forms a Kind of Epocha in the History and Progress of Society," Adams correctly declared when the convention completed its work, thereby setting the standard for constitutions to follow.

Ratification was also submitted to the towns, so that the final constitution was truly a consensual decision of "WE THE PEOPLE" — the profound opening phrase of the U.S. Constitution, which, Pauline Maier points out, was inspired by the Massachusetts Constitution of 1780.

The historical irony is that, although the drafting and the ratification of the Constitution of 1780 were the most democratic of all the states, the form of government that the

Constitution created was the most conservative of all the states.

Drafted by Adams, it embraced the theory of separation of powers and established a fail-safe system of checks-and-balances: a two-house legislature, a strong executive with veto power, and an independent judiciary.

### **Perfect Constitution**

On July 4 we celebrate the inspiring words penned by Thomas Jefferson in the *Declaration of Independence*. We also should contemplate the less confident words he wrote on May 16, the day after the Continental Congress narrowly approved Adams' now forgotten preamble.

Although making new state constitutions was the "whole object of the present controversy," Jefferson warned that "if bad governments be instituted," it would be better to have accepted "the bad one offered to us from beyond the water without the risk and expense of contest."

The Massachusetts Constitution of 1780 represented the definitive second wave of American constitutions, washing away the failed and faulty constitutions of Pennsylvania and all of the other states that, as Jefferson cautioned, could have doomed the American experiment.

Cobb Houses, after all, were built of mere mud and straw. The country needed a stronger foundation for it to flourish.

In his Pulitzer-Prize-winning book, *The Creation of the American Republic*, Gordon Wood praised the Massachusetts Constitution of 1780 as the "perfect constitution." Historians agree that both the federal Constitutional Convention of 1787 and the U.S. Constitution of 1789 emulated the exemplary examples set in Massachusetts.

Adams was right. Fulfilling the promise of the *Declaration of Independence* depends on the enduring strength of our constitutional system. It, too, deserves some "high-fives" as we grill our hotdogs and hamburgers in celebration of July 4th. **MLW**