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Numero 10 - 2014

ISSN: 1825-411X

Art. 33

pp. 1-15

DOI: 10.12977/stor581

Editore: BraDypUS

Data di pubblicazione: 30/12/2014

Sezione: Fonti e Documenti

Dossier: Angela De Benedictis (ed.), *Rebellion, Resistance
and Revolution Between the Old and the New World: Di-
scourses and Political Languages*

Insurrections, Bank and Private Contracts:

How Society shaped the Constitutional Order during the American Revolution

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Looking at the revolutionary context of Pennsylvania, the essay analyzes the continuous movement of rebellions during the American Revolution in order to highlight the process of institutionalization of the constitutional order, namely the changeable power relationship that shaped society. The essay reconstructs: 1) the battle for free trade and freedom of property and the resulting rising of the mercantile class as a national elite; 2) the mercantile political project of ordering society by creating a national system of public credit based upon the institution of the public debt and the foundation of the first national bank; 3) the vicissitudes of the bank by analyzing Dissertations of Government, the Affairs of the Bank and Paper Money (1786), one of the most underrated pamphlets of Thomas Paine. By this way, the essay shows how the principle of popular sovereignty and the language of rebellion were intended to be institutionalized as part of the constitutional order that was formalized in 1787-88.

Il saggio analizza i movimenti di ribellione verificatisi durante tutto il periodo della Rivoluzione americana, con particolare attenzione al contesto rivoluzionario della Pennsylvania, allo scopo di evidenziare il processo di istituzionalizzazione dell'ordine costituzionale e in specifico le mutevoli relazioni di potere che diedero forma alla società. Il saggio ricostruisce: 1) la battaglia per la libertà di commercio e di proprietà, e il conseguente sorgere della classe mercantile come élite nazionale; 2) il progetto politico mercantile di ordinamento della società attraverso la creazione di un sistema nazionale di credito pubblico basato sulla istituzione del debito pubblico e la fondazione della prima banca nazionale; 3) le vicissitudini della banca attraverso l'analisi di uno dei più sottovalutati pamphlet di Thomas Paine, Dissertations of Government, the Affairs of the Bank and Paper Money (1786). In tal modo il saggio mostra come si intendesse istituzionalizzare il principio della sovranità popolare e il linguaggio della ribellione in quanto parte dell'ordine costituzionale formalizzato nel 1787-1788.

Introduction

Historiography has addressed the question of rebellion during the American Revolution by focusing mainly on two specific moments of the founding of the United States: the protests against imperial taxation that led to the *Declaration of Independence*; and the insurrections that preceded and succeeded the national convention and the ratification of the federal Constitution. In the first case, historians have showed that the Jeffersonian *Declaration* elaborated the Lockean theory of legitimate resistance by appealing to the natural rights of man, that Jefferson considered as self-evident truths, by referring to the Scottish Philosophy of Common Sense. In the second case, historians have reconstructed the Shays' and Whiskey Rebellions in order to underline their role in catalyzing sentiment against what the national elite defined as an «excess of democracy», «tyranny of majority» or «anarchy».

The two rebellions offered examples of the possibilities and the perils of the language of rebellion and the principle of popular sovereignty that were spread by the *Declaration*. The farmers of the western counties of Massachusetts and Pennsylvania proclaimed themselves to be the true heirs of the Revolution. Like the patriots, they said, they opposed unjust taxation levied by a distant and unresponsive legislature. They voiced their objections through peaceful protests, including petitions and instructions to the assembly, and the calling of county conventions. Like the revolutionaries of 1776, they resorted to more violent measures – such as closing courts and taking up arms – only when previous efforts failed to bring redress of their grievances. On the contrary, the national elite leading the reaction to the insurrections conceived that, while a revolt against a monarch could be justified in the last resort, the overthrow of a representative government could never be sanctioned. By circumventing representative institutions and procedures, extralegal popular action threatened the very basis of the *Declaration*, namely the principle of popular sovereignty. Thus, both the Shays' and Whiskey Rebellions became a symbol of the need for a stronger Union throu-

ghout the United States. The state militias that President Washington called into national service against the «whiskey rebels» issued a warning to all who invoked insurrection against the new constitutional order.¹

In this view, such events were considered as isolated constituent moments that explained the *Declaration of Independence*, the drafting of the federal Constitution and the effective supremacy of the Union. However, Americans rebelled on numerous occasions during all the revolutionary age, particularly during the Eighties, the so-called “critical period” of the Revolution. Far from agreeing with the national elite that the thirteen state governments suffered from an «excess of democracy», a large segment – farmers, artisans and journeyman – of society considered the states not attentive enough to the will of the majority. They heavily influenced state legislatures and courts through extra-legal actions in order to regulate commerce, control prices, seize properties and bring about debt and tax reliefs: they “used” representative institutions in order to force legislatures at local and state level to their will.²

Looking at the revolutionary context of Pennsylvania, I will briefly reconstruct this continuous movement of rebellions and its ongoing relation with Congress and state legislature in order to cast light on the social and political forces that fueled the making of Union. From this perspective, I will pay less attention to the drafting of the federal Constitution in the national convention – that is to say the constitution as a written text – than to the very basis of the process of institutionalization of the constitutional order during the Revolution, namely the changeable power relationship that shaped society. First, I will reconstruct the battle for free trade and freedom of property and the resulting rising of the mercantile class as a national elite. Second, I will analyze the mercantile political project of ordering society by creating a national system

¹ Hogeland 2006; Richards 2002; Gross 1993; Slaughter 1986. See also Onuf 1987.

² Among the recent, most important literature: Martin 2013; Bouton, 2007; W. Holton 2007.

of public credit based upon the institution of the public debt and the foundation of the first national bank. Third, looking at the vicissitudes of the bank through *Dissertations of Government, the Affairs of the Bank and Paper Money* (1786), one of the most underrated pamphlets of Thomas Paine – author of the bestsellers *Common Sense* (1776) and *Rights of Man* (1791–1792), I will show how the principle of popular sovereignty and the language of rebellion were intended to be institutionalized as part of the constitutional order that was formalized in 1787–88 [Battistini 2012].

The Rising of the Mercantile Class

Faced with the economic crisis of the American Revolution – the problematic funding of the war and the necessary printing of paper money, which highly depreciated the continental currency causing prices of commodities to soar – a campaign for price regulations was launched during the first year of the war. The program was initiated by the Northern states, acting together in regional conventions, which had popular support. In 1779, the depreciation of paper currency was mainly responsible for the renewed demand for regulation by town meetings. The city of Philadelphia led this new wave of regulation. On May 12th, the First Company of Philadelphia Artillery presented a memorandum to the city assembly, reviewing the rise in prices since 1776 and referring to possible popular actions. As the threat of violence mounted, the radical leaders of Philadelphia called for a mass meeting on May 25th. The meeting appointed a committee to carry out price reduction. Intended to work as «discretionary power [...] for the redress of temporary evils» [*Pennsylvania Packet*, June 29, 1779], the committee could exceed constitutional bounds and interfere in economic exchanges. In the September 10th extraordinary edition of the *Pennsylvania Packet*, the committee argued that free trade had de facto implied «a right to extort

and a power to enforce that extortion». For the merchants, «freedom of trade» had meant «freedom of extorting [...] forestalling, monopolizing and engrossing». The committee declared these practices to be «repugnant to every principles on which society and civil governments are founded» [*Pennsylvania Packet*, September 10, 1779].

At the end of August 1779, Philadelphia merchants demanded the repeal of regulation. Their memorandum – signed by merchants and lawyers such as Robert Morris and James Wilson – emphasized the argument that «the limitation of prices is in the principles unjust, because it invades the law of property, by compelling a person to accept less in exchange for his goods». It represented the merchants' first attempt to assert their vision of society and conception of individual freedom:

It is true they [merchants] were prompted by the love of gain, but whatever may have been the cause, the effect certainly was to relieve the necessities of the people [*Pennsylvania Packet*, September 10, 1779].

By setting love of gain at the very center both of individual freedom and general welfare of the people, merchants could justify free trade as not only more efficient, but also more just than any other scheme of regulation. Moreover, they could demand a leading role in economy and society for themselves. By claiming their superior degree in society, they aimed, in turn, to raise their level of national political leadership. In several writings (*Essays on Free Trade and Finance*, 1779; *Dissertation on the Political Union and Constitution of the Thirteen United States of North America*, 1783), Pelathia Webster, one of the signers of the memorandum, voiced the merchants' economic and political ambitions by arguing that there was no «another body of men, whose business of life, and whole full and extensive intelligence, foreign and domestic [...], and whose particular interests are more intimately and necessarily connected with the general prosperity of the country».³

At the end of September 1779, by refusing to sell goods at fixed pri-

³ Webster 1791, 216.

ces, Philadelphia merchants forced the Committee to stop its activities. The demise of the city Committee and the reluctance of the state government to take effective action set the stage for the “Fort Wilson Riot” of early October 1779. With the failure of institutional channels for the expression of popular grievance, resentments against the merchants exploded into insurrection. On October 4, a militia group began to march into the center of the city, making its way to the house of James Wilson, the rich merchant and important lawyer who later became a member of the national convention and Supreme Court justice. The insurrection was suppressed by state government troops. The riot can be considered a turning point: it split rural farmers groups from urban artisans groups, and – most importantly – the radical leadership of Pennsylvania politics from popular activity, it set therefore the tone for the rise of the mercantile class.⁴ What result was the crystallization of sentiment among members of the Continental Congress in favor of free trade, and the emergence of Robert Morris as the political leader of the national mercantile elite. The proposal – advanced by Webster among others – of appointing a Superintendent of Finance was adopted. In May 1781, the Continental Congress elected Morris as Superintendent.

The Mercantile Political Project of National Finance

The Superintendent’s *Report on Public Credit* of July 29, 1782, most clearly expressed the political project of the mercantile elite.⁵ The plan took up the question of how best to found a new State in the world of European States. Funding the war was not simply a national problem,

⁴ For a detailed reconstruction of the Fort Wilson Riot: Rosswurm 1987.

⁵ For a more detailed reconstruction of the mercantile project of national finance in an atlantic perspective, also in relation to role played by Alexander Hamilton in the early American process of state-building: Battistini 2013.

Morris suggested. The economy of the American nation had to be considered in the context of the international market. Given the war against the British, the need for loans, both domestic and foreign, was more and more pressing. But, American citizens and foreigners – moneyed men and governments, in particular the French and Dutch – would trust Congress with money only if they were certain of being repaid. Morris proposed therefore to center the states' war debts in the Continental Congress. Following the experience of Eighteenth century England, he aimed at funding debt by committing taxes to pay the interests on the debts without an obligation to discharge the principal. Merely by paying interest regularly, new monies from domestic and foreign creditors could be expected.

Yet, there was an obstacle to this plan. This method of funding public debt would increase the power of Congress, power that was restricted by the Articles of Confederation. Morris advanced therefore a two-fold reform that would shape both politics and society. On the political end, the reform added political centralization to a vision of society based on free trade. The reform aimed at giving Congress the power to collect federal taxes, starting with a federal duty on imported goods – the five per cent duty. At stake was the definition of an essential feature of national statehood, the power of taxation. On the end of society, the method of debt payment was integrated with the incorporation of the first national bank, the Bank of North America.

Funded by French loans and American merchants' subscriptions, the bank was more than just a commercial bank for private transactions. It was also intended to serve as a national bank, holding government funds and issuing notes that Morris hoped would serve as medium of exchange. When Congress incorporated the subscribers by recognizing them as a corporation «able and capable in law», it gave them de facto power to control both money lending and the quantity of money in circulation. Thus the bank could do more than manage the war debt. In his *Report*, Morris argued that the bank was positioned to «distribute pro-

erty into those hands which could render it most productive». As Morris explicitly pointed out before the Congress, the bank «would supply the Want of Credit to the mercantile Part of Society» [Morris 1793–99, 6:62–63, 70]: regular interest payments would put capital into the hands of the merchants who were the creditors of public debts and making the debt transferable would create a market, nation-wide in scope, for intangible property, thus solving the problem of a lack of credit. This explains why, from his point of view, no distinction should be made between investment and speculation, because the accumulated funds of intangible property would serve as capital that would be invested, thus creating more wealth in which the larger population would ultimately share [6:56–58]. The mercantile interest would then become the general interest of the nation.⁶ In this specific sense, the system of public credit would outline the first political frame of national statehood that would legitimate and consolidate the accumulation of capital scattered across society.

It is worth noting that Morris defined such a system of public credit as a «Method of Administration». It was not only a matter of economic accounting. Most important, it would have a constituent political meaning because – as the Superintendent explained by official recommendations addressed to the state governors – the administration of the public debt would be a «source of trust and confidence». In his mind, the word *trust* referred to the Lockean theory of the relationship between government and proprietors (in this case the proprietors were the creditors of the public debt), and the word *confidence* was related to the individual hope of gain in commercial exchanges and financial transactions. The method of administration was therefore intended to foster both trust between the government and the creditors, and *confidence*, not only among creditors, but also among debtors and all other economic forces of society. Thus, *trust* and *confidence* were perceived as the necessary social and political

⁶ On the concept of interest in the making of the Union: Matson and Onuf 1990.

condition to establish an informal, but effective constitutional order that would neutralize the principle of popular sovereignty and the language of rebellion: the system of public credit and its method of administration were the double institutional solution to the problem of overcoming the «inevitable unruliness of a great revolution».

In his opinion, the government would be obeyed and the society would be ordered only if the system of public credit would be shaped by, and would shape, the power relationship that marked society, namely only if the supremacy of mercantile interest and the mercantile principles of free trade and freedom of property would be institutionalized in the very practices of the national finance: because the depreciation of paper currency and the rising inflation both have caused popular protests and have discouraged merchants' economic activities, the method of administration would favor the pursuit of private interest and would restore «Harmony and Confidence» both «among Men on private Credit» and in the national government: «Being more Respectable», national government would consequently be «better obeyed» [Morris 1973–99, 1:397–400; 3:84–88; 4:376].

We can therefore conclude that the national system of public credit not only consolidated mercantile interest and the rising of mercantile national elite, but it also established an effective – although not formally framed – constitutional order, paving the way for the making of the Union. But, in order to move from the Confederation toward the federal Constitution, such mercantile national elite should again face popular revolts, such as the one that led to the dismantling of the national bank in Pennsylvania.⁷

⁷ On the national mercantile elite and the federal Constitution: Ferguson 1969; 1961.

The Government and the Affair of the Bank

Starting in 1784, a new wave of popular protests, in particular by the farmers of Pennsylvania's western territories, forced the state legislature to issue policies of price regulations, tax and debt relief. Moreover, a new committee was instituted for the control of the economy. The committee presented the Assembly with a document in which it was argued that the national bank was responsible for the «accumulation of enormous wealth.» The document denounced that its financial transactions had consolidated a strong «mercantile interest» by exerting influence on the economy: reducing the supply of money; restricting credit; raising interest rates and making it more difficult for debtors to get out of debt while ensuring that creditors received a substantial return on what they had loaned. Some men were forced to sell their property to cover their debts, others saw their property foreclosed on. The restriction of credit limited access to capital to a small circle of merchants, and frustrated workers' ambitions to achieve economic independence by acquiring land or a workshop [Paine 1945, 2:387-388].

The mercantile class answered the document by publishing pamphlets in which it was argued that the repeal of the law, which had established the bank at state level, represented a constitutional problem: how to conjugate the revolutionary principle of popular sovereignty with the need for a nationwide method of administration.⁸ One of the most important pamphlets was *Dissertations on Government, the Affairs of the Bank and the Paper Money* (1786) in which Thomas Paine answered the farmers' leaders by addressing the question of rebellion. John Smilie and others, who later would be protagonists of the antifederalist campaign against the ratification of the Constitution, argued that, because the bank favored an «extreme accumulation of wealth» which was against «democracy,» rebellion was legitimate. In order to oppose such arguments, the

⁸ Wilson 1785; Webster 1786.

first part of the Dissertations was dedicated to a theoretical reflection on sovereignty and rebellion. Paine argued that any government was based on an uncontrolled power that controlled everything, namely the sovereign power. What changed was therefore where sovereignty rested: while in despotic monarchies sovereignty was the title of the crown, in republics it belonged to the people. However, popular sovereignty did not imply an “indiscriminate use” of political power. It instead implied a “constitutional and legal” method.

Paine explained that power should be exerted only in accordance with specific rules laid down by the Constitution: from below, through representation, namely «electing and deputing a certain number of persons to present and act for the whole»; from above, through «the administration of the republic» that should be directed by principle of «right and justice» in order to achieve the «public good». Paine explained that public good was not «a term opposed to the good of individuals», but it was «the good of every individual collected». From this perspective, the legislature could not only enact general laws that «have universal operation, or apply themselves to every individual». The legislature could also issue acts that operated in certain cases and on some parts or groups of society, namely it could negotiate agreements and contracts with individuals or associations to fulfill purposes related to the general interest of the nation, as in the case of the bank. In this view, the «public business» of government was to connect and accommodate the conflicting interests of society by the legitimate procedures of representation and administration. This double movement, from above and below, explained the political difference between monarchy and republic. While rebellion against the crown was legitimate, in the republic rebellion was illegitimate: the continuous process of institutionalization of social and economic practices and interests through the system of representation and administration left «no room for insurrection, because it – such system – provides and establishes a rightful means in its stead» [2:368-372, 375-376].

Looking at the affair of the bank from this theoretical standpoint, Paine denounced the fact that the popular protests forced the state Assembly to issue policies – not only the repeal of the bank law, but also measures for price regulation and tax and debt relief, such as the issue of paper money – that impaired private contracts. Such policies gave to the state government too much power, namely the power to violate the right of property: «there can be no such power in a republican government, the people have no freedom, and property no security where this practice can be acted» [2:374, 380–381]. Since no law could revoke a private contract, such acts were to be considered as «unconstitutional» and possible disputes about the contracts ruling the financial transactions of the bank should be under the jurisdiction of courts [Ford 1998; Foner 1977]. In this view, Paine elaborated the same threefold constitutional argument that it could be read in the pamphlets of the mercantile class, such as *Considerations on the Bank of North America* (1785) by James Wilson: the supremacy of the continental law that instituted the bank on the law that incorporated the bank at state level; the primacy of the constitution on the law and the principle of constitutionality; the competency limit of legislative power and the role of judiciary in ensuring private contracts and property rights. The repeal of the state law of the bank forced therefore Paine and the mercantile class to elaborate a constitutional conception of the Union more fully and coherently than ever before, paving the way to the overcoming of the confederal boundaries to the national sovereignty.

In conclusion, by reading Paine's *Dissertations* in the broad context of continuous popular insurrections, the foundation of the United States appeared as a conflicting process of institutionalization of social and economic values (free trade and freedom of property), practices (financial transactions, credit and debt) and interests (landed and mercantile) both at state and national level. From such a perspective, an effective constitutional order emerged before its formal definition in the federal Constitution of 1787. In this specific sense, one can speak of "constitu-

tion as process”: a political process that shaped and was shaped by the changeable power relationships of society; that absorbed the revolutionary principle of popular sovereignty and the language of rebellion into “rightful” representative and administrative procedures; and – most importantly – opened constitutional room for legitimating the mercantile political project. The federal Constitution did not only restrict the range of states’ power on commerce and enlarge both the constitutionally protected domain of human economic agency and the sovereign national power of regulating domestic and foreign market [Edling 2003]. The national convention also resolved to write creditor language into the Constitution by prohibiting the states from rescuing debtors and violating private contracts (Article I, Section 10). In this specific sense, the mercantile class played a crucial role in translating «the inevitable unruliness of a great revolution» into «constitutional and legal reason».

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