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## *The Reality of the Constitutional Vision of Thomas Paine*

Thomas Paine was not included into the galaxy of the Founding Fathers although that is where some of his biographers placed him.<sup>110</sup> Neither did he participate directly in the formulation of the 1787 Constitution or its propagation. At the time the Convention was starting in Philadelphia, he was already in Europe. He did neither take part in the Convention with famous politicians, nor with leaders of the patriot groups who were struggling for the independence of the United States, such as John Adams, Thomas Jefferson, and others known from the Congress debates.

The constitutional vision of 'the great absentee' exerted, however, a powerful impact on the debates of Congress. Great credit should be given here to Thomas Paine, who exhorted his fellow-citizens to abolish the British rule, while presenting his conception of the future Union. In Thomas Paine's vision presented in his pamphlet *Common Sense* (1776), America was to begin a new era in world history. Its government, compatible with the theory of natural law and rationalism, was to guarantee freedom and rights for individuals and for the whole nation. His famous statement was: 'The cause of America is in a great measure the cause of mankind.'<sup>111</sup>

The earlier conflict between Great Britain and its overseas colonies boiled down to the interpretation of the constitutional rights to which their inhabitants were entitled. They opposed the rights of British Parliament to issue official acts valid in America (Stamp Act, Declaratory Act). The incidents near Boston radicalized attitudes of both sides. Nobody questioned, however, the principles of the political system, shaped as a result of the 'Glorious Revolution,' which, at the time in Europe, was considered the model political system.<sup>112</sup>

Thomas Paine challenged that basic paradigm of his time and launched an attack on notions glorified by tradition. In introducing a distinction between society and government, Paine was abolishing a myth about the harmony, which supposedly was reigning between society and the British government since the time of the 'Glorious Revolution.' He submitted the British system to his total critical examination. According to him, the hereditary power of the king and lords was undermining the principles of

the sovereignty of the people – leading to despotism, tyranny, and wars. Such a tyrant was George III. Monarchy and heredity were considered by Paine to be a constitutional error. Society had a right to overthrow its unworthy ruler and create its own government, he claimed. ‘Our own government is our own natural Right.’<sup>113</sup> Sovereignty in this approach is an attribute of society and not of government.<sup>114</sup>

Thomas Paine demanded immediate proclamation of the Declaration of Independence, which, as an act legally adopted by Congress, would constitute a document of America’s own national sovereignty and a guarantee of citizens’ rights. Such a document would pave the way for establishing external relations allowing Americans to obtain economic independence from the metropolis. More than half a year was to pass before the decision about gaining independence was taken. *Common Sense* caused that it became inevitable, prepared minds for it, and exerted a direct influence on the content of the Declaration drafted by Thomas Jefferson.<sup>115</sup>

As a political thought theoretician, Thomas Paine was rejecting hereditary power, the principle of its three-tier division, and its aristocratic and monarchical elements. From the British system he accepted only its republican elements represented by the House of Commons. Under American conditions, its role was to be played by Congress – the representation of the sovereign nation.

Let us pass now to the constructive elements of his constitutional vision. It was to be the world’s first realization of an Agreement by the people, to be drafted immediately after announcing independence. Not Great Britain but America would give the world a proper constitutional system. ‘We have it in our power to begin the world over again ... The birthday of a new world is at hand.’<sup>116</sup> Awareness of the crucial character of the events was deeply rooted in the public opinion. It is expressed in an inscription introduced to the Great Seal of the United States, *Novus Ordo Seclorum [new order of the ages/worlds]*.

The Constitution was to be a guarantee for preserving natural rights by society. It was to be a written document – the *Magna Carta Libertatum* – which was called *Continental Charter* by Paine. This document of highest rank was not to be drafted by the already debating Congress but by a special Constitutional Convention composed of delegates from each colony – members of the assemblies and delegates elected directly by all people – a combination of ‘Knowledge and Power.’<sup>117</sup> The day on which the Constitution would be proclaimed was

to be an especially solemn and festive day.

Years later he would return to the same subject, 'A constitution is not the act of its government, but of the people constituting a government, and government without a constitution is power without a right.'<sup>118</sup> Among fundamental natural rights, which should be guaranteed by the Constitution, he included the individual's right to liberty, property, and freedom of worship. The right to property was synonymous with the restrictions of the government's powers in the field of taxation.

The proposals concerning the structure of the future state were misty and utopian in 1776; but the main principles and ideas made their way into the consciousness of ordinary citizens. Among the most important of them was the idea of republicanism. Paine equipped the concepts of 'republic' and 'republicanism' with their new meanings. Historian Gordon S. Wood claims that until the year 1776 – and even later – these were terms with pejorative undertones. They were associated with memories of Cromwell's dictatorship. The writers in the Age of Enlightenment took an undecided stance towards republicanism. After all, the republics known from history had either collapsed, succumbed to rules of despots, or transformed themselves into governments of aristocratic oligarchies (Venice, Switzerland, Holland). Paine inspired the American society with faith in the republican system of government and unwillingness to monarchy. Implanting the spirit of republicanism or, in other words, *The Spirit of Seventy Six* into society along with the principle of sovereignty of people and the Union of the United Colonies, could be attributed, to a large extent, to Thomas Paine. *The Spirit of Seventy Six* was an appeal for national sovereignty, liberalism, and democracy.

Independence was to be decided upon through a referendum in each Colony, and each of them was to have the right to draft its own constitution. The Congress proposed this mode of deciding about the national future on the motion of John Adams. The most significant prerequisite of these decisions was to preserve the Union of Thirteen Colonies represented in Congress. The supreme authority of the Union was to remain with the one-house Congress. According to Thomas Paine's proposal, it was to be a congress-giant composed of representatives of all colonies in equal numbers. As a condition of egalitarianism, the author did not accept area or population size, but a geographical criterion. Provincial Assemblies were to subordinate themselves to decisions of the Congress.

The new State was to be a republic or, rather, a federation of republics. The king's place was to be taken by law, while law at each level was to be the people's will in Rousseau's sense. In Thomas Paine's conception, the term 'republicanism' was synonymous with the term 'democracy.' He voiced also in favor of eligibility for all adult men. That was a novel solution unknown in modern Europe. The elected President of the Union, or rather of Congress, was not to be the Chief of the executive authority. All power should belong to Congress. It is a conception of power of the people (democracy) leaving no room for separation of powers and all the more so to check and safeguard their balance. Executive power, according to Paine, 'can be considered in no other light than as inferior to the legislative. Sovereign authority in any country is the power to make laws, and everything else is an official department.'<sup>119</sup>

The constitutional vision of Thomas Paine in his further writings was enriched by new elements:

- (a) Postulate about separation of the Church and the State
- (b) Postulate about the abolition of slavery
- (c) Postulate about the right for revision of the Constitution by future generations.

Each generation should have its right to amend the Constitution. The dead should not continue to govern from their graves. The same theses were advanced by Thomas Jefferson. Such a clause was introduced only into the Polish Constitution, adopted on May 3, 1791. It was one of the first constitutions in the late eighteenth century.

Thomas Paine was the first to formulate the name of the future State: *The United States of America*, and he supported firmly a close and inseparable Union. Moreover, he demanded a uniform federal citizenship. A state citizenship was considered by him to be an internal distinction.<sup>120</sup> He called himself a 'World Citizen.' The Republic was a 'Public Good,' he would explain.<sup>121</sup> Stable community and the Constitution guaranteeing the individual's rights would secure welfare for the country and create unlimited prospects for its development. Commerce and not politics or dynastic conflicts would ensure peace and security for the State and its concord with other countries.

In analyzing Thomas Paine's political theory it may be stated that it was a translation of the political philosophy of the Age of Enlightenment into an ordinary man's language. 'The power of Thomas Paine, though

political, was not so much in what he said but in how he said it.<sup>122</sup> Thomas Paine's constitutional vision crossed the Ocean and returned to his motherland. In Great Britain he is called the father of radicalism.<sup>123</sup> Indeed, in his polemic with Edmund Burke, Paine's views underwent a considerable radicalization. It was not Revolutionary France which he defended but instead he was proclaiming the universal revolution whose beginnings were the American Revolution and, in turn, the French Revolution. 'The Revolution in France is certainly a forerunner of the Revolution in Europe,' he wrote to Edmund Burke in January 1790.<sup>124</sup> He believed that the decaying British monarchy was drawing to its close and that the British people would become sovereign again. The French legislature included him among the honorable citizens of France. In 1792, as one of two foreigners (Klouts), he was elected to the National Convention and became a member of the Committee set up to draft the New Republican Constitution for France, which was headed by Danton. However, the members of the Committee made little use of the American model and ideas of Thomas Paine. He also opposed the bloody terror, being convinced – and he did not hesitate to voice the thesis – that abolition of the monarchy did not have to be combined with regicide.

In the opinion of the author of *Rights of Man*, the vision of sovereignty of the people and man's rights guaranteed by the Constitution were leading to brotherhood and universal peace. Thomas Paine believed that the War of Independence, although a just war, would be the last war fought by America. He also wanted to defend France from aggression by enemies of the Revolution; he was attempting to prove that republics were not inclined to aggression and war hostilities. He would give Poland as an example, which did not have a hereditary throne and fought far fewer wars than the hereditary monarchies.<sup>125</sup> According to him, a war was a whim of kings bringing misery and oppression of people. Such arguments can be found in the antiwar brochure *Prospects on the Rubicon* (1787) and in both volumes of *Rights of Man*.

Thomas Paine's ideas were taken over by the radical groupings of Great Britain in their publications. In the Bodleian Library, the collection of Undersecretary of State James Bland Burgess (Bland Burgess Papers), I found a leaflet printed in Leicester in September 1793, at the time that the war with France was already in progress.<sup>126</sup> The leaflet had been confiscated from a distributor of such leaflets, who was imprisoned immediately. The case was passed to the attorney-general, who ordered

an investigation to find its author, who was using the pseudonym 'Hampden.' It is a leaflet printed on both sides, of newspaper size, and similarly to a newspaper it was printed in two columns. The title consisted of one word in capital spaced letters with three exclamation marks: 'WAR!!!' It resembles a call-word, an appeal, and summons. Its content was a passionate protest against the war which already had begun with the Republic of France. Arguments against the war included a threat of poverty, unemployment, decrease in production and trade. Here is a quotation: 'Will the murder of some thousands of Frenchmen be any consolation under these calamities?' ... 'Will the reestablishment of Absolute Monarchy in France ensure our future peace with that country? Will the dismemberment of France secure us from a visit of that infamous Combination whose treacherous conduct in Poland we are (to our eternal disgrace) indirectly giving a sanction to? Will the Christian Religion become more respected in France when propagated under the auspices of cannon and bayonets!'

Propaganda values of this fervent leaflet are a testimony of the author's writing skills. Its content and argumentation are convergent with the theses of the author of *Common Sense* and *Rights of Man*. A suspicion fell on Benjamin Vaughan who left Great Britain under penalty of imprisonment, while Thomas Paine was already in France. Whoever the author of this remarkable leaflet was, it stands to record that Thomas Paine's thought, lively and permanent, was reflected in its content. Under the heading 'WAR!!!' there is a motto: 'War is the pharo-table of Governments, and Nations are the dupes of the game,' and further on, 'War's a game that, were their subjects wise, kings would not play at' (*Rights of Man, Writings*, v. 1, p. 191). The famous sentence of Thomas Paine, 'These are the times that try men's souls' (*The American Crisis*, No. 1) was placed under the heading of the second article, 'The Effects of War on Poor.'

Along with the changing theatre of the European revolution, the republican constitutional vision of Thomas Paine was subject to reinterpretation. Thomas Paine's internationalist and antiwar slogans became the repertoire of radical circles in Great Britain, and they were persecuted by law. At that time, the French Revolution abandoned also the internationalist concept and appealed to national, patriotic feelings. The World Citizen and Defender of Man's Rights became a prisoner of Robespierre.