

## ACCORDING TO THEIR GENIUS: AMERICAN POLITICS AND THE EXAMPLE OF PATRICK HENRY

by M. E. Bradford

*Dr. Bradford is associate professor of politics and literature at the University of Dallas. He received his B.A. and M.A. from the University of Oklahoma and Ph.D. from Vanderbilt University.*

*This presentation was given at Hillsdale College in the seminar of the Center for Constructive Alternatives which dealt with "The Roots of American Order."*

Even before the first of our bicentennial observations began, it was altogether predictable that their emphasis should fall more upon the *what* than the *why* of events transpiring during and prior to our original War for Independence. According to those responsible, no controversy could follow from this procedure. There is, however, a danger in submitting to such probability and neglecting to redress the balance of emphasis toward interpretation. For, try as we will, there is no honest way of making our salute to the revolutionary forefathers into a non-partisan event.

What they attempted and achieved embodied a political intention and a theory of the politically good. And no less than the New Left distortions of the People's Bicentennial Commission, the supposedly value-free and "factual" accounts of our received historiography which stand behind the rites and ceremonies of our official and federally sponsored celebrations obscure that intent and theory. Standing in the way of the recovery of legitimate precedent which I here recommend is, of course, the Second American Revolution of our Civil War. But that is another study.

The more immediate obstacles to our understanding of what American colonials intended by their official separation from the mother country are the unrepresentative sentiments of intellectually interesting but sometimes deviant revolutionaries, such as James Madison, Thomas Jefferson, Benjamin Franklin, and Thomas Paine. In their stead, we should concentrate upon the thoughts and actions of less curious men, such as John Dickinson, John Adams, and the taciturn Cincinnatus of Mount Vernon. And especially we should concentrate upon the thoughts and actions of that trumpet-voice of the Revolution—Patrick Henry of Virginia.

The great difficulty which we confront in reconstructing the thoughts of such active men as the Virginia Demosthenes is a paucity of detailed records and a shortage of that idol of the scholars, written documents. For it is a paradox of intellectual history—a paradox rooted in human nature—that the men positioned on the outer fringes of the great events of an age write the most and the most interestingly about them, and the men at their center almost nothing at all. Or at least since the Renaissance it has been the rule that the modernist and secular philosophers of change have left us a record of their speculations upon happenings with which they had very little to do. Letters, tracts, and pamphlets have furnished them with an outlet which the public world of action did not provide. Yet thanks to the scholars, usually men of their own kidney, they have had a final victory through interpretation, a victory which stands between us and the actual deeds of more moderate and less ingenious men.

It is reasonable to claim that Patrick Henry was the characteristic American spokesman during the Revolution, the epitome of Whig sentiment in that era. As a young man he first threw down the gauntlet of constitutional challenge in the celebrated Parson's Case (1763). His Stamp Act Resolves (1765) energized American resistance to usurpation in the thirteen colonies and led to the inter-colonial communication and cooperation which issued finally in the Continental Congress. And before the Second Virginia Convention of 1775, he drew his countrymen after him to face up to the logic of their situation and prepare for war.

After that peroration, for liberty or death, and after its general acceptance, not only by those present in St. John's Church but by a plurality of all Americans determined to resist the imposition of the royal

im•pri•mis (im-pri'mi)s adv. In the first place. Middle English, from Latin in primis, among the first (things)...

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prerogative through force, the Declaration of Independence was anticlimactic. Yet even in that development, Henry played a major role. For the document which young Jefferson composed in Philadelphia, effacing himself and speaking for representatives of the Commonwealths there assembled, had behind it the instructions of the various colonial legislatures: particularly the instructions of the Virginia Assembly drawn in the late spring of 1776 by or under the influence of their chief of men. I quote here the precise language of that instrument in the draft of Patrick Henry:

As the humble petitions of the Continental Congress have been rejected and treated with contempt; as the parliament of G. B. so far from showing any disposition to redress our grievances, have lately passed an act approving of the ravages that have been committed upon our coasts, and obliging the unhappy men who shall be made captives to bear arms against their families, kindred, friends, and country; and after being plundered themselves, to become accomplices in plundering their brethren, a compulsion not practiced among prisoners of war except among pirates, the outlaws and enemies of human society. As they are not only making every preparation to crush us, which the internal strength of the nation and its alliances with foreign powers afford them, but are using every art to draw the savage Indians upon our frontiers, and are even encouraging insurrection among our slaves, many of whom are now actually in arms against us. And as the King of G. B. by a long series of oppressive acts has proved himself the tyrant instead of the protector of his people. We, the representatives of the Colony of Virginia do declare, that we hold ourselves absolved of our allegiance to the Crown of G. B. and obliged by the eternal laws of self-preservation to pursue such measures as may conduce to the good and happiness of the united colonies; and as a full declaration of Independency appears to us to be the only honourable means under Heaven of obtaining that happiness, and of restoring us again to a tranquil and prosperous situation;

Resolved, That our delegates in Congress, be enjoined in the strongest and most positive manner to exert their ability in procuring an immediate, clear and full Declaration of Independency.<sup>1</sup>

The changes made by Edmund Pendleton and certain other delegates in the resolution conveyed to Philadelphia are not significant. And in that summer, no Virginia Whig would presume to contradict such instructions or rewrite them to mean something contrary to what their author intended.

Thus Patrick Henry *made* a revolution, though he did not write about one. And we would be generally at a loss to know what he intended through that making, except for the preserved recollections of his contemporaries and a very few documents: that is, had he not been drawn in debates over the

federal Constitution (1788) to reconsider those designs and purposes in public, with a stenographer at hand. In my opinion, there are few instruments more valuable to the student of our national beginnings than Volume III of Jonathan Elliot's *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*.<sup>2</sup> It is, of course, true that Henry stood in opposition to adoption in Virginia. But it is noteworthy that no Federalist opponent of his masterful performance disputes his interpretation of the history from which he argues. Nor do they deny him when he advances the prospect of certain innovations in the American system as hostile to and violations of the Revolutionary model. It is rather their point that the Constitution will be a means for preserving and perfecting a generally agreed upon heritage.



The Henry who was a better prophet than his antagonists is once again the subject of another essay. It is sufficient for our present purposes that he said a great deal about the Revolution in those heated Richmond debates, about its significance for the men who brought it to completion—many of whom were present; that they found his remarks to be unexceptionable; and that, together with the aforementioned recollections and occasional documents, they make available the original American political precedent—a precedent from which we presently diverge at our great peril.

#### Not a Revolution of Abstract Theory

What counts most about Henry's teaching in those Richmond orations is that it discourages in our generation all attempts to subsume the American struggle for independence under the general category of "revolutions of dogma and abstract theory"—revolutions such as have convulsed the Old World periodically since the decade of our own achievement of political identity. According to his son-in-law, the eloquent Judge Spencer Roane, the mature Henry "detested the projects of theorists and book-worms. His prejudices against statesmen of this character were very strong."<sup>3</sup> And these wise prejudices did suffer from considerable provocation during his thirty-five year experience of every sort of American politician, but more, at the end of his life, from over the seas. Patrick Henry did not think well of the rebellion they made in France. He wrote

a friend of our original ally that "her conduct has made it the interest of the great family of mankind to wish the downfall of her present government." In fact, he thought so ill of it that to oppose the spread of such influence on these shores he made common cause with his old enemies, the Federalists. If "everything that ought to be dear to man is covertly but successfully assailed . . . under the patronage of French manners and principles [and] under the name of philosophy," what could an old Whig constitutionalist do but disapprove?<sup>4</sup>

In recommending corrections in the Federal Constitution of 1787, Governor Henry, speaking for the Virginia legislature, offered counsel "not founded in speculative theory but deduced from principles which have been established by the melancholy example of other nations, in different ages."<sup>5</sup> And even in the most "radical" performance of his career he declared, "I have but one lamp by which my feet are guided; and that is the lamp of experience."<sup>6</sup> In mixing the argument from consequences with the appeal *ad verecundium* (from tradition), Henry is far removed from the school of strict reason, from the world of the *philosophe*, but at the same time, at the very heart of the original American political tradition.

Stated briefly, this commitment to historic rights, inherited rights available at law and passed on in a historic continuum (organic compact), as property is passed from father to child, identifies Henry as an American subspecies of the English "country Whig." True enough, he did employ the conventional language of contract theory and make an occasional bow toward "natural rights." But that the fundamental and indefeasible rights of man could be even partially achieved outside the complex negotiation that is the common fortune of a given people located in a given place over a number of generations did not occur to him as a serious possibility. Nor did he by "equal liberty" mean anything like what natural rights theory assumes: anything more elaborate than the necessity for self-defense and self-preservation. For Henry's "liberty" allowed him to propose on the eve of his fourth term as governor a pluralistic religious establishment for the support through law and taxation of Virginia's principal denominations.<sup>7</sup>

And, when the high-toned Edmund Randolph during the ratification debates spoke of the "short work" made of the bushwhacker Josiah Philips by his upcountry neighbors as proof that a federal power was needed to secure equal rights, Henry replied scornfully that his friends understood their business better than any uniformitarian jurisprudence and "beautiful legal ceremony" could guarantee (Elliot, p. 140). As we know, "Fair Liberty" was all his cry. And of government he declared that the "security of liberty should be its direct and only end" (Elliot, p. 45). By these injunctions he signified nothing more complicated than a desire to see his countrymen free to be themselves and to generate their own culture out of the dialectic of their own experience according to what he called their "genius." And by that last word—"genius"—he specified an assumption, or set of assumptions,

around which we may reconstruct his view of what the Revolution was all about.

#### According to Their Genius

Each nation has its own genius.<sup>8</sup> And history is the touchstone of any systematic effort toward its identification. In the Richmond debates Henry spoke from little else but history—particularly from the British and the English colonial record of which our new republic was to be, in his understanding, a consummation. Consider the following language and ask yourself, "Can it be otherwise construed?"

When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation: not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty (Elliot, pp. 53-54).

And again:

We entertained, from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners, and laws (Elliot, p. 162).

From that noble source have we derived our liberty: that spirit of patriotic attachment to one's country, that zeal for liberty, and that enmity to tyranny, which signalized the then champions of liberty we inherit from our British ancestors. And I am free to own that, if you cannot love a republican government, you may love the British monarchy; for, although the king is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British Constitution, render it less dangerous than other monarchies, or oppressive tyrannical aristocracies (Elliot, pp. 165-166).

Against the new and insufficiently prescriptive Constitution he advanced over and over again, with the English precedent in hand. "How are the state rights, individual rights, and national rights, secured? Not as in England; for the authority quoted from Blackstone would, if stated right prove, in a thousand instances, that, if the king of England attempted to take away the rights of individuals, the law would stand against him. The acts of Parliament would stand in his way. The bill and declaration of rights would be against him. The common law is fortified by the bill of rights" (Elliot, p. 513). Finally, he summarized these objections in one sentence. Of the Philadelphia instrument, he maintained, "There is not an English feature in it" (Elliot, p. 170).

We are reminded of the language employed by Edmund Burke in his "Speech on Conciliation with

America" (1775) to describe his kinsmen over the sea: "The temper and character which prevail in our colonies are, I am afraid, unalterable by any human art. We cannot, I fear, falsify the Pedigree of this fierce people, and persuade them that they are not sprung from a nation in whose veins the blood of freedom circulates. The language in which they would hear you tell them this tale would detect the disposition; your speech would betray you."<sup>9</sup> The affinity in perspective on a common inheritance linking these two statesmen brings me to the crux of my argument concerning Henry on revolution.



### Colonial Counterrevolution

Seen in this light, what happened in the thirteen North American colonies between 1774 and 1782 was not so much a revolution as a counterrevolution: a struggle by the colonials to preserve a regime both extant and well affirmed from threats to its felicity issuing from other components of the total British polity. Like the architects of 1787, who would have (according to an apparent majority of Americans) established a government not checked by the necessary and specific restrictions on its coercive powers, it was George III, his ministers, and their supporters who were guilty of a "radical" usurpation against the rule of interdependence for the common good (Elliot, p. 44). Once the prospect of military force in implementing these doctrines became an ingredient in this confrontation, war was bound to come. For once the sword is drawn, nothing can answer but the sword, or so says honor — hence the language in Virginia's 1776 instructions to the Continental Congress, the language of Henry quoted above; and hence the Declaration of Independence itself which, as we are so often urged to forget, should be read in the light of such representative Whig expressions of opinion. Men, in their composite character as collectivities, have inalienable rights to observe the "eternal law" of self-preservation, to protect life, property, and hope of a future. One people has the right to expect this of government as much as another—in that sense, are equal to them. And certainly, one group of Englishmen expects as much as any other Englishmen.

### Inalienable Rights Usurped

But, compulsion aside, how precisely are the English authorities to be taken as usurpers against law, usage, and custom? And how shall rebellion take on the sanction of preservation? For, in Henry's view, as in the Declaration, "light and transient causes" will not serve; revolt is not an end in itself.<sup>10</sup> First of all, as part of a sequence of developments in the evolution of the English Constitution, beginning with the 1628 Petition of Right and, after royal and parliamentary excesses, brought to a partial settlement in the 1689 Bill of Rights (Elliot, pp. 316-337). Yet, as Americans discovered, a further step toward community under the sovereignty of law (charters, statutes, and unwritten prescription—all determining stations and roles) was required. As a young lawyer, Henry had foreseen this exigency. For in the Parson's Case he had argued, "A king by annulling or disallowing laws of this salutary nature, from being the father of his people degenerates into a tyrant and forfeits all right to his subject's obedience."<sup>11</sup>

American colonials had developed their government within the legal context of the established English political forms, minus a titled nobility and a full religious hierarchy. Remove also an offending king and only the prescriptive law remains. But (since another executive will be provided, and judges for their support) with additional writing down, add specificity to forestall those old enemies, inference and construction. And ban the more obvious infringements of fiat, called under the crown "expansions of the prerogative." However, if executive authority, representatives, and people are, in all their roles and stations, determined by a clear and limited set of agreements and laws; and if they come to love that bond, their genius may then flourish and their virtue (*qua* public spirit, reinforced by a sense of joint investment) be expected to grow. To how these improvements should be drawn history was once again the key, experience followed by meditation. In it good citizens might find "the voice of tradition" (Elliot, p. 56). Henry was always proud of his part in keeping the common law in a free Virginia, proud of the heritage it made manifest, and also proud of his part in abstracting from the political system which antedated that freedom all prospect of future obstructions to its fruitful operation (Elliot, p. 446). His constant aim was to release what he, as a very social man, knew better than any of his contemporaries—that "genius" of this shore, this commonwealth, of which I spoke before, and to which I must now return in summarizing Henry's social theory.

### To Flourish in a Climate of Liberty

Genius, as used in the eighteenth century, is an imprecise term. It can mean several things, but in a political context will usually signify a quality rooted in nature and place. As in the Latin *genus loci*, or resident spirit of a stream or wood, it could not be known save through its activities. And the genius of a people is likewise signified. A spare structure or supporting institutional framework could encourage its revelation—or a large *a priori* political

machinery prevent that unfolding. Henry, even in 1775, wanted union and had once declared, in the context of war, that where our foreign enemies were concerned he did not think of himself as a Virginian, but as American.<sup>12</sup> And he seriously wished to see the Articles of Confederation strengthened in keeping with the genius of the entire country.

But in his view, that was an entity which touched upon only a small portion of our common life; and likewise state law in the Old Dominion. Virginia had a "government suited to the genius of her people"—a government "formed by that humble genius," a spirit which included the genius of their ancestors. And its success proved of those who formed it that they, "perhaps by accident, did what design could not do in other parts of the world." It is only thus that liberty, a condition, is the end of official government, for by its operation is genius released, and a culture permitted to develop from its roots, upward (Elliot, p. 161).

Henry's antithesis of "design" and "accident" is central to his political teaching. For design is what he perceived in the Federalist model for our United States, an "energetic" plan framed to organize and dragoon its citizens toward the achievement of some externally determined end. Further, it was obvious that such design would eventuate in the divinization of the state: a condition where men live for government, not the other way around, and government either *for* ideology or to enact some monstrous private will. I will not here take you through his particular objections to Madison's crafty composition. It suffices to say that they were all directed toward liberty and away from an extrinsic *telos*, all finally productive of what we now know as the Bill of Rights. His America did not exist to pursue certain military, economic, moral, or philosophical objectives. To borrow language from a group of his most articulate political descendants, he scorned the notion of a culture "poured in from the top,"<sup>13</sup> whatever the rationale. Rather, his social-political vision was what Michael Oakeshott has called "no-mocratic" and Eric Voegelin "compact."<sup>14</sup>

Political manners, divorced from any purpose outside of sustaining their devotees in relation to each other, would produce identity for *a posteriori* description by the wise: grown identity, as good husbandry of soil makes a tree bear fruit, but does not plumb the mystery of that tree.<sup>15</sup> Not the glory, nor the power, nor the wealth which the Federalist (as had King George) promised could be the mainspring of the republic which Henry envisaged. Nor could it be the right to live outside the *societas* which a quasi-Roman notion of normative national law might guarantee: the anti-community of atomistic individuals who become a "herd" (a word Henry despised) by overdoing their effort to be the opposite. What was needed must come from within, from persons in relation to persons, all knowing who they are.

### Silence in Interpretation

It should now be possible for us to understand why there has been something like a conspiracy of

silence concerning the political theory of Patrick Henry, its ancient antecedents, and its obvious relevance to disruptions in American life today. Our scholars, most of them rationalists and neo-Federalists, had a vested interest in producing Henry's present reputation: that he was a simple-minded country politician turned demagogue, a populist trimmer whose talents happened to serve his more far-sighted contemporaries when the Revolutionary crisis came. That Madison was the fellow to read, and Jefferson before him—or certain selected Boston radicals, as reprinted under the auspices of the Harvard University Press. In any case, Henry's rhetoric could be explained as a product of the shifting circumstances of his private life and developments in the regional economy of the districts where Henry's will was: "omnipotent." Henry's rhetoric, but not that of his political antagonists. To the degree that this obfuscation has been successful and Henry replaced in the center of our bicentennial attentions by more speculative politicians who in some way augur the present dispensation of things, to that extent we have been deprived of the political paradigm which the occasion requires us to seek.

We should not feel free to forget that the Revolution was made against power, uninformed of the conditions which it administered and untouched by the consequences of that remote administration, particularly in view of what we have learned of power since. Nor should we ignore the evidence that there was a republicanism abroad in the land which owed more to Lord Coke and Roman history than to Mr. Locke. Henry's politics as here reconstructed will, I hope, help prevent such mistakes.

But to practice a more complete piety and to make the precedent here considered into a living force, more than theoretical study is required. The best way to know from the inside the kind of America Patrick Henry hoped to leave us intact is to plunge submissively into state and county histories, reminiscences, and letters—into the bygone world of country and village and town as managed by ordinary citizens according to the *mos majorum* and their own particular lights. From such studies and from the evidence of American literature, as opposed to the more conventional searchings after nuance and refinement in the record of political thought, we can approach that interior knowledge: for there is theory in the private history of free Americans living *privately* in communities, within the ambit of family and friends: living under the eye of God out of the memory of their kind. Theory is evident for such students as are prepared to begin in the proper places and to seek out the proper contemporary guides in framing language for the translation of actions into thought—theory usually better than the disembodied kind.

Patrick Henry, as available in Elliot and in his other scattered remains, when framed by the early history of Virginia and the upper South, is such a guide. For, as we all recognize, his wisdom was longest preserved in its place of origin and from the perspective of our day seems almost inseparable from two hundred years of Southern testimony in "opposi-

tion." Yet it is not, nor was it ever, meant for local consumption alone—not just for the electors of Hanover, Louisa, Goochland, Prince Edward, and the other counties west of Richmond or on the "south-side" of the James. Assuming (as does my presence here) that Henry's America of the Revolution has a lesson for us all, Andrew Lytle, in his recently published *A Wake for the Living*, has recovered its image in a condensed and dramatic re-creation. Most of what is argued here from Henry is implicit in Lytle's family chronicle, and especially the separation of the public and private spheres, the horror of a totally politicized world. Toward the book's end, Lytle recalls the incident of a young colonel who asked of Robert E. Lee what the General could say to history in defense of his command decisions. Out of a world view identical with Henry's, Lee replied, "I will take the responsibility."<sup>16</sup>

The authority for such decisions comes only from the virtue of unequal men unequally accountable to God, respectful of the prescription, guided by manners, and free through that combination to exercise responsible choice: only from the leader of a people whose genius remains intact because that "jewel . . . the public liberty" has been guarded with "jealous attention" (Elliot, p. 45). If we consider the example of Patrick Henry with such distinctions in mind, we will have some idea of how far from our beginnings we have come—and some idea of the hard way back.

#### Footnotes

<sup>1</sup>Norine Dickson Campbell, *Patrick Henry: Patriot and Statesman* (New York: Devin-Adair, 1969), p. 206.

<sup>2</sup>Jonathan Elliot, editor, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787* (New York: Burt Franklin, n.d.), 5 volumes. A reprint of the 1888 edition, cited hereafter within the text.

<sup>3</sup>Robert Douthat Meade, *Patrick Henry: Practical Revolutionary* (New York: J. B. Lippincott, 1969), p. 265.

<sup>4</sup>Campbell, *op. cit.*, p. 407.

<sup>5</sup>Meade, *op. cit.*, p. 377.

<sup>6</sup>Campbell, *op. cit.*, p. 129.

<sup>7</sup>Meade, *op. cit.*, p. 268.

<sup>8</sup>Henry uses the word throughout the debates with unmistakable iteration.

<sup>9</sup>Quoted in Campbell, *op. cit.*, p. 133.

<sup>10</sup>Meade, *op. cit.*, p. 70. Henry recommended against attempting to draw Canada into the Revolution because he believed that "men will never revolt against their ancient rulers while they enjoy peace and plenty."

<sup>11</sup>Robert Douthat Meade, *Patrick Henry: Patriot in the Making* (New York: J. B. Lippincott, 1957), p. 133.

<sup>12</sup>Richard R. Beeman, *Patrick Henry: A Biography* (New York: McGraw Hill, 1974), p. 60.

<sup>13</sup>From p. xvi of the "Introduction" to *I'll Take My Stand: The South and the Agrarian Tradition* (New York: Harper & Brothers, 1930) by Twelve Southerners. John Crowe Ransom, speaking for the group, wrote this passage.

<sup>14</sup>Michael Oakeshott, *On Human Conduct* (Oxford: The Clarendon Press, 1975), pp. 201-203; Eric Voegelin, *The New Science of Politics* (Chicago: University of Chicago Press, 1952), pp. 86-91.

<sup>15</sup>See Alexander Bickel's *The Morality of Consent* (New Haven: Yale University Press, 1975), where the idea of procedure as the identifying bond of the Republic is instructively developed.

<sup>16</sup>Andrew Lytle, *A Wake for the Living* (New York: Crown Publishers, 1975).

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