Politics and Antipolitics in the Modern State: Reflections on the French and American Experiences

Dick Howard

The legitimacy of the modern state in the United States and in France is paradoxical; both claim to have been founded on the experience of *revolution*, a radical break with their historical past that is realized by their creation of a *republic* based on equal rights that are valued as universal. In both cases, this revolutionary foundation made solidification of republican institutions problematic; normal discontents, conflicts of interest and ideological differences did not dissipate over time as the optimists had hoped; the universal principles that founded the republican state could be invoked to transform particular griefs into universal wrongs whose eradication demanded the refoundation of the republic on which the state was founded to denounce the triumph of special interest and to demand thefoundation of a new constitution that would assure true equality. This dialectic between universal principle and its particular realisation was illustrated in Hegel's analysis of the French revolution in the *Phenomenology of Spirit* (1807); the philosopher had little to say about its American cousin, but it retrospectively clarifies some problems implicit in its republican institutions. In both cases, the conflict between universal principle and its realisation was resolved politically by the emergence of *democracy*[1]. However, in the French case, their political revolution sought to create what I will call a *democratic republic*, whereas the three decades following the Americans' victorious war of independence from the British monarchy gradually instituted what I will call a *republican democracy*. I will explain and illustrate why this apparently semantic distinction has implications that are both analytic and political.

I.

[1] As implied by the allusion to Hegel, my concern today will not be to ask how the contemporary challenges to democratic legitimacy have appeared in both states, particularly since 1989. The major challenge in the U.S. comes from the Black Lives Matter movement, which has been given important intellectual legitimacy from the so-called "1619 Project" initiated by the *New York Times,* which claims that America's republican democracy has been vitiated since that date, which marks the arrival of the first slaves in the colony of Virginia. Those claims have been challenged; the facts may be true, but their political significance is questioned. Meanwhile, a radical right wing, identified with Donald Trump, has become another threat. As to France, aside from the nearly year-long agitation of the "Yellow Vests" demanding a renewal of direct democracy in response to the youthful challenge embodied by president Macron's "Jupiterian" disdain for everyday politics. The organised left continued the fragmentation that followed the elected socialist François Mitterrand's 1983 "betrayal" of the quest for a democratic republic in favour the mirage of an economic and financial unitary "Europe." Once again, these facts exist, but their political significance is open to challenge. Conceptual clarity is required prior to political interpretation.

The dialectic diagnosed by Hegel was present almost from the outset of the French revolution; the abstract universality of the revolutionary triad –liberté, égalité, fraternité—formed a stellar constellation that could not be found in terrestrial institutions. The principle of *liberté* seems to have been localised first in the political sphere; the *nuit du 4 août* eliminated rule by aristocracy, but social privilege returned soon enough in the shape of a commercial, then an industrial, and more recently an intellectual aristocracy. As a result, political *liberté* shaded into (the quest for) social égalité; the promised political *liberté* was an empty form whose realisation depended on material conditions for its practical exercise. Equal voting rights were only a first stage during which various forms of political equality—limited and, and male-only (in spite of protests by women)—were experimented with; permutations of material equality were tried, before the idea of an equal *status* for all persons in the eyes of all were recognised—although today a new dialectic threatens to transform this new equality in the form of "identity politics." In the French case, the same dialectical (or 'paradoxical') logic that led *liberté* in practice to shade into recognition of social *égalité* turned that demand toward the search for that *fraternité* that seemed for a moment to have been realised on July 14, 1790, in the *Fête de la Fédération*. The contradiction between universal claims to freedom and equality seemed to have been overcome for a moment when the new principle found its incarnation in the masses gathered on the Champs de Mars. Our German Virgil's chronicle of the adventures of the dialectic takes up the next twist of the story with the account of the *fraternité-terreur* when universal brotherhood was imposed from above, by the humanitarian invention of Dr. Guillotin, or its threat, which revealed again the gap between universal principle and its realisation. Thermidor brought the triadic constellation of principle to earth; but like the moon, it would illuminate the night over the next centuries, and not only in France.

The century of French history inaugurated by its revolution was eventful; its broad outline illustrates the dialectical dilemmas that were condensed in its early years. The years of conquest that, at least at the outset, sought to spread the principles of 1789 across Europe were also those that transformed Bonaparte into Napoleon, the republic into an empire for an expansion without geographical limit, unified only by the person of the emperor and the legitimacy incarnated in armed masses represented by the chain of his victories. When Napoleon's attempted imperial resurrection during the *100 Days* was finaly doomed with the defeat at Waterloo, the politics of the restored Bourbons tried to pretend that the revolution had left no traces, ignoring the lunar reflection of the principles of the revolutionary triad that did not disappear because its realisation had failed, leaving its ideals intact. . Political freedom was demanded now by *social* interests that had benefitted from the previous forms of material equality; they in turn would find new fraternal forms that were reinforced while widening their conquests. This was the moment of republican liberalism when, in 1830, the dreams of political Restoration were awakened to the social reality first represented by the liberal Orléanist monarchy, which promised a new kind of *social* prosperity identified with the name of Guizot and, still more, with his slogan, *enrichissez-vous*. Many tried: some succeeded, others were excluded. But the excluded were not alone; they were all excluded together, their condition was equal, their exclusion political, and brotherhood was

a rare commodity in the marketplace… save among the ideas competing with one another to represent the triangle of revolutionary values.

In February 1848, a renewed revolution emerged as the excluded found that their social interests coincided with their demand for political rights against monarchical exclusivity. While this revolution introduced universal suffrage, it was only briefly able to realise a social transformation: its promise of the "right to work" remained an unfulfilled wish. The failure of universal suffrage without a material foundation engendered false fraternity among the electors, who cast their lot with Louis Napoleon Bonaparte, claiming legitimacy as the nephew of Napoleon. False hopes were quickly dashed by armed force when—only months later, in June 1848—workers without work banded together to demand the promised equality. The jaws of the dialectic had in fact remained open because the proponents of democratic suffrage had written into their republican constitution a provision that they imagined could ensure political equality, simply by treating the elected president like all other citizens by making him ineligible for a second term in office. Their institutions established the principles governing the office (of the presidency) without considering the particular character of the officeholder. Although democratically elected, the nephew of Bonaparte still nourished imperial dreams; as his term in office neared its end, he launched a coup d'état whose success was crowned by a popular referendum submitted to a defeated electorate who harboured neither the political hopes of February 1848 nor the social vision of June. The demise of the Second Republic was quickly followed by the years of the Second Empire (1852-1870). The cycle was aptly described by Karl Marx, a worthy successor to Hegel, from whom he had learned to appreciate the paradoxes of dialectics: "[t]he first time is tragedy, the second is farce"was Marx's lapidary summation of the French political dilemma. The farce came to an inglorious conclusion eighteen years later when the emperor, facing renewed political demands from those who had benefitted socially from the imperial expansion, embarked on an adventurous war with a newly united Germany, which ended with the disastrous defeat at Sedan.

The vainglorious French emperor was taken prisoner, but the victorious Germans seemed to have overplayed their hand by not recognising the attempts by moderate republicans to re-form the republic: faced with the German demands to disarm, the working class of Paris refused to surrender. Their self-governing defensive unity, the *Commune*, took over political leadership while also introducing egalitarian reforms. Although it lasted only 72 days before being crushed in blood, the Commune left its mark in French history—and beyond. Karl Marx's pamphlet, *The Civil War in France*, written during these events, claimed to see in the Commune "the *form*at last discovered" in which the proletariat could liberate itself; it was a form of self-government in which the opposition between the political state and civil society had been overcome. Because Marx's claim was only formal, it was easily forgotten by the reformist leaders of the new Social-Democratic leftist parties drew from their experience as industrialization proceeded apace and a new century began; on the contrary, they insisted that the republican political institutions provided the necessary framework within which

social reform would become possible.[2] The time for true revolution seemed to have passed for four decades when, to everyone's surprise, world war broke out in 1914, only to be followed—(in retrospect: dialectically)—by the Bolshevik seizure of power in Russia in 1917—which itself claimed legitimation as a phase in inevitable world revolution. A crucial section of Lenin's explanation of the revolutionary goals of "soviet" institutions in his 1917 pamphlet, State and Revolution, returns to the unfinished experience of the Paris Commune, stressing particularly Marx's idea that it was the "form at least discovered" for liberation of the proletariat. *This is the root of the idea of a "democratic republic,"* it seeks or claims to have overcome the opposition between state and society, between politics and economics, and between leaders and followers. With the democratic republic, the jaws of the political dialectic are to be finally closed as form and content, ideal and reality are united. *And,* with its failure to realise these promises, the illusory dialectical idealism of Hegel can be—as the young Marx had claimed in his early philosophical development—stood back on its feet.

This conceptual history of the French pursuit of a *democratic republic* suggests that it was perhaps no simple accident that communism in its Bolshevik guise found deep roots in France; Stalin's totalitarian regime seemed to be both willing and able to realise the goals of the most radical phases of the Jacobin Terror. When Stalin explained the need to strengthen the state by means of ruthless purges, whether accompanied by show-trials or not, as the precondition for its abolition, it was not only French leftists who could easily understand the scene playing before their eyes, whether or not they supported its means (i.e., Bolshevik and totalitarian), or even its goals (i.e., "communism"). For the same reason, when the Soviet Union showed not only its economic feet of clay but the fundamentally totalitarian political foundation on which it was built—being both anti-democratic and anti-republican at once—the resulting so-called "Solzhenitsyn shock," coupled with the new popularity of anti-totalitarianism and the quasi-disappearance of the Communist party (which was not the result of François Mitterrand's clever politics), was deep and ultimately definitive. Today, the political theatre is thin, *aimless* and unmoored, absurd in form and content; it is as if Karl Marx has been replaced by Luigi Pirandello, save that there are more than six characters searching for an author(ity). The quest for a democratic republic culminates (as Lenin, but not Marx, wished), in the triumph of *antipolitics*; anarchy in the guise of democracy. In short, the same legitimation that explains the rise of the "democratic republic" is a powerful factor in its present-day decline. *Anti-politics is ruled by the irascible goddess known as TINA, "there is no alternative," accompanied by the nostalgia for an imagined past whose chthonic solidity offers an anecdote to anarchic individualism or technological wish fulfilment.*

[2] The French Third Republic would be founded only in 1877. Its political structures would resemble in some ways the institutional forms of the American republic; but the energies that set into motion the political dynamics of the Third Republic were distinct, as suggested in the following two paragraphs. C.f., Stephen Sawyer's forthcoming *Demos Rising,* as well as the earlier volume of the trilogy that appeared in 2018, *Demos Assembled*.

At the same time, anti-politics is a *modern* form of politics! It is today referred to by pejorative labels like *populism*, *identity-politics*, or twentieth century communist or fascist forms of *totalitarianism*, but it can also take an apparently more benign form referred to by concepts like *neo-capitalism, illiberalism,* or formalist *constitutionalism.* To clarify the reasons that anti-politics is indeed a form of modern politics, however paradoxical the claim first appears, I will return to the origins of modern politics, which, as explained above, can be illustrated by the American and French revolutionary experiences.

II.

The origins of the two revolutions were treated together as products, as well as expressions of a so-called "Atlantic Revolution" that heralded what the American historian R.R. Palmer described in his two-volume [NO ITALICS HERE! study as *The Age of Democratic Revolution* (1959 and 1964). Palmer's work became a classic of—as well as an expression of Cold War historiography. As an accomplished academic historian, Palmer was looking for historical similarities rather than principled differences. Nonetheless, such differences were apparent to contemporaries such as Edmund Burke, whose insights were made explicit for a wider public by the conservative German diplomat Friedrich Gentz in his account of the "*Origins and Principles of the American Revolution, Compared with the Origin and Principles of the French Revolution*" (1800). The book was immediately translated by an American diplomat in Berlin—John Quincy Adams, son of the American president, and later himself elected president—as a weapon in his father's losing re-election campaign against Thomas Jefferson. The details of Gentz's work, whose debt to Burke's *Reflections on the French Revolution* was evident, are of no present concern. It is more important to stress that his American translator was fully aware of the paradoxical antinomies found in the course of the two revolutions that became evident in the battle with the rising Jeffersonians. One such antinomy is expressed in the difference between the French attraction to the idea of a "democratic republic" and the Americans' at first unintentional creation of what I call a *republican democracy.*

Compared with the ambitious social projects that drove the French revolution, the American revolution appears to be, as Gentz argued, a "defensive revolution." The colonists thought of themselves as "true Englishmen" who had expatriated themselves to virgin lands free from the corruption of an aristocratic monarchy; their self-defence was an affirmation of the "rights of an Englishman" against the corruption of their colonial masters. This consanguinity of principle was expressed in the largely non-violent revolt that played out in the 13 colonies in the decade between the end of the Seven Years' War with the Treaty of Paris in 1763 and the outbreak of armed conflict officialised by the "Declaration of Independence" in 1776. It was no accident that the just-concluded continental war had been called the "French and Indian War" by the colonists. It became clear that wars change their participants and goals, transforming the ostensible principles for which they were fought. A clear example is found in the life of George Washington, who was among the defeated British generals at Fort Necessity in 1758 became commander-in-chief of the rebel armies in 1775 to whom the British surrendered at Yorktown in 1781, effectively recognising American independence with the same Washington as its first president.

The political form adopted by the new nation was at its outset a "confederation" of independent former imperial colonies, jealous of their independence; their de facto constitution was defined by the "Articles of Confederation." Their composition was diverse as were their reasons for rebellion: some were predominantly agricultural, based on small self-sufficient farmers, others slave-based plantations, while artisan manufacturing took place in towns, and growing cities were oriented to foreign commerce (not infrequently smuggled, as in the case of tiny Rhode Island, which, not by coincidence, would be the last to ratify the federal constitution proposed in 1787). These economic differences do not explain the instability of the confederal government; its problem was political: the autarchic self-sufficiency of each of the newly independent states that not only led to instability but offered a temptation for foreign invasion—the British were still in Canada, the French in Louisiana, the Spanish in Florida and Mexico. Determined to act, leaders from the states met in Philadelphia in 1787. Their ostensible and public goal was to reform the Articles of Confederation; but, as the hot summer months wore on, their deliberations proposed a new, *federal* constitution. I will return to its structure in a moment; more important was their recognition that *popular* ratification in each state separately was necessary to assure the legitimacy of the new institutions. As in the debates leading from protests in 1763 to the demand for independence in 1776, anticipation of the weight of the choice and a relatively large literate public encouraged the circulation of a vast number of pamphlets, often reprinted in local newspapers and commented on in others. The opposition accepted (unwisely) the label of "Anti-Federalists;" their criticisms turned largely around the purported anti-democratic features of the new institutions. The major arguments of the federalist supporters were presented in a series of 85 essays published under the classical-republican pseudonym of "Publius" by Alexander Hamilton, James Madison and John Jay. Tactically adept, the articles had first appeared in newspapers published in different states before being collected as a unitary argument in *The Federalist Papers*. As a result of this public process of deliberation, the ratification debate was already a national national concern before the vote in the individual states; the legitimacy of the new, federal republic was based on this deliberative democratic expression of popular sovereignty. The pseudonymous identity of the author, *Publius*, strategically chosen, incited political debate with the inward-directed Anti-Federalists, who claimed to support democratic immediacy against the republican constitutionalism.

The institutional structure of the new constitution could be called "defensive," reflecting the struggles for independence at the birth of the new republic. The members of the Convention were well versed in classical political theories and Roman history; they were also products of the scientific age of Enlightenment, which offered the political ideal of government as a dynamic balance of forces able to produce what the historian Michael Kammen called "a machine that would go forever" without the arbitrary power of a ruler. They sought compromises that would satisfy the norms of political theory and local interests that could not be ignored. Their goal was to create a "government of laws, not of men." At the same time, the vision of a continental future that had arisen during the struggle for

independence remained a latent presence.[3] In effect, the newly independent nation was being transformed from "these united states" into "the United States." This fact would take on a growing importance, particularly as the powers of the presidency grew to form a so-called "imperial presidency" after the mid-twentieth century[4].

The constitution proposes a delicate series of institutional "checks and balances" that can be used and strengthened by each of the countervailing and separate powers that are joined together in the unitary federal sovereign republic. Although this structure of unity-in-difference was clearly marked out, one practical feature in the constitution marked a significant innovation: the provision for amendment proved to be an essential feature of the democratic governance of the "republic of laws."[5] This provision played a significant role in the first years of the constitution. Madison came to accept one of the major Anti-Federalist critiques; he proposed a series of amendments to the constitution known as the "Bill of Rights."[6]

Another apparently anti-democratic feature of the new institutions was the existence of a senate, which had classically been the aristocratic branch of government in the classical vision of the Roman republic. What place did a senate have in a democracy, asked the Anti-Federalists. The traditional answer is that the senate is needed to restrain impetuous action by the popular House; it was to act like a saucer, cooling the heated brew contained in the cup. That reply only seemed to confirm the anti-democratic character of the constitution. The Federalist Papers' explanation turns on a *distinction between direct and representative democracy*. Writing as Publius in *Federalist* #63, Madison pointed out that in the classical constitutions the represented classes were assumed to be wholly present (i.e., not just represented) in 'their' specific institutions, whereas

[3] It had been reaffirmed a year earlier by the outgoing acts of the Congress of the Confederation, the "Northwest Ordinance" that outlined political principles for the incorporation of territories as yet only thinly settled.

[4] During the ratification process, it was assumed that the executive would not dominate over the other powers; the fact that it was widely assumed that George Washington – who, like Cincinnatus, had returned to his farm (sic: plantation) once the emergency had ended – would become president. But already with the presidency of Thomas Jefferson, the institution showed a surprising capacity for initiative, nearly doubling the American landmass with the Louisiana Purchase in 1803.

As the century wore on, both republics took on imperial ambitions; and both retained them into the 20th century. Was this ambition connected to the universalism of the republican vision which had no place for the messy compromises that came with the recognition of other powers? As both have entered the 21st century, they have been faced with the need to recognise the rights of others, which has posed problems for the legitimacy of domestic political choices.

[5] These ideals of a "machine" and of a "republic of laws" must have shocked classical political theorists, whose credo had been renewed as recently as Montesquieu's *Spirit of the Laws,* which insisted that a republic must be based on the *virtue* of its citizens.

[6] It should be noted that this Bill of Rights defines *political rights*; it is not a Declaration of the Rights of Man that are taken as pre-existing the constitution (as defined by the preamble of the Declaration of Independence. As a result, these rights appeared to be rights belonging to the states; only after the Civil War had resolved the question of the "property rights" of slave-owners under the 14th amendment to the constitution (1868) did the rights pertain explicitly to individuals.

the sovereign people had no place or presence. The American constitution, Publius argued, is different: the people are represented in all institutions;[7] they have no unique (institutional or physical) representative; this omnipresence of a non-localisable *demos* is the motor that constantly renews the democratic dynamic. In this way, the republican democracy makes use of the idea of *political representation*, which, like the constitution itself, is never an exact reproduction of the process it represents; its nature is subject to debate and, eventually, to amendment. As a form of government, political representation does not pretend to *incarnate* the sovereign people but to be a reflection of – and on – not only the present state of affairs but also of a desirable future that is arguably part of its potential reality.[8] Two hundred fifty years of republican democracy in the U.S. can be interpreted as a series of dynamic conflicts among the separate and distinct powers of government and the diverse forces that animate them.

A final illustration of the working of the American form of a republican democracy will help illustrate the actual functioning of the republican democracy at its origins. The unanimity supporting the presidency of George Washington began to fracture with the choice of his successor. The election of 1796 was contested by two inchoate parties, which would congeal in 1800 to form a bipartite *system*, a unity in its division. The Federalists (led by vice-president John Adams) and the Democratic-Republicans (led by Secretary of State, Thomas Jefferson. The development of political parties had not been anticipated in the constitution; the bitter rivalry of their partisans appeared to contemporaries as a threat to the republic. The election of 1796 reflected the danger; Adams became president, but his rival, Jefferson, who had received more votes than Adams' co-candidate, was awarded the vice-presidency.[9] As vice-president, Jefferson had little power; but his partisans, led by James Madison in the House of representatives, played a role in blocking many of President Adams' proposals. The election of 1800 was therefore decisive, bitterly contested, overlaid by ideological venom reflecting the continental conflict between "Jacobins" and "Monarchists." The Jeffersonians' victory appeared to polemicists as the "Revolution of 1800."

The application of those French political categories to American institutions should not obscure the fact that power passed *peacefully* from the Federalists to the Democratic-Republicans; the vanquished did not disappear from the political stage in a violent *coup*. This was an innovation in political history; it reflects the way in which a unitary republic can make room for the democratic activity of the citizenry. The novelty of this republican-democratic dynamic was not clear to the actors at the time—for example, Jefferson's partisans still called themselves "Democratic-Republicans"—but it would become explicit in a decisive decision in which the Supreme Court affirmed *its* role as a distinct institution whose *power* derived from

[7] Among these institutions are included the individual states, as well as other constituted civic institutions. This aspect explains frequent appeals to state governments as "laboratories of democracy."

[8] This feature of representation, which is denied by radical proponents of direct democracy, can be said to be the *utopian moment* in the institutions of republican democracy.

[9] This constitutional anomaly was repaired by the XII amendment to the constitution, ratified in 1804. It would be the last amendment agreed to before the end of the Civil War in 1865.

its guardianship of the *principles* of the constitution. The occasion was provided by the case of *Marbury v. Madison,* in 1803. In the waning hours before Jefferson took the oath of office, Adams made several "midnight" patronage appointments; the incoming secretary of state, James Madison, refused to certify these nominations, including that of Marbury. The conflict came before the high Court, whose Chief Justice, John Marshall, had been a staunch Federalist politician before his nomination by Adams in early 1801. In his new judicial role, Marshall could not be seen to act as a partisan; he had to defend the constitution, which was the basis of the court's own power.

Speaking for the Court, Marshall argued first that Madison had been wrong to refuse the certification because it is the constitution, *not the temporary majority*, that expresses sovereignty in a republic. Indeed, according to Anglo-American common law, "where there is a right there is a remedy." However, the ruling continued, the Supreme Court was not the proper agency to *execute* that remedy; the role of the court is *limited* to the defence and protection of the constitution. And, concluded Marshall, because the law to which Marbury appealed for remedy (the Judiciary Act of 1790) itself violates the constitution by giving excess power to the Congress that voted its passage, there is no judicial remedy available to Marbury. Marshall's reasoning has come to be accepted by jurists; the constitution itself, *not* its constituent powers *nor* a temporary electoral majority is the guarantor of the republic.

In effect, there seems to be no explicit constitutional protection for democracy as real or realizable in itself, as was the effect of the Court's refusal to deliver his lawful commission to Marbury; on the other hand, the citizenry can fall victim to the temptation to equate a *temporary* majority opinion with the will of the *demos* which is never in reality a single unified whole. Both of these options become forms of *antipolitics*. Constitutional structures and juridical reasoning cannot stand on their own; their *legitimacy* ultimately depends on political choices and citizen action. In a word: the symmetrical political institutions seen in the French attempt to realise a *democratic republic* and present in America's republican democracy hold up a mirror that illustrates the ways in which each of these states could suffer a *loss of legitimacy*. I conclude with a well-known anecdote from the time of the American Founding. Benjamin Franklin was a delegate to the constitutional convention, whose proceedings had taken place behind closed doors. As the delegates emerged from the final session, a woman approached Franklin with a question: "What kind of government are we to have?" The elderly sage replied simply: "A republic, if you can keep it."

III.

Benjamin Franklin's political imperative may have been coined in the late 18th century; but it remains a , and not only for today's Americans—whose institutions were maintained by the (perhaps antipolitical) intervention of the Supreme Court in the contested election of 2000 but were threatened only two decades later by the antipolitical demagogy of former President Donald Trump and his MAGA partisans in 2020, who remain an antipolitical threat.. It is not only U.S. citizens who face the challenge but also all those nations that have become democracies in the intervening years and centuries, particularly those formerly under colonial

or totalitarian domination. The choice is easy to portray in theory, as I have tried here to show; and even harder to put into practice! As doubts spring up and authority is contested in an increasingly complex and interconnected nation, itself a participant in an increasingly global world of nations, it is the task that must be mastered, and at times reconquered by *politics*; recognition of this political imperative is necessary if the always present *antipolitical* temptation that is inherent in modern democracy is to be avoided. Neither institutional arrangements nor the immediate participation of the citizenry; faced with unexpected conditions, neither a republican constitution nor a democratic citizenry can ensure that what I have called a *republican democracy* can perdure.
