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REFERENDUM ON THE REVOLUTION: THE PENNSYLVANIA  
CONSTITUTIONAL DEBATE, 1776-1784

BY

TRISTAN JAMES NEW

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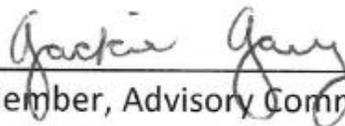
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REFERENDUM ON THE REVOLUTION: THE PENNSYLVANIA  
CONSTITUTIONAL DEBATE, 1776-1784

BY

TRISTAN JAMES NEW

Submitted to the Faculty of the Graduate School of  
Eastern Kentucky University  
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

2019

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## ABSTRACT

The Pennsylvania constitution of 1776 ignited an extensive and intractable debate that remained at the center of the state's politics throughout the Revolutionary period. This debate encompassed disagreement over a broad range of questions relating to the relationship between government and society, many of which brought into question the implications of the concept of popular sovereignty for governmental structure and popular political agency. Competing notions regarding these issues, while expressed within a general framework of consensus concerning the source of political authority [the people], revealed fundamentally different visions of governmental order. Partisans presented these visions as inextricably connected to their respective understandings of the American Revolution. This debate suggests that constitutionalism and political ideology were closely connected to, and mutually informative of, one another during the Revolution and that factions within the Patriot cause perceived their differing visions of government and brands of constitutionalism as inseparable from the cause of the Revolution itself.

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## Introduction: Pennsylvania and the Revolution as a Constitutional Phenomenon

“The time is now approaching, when the Colonies, will find themselves under a Necessity, of engaging in Earnest in this great and indispensable Work [the creation of new governments]. I have ever Thought it the most difficult and dangerous Part of the Business, Americans have to do, in this mighty Contest, to contrive some Method for the Colonies to glide insensibly, from the old Government, into a peaceable and contented Submission to new ones... At present, this sense of Necessity seems to be general, and Measures are taking which must terminate in a compleat Revolution. There is a Danger of Convulsions. But I hope, not great ones.”—John Adams, April 1776<sup>1</sup>

The American Revolution’s essential character and central concerns have been the objects of extensive scholarly debate. Historians have disagreed at length as to whether the Revolution was a contest, as Carl Becker famously put it, over “home rule or who should rule at home” but less attention has been given to debates within America over what home rule should ultimately look like.<sup>2</sup> Further contention exists over whether the Revolution was fundamentally a political, social, or economic phenomenon and whether it decisively reshaped society within the newly formed American states.<sup>3</sup> Perhaps the

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<sup>1</sup> John Adams to Mercy Otis Warren, April 16, 1776 in ed. Robert Taylor, *The Adams Papers*, Papers of John Adams, vol. 4, *February-August 1776* (Cambridge: Harvard University Press), 123-126. Accessed at <https://founders.archives.gov/documents/Adams/06-04-02-0044>.

<sup>2</sup> Carl L. Becker, *The History of Political Parties in the Province of New York, 1760-1776* (1909; reprint, Madison: University of Wisconsin Press, 1968), 22.

<sup>3</sup> For examples of the constitutionally-attuned interpretation of the Revolution’s origins and character, see Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: New York University Press, 1932); John Phillip Reid, *Constitutional History of the American Revolution*, 4 vols. (Madison: University of Wisconsin Press, 1986-1993); Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain* (New York: Knopf, 1972); Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1789* (Athens: University of Georgia Press, 1986); *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville: University of Virginia Press, 1994) and *The Constitutional Origins of the American Revolution* (Cambridge University Press, 2011).

For accounts that privilege examination of economic and social affairs over the assessment of constitutional and political development, see Jackson Turner Main, *The Social Structure of Revolutionary America* (Princeton University Press, 1965) and *The Sovereign States, 1775-1783* (New York: Franklin Watts, 1973); Merrill Jensen, *The American People and the American Revolution* (Menasha, WI: George Banta, 1970); *The American Revolution within America* (New York University Press, 1974); Gary Nash, *The*

only thing regarding which scholars can come to a consensus is that colonists in British North America engaged in an effort to separate themselves from the British empire and reshape their colonies into independent and sovereign states.

The case of the state constitutions shows the importance of ideology in Revolutionary America. While the movement to secure independence from Britain prompted domestic debate over social and economic affairs, discussion of constitutional and political matters predominated. The cause of drafting new constitutions commanded the attention of politically active individuals within each of the colonies. Although independence was formally declared by the Continental Congress in July of 1776, the Declaration written by Thomas Jefferson merely provided rhetorical flourish and intellectual justification to a process of separation that was already in some places being decisively finalized through the creation of state constitutions.<sup>4</sup> The drafting and adoption of new constitutions signaled the colonies' transformation into separate and distinct political societies whose ties to the British empire had been decisively severed.

The process of creating state constitutions prompted a broad range of debates over proper political structure and the relationship between the government and the governed. Nowhere was controversy over these issues as intense and influential as in Pennsylvania, where the state constitution eschewed prevailing notions about the balancing of power between the branches (executive, legislative, and judicial) of government, bicameralism, and the importance of a deferential element of politics. The authors of the Pennsylvania

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*Urban Crucible: Social Change, Political Consciousness, and the Origins of the American Revolution* (Cambridge: Harvard University Press, 1979).

<sup>4</sup> On the mostly symbolic function of the Declaration, see Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf, 1997).

constitution seized upon the implications embedded within the logic of popular sovereignty that had animated Whig grievances against British policy and instituted them within the structure of their new government.

Because the Pennsylvania constitution was such a decisive rejection of conventional assumptions about government, it sparked enormous debate. The constitution was the central issue of political contention in Pennsylvania from its inception in 1776 through its replacement in 1790. It was the defining concern of the state's discourse during the Revolutionary period. The parameters of state politics adhered closely to the lines of disagreement over the constitution which emerged shortly following its publication for public consideration.

In the process of debating the constitution, its supporters, the Constitutionals, and opponents, the Republicans, advanced distinct and competing visions of governmental structure. These visions implicated conflicting understandings of the implications of popular sovereignty, the notion that all political authority was ultimately derived from the people. Constitutionals and Republicans alike affirmed the doctrine of popular sovereignty, but they expressed altogether differing understandings of its implications. The Constitutionals believed that, because the people reigned supreme, the legislature should be the preeminent branch of government so that the people's interests predominated in governmental matters. This was a rejection of conventional assumptions about the need for a balance of power. Republicans agreed that the people were sovereign but thought that power needed to be diffused so that the influence of the electorate could be checked by various elements of government. Each branch of

government was representative, but Republicans believed that distinctions between them were essential to maintaining governmental stability.

Constitutionalists and Republicans associated their separate visions of political order with the American Revolution. Constitutionalists believed that, because the Revolution was an effort to secure popular control of government, it was imperative to create a constitution which clearly and directly established that principle as the reigning logic of government. Republicans argued that the constitution was such an affront to assumptions about government they regarded as universal and indispensable that it jeopardized the prospect of securing Pennsylvania's independence. They further contended that the constitution's failure to impose constraints on legislative power made the state Assembly an omnipotent and arbitrary institution—similar, they noted, to a Parliament which failed to recognize the boundaries inherent to the English Constitution. Thus, they argued, the constitution was a fundamental threat to the Revolutionary cause.

The Pennsylvania constitutional debate was both a contest between competing visions of political order and a referendum on the character and fate of the American Revolution. Historians have devoted considerable attention to the divisions that separated the constitution's partisans and critics. They have stressed the radicalism of the authors and champions of the constitution and emphasized the conservative and reactionary tendencies of the constitution's opponents, in the process telling a story of internal division predicated on conflicting constitutional visions.<sup>5</sup> However, they have primarily

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<sup>5</sup> J. Paul Selsam, *The Pennsylvania Constitution of 1776: A Study in Revolutionary Democracy* (Philadelphia: University of Pennsylvania Press, 1936); Robert L. Brunhouse, *The Counterrevolution in Pennsylvania, 1776-1790* (Harrisburg, PA: Pennsylvania Historical Commission, 1942); Jackson Turner Main, *Political Parties before the Constitution* (Chapel Hill: University of North Carolina Press, 1973), 175-211; Richard A. Ryerson, "Republican Theory and Partisan Reality in Revolutionary Pennsylvania:

examined the practical dimensions of the constitutional controversy, examining the actions of the state Assembly, assessing the composition of the Constitutionalist and Republican parties, and emphasizing the importance of economic and logistical concerns to political debates. These issues were important to state politics. However, they were not quite as central as the differences in constitutional ideology that separated Constitutionalist and Republicans and seemed to ensure that political reconciliation would be an impossible venture so long as the constitution remained intact.

This study intends to redress this historiographical oversight by both asserting the primacy of ideological division in shaping state politics and assessing disagreement about the nature of the Revolution in Pennsylvania. Through a series of case studies, I demonstrate that the essential differences in the Constitutionalist and Republican visions of political order provided the basis for their numerous disagreements on the constitution. Because Republicans insisted that the constitution's perceived problems could only be redressed by either substantively reshaping the constitution or abandoning it altogether and Constitutionalist remained steadfast in their insistence that the constitution's maintenance was essential to securing the Revolution, Pennsylvania politics was fraught with interminable disagreement regarding the legitimacy and sustainability of the state's source of fundamental law.

This study has implications which extend beyond the study of Pennsylvania and relate generally to the study of the American Revolution. Consideration of constitutional

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Toward a New View of the Constitutionalist Party," in eds., Ronald Hoffman and Peter J. Albert, *Sovereign States in an Age of Uncertainty* (Charlottesville: University of Virginia Press, 1981); Owen S. Ireland, "The Crux of Politics: Religion and Party in Pennsylvania, 1778-1789," *William and Mary Quarterly* 42, no. 4 (October, 1985), 453-475; Douglas Arnold, *A Republican Revolution: Ideology and Politics in Pennsylvania, 1776-1790* (New York: Garland Publishing, 1989).

and political issues as sources of domestic disagreement has been largely abandoned in recent decades in favor of Neo-Progressive examinations of economic and social animosity and culturally minded assessments of the place of race and gender in the Revolution.<sup>6</sup> While these approaches have produced useful insights into the Revolutionary era, they have failed to provide a comprehensive explanation for the differences in domestic outlook that characterized various elements of the movement for American independence. The Pennsylvania constitutional dispute demonstrates that differences in political and constitutional ideology were central to the divisions regarding the nature and purpose of the Revolution that emerged within the Patriot camp. Even in Pennsylvania, which hosted perhaps the most socially egalitarian contingent of adherents to the Patriot cause, questions of constitutional and political order eclipsed considerations of social and economic equality.

Further, this study has relevance to the concept of an American Revolutionary settlement.<sup>7</sup> The origins of the American Revolution and the contrast between nationalist and state sovereigntist visions have been examined at length. Less attention has been paid to the conflicting political visions that produced divisions within the Patriot cause prior to

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<sup>6</sup> For examples of this “Neo-Progressive” approach, see Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999); Gary B. Nash, *The Unknown American Revolution* (New York: Penguin, 2006); Terry Bouton, *Taming Democracy: “The People,” The Founders, and the Troubled Ending of the American Revolution* (New York: Oxford University Press, 2007). For examples of the cultural interpretation of the Revolution, see Carroll Smith-Rosenberg, *This Violent Empire: The Birth of an American National Identity* (Chapel Hill: University of North Carolina Press, 2010); Robert G. Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution* (Chapel Hill: University of North Carolina Press, 2016).

<sup>7</sup> For examples, see John Murrin, “The Great Inversion, or Court versus Country: A Comparison of the Revolution Settlements in England (1688-1721) and America (1776-1816),” in ed., J.G.A. Pocock, *Three British Revolutions: 1641, 1688, 1776* (Princeton University Press, 1980), 368-453; Aaron N. Coleman, *The American Revolution, State Sovereignty, and the American Constitutional Settlement, 1765-1800* (Lanham, MD: Lexington Books, 2016).

the resolution of hostilities with Great Britain. Pennsylvania furnishes a great deal of evidence that conflicting political visions between Whigs were extensive and heavily informed debates over the state constitutions. Before the American Revolution's participants could debate the Revolution's implications for national affairs, they had to determine its implications for state politics. The Pennsylvania constitutional debate is a prime example of an instance in which these questions were debated at length.

This study takes an episodic approach to covering debates over the Pennsylvania constitution, beginning with its adoption in the summer of 1776 and concluding with the adjournment of the state Council of Censors in 1784. Chapter One discusses the background of the American Revolution in Pennsylvania and addresses the content and general reception of the Pennsylvania constitution. Chapter Two examines the differing constitutional visions presented in the number of newspaper essays about the Frame of Government written in 1776 and 1777. Chapter Three assesses the debates of the state Council of Censors, a constitutionally established body charged with reviewing and proposing amendments to the state constitution. The concluding section examines the Pennsylvania constitutional debate as it relates to broader arguments about constitutionalism and the character and outcome of the American Revolution.

Although this project is limited in its scope and immediate objectives, it should nonetheless contribute to the scholarly understanding of the Pennsylvania constitution. It should also enhance the historical understanding of the ways in which constitutional and political ideology shaped American Whigs' conflicting understandings of the American Revolution's implications. It was, perhaps, only fitting that a struggle precipitated by a clash of conflicting constitutional interpretations should be the source of extensive

constitutional disagreement within the newly formed United States. The American Revolution was, at least in Pennsylvania, an internal struggle waged not over questions of economic and social equality (although those questions were certainly present and influential), but over distinct and seemingly incompatible visions of political order. These visions of political order delineated partisans' interpretations of the Pennsylvania constitution, which were, in turn, intertwined with their conflicting understandings of the American Revolution. This study is an effort to make sense of these connections.

## Chapter One: The Background, Content, and Reception of the Pennsylvania Constitution

Political conflict defined Pennsylvania throughout the Imperial Crisis touched off by Parliament's passing of the Stamp Act. Resistance to British imperial policies sparked resistance to the colony's proprietary class, which had dominated politics for nearly a century, and also prompted hostility towards the colony's substantial population of Quakers, who also wielded considerable authority under the proprietorship.<sup>8</sup> Revolutionary committees, associations, and militias became vehicles through which opposition was directed against not only the British empire's policies, but the constituted authorities of Pennsylvania's political scene. The colony's middling and lower classes transformed the institutions established to protest British policies into instruments for corroding the stranglehold on Pennsylvania politics maintained by the proprietorship and the Quakers.<sup>9</sup>

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<sup>8</sup> On this development, see James H. Hutson, *Pennsylvania Politics, 1746-1770: The Movement for Royal Government and its Consequences* (Princeton: Princeton University Press, 1972). On Pennsylvania politics prior to the emergence of the American Patriot cause, see Alan Tully, *Forming American Politics: Ideals, Interests, and Institutions in Colonial New York and Pennsylvania* (Baltimore: The Johns Hopkins University Press, 1994); Richard Beeman, *The Varieties of Political Experience in Eighteenth Century America* (Philadelphia: University of Pennsylvania Press, 2004), Chapter 8; Nathan Kozuskanich, " 'For the security and protection of the community': The frontier and the makings of Pennsylvania constitutionalism," (Ph.D. Diss., The Ohio State University, 2005); Christopher Pearl, " 'For the good order of government': The American Revolution and the creation of the Commonwealth of Pennsylvania, 1740-1790," (Ph.D. Diss., State University of New York-Binghamton, 2013), Chap. V. On Quakerism and Pennsylvania politics, see Jane E. Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson* (Cambridge: Cambridge University Press, 2008).

<sup>9</sup> On the radical committees' role in shaping Revolutionary politics in Pennsylvania, see Richard Alan Ryerson, *The Revolution is Now Begun: The Radical Committees of Philadelphia, 1765-1776* (Philadelphia: University of Pennsylvania Press, 1978) and Kenneth Owen, *Political Community in Revolutionary Pennsylvania, 1774-1800* (Oxford University Press, 2018) Chapter I; on the militias' importance, see Steven Rosswurm, *Arms, Country, and Class: The Philadelphia Militia and 'Lower Sort' during the American Revolution, 1775-1783* (New Brunswick: Rutgers University Press, 1987).

These circumstances enabled mechanics, tradesmen, and artisans to exercise an unprecedented degree of influence over politics. Intercolonial pressures brought about by the coming of the War of Independence solidified this impact. Pennsylvania's political elite, preoccupied with preserving the proprietary frame of government, hedged their bets on reconciliation with Britain and opposed independence, even after the start of open hostilities between colonials and the empire. Clinging also to the pacifist tenets of Quakerism, they refused to cooperate with the Continental Congress' requests for requisitions, maintaining hope of reconciliation with the imperial metropole.<sup>10</sup> The unwillingness of the colony's established governing figures to accept the cause of American independence facilitated the emergence of a popularly driven political movement. The colony's radical element became the party of the American Revolution in Pennsylvania, displacing more moderate Whigs from leadership roles and assuming direction over the colony's involvement in the Patriot cause. The mantle of forging intercolonial cooperation fell to them, as they cooperated with the Continental Congress and thus became, so far as national affairs were concerned, the group in control of administering the war effort.

The radicals also undertook a campaign to replace the proprietorship, which they regarded as overly exclusionary in its dispensation of political power. They desired not only independence from Britain, but the replacement of the proprietary government with

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<sup>10</sup> Jessica Chopin Roney, "Government Without Arms, Arms Without Government: The Case of Pennsylvania," in Patrick Griffin, Brian Schoen, Peter S. Onuf, and Robert G. Ingram, eds., *Between Sovereignty and Anarchy: The Politics of Violence in the American Revolutionary Era* (Charlottesville: University of Virginia Press, 2015), 84-86

a new political order.<sup>11</sup> The extent to which they intended to abandon the precedents of the state's colonial history and establish a government directly representing the will of the people became apparent through their creation of a new constitution for the state of Pennsylvania in July of 1776.

On May 10, 1776, the Continental Congress issued a resolve recommending that each colony "adopt such government as shall, in the opinion of the representatives of the people, best conduce to the safety and happiness of their constituents in particular, and America in general."<sup>12</sup> Pennsylvania Whigs answered this call by convening in Philadelphia in July to hammer out a new constitution and establish statehood. Like the Revolutionary committees that preceded it, this convention was comprised mostly of mechanics, tradesmen, and artisans. Its members were men of common stock who had, with only a couple of notable exceptions, been untouched by much fame or distinction outside of Pennsylvania.<sup>13</sup> Benjamin Franklin and the watchmaker David Rittenhouse were the only two attendees of much reputation, and Franklin was likely only present at the convention for a brief interlude. While these men had assumed roles of increasing political importance through their involvement with the Revolutionary associations and militia, they had been excluded from positions of defining influence in state politics prior to the onset of the War. Their engagement in, first, cooperating with the Continental

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<sup>11</sup> This was evident in their criticisms of the proprietorship in a string of pamphlets written early in 1776. See Ryerson, *The Revolution is Now Begun*, 169-170. See also, Benjamin L. Carp, *Rebels Rising: Cities and the American Revolution* (Oxford University Press, 2007), 172-212.

<sup>12</sup> *Journals of the Continental Congress, 1774-1789*, 342. Accessed at [http://memory.loc.gov/cgi-bin/query/D?hlaw:4:./temp/~ammem\\_PvSt:](http://memory.loc.gov/cgi-bin/query/D?hlaw:4:./temp/~ammem_PvSt:).

<sup>13</sup> Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (New York: Oxford University Press, 1981), 637. Also see Charles S. Olton, *Artisans for Independence: Philadelphia Mechanics and the American Revolution* (New York: Syracuse University Press, 1975).

Congress to provide supplies and manpower for the war effort and, secondly, framing the state constitution, catapulted them to preeminence in state affairs. The onset of armed conflict and the coming of independence had provided them with the opportunity to eclipse Pennsylvania's entrenched political classes and become the principal movers in charting the state's newfound course of government.<sup>14</sup>

Pennsylvania's Revolutionary leaders harbored tremendous disdain for the state's former ruling class. Their resentment towards those they displaced from power animated their attempt at creating a government suitable to both the exigencies of war and the demands of popular politics. They denounced those who had previously dominated Pennsylvania politics as "a minority of rich men" and "an aristocratical junto" that had exerted every effort to "make the common and middle class of people their beasts of burden."<sup>15</sup> A letter circulated by the Philadelphia militia concerning the selection of delegates to the constitutional convention warned against electing "great and over-grown rich Men," noting their propensity for framing "Distinctions in society."<sup>16</sup>

Their distaste for the elites who had previously been at the helm was so intense that the state constitutional convention considered "whether the future legislature of this State should have the power of lessening property when it became excessive in individuals." A provision included in a preliminary draft of the Declaration of Rights set forth in the state constitution warned against "an enormous Proportion of Property vested in a few

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<sup>14</sup> Ryerson, *The Revolution is Now Begun* and Kenneth Owen, *Political Community in Revolutionary Pennsylvania*, 19-36.

<sup>15</sup> Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 86.

<sup>16</sup> John Murrin, "An American Ruling Class," in Murrin, *Rethinking America: From Empire to Republic* (Oxford University Press, 2018), 263.

Individuals,” and provided that such a state of affairs should be “discouraged by the laws of the state.”<sup>17</sup> These measures were rejected by the convention, but they attested to a levelling impulse within the state’s revolutionary movement. This levelling tendency aimed at a social restructuring of Pennsylvania politics, although it did not aspire to economically reshape society through government action.<sup>18</sup>

### **I. The Pennsylvania Constitution**

I do declare that I do not hold myself bound to bear Allegiance to George the Third, King of Great-Britain; And that I will steadily and firmly and at all Times promote the most effectual means, according to the best of my Skill and Knowledge, to oppose the tyrannical Proceedings of the King and Parliament of Great-Britain against the American colonies, and support a Government in this State on the authority of the People only...

--John Morris, July 1776<sup>19</sup>

This pledge, taken by the Secretary of Pennsylvania’s constitutional convention shortly after the body gathered, signaled the joint objectives of Pennsylvania’s most radical supporters of Independence. The authors of the Pennsylvania constitution thought that the realization of independence and the creation of a government grounded in the “authority of the people only” were interchangeable and synonymous. In their view, the American Revolution was not merely a struggle to throw off the yoke of British control. Independence was essential, but it needed to be accompanied by the creation of a state government which fully accounted for, and was energized by, the popular will. This objective, to a certain extent a product of the members’ outsider status and egalitarian leanings, but also a product of their conceptualization of popular sovereignty (a topic

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<sup>17</sup> Wood, *Creation*, 89.

<sup>18</sup> Murrin, “An American Ruling Class,” 264.

<sup>19</sup> *Minutes of the proceedings of the Convention of the State of Pennsylvania, held at Philadelphia, the fifteenth day of July, 1776* (Philadelphia, 1776), 5.

addressed at greater length in the next chapter), led them to produce a constitution far more democratic than any of the other state constitutions created at the outset of the War for Independence.

The constitution they devised consisted of three sections: an introduction enumerating the colony's reasons for separating from Britain (similar to the various Declarations of Independency issued by the other state governments and the Declaration of Independence adopted by the Continental Congress), a fairly standard Declaration of Rights listing rights reserved to the commonwealth's citizens, and a Frame of Government outlining the design and operation of the new state government.<sup>20</sup>

The first two sections provoked minimal controversy. The Declaration of Rights was squarely a part of the Anglo-American tradition of enumerating individual rights.<sup>21</sup> It established the individual right to life, liberty, property, happiness, and safety; the right to assemble to discuss political affairs and grievances, the right to bear arms; and religious freedom (an element reflecting Pennsylvania's longstanding tradition of religious toleration). It counterposed those rights with the responsibilities of the citizenry: the payment of just taxes, military service, and the responsibility to "continually oversee" state officials.<sup>22</sup> The Declaration reflected a variety of influences. The influence of the English common law was evident its enshrinement of liberties, the recognition of those rights as existing in the absence and in possible opposition to government attested to the

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<sup>20</sup> On the numerous Declarations of Independence adopted by the nascent American states, see Maier, *American Scripture*.

<sup>21</sup> On this tradition, see John Phillip Reid, *Rule of Law: The Jurisprudence of Liberty in the Seventeenth and Eighteenth Centuries* (DeKalb: Northern Illinois University Press, 2004); *The Ancient Constitution and the Origins of Anglo-American Liberty* (DeKalb: Northern Illinois University Press, 2005).

<sup>22</sup> Constitution of Pennsylvania, September 28, 1776. Accessed at [http://avalon.law.yale.edu/18th\\_century/pa08.asp](http://avalon.law.yale.edu/18th_century/pa08.asp).

influence of liberal thought, and republican influences were apparent in its articulation of the civic duties of citizens.<sup>23</sup> It was the product of a multiplicity of influences and a testament to the intellectually heterogeneous nature of American constitutional thought.

Most importantly, the Declaration articulated a vision of the people's relationship to the government and the nature of political authority in Pennsylvania.<sup>24</sup> It unequivocally announced both that the people were the source of political authority and that the constitution was intended to place them fully in control of Pennsylvania politics.

Affirming popular sovereignty as the central tenet of the new state government, the Declaration expressed the people's "sole, exclusive, and inherent right," of "governing and regulating" the state's internal police.<sup>25</sup> It stated that power was "originally inherent in, and consequently derived from," the people. This made "officers of government" the "trustees and servants" of the people.<sup>26</sup> Government officials could therefore be "reduce[d]... to a private station," should they prove unsatisfactory in the execution of

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<sup>23</sup> On the place of liberalism in Anglo-American thought and discourse, see Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace, 1955); Isaac Kramnick, *Bolingbroke and His Circle: The Politics of Nostalgia in the Age of Walpole* (Cambridge: Harvard University Press, 1968); Gary Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, NY: Doubleday, 1978); Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York University Press, 1984) and *Liberalism and Republicanism in the Historical Imagination* (Cambridge: Harvard University Press, 1992); Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge University Press, 2004); Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775* (Cambridge University Press, 2011). On republicanism, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967); Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton University Press, 1975); Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca: Cornell University Press, 1978); Robert E. Shalhope, "Republicanism and Early American Historiography," *William and Mary Quarterly* 39, no. 2 (April, 1982), 334-56; Daniel T. Rodgers, "Republicanism: the Career of a Concept," *Journal of American History* 79, no. 1 (June, 1992), 11-38.

<sup>24</sup> Jeffrey L. Bauman, "Pennsylvania: Liberty, Independence, and Virtue," in eds. George E. Connor and Christopher W. Hammons, *The Constitutionalism of the American States* (Columbia: University of Missouri Press, 2008), 250.

<sup>25</sup> State Constitution, Declaration of Rights, Clause III.

<sup>26</sup> *Ibid.*, Clause IV.

their duties.<sup>27</sup> The constitution acknowledged that the people had other recourses against governmental abuse of power that extended beyond the recalling of representatives.

Affirming perhaps the greatest concession to popular sovereignty and sounding distinctly Lockean, the constitution recognized the people's authority to "reform, alter," or even to "abolish government," in order to secure the general welfare.<sup>28</sup>

These clauses set forth a vision of a government conducive to the collective good of the commonwealth and directly accountable to the governed. Section V's expression of the importance of promoting the common welfare over the interests of private parties is a telling indicator of the authors' commitment to a vision of popularly controlled government devoid of factional divisions. The constitution aimed for a promotion of collective interests over those of factions.<sup>29</sup>

The Declaration established the "common benefit, protection, and security," as the object of government. Eschewing the idea that government should provide an avenue for factions or interests to acquire power or wealth, it avowed that the government would not work towards "the particular emolument or advantage of any single man, family, or sort of men."<sup>30</sup> These clauses set forth a vision of a government conducive to the collective good of the commonwealth and directly accountable to the governed. Unlike the interpretation of the imperial constitution presented by defenders of Parliament, the

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<sup>27</sup> Ibid., Clause VI.

<sup>28</sup> Ibid., Clause V. John Locke had sanctioned the popular overthrow of tyrannical governments in his *Second Treatise of Government* (London: 1689).

<sup>29</sup> Albrecht Koschnik and Kenneth Owen both contend that the supporters of the Pennsylvania constitution adhered to an ideal vision of their state in which factionalism and private interests were nonexistent and the general interests of the political community, construed as a homogeneous entity that encompassed the various constituent elements of society without bringing them into conflict with one another, prevailed. Koschnik, "Let a Common Interest Bind us Together": *Associations, Partisanship, and Culture in Philadelphia, 1775-1840* (Charlottesville: University of Virginia Press, 2007); Owen, *Political Community*.

<sup>30</sup> Ibid., Clause V.

Pennsylvania constitution affirmed the direct power of the people to exercise control over their government; there was no hint of virtual representation in the constitution's introduction.<sup>31</sup> Simultaneously promoting popular control and the general welfare, the constitution seemed to suggest that its framers thought those goals to be directly consonant with one another.

The Frame of Government set forth in the constitution's third and final section created an institutional framework that incorporated the ethos of democratic government explicated in the Declaration. It created a framework that made unprecedented concessions to the popular will. It established a unicameral legislature, one-year terms of office for state legislators, and mandated that laws be published for public consideration and that their enactment be delayed until after the adjournment of the legislative session in which they were introduced. These measures established mechanisms through which the electorate could exercise a tight control over their legislative affairs.<sup>32</sup>

The constitution also dramatically expanded the scope of the electorate. It gave the franchise to all taxpaying males aged twenty-one or over.<sup>33</sup> By eschewing property qualifications, the constitution established a political process in which wealth was not a barrier to participation. This ensured that the majority of the people (a term whose reach was still limited to adult white males) could engage in political affairs and that the

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<sup>31</sup> On the British attitude towards American appeals to actual representation, see Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788* (Athens: University of Georgia Press, 1986); Eliga H. Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill: University of North Carolina Press, 2000).

<sup>32</sup> Pennsylvania Constitution, Frame of Government, Section II.

<sup>33</sup> *Ibid.*, Section XXII.

interests of society as a whole, and not just the interests of property-holders, could be taken into account.

While the constitution expanded the size of the electorate and thus, in combination with its grant of power to the legislature, promised to enhance the people's influence on politics, its concessions to popular authority were not without qualification. The constitution mandated that officeholders take a loyalty oath under which they would pledge both to "be true and faithful to the commonwealth of Pennsylvania" and to "not directly or indirectly do any act or thing prejudicial or injurious to the constitution thereof." Here, the constitution's authors seemed to anticipate (incorrectly, it turned out) that the harmonious state of affairs envisioned in the constitution would be realized and that the constitution would enjoy general, if not unanimous, support across the state. Evidencing their conviction that the interests of the Commonwealth and the maintenance of the constitution were one and the same, the framers bound all public officials to swear allegiance to the constitution.<sup>34</sup>

The constitution's authors deviated from the proprietary frame of government in place throughout Pennsylvania's history as a colony by creating an executive branch without a governor and by placing the judiciary under the thumb of the legislature. It established a plural executive comprised of a supreme executive council and a president, and it did not create an executive veto.<sup>35</sup> The council consisted of twelve members, who were only allowed to serve for three years at a time before being barred from resuming

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<sup>34</sup> Pennsylvania Constitution, "Oath or Affirmation of Allegiance."

<sup>35</sup> *Ibid.*, Section III.

office for a period of four years.<sup>36</sup> The judicial branch was not afforded the customary protections it had previously received under the propriety government. Justices were appointed by the Council for seven years terms and could be reappointed--but they were subject to removal by the Assembly at any time, a power which later brought controversy.<sup>37</sup> These provisions placed the executive and judicial branches in a subordinate position *vis a vis* the state legislature. The executive could not check the actions of the legislature--and was therefore unable to prevent the Assembly from removing justices of the state Supreme Court at will. The constitution thus effectively gave the legislature preeminence in the new state government.

These provisions signaled a radical departure from traditional Anglo-American notions regarding the separation of powers, expressed most notably in Montesquieu's *The Spirit of the Laws*.<sup>38</sup> Legislative preeminence, generally brought about through the actions of the lower houses of the colonial assemblies, had been a trend in the thirteen colonies throughout the eighteenth century. However, never had an American charter or constitution established so much formal power in a legislature and so clearly afforded the executive and judicial components such a clearly secondary place in the distribution of power.<sup>39</sup> The framers of the Pennsylvania constitution appear to have shared with their counterparts in the other states an abiding fear of executive overreach that led them to

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<sup>36</sup> *Ibid.*, Section XIX.

<sup>37</sup> *Ibid.*, Section XXIII.

<sup>38</sup> Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (1748).

<sup>39</sup> On the growing influence of the lower houses of the colonial assemblies during the eighteenth century, see Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (Chapel Hill: University of North Carolina Press, 1963) and "The Role of the Lower Houses of Assembly in Eighteenth Century Politics," in *Negotiated Authorities*, 163-84. For a comprehensive look at the colonial charters and state constitutions, see Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988).

create an ineffectual and subservient executive component. However, they went well beyond the other state constitutions by creating an executive council, rather than a governor, and providing for no executive veto over laws passed by the legislature.

It is difficult to identify the direct inspiration for the system of government created under the constitution. Some of the frame of government's features had been proposed in pamphlets published shortly before the constitutional convention met.<sup>40</sup> While the shortage of extant records detailing the convention's debates makes determining the influences of the constitution's framers a nearly impossible task, it is probably fair to suggest that they were guided by these proposals. Thomas Paine likely furnished further influence, as he was closely associated with several the convention's members and had promoted unicameralism in *Common Sense*.<sup>41</sup>

Whatever their influences and inspirations, the authors of the state constitution created a system of government remarkably different from both the charters of the colonial period and the constitutions their contemporaries from other states were writing. In creating a unicameral legislature with the power to dominate state politics, the constitution's authors took the implications of the concept of popular sovereignty to more extreme conclusions than any of their counterparts. The Frame of Government was an attempt to create political institutions capable of facilitating rule by the people and, by extension, militating against the dominance of the elite interests that had traditionally

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<sup>40</sup> See *An Essay of a Frame of Government for Pennsylvania* (Philadelphia, 1776); *Four Letters on Interesting Subjects* (Philadelphia, 1776); *The Genuine Principles of the Ancient Saxon, or English Constitution... With some Observations on their peculiar fitness... for Pennsylvania* (Philadelphia, 1776).

<sup>41</sup> Thomas Paine, *Common Sense* in ed. Moncure Daniel Conway, *The Writings of Thomas Paine*, vol. I (New York: G.P. Putnam's Sons, 1894), accessed at <https://oll.libertyfund.org/pages/1776-paine-common-sense-pamphlet>. On Paine's association with radical Whig politics in Pennsylvania, see Eric Foner, *Tom Paine and Revolutionary America* (New York: Oxford University Press, 1976), chapter IV.

been at the helm of Pennsylvania politics. The constitution established a framework for government that, rather than indirectly and dispassionately representing the interests of the people, was directly subject to their oversight and control.

The governmental framework established under the constitution was animated by the concept of popular sovereignty, or the notion that all political authority was derived from the people.<sup>42</sup> This idea commanded almost universal acknowledgment among Americans. It was a common truism that the people were sovereign. However, most Americans in 1776 still thought that, while in theory sovereignty resided with the people, carefully calculated constraints on the political agency of the people were necessary to ensure governmental stability.<sup>43</sup>

The authors of the Pennsylvania constitution departed from this general wisdom. While they still worked under the assumption that representation was necessary and that a purely democratic government would be inoperable, they afforded a greater degree of power to the people than most Americans were willing to concede. They did this by rejecting prevailing notions about the balance of power and making the legislature the preeminent part of the state government. Rather than distributing power in ways that

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<sup>42</sup> Edmund S. Morgan's *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton, 1988) remains perhaps the definitive account of the concept's development, although Morgan contends that the idea mostly remained bound to the realm of theory, providing intellectual justification for political norms which often constrained the agency and power of the people. Morgan's understanding of the concept aligns with its exposition by the Pennsylvania constitution's critics. However, it fails to account for the more direct understanding of the idea propounded by the constitution's supporters. Christian G. Fritz's assessment of the idea in *American Sovereigns: The People and America's Constitutional Tradition before the Civil War* (Cambridge University Press, 2007) aligns more closely with the concept's elaboration by the Pennsylvania Constitutionalists. Also see, Horst Dippel, "The Changing Idea of Popular Sovereignty in Early American Constitutionalism: Breaking Away from European Patterns," *Journal of the Early Republic* 16, no.1 (Spring, 1996), 21-45.

<sup>43</sup> Thad W. Tate, "The Social Contract in America, 1774-1787: Revolutionary Theory as a Conservative Instrument," *William and Mary Quarterly* 22, no. 3 (July, 1965), 375-91.

checked the influence of the people over government and appealing to an ideal of deferential politics, as the authors of most of the other state constitutions did, the Pennsylvania framers created a structure which gave authority to the agents of the people and made them directly responsible to their constituents in ways that had not previously been realized.<sup>44</sup> Political power in Pennsylvania was a stream flowing from a spigot which the people could turn at any moment.

This effort to instantiate directly the authority of the people within the structures of government prompted staunch criticism. Supporters of the proprietorship objected to the constitution's displacement of the governmental structure that had existed throughout Pennsylvania's colonial history. Their concerns about the content of the constitution were compounded by their objections to the manner in which it was adopted—the Assembly that had produced the document was an extralegal body unaccountable to the people. The constitution's opponents argued that the nature of the frame of government's creation rendered it illegitimate. The Assembly had operated in an extralegal manner to establish a system which, while democratic in its proposals, had not actually been subject to popular approval. The critics of the constitution emphasized the apparent hypocrisy inherent to this method of establishing a government (although it is worth noting that the other state constitutions were adopted in extralegal manners and were not subject to direct popular approval).<sup>45</sup>

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<sup>44</sup> For an overview of deference's place in early American politics, see Richard Beeman, "Deference, Republicanism, and the Emergence of Popular Politics in Eighteenth-Century America," *William and Mary Quarterly* 49, no. 3 (July, 1992), 401-30.

<sup>45</sup> Jack Rakove, "Constitutionalism: The Happiest Revolutionary Script," in eds., Keith Michael Baker and Dan Edelstein, *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions* (Palo Alto: Stanford University Press, 2015), 114-16.

Critics also objected to convention delegates' common background and apparent ignorance of political affairs. One observer referred to the delegates as a group of "plain countrymen,"; another bluntly dismissed them as "numsculs." Even Thomas Smith, a delegate to the convention, complained that "not a sixth part of us ever read a word," concerning government.<sup>46</sup> Opponents of the constitution seized upon what they regarded as its authors' unrefined backgrounds and ignorance of political affairs. The constitution's critics believed that the members of the convention had violated the established norms of political deference, rising above their allotted station and revealing their inability to create a government worthy of preservation.

The state constitution's apparent radicalism prompted criticism from moderate Whigs, including some, such as Benjamin Rush, Christopher Marshall, and Thomas McKean, who had been active proponents of Independence and open critics of the proprietary government. They recoiled at the domination of politics by a "mobocracy," viewing the constitution's provisions for popular rule as the extreme product of Pennsylvania's most radical acolytes of popular liberty. John Adams voiced a similar opinion, exclaiming "Good God!" on his first reading of the constitution and observing that the people of Pennsylvania would soon "be glad to petition the crown of Britain for reconciliation" to escape "the tyranny of their Constitution."<sup>47</sup> Adams' criticism of the state constitution is unsurprising, considering his staunch advocacy of the separation of powers and bicameralism in "Thoughts on Government," which Adams wrote in response

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<sup>46</sup> Eric Foner, *Tom Paine and Revolutionary America*, 131.

<sup>47</sup> David Hawke, *In the Midst of a Revolution*, (Philadelphia: University of Pennsylvania Press, 1961), 177-178.

to Thomas Paine's argument in *Common Sense* that the ideal government was one comprised of a single-chamber legislature, an elected judiciary bound by a single term, and a weak executive--a vision reflected in the state constitution.<sup>48</sup> While Adams argued that legislatures should be "in miniature an exact portrait of the people at large," he contended that unicameral legislatures were dangerous because they possessed no internal checks, and he further maintained that the exercise of executive and judicial powers by the legislature was an essential threat to the maintenance of a balance of powers between the three branches of government.<sup>49</sup>

The broader debate that emerged in Pennsylvania mirrored the disagreement between Paine and Adams. It was a contest which pitted a distinct vision of direct government by the people against a more prevalent conception of deferential government, in which the people were acknowledged as the source of political authority but their ability to exercise that power was constrained by a carefully maintained institutional equilibrium. While much of the debate consisted of wrangling over specific provisions of the constitution, the contest essentially revolved around this fundamental difference in outlook. Further, these conflicting visions of political society and constitutional order intersected with the partisans' differing understandings of the meaning of the American Revolution. These differences framed the contours of political discourse in Pennsylvania throughout the waging of the War of Independence. They attest to the centrality of constitutional ideology to political discourse during the Revolutionary period. As the next

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<sup>48</sup> Elisha P. Douglass, *Rebels and Democrats: The Struggle for Equal Political Rights and Majority Rule during the American Revolution* (Chapel Hill: University of North Carolina Press, 1955), 22-32; Hawke, *In the Midst of a Revolution*, 183.

<sup>49</sup> Adams, "Thoughts on Government," in ed. Charles Francis Adams, *The Works of John Adams*, vol IV (Boston: Little, Brown, 1856), 132-3.

chapter demonstrates, the constitution's adoption and implementation provided the occasion for these distinct visions to be articulated. The newspaper debate that ensued in the wake of the constitution's publication provided a forum for these understandings to be expressed at length.

## Chapter Two: Debating the Constitution in the Press, 1776-1778

All government supposes power, and power can exist only by delegation. Why then should the people by the Constitution of Pennsylvania, in so many cases, refuse to part with their power when it is given wholly to *their* servants who are bound by a thousand ties to employ it only for *their* benefit, and who must return it to them every year? The people in this case resemble a man who bequeaths his estate to himself, and afterwards appoints himself his own executor.<sup>50</sup>

--“K,” *Pennsylvania Packet*, September 24, 1776

In 1811, Alexander Graydon published a memoir detailing his experiences living in Pennsylvania over the course of the previous six decades. In addition to recounting a personal narrative, Graydon addressed the political trends the state had experienced during that period. Graydon articulated a vision of popular government in alignment with that of the authors of the state constitution of 1776. The “source of power,” he wrote, “has been diligently explored and discovered too...and universal suffrage, with the right to pull down and build up again, thence recognized as fundamental.” He noted that this discovery had completely upended prevailing notions about the balance of power; it had the potential to “puzzle the learned advocates for strong executives, and independent judiciaries, and in the end, perhaps, turn all their well-spun theories into lumber, little better than nonsense.”<sup>51</sup>

Graydon’s perception of political trends in Pennsylvania aligned closely with the realities of the state during the American Revolution. The conception of popular sovereignty as a precept whose realization had the power to render “strong executives,

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<sup>50</sup> *Pennsylvania Packet*, September 24, 1776.

<sup>51</sup> Alexander Graydon, *Memoirs of a Life Chiefly Passed in Pennsylvania within the Last Sixty Years* (Harrisburg, PA: John Wyeth, 1811), 305-306.

and independent judiciaries,” unnecessary was central to the way that the supporters of the state constitution presented its Frame of Government. Principally articulating their vision through a series of newspaper essays, these defenders of the constitution argued that the authority of the people, which they viewed as essential to the Revolution, necessitated a rejection of prevailing notions about the dispersion of political power. Graydon was, further, correct in recalling that this conception of popular sovereignty perplexed and discomfited those who believed that “strong executives and independent judiciaries” were indispensable to balanced government.<sup>52</sup>

Graydon was incorrect, however, in presenting this development as an uncontested triumph for the Constitutionals’ direct reading of popular sovereignty. Those who opposed the constitution assailed the notion that the power of the people could be reconciled with a government which did not establish a clearly balanced dispensation of authority among the branches of government. They argued that the constitution’s establishment of a unicameral legislature occupying a place of preeminence in the state government provided the basis for the government’s degeneration into an arbitrary regime.<sup>53</sup>

Graydon’s account provides a useful overview of the basic fault lines that separated the constitution’s supporters and opponents. Their visions of constitutional order, premised on conflicting visions of government and divergent notions about the purpose of the American Revolution and its proper direction, were presented in the

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<sup>52</sup> Ibid.

<sup>53</sup> Wood, *Creation*, 441-442.

newspaper essays written in the aftermath of the constitution's adoption. These essays provide a window into understanding the extent and nature of the ideological divisions between the two factions in the constitutional debate.

The disagreement on issues of constitutional structure and the dispersion of power that emerged in the aftermath of the constitutional convention persisted throughout 1776. The suitability of legislative preeminence and the limits of republican government were central themes in Pennsylvania discourse. The public sphere provided a forum for the constitution's supporters and opponents to make their case through a variety of arguments.<sup>54</sup>

While evidence of these issues' hold on public consideration can be found in public documents, their place in political debate is most apparent in a number of newspaper essays written in 1776. Supporters of the constitution championed its facilitation of popular rule through the establishment of an annually elected and remarkably powerful Assembly. In their eyes, the constitution's success at realizing, to an unprecedented degree, the principle of popular sovereignty meant that revision or abandonment of the document were not only unnecessary measures, but efforts to undermine the cause of popular government, which they equated with the cause of Independence. Opponents of the constitution argued that the framers of the constitution had gone entirely too far in their efforts to realize the doctrine of popular sovereignty.

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<sup>54</sup> For an overview of the literature on the early American public sphere, see John L. Brooke, "Consent, Civil Society, and the Public Sphere in the Age of the Revolution," in eds., Jeffrey L. Pasley, Andrew W. Robertson, and David Waldstreicher *Beyond the Founders: New Approaches to the Political History of the Early American Republic* (Chapel Hill: University of North Carolina Press, 2004).

They recognized the people as sovereign but believed that their power needed to be diffused across multiple branches of government and thereby restrained. They saw their proposals to either reform or replace the constitution as sound and moderate efforts to ensure governmental stability and avoid disastrous internal calamity in the midst of an uncertain war with Great Britain.

These positions framed the contours of the public debates over the constitution that took place in 1776 and 1777. Although not every partisan of the constitution believed that the document was faultless, and not every critic of the constitution argued that the Frame of Government was irredeemably flawed, disagreement on governmental structure was the common thread that bound together the majority of the newspaper essays on the constitution written during this period. Further, partisans of both positions argued that their respective stances on the state constitution--and, by extension, their conflicting visions of governmental order--were bound up with the cause of successfully prosecuting the War for Independence and securing the principles of the American Revolution.

### **I. Governmental Structure and the Role of the People**

The constitution's establishment of a unicameral legislature was a source of enormous controversy within newspaper debates over the constitution. Supporters of the constitution argued that a unicameral legislature was the best means of directly securing the liberties of the people because it encapsulated the interests of the entire political community within a single body. They further argued that it militated against the emergence of "aristocratic" interests, which they contended had historically dominated within upper legislative houses. Critics turned upside down the notion that a second

legislative branch was necessary to provide legislative wisdom and serve as a check on the lower house, noting upper houses' traditional role as a vehicle for distinguished members of society to exercise their influence over political affairs. The elite-centric nature of upper houses was, they contended, a threat and not an asset.

Further debate centered around the legislature's relationship to the other two branches of government. The powers granted the legislature under the constitution effectively made it the preeminent part of the state government. Supporters of the Frame of Government either argued that the constitution provided enough alternative checks on legislative power (through means such as annual elections or the delaying of legislative enactment until the opening of the following year's legislative session) to constrain it, or that the legislature's role as the representative of the people meant that it should wield a preponderance of the distribution of power.

"K," one of the first authors to comment on the constitution, invoked the republican notion that the "weakness and depravity of human nature" made "proper restraints" on both liberty and power necessary. They conceded that unicameral legislatures would be ideal "If men were wise and virtuous as angels," but noted that human nature had made compound legislatures a staple of free governments. The tendency of "liberty to run into licentiousness," made restraints on legislative power a necessity, and "K" argued that an upper house of the legislature would ensure that the Assembly remained within the bounds of power prescribed by human errancy.<sup>55</sup>

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<sup>55</sup> *Pennsylvania Packet*, September 24, 1776.

“Demophilus” acknowledged such arguments on behalf of an upper house but argued that Pennsylvania’s peculiar social composition made such an institution impractical. While the essayist recognized the “wisdom of the most learned and experienced members of the state,” he argued that Pennsylvania did not boast a large enough class of distinguished individuals to assemble an upper chamber of the legislature. Pennsylvanians were, he argued, “farmers, men of moderate education, possessed of common sense,” but lacking much background in “the history laws or politics, even of their own, not to mention other states.” Demophilus thought “The best assembly of farmers merchants, and mechanics that could be picked out of the united states, would hardly be equal to the task of framing one regular digest.” Their natural incapacity for government, would, however, be alleviated by the nature of a unicameral assembly; “Demophilus,” argued that single-chamber legislatures were more conducive to consideration of “what is RIGHT” than of abstract questions of political philosophy. Further, the essayist ultimately concluded that there were so few individuals in Pennsylvania qualified to serve as members of an upper chamber that creating such an institution would ensconce an aristocracy within the state government and render the common citizens of the state incapable of promoting their own interests against those of their superiors.<sup>56</sup>

“Camillus” took the notion of popular control over the legislature to even greater lengths, rejecting the suggestion that any other branch of government could exercise a negative over actions taken by the Assembly. Arguing that “The more simple, and the

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<sup>56</sup> *Pennsylvania Journal*, September 25, 1776.

more immediately dependant the authority is on the people, the better; because it must be allowed, that they themselves are the best guardians of their own liberties.” The implication of this popular possession of political authority was that the legislature needed to be the preeminent branch. It channeled the will of the people and therefore could not delegate a negative over its authority to another body. This meant that only the people could legitimately exercise a check against the power of the legislature.<sup>57</sup>

An article entitled “Remarks on the Resolves published against the Plan of Government, by a gentleman of neither party,” argued that the constitution had maintained elements of a balance of power while abandoning those aspects that offended the sensibilities of Pennsylvanians. Despite the author’s professed detachment from the emerging partisan divide engulfing the state, he offered a number of arguments on behalf of the constitution. The essayist found that the constitution had in fact established an independent judiciary through its provisions for septennial terms of office and fixed salaries for judges. The author argued that the executive’s presumed “dependance” on the legislature was “mostly imaginary, and where it is real, it is but a continuance of our former practice, which so many esteem and admire.” The essayist contended that Republicans’ efforts to establish a balanced government had led them to propose a recreation of an English-style mixed regime that was inconsistent with the social composition of Pennsylvania. Republicans were “evidently exalting the English plan of King, Lords, and Commons, in the ideas of a people possessed of different ranks suitable thereto...but where are our Nobles? Or who dreams of a King of Pennsylvania?”

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<sup>57</sup> *Pennsylvania Journal*, October 2, 1776.

Pennsylvania society was, the author believed, far too egalitarian for such a system to function properly. A classical governmental order, in which different elements of the government corresponded with distinct societal interests, could not survive in a society as broadly egalitarian as Pennsylvania.<sup>58</sup>

The author's characterization of Republicans as proponents of a mixed regime was rhetorically powerful but inaccurate. Contrary to the essayist's contentions, Republicans were not supportive of a classical-style order in which the interests of the one, the few, and the many were vested in separate branches and set in counterpoise to one another. Rather, the ardency with which they promoted a balance of power resulted from a desire for a balanced government controlled by the people but subject to a series of institutional constraints on their power. Despite their opponents' characterization of them as reactionary stalwarts, Republicans were proposing *balanced* government—at the time a revolutionary concept—not the mixed regime of classical politics.

The author further contended that the legislature could assume powers beyond the domain of lawmaking without becoming tyrannical, noting that the state Assembly had created a Committee of Safety comprised of its own members the previous winter. Beyond simply being a refutation of established assumptions about the delineation of powers among branches of government, this notion was a justification for extralegal government under the auspices of promoting the common safety and general welfare of the state. The author seemed to believe that the exigencies facing the state sanctioned a

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<sup>58</sup> *Pennsylvania Evening Post*, November 9, 1776.

broad degree of legislative discretion to take *any* action necessary to promote the state's safety.<sup>59</sup>

“One of the People” argued that those intent on establishing an upper house wanted such an institution because of its “lordly powers to direct and controul the Commons.” The author rejected the Republican assertion that the “fatal influence of hasty, incorrect, passionate and prejudiced determinations” would prevail should a lower house “consisting chiefly of farmers and mechanics,” be established and criticized the notion that the “other House will be famed for wise, prudent, just and well judged counsels.” The essayist appealed to English history as an example of the merits of a lower house, observing that the House of Commons was the principal instrument within the English government for the advancement of liberty: “They were brave, prudent, and eloquent, they were the guardians of liberty, the glory of Britain and an honor to mankind.” The House of Lords, by contrast, had only served as a roadblock to the work of the House of Commons on behalf of liberty.

The essayist further suggested that an upper house would inevitably become as corrupt and aristocratic as he believed the House of Lords was. The author suggested that the “sons of wisdom” who would occupy seats in an upper chamber would eventually refuse to “submit to yearly elections by the ignorant vulgar,” pushing for longer terms of office and eventually demanding “places and pensions to support their dignity.” “One of the People” argued that the upper house would be able to effectively deploy assumptions about the “passion and prejudice” of the lower chamber to prevent the lower house from

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<sup>59</sup> Ibid.

checking its members' efforts to aggrandize power and influence. The result would be that "every leader must have a place of honor, or profit, or an annuity for life for betraying the state," a development which had occurred within the House of Lords and could easily be simulated in America, as "we know that what has happened in Britain may happen in America." "One of the People" cited English historical example in rebuttal to the theoretical arguments about the necessity of an upper house raised by opponents of the constitution.<sup>60</sup>

"The Considerate Freeman" submitted that the equal and representative nature of the legislature was sufficient insurance against the possibility of its members behaving tyrannically. The author saw the legislature as an embodiment of the ideal of actual representation:

it consists of a body of men, chosen in every part of the State by the free voice of the people for whom they are to legislate, and proportioned on the true principles of representation, so that every man has a voice in delegating the man who is to give away his money, or make the laws by which he is to be bound, and no man has a greater voice than another...By this means the whole State becomes its own council, and every freeman in it is a counsellor, and the negative lies in the whole body politic, and not in a few grandees.<sup>61</sup>

The author contended that the entire citizenry of Pennsylvania was represented by the legislature. Rather than representing merely a select segment of the general population, the Assembly would represent the interests of every element of the political community. Where upper houses could easily "gratify their ambition and thirst for power at the expence of the people," because the nature of an upper chamber placed distance between

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<sup>60</sup> *Pennsylvania Evening Post*, November 23, 1776.

<sup>61</sup> *Pennsylvania Packet*, November 26, 1776.

its members and the people, the Assembly could not become “ambitious and tyrannical” without jeopardizing its members own interests, because pursuing such a course would require them to “exercise its [the legislature’s] projects on itself.” This representative character, “A Considerate Freeman” contended, would be reinforced by the constitution’s provisions for annual elections, term limits, and transparency in the legislature’s meetings, which would ensure that the legislature’s members could not acquire an excess of power or operate in ways that contradicted the wishes of their constituents.<sup>62</sup>

Constitutionalist arguments in support of the legislature established under the Frame of Government were greeted with swift and robust resistance by Republicans. Republicans’ criticisms of the constitution’s unicameral and preeminent legislature centered primarily around the notions that unicameral legislatures gave too much direct power to the people without any internal check and that a preeminent legislature upset the separation of powers necessary to prevent a single governing body from acquiring an excess of power.

“Scipio,” attributed the success of the constitutions written in neighboring states to their removal solely of the monarchical elements of their constitutions and their retention of upper legislative houses and governorships. The essayist argued that a people capable of attaining freedom and happiness under a unicameral legislature “might be equally free and happy without any government,” arguing that “Both situations suppose equal degrees of virtue in a people.” The virtue of the people alone was insufficient to secure liberty; it could only be acquired through a balanced government. “Scipio”

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<sup>62</sup> Ibid.

rejected the republican idea that civic virtue was the bulwark of liberty, instead embracing the notion that governmental structures intended to restrain the dangerous impulses of the masses were the best means of achieving it.<sup>63</sup>

“Samuel Howell” expressed anticonstitutionalists’ support for a “mixed and tempered legislature.” Unlike most of the constitution’s critics, the author suggested that the constitution was conducive to economic division. He envisioned a perpetual contest between the wealthy and the impoverished, averring Republicans’ desire for “a government that shall not suffer the rich and poor alternately to be the prey of each other.” He contended that “prejudices and passions of the WHOLE community” had been “let loose upon every man’s property, liberty, and life” through the legislature, the courts, and the Council of Censors. The fundamental problem, “Howell” contended, was that the people had “UNDONE themselves by a hasty and ill-judged exercise of their OWN power.” By concentrating the entire power of the political community within a single venue (the legislature), the people had made themselves functionally supreme. This empowered the people as a collective, but endangered their individual lives, liberty, and property by unleashing the collective from the restraints embedded within a more conventionally balanced system.<sup>64</sup>

“One of the People” expressed profound uneasiness with the idea of a preeminent legislature. Commenting on the legislature’s power to determine terms of office, the author argued that “the monster prerogative” threatened the rights of citizens by

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<sup>63</sup> *Pennsylvania Packet*, October 8, 1776.

<sup>64</sup> *Pennsylvania Packet*, November 5, 1776.

subjecting them to the oversight of “mere arbitrary edict[s]” instead of carefully sanctioned protocol for governance. The author rejoiced that the constitution had reserved the power of amendment to the Council of Censors, arguing that such a power in the hands of the Assembly would make them “as absolute masters of the lives and fortunes of their constituents in Pennsylvania” as Parliament had been over British subjects.<sup>65</sup>

“Hampden” stressed the resemblance between the broad scope of powers granted the Assembly by the constitution and the supremacy asserted by Parliament during the Imperial Crisis: “Our Assembly is an *omnipotent* body. Like the British Parliament they have a right to *bind us in all cases whatever*.—They are unlimited in the extent and exercise of their power.” This absolute power was magnified by the absence of any mechanisms through which the people could militate against the legislature’s authority; the people had “no Legislative Council, or Governor to check their violence.”

“Hampden” contended that a legislature wielding unrestrained power was potentially just as dangerous to the fundamental rights of the governed as an absolute monarch: “Where is the man that would give up the *absolute* disposal of his property, liberty, or life for seven years, or even for one year, to *any one* man in the world?...the freemen of Pennsylvania have suffered *one body* of men to usurp an absolute power over their property, liberty, and lives for one year by their laws; and for seven years by their constitution.” Although Hampden contended that the scope of the legislature’s authority was a product of its disregard for the constitution, the extent of the Assembly’s powers was outlined in the constitution and, even if it acted in ways contradictory of the Frame

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<sup>65</sup> *Pennsylvania Packet*, November 5, 1776.

of Government, the source of Hampden's objection seemed to be the author's concern that the other branches possessed far too little power to check the legislature.

A gathering of critics of the constitution in the Philadelphia state-yard on October 22 issued a series of criticisms of the constitution, including their objections to its clauses pertaining to the legislature. They noted the constitution's differences from "those lately formed," especially paying attention to its legislative clauses. They objected to the legislature's unicameral nature and to the dependence of the judicial and executive branches upon the Assembly. They specifically pointed to the legislature's power of removal over judges and its ability to determine the membership of the Supreme Executive Council and alter the members' salaries at will. The Republican critics upheld the separation of powers, "The several powers, being separated and distributed into different hands, for checks one upon another," as "the only effectual mode ever invented by men to promote their freedom and prosperity." They argued that the notion of the new state government as a balanced one was utterly false and that "in truth the legislative, executive, and judicial powers may be said to be united in one body, the Assembly."<sup>66</sup>

Critics also objected to the notion that the people of Pennsylvania could be expected to render the level of civic engagement necessary to effectively govern themselves. "Andrew Marvell" rejected the notion that a check on legislative power could be placed "in the hands of the people at large" instead of within a legislative council. Where "Demophilus" had argued that the absence of a large number of distinguished citizens necessitated a unicameral legislature consisting only of a lower

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<sup>66</sup> *Pennsylvania Evening Post*, October 22, 1776.

house, “Andrew Marvell” argued that it made a functioning lower house an impossibility. “Marvell” noted that a purely popular Assembly would require “all men to possess *equal* understanding, knowledge, and leisure,” a mandate that could not be upheld in reality. It would further require the people to forgo their personal livelihoods, forcing “the husbandman” to “neglect his farm,” “the merchant” to “forsake his counting-house,” and “the tradesman shut up his shop to examine the acts of every session of Assembly.” Moreover, the distance separating towns and villages made it highly impractical for the residents of counties to gather after every legislative session “to debate and vote in a tumultuary manner upon their laws, and afterwards instruct their members to confirm or reject them.” “Marvell” believed that both the hierarchy of “understanding, knowledge, and leisure” and the realities of agricultural and commercial activities made a directly representative legislature prohibitively difficult to achieve.<sup>67</sup>

“Ludlow” criticized the constitution’s egalitarian premises, arguing that they were “wholly repugnant to the principles of action in man” and certain “to check the progress of genius and virtue in human nature.” The constitution had ignored the pervasive inequalities in “property, wisdom and virtue among the inhabitants of the state,” mistakenly presupposing “perfect equality” in those traits. This failure to properly grapple with human nature had produced an inability to represent the distinctions between legislative, executive, and judicial powers. “Ludlow” contended that these functions had been “jumbled together in a most unsystematic manner.” These failings combined to produce a constitution that completely elided both social and economic

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<sup>67</sup> *Pennsylvania Packet*, November, 26, 1776.

differences and the distinctions in governmental power that republican theorists had asserted were essential to a balanced government. The attempt to produce an equal and representative government through the constitution had instead resulted in the inverse: a government that failed to represent both social reality and the realities of governance.<sup>68</sup>

Benjamin Rush echoed these critiques in a pamphlet published in 1777. Sounding nearly identical to “Ludlow” (and apparently revealing either the influence of that author or indicating that Rush himself had written that essay), Rush contended that the constitution “supposes perfect equality, and an equal distribution of property, wisdom, and virtue, among the inhabitants of the state.” Rather than vesting legislative, executive, and judicial powers in separate and distinct branches, Rush contended that the constitution had them “jumbled together in a most unsystematic manner.”<sup>69</sup>

Rush criticized the constitution for effectively granting the legislature *carte blanche* to operate as it wished. The constitution, he contended, had placed the “supreme, absolute, and uncontrouled power of the whole state” in “the hands of *one body* of men.” Rush argued that this grant of power to a single instrument of government violated the separation of powers. He quoted a passage from the Viscount Bolingbroke in which the English noble posited that “simple governments,” which granted the “whole supreme power” solely in the hands of a single individual or group, as governments of “arbitrary will.”<sup>70</sup>

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<sup>68</sup> *Pennsylvania Journal*, May 21, 1777.

<sup>69</sup> Benjamin Rush, *Observations upon the Present Government of Pennsylvania in Four Letters to the People of Pennsylvania* (Philadelphia, 1777), 4.

<sup>70</sup> *Ibid.*, 5-6.

Expounding on this theme, Rush argued that the constitution's supporters had confused simplicity of principles— “perfect security for property; liberty and life” with simplicity of practice. He noted that the essential aims of government were simple, but that their realization required “extensive combinations” of power. Emphasizing the importance of an elaborate diffusion of power, Rush contended that simple governments tended towards tyranny because they failed to properly disperse power.<sup>71</sup>

Rush distinguished between the principles and forms of government, describing principles as “simple” and forms as “difficult and complicated.” Illustrating the difference between principles and practice, he pointed to an example from the scientific realm: “Who understood the principles of mechanics and optics better than Sir Isaac Newton? and yet Sir Isaac could not for his life have made a watch or a microscope.” Rush highlighted the discrepancy between an understanding of the principles of government and an understanding of those principles’ implications for governmental structure. He identified John Locke as the “oracle” with regard to principles of government and James Harrington and the Baron de Montesquieu as oracles with regard to forms of government. Rush argued that the principles of securing life, liberty, and property required a level of governmental sophistication that could only be achieved through the extensive separation of powers advocated by Harrington and Montesquieu.<sup>72</sup>

Rush questioned the representative character of the state Assembly. Drawing on the republican notion that the representation of property was foundational to a truly

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<sup>71</sup> Ibid., 7.

<sup>72</sup> Ibid., 20.

representative government, Rush contended that the absence of a property qualification to vote, combined with the eligibility of all electors to serve in the Assembly, made it possible for the legislature to have no interest in representing the property-holding citizens of the state. He envisioned a scenario in which the legislature did not possess “a single foot of property in the State, and who can give no other evidence of a common interest in, or attachment to, the community than having paid ‘public taxes,’ which may mean poor-taxes.” Rush argued that the broad scope of the electorate, coupled with the absence of any substantive qualifications for officeholding, made it possible for those who did not possess the levels of property generally thought necessary for political participation to acquire the reins of power and effectively disenfranchise the property-holding class.<sup>73</sup>

Rush simultaneously argued on behalf of basic political equality and organic social inequality. Responding to the idea that “there is but one rank of men in America,” Rush conceded that “there should be only one representation of them in a government.” He further stated his opposition to “artificial distinctions of men into noblemen and commoners.” However, he argued that, despite the absence of a formal aristocracy, a more organic social hierarchy had arisen in America. “Superior degrees of industry and capacity, and above all, commerce” had produced “inequality of property,” creating “natural distinctions of rank in Pennsylvania, as certain and general as the artificial distinctions of men in Europe.” Rush argued that these social distinctions predicated on differences of wealth needed to be represented in a bicameral legislature. Placing the

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<sup>73</sup> Ibid., 7.

middling and poor in the same legislative chamber as the men of “over-grown property” would merely enable those wealthy members to bribe and control the less wealthy members. In his concern with maintaining a representation of property within the legislature and with preventing the natural aristocracy from using influence and bribes to control their social and economic inferiors, Rush was typically republican.<sup>74</sup>

Further objecting to the arguments fielded by the constitution’s supporters on behalf of the document, Rush contended that a traditional separation of powers did not pave the road for an aristocracy or monarchy to emerge. Contesting the notion that a “legislative council or governor lays the foundation for aristocratical and monarchical power in a community,” Rush argued that the popular sanction underpinning upper houses and governorships would prevent them from becoming tyrannical. Because those institutions would be popularly elected, they would represent the will of the people. There was nothing inherently aristocratic about an upper chamber or monarchical about a governor. He questioned whether “the same fountain of pure water should send forth, at the same time, wholesome and deadly streams?” and noted that, in a bicameral system, the “Council and Assembly” were “both formed alike from the common breath of the people.” Rush went to great lengths to distinguish between balanced government, which he saw as compatible with the authority of the people, and a mixed regime grounded in a classical understanding of society.<sup>75</sup>

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<sup>74</sup> Ibid., 9.

<sup>75</sup> Ibid., 8.

Rush acknowledged popular sovereignty, but his attitude towards its realization differed greatly from his opponents' stance. Rush recognized that power was derived from the people but denied that it should be "*seated* in the people." He emphasized the necessity of a delegation of authority away from the "people at large," because making them "judges of laws, or checks for Assemblies" was an effort that relied on the "supposition that mankind is all alike wise, and just, and have equal leisure." According to Rush, the people could not simultaneously delegate power while reserving the right to exercise it themselves:

What man ever made himself his own attorney? And yet this would not be more absurd than for the people at *large* to pretend to give up their power to a set of rulers, and afterwards reserve the right of making and judging of all their laws themselves. Such a government is a Monster in nature. It contains as many Governors, Assemblymen, Judges and Magistrates as there are freemen in the State, all exercising the same powers and at the same time.<sup>76</sup>

Rush believed that granting the people an excess of oversight and power over their representatives was certain to result in disorder. Such a concession failed to recognize the distinction between the source of power (the people) and their agents, who alone possessed the authority to exercise it. The people did not even need to choose every member of a government for it to represent their interests, he argued. Popular sovereignty took effect even when one representative of the people chose another in their stead. The people ultimately possessed control by acting as "the first link of the sacred chain of the power of the State," but they did not need to control every aspect of that power's employment. Rush thought that the practical realities of governance necessitated a

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<sup>76</sup> Ibid., 15.

deference of the people towards their representatives that precluded governments of such a direct character as the one established by the Pennsylvania framers.<sup>77</sup>

Essayists also disagreed about the proper scope and composition of the electorate. “Camillus” rejected the notion that political authority should be removed from the hands of the people, arguing that “The more simple, and the more immediately dependant the authority is on the people, the better,” because the people “themselves are the best guardians of their own liberties.” This direct authority of the people extended to its power over the legislature, according to “Camillus.” The essayists argued that negatives on legislative power should only be exercised by the people and their direct agents and that the exercise of such a check by non-elective elements of the government was a violation of the sovereignty of the governed. This understanding of popular sovereignty’s implications for government aligned closely with the powerful and preeminent legislature established under the state constitution.<sup>78</sup>

While discussions of the scope of the electorate often took on a theoretical tone, they were not devoid of social dimensions. “Spectator,” commenting on the Republican meeting at the Pennsylvania Philosophical Society, praised the attendees as “men of property, and some of *ambition* enough to serve all the good people on this side of the Blue Mountains; and that was much better than to have been plagued with a contradictory mob of your *scum of the earth*, who of late conceit they have a right to meddle with state affairs.” The author noted the conspicuous presence of “*leading men*” among the meeting’s members. The author’s open discussion of the existence of a class

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<sup>77</sup> Ibid.

<sup>78</sup> “Camillus,” *Pennsylvania Journal* October 2, 1776.

of leading figures better suited to rule than their inferiors among the rabble was uncharacteristic of Republican rhetoric. Most critics of the constitution criticized the ability of the people to directly govern themselves and pointed to the magnetic effect institutions like an upper house and governorship would have on those best suited to govern. Few expressed the direct hostility towards the masses displayed by “Spectator.” However, the authors’ bromide against the masses indicated that at least some opposition to the constitution was motivated by a belief in a distinct social hierarchy.<sup>79</sup>

## II. Establishing Patriot Credentials

Participants in the press debate also attempted to establish their respective status as supporters of the Patriot cause, in the process suggesting that their opponents were in fact either opposed to the cause of independence or, nearly as bad, “disaffected” towards it.<sup>80</sup> They employed a brand of rhetoric laden with appeals to patriotism and bromides against the British Empire. Appealing to a sense of mutual honor and fortitude, they portrayed themselves as the foot soldiers of liberty and their opponents as its enemies.<sup>81</sup>

“Cassius” criticized some of the critics of the constitution for urging Non-Associators and Loyalists to refuse paying a tax imposed on them as a substitute for

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<sup>79</sup> *Pennsylvania Evening Post*, November 16, 1776.

<sup>80</sup> Anne Ousterhout has argued that the number of “disaffected” in Pennsylvania vastly exceeded the number of Loyalists in the state during the War of Independence. She notes that, while Whigs often employed the terms interchangeably, there was a considerable distance between those who were alienated from the Patriot movement but unsupportive of Britain and those who actively supported the British effort to reconsolidate the bonds of empire within the newly established American states. See Ousterhout, *A State Divided: Opposition in Pennsylvania to the American Revolution* (New York: Greenwood Press, 1987), 3-5.

<sup>81</sup> On the relationship between Patriot ideology and American attitudes towards the Revolutionary war effort, see Charles Royster, *A Revolutionary People at War* (Chapel Hill: University of North Carolina Press, 1979) and Sarah J. Purcell, *Sealed with Blood: War, Sacrifice, and Memory in Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2002).

military service, arguing that their advocacy for such a refusal was impeding the war cause. The essayist characterized the members of the constitutional convention as “Whigs and Associators” whose works “testif[ied]” of their commitment to the war. By contrast, those who proposed resistance to the tax for those not engaged in military service were “Non-Associators.”<sup>82</sup>

“Scavola” questioned whether the constitution was capable of commanding enough public support to sustain the state through the course of the war with Britain. The author predicted that “The next seven years will be loud in their demands upon us for blood and treasure. They will require uncommon vigor and union among us...”

“Scavola” expressed skepticism as to whether the constitution was capable of producing such a sense of unanimity and making the people “united and rendered one mass of people.” Attempting to disentangle support from the Pennsylvania war effort with assent to the constitution, “Scavola” proposed replacing the constitution’s loyalty oath for entering public servants with a pledge to disavow allegiance to George III and uphold the “Freedom and Independence of this state.” Affirming his status as a participant in the military effort, “Scavola” noted that he had “borne arms in defence of the independence of these States,” and was “willing to seal his attachment to it with his blood.”<sup>83</sup>

A gathering of Republicans at the Philadelphia Philosophical Society in November expressed their belief that a state of disorder was preferable to the establishment of a government they perceived as inimical to the goals of the Revolution.

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<sup>82</sup> *Pennsylvania Evening Post*, October 8, 1776.

<sup>83</sup> *Pennsylvania Journal*, October 16, 1776.

While they recognized the “inconveniences of the want of a regular government, that shall collect and exert the strength of the state against our powerful external and artful internal enemies,” they believed that such an absence of a vigorous government was preferable to the constitution. They argued that the document “destroys the great objects of equal liberty and free government, for which alone we consented to draw the sword in the present contest with Great Britain.” Although they believed that a government capable of superintending the military contest with Britain was essential, they contended that the state constitution undermined the objectives of the War for Independence to such an extent that it could not be maintained if the struggle was to retain its character as an attempt to secure “equal liberty and free government.”<sup>84</sup>

“Farmer” criticized the internal discord he saw prevailing within the Whig cause. He noted that the supporters of independence were contending both with the power of the British Empire and the “political machinations of its [the Revolution’s] internal enemies, who are endeavouring at this important crisis to throw everything into confusion, by impeding and distracting our civil polity.” The author did not directly implicate the constitution’s authors as the Revolution’s “internal enemies,” but expressed criticism of the constitution’s disruptions of the established order and seemed to view Constitutionalists as a source of acrimony. However, “Farmer” believed that both Whigs and Tories were resorting to extreme measures on behalf of their causes: “Where the Whigs have prevailed, they have run into extravagant refinements, on republican principles; and where the Tories have prevailed, the spirit of monarchy has made large

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<sup>84</sup> *Pennsylvania Packet*, November 12, 1776.

and dangerous strides...” The author believed that neither extreme was “fitted to the genius and authority of the people.” “Farmer” ultimately inclined towards the Republican camp while employing a rhetoric of moderation and conciliation.<sup>85</sup>

“Demophilus” likened those who opposed the state constitution with the initial opponents of the Patriot cause during the Imperial Crisis. The author contrasted those individuals’ desire to maintain order and stability under British rule, to “submit to some abridgement of liberty rather than run the venture of being thrown into a state of *anarchy* and *confusion*” with their sudden commitment to “overthrowing our *civil constitution* without proposing one single measure for establishing another.” “Demophilus” suggested that those individuals had in fact retained their support for Britain and that it was this covert loyalism which motivated their opposition to the constitution. By challenging the “authority of whole community,” and conspiring to alter the constitution, these individuals leaned towards an “immediate separation of themselves from the body of the Common-Wealth.” “Demophilus” noted that, surprisingly, “in fact some of the are open enough to acknowledge the consequence” of this separation taunted their fellow Pennsylvanians with prospect of occupation by the British, “tell[ing] us plainly as they think will bear, that Lord Howe is expected to pay us a visit in Philadelphia.” In Demophilus’s account, there was only a short distance between attempting to change the constitution and supporting the British war effort.<sup>86</sup>

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<sup>85</sup> *Pennsylvania Packet*, November 5, 1776.

<sup>86</sup> *Pennsylvania Packet*, October 22, 1776.

“Union” believed that both the constitution’s supporters and opponents were genuinely invested in the success of the War of Independence but argued that revising the constitution was an essential precondition for winning the conflict. The author characterized the constitution’s authors as “worthy men and warmly attached to the American cause,” who “had nothing in view but the liberty and happiness of Pennsylvania.”<sup>87</sup> However, “Union” believed that the constitution’s authors had failed to establish a government capable of securing liberty and ensuring happiness. The essayist argued that an immediate reshaping of the constitution was necessary. In response to those who argued that the “immediate establishment of a regular government” was imperative, “Union” questioned: “Is there anything half the consequence in the present struggle as a good constitution?” Expanding on that question, the author argued that the source and objective of the military conflict was the desire for “a good government.”<sup>88</sup>

“Union” argued that abandoning the constitution was the state’s best hope of animating the energies of Pennsylvania’s soldiers: “And what but a good government will ever call forth the wisdom—the strength and the virtue of Pennsylvania, so as to give them their proper weight in the great scale of the United States?” “Union” characterized a good government as “a soldier’s legal *title* to liberty,” noting that “The prospect of ending his days under a happy constitution is the sweetest supporter a soldier can have under the hardships of a campaign.” This incentive made amending the constitution an

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<sup>87</sup> *Pennsylvania Packet*, November 19, 1776.

<sup>88</sup> *Ibid.*

ideal way to “call forth the flower of our State, and fill our camp with men, who will possess with the courage of soldiers, the disinterested virtues of citizens and patriots.”<sup>89</sup>

“Hampden” similarly contended that the demands of wartime and the presence of “Howe at our gates” were not sufficiently compelling reasons to maintain the constitution. The essayist queried, “Did we say a ‘bad government was better than none’ when we threw off the royal and proprietary governments of Great-Britain? Did we not feel ourselves too much cramped by them, to exert our whole strength in the defence of our liberties?” While the author recognized the tumultuous circumstances facing Pennsylvania, they noted that the other states had framed their constitutions in the midst of warfare. Further, they contended that continuing under the state constitution much longer would render Pennsylvanians “ever afterwards unfit to assert or relish the sweets of liberty, *or of a free government.*”<sup>90</sup>

“Addison” addressed the military campaign of 1776, arguing that Pennsylvanians’ valor “reflect[ed] much honour upon the state, but none upon the Constitution.” The essayist suggested that the constitution had not been the source of the military heroism displayed by Pennsylvania’s soldiers: “Did it prompt them to face all the dangers of the war, and to endure all the inclemencies of the season? Did it lead them against the enemy at Princeton? Did it support them under the amazing fatigues, which preceded and followed the action at that place?” “Addison” believed that Pennsylvanians had demonstrated tremendous courage, but that it had not been motivated by any desire to

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<sup>89</sup> Ibid.

<sup>90</sup> *Pennsylvania Evening Post*, March 13, 1777.

sustain the constitution. The essayist suggested that the loyalty oath established by the constitution was detrimental to the Patriot cause. Rather than being aimed at “tories, or persons disaffected to the American cause,” the oath was in reality intended to exclude those within the Patriot camp “who should disapprove of the constitution,” a number which included “a majority of the Whigs in the state.” While “Addison” believed that abandoning the constitution in the middle of the conflict with Britain would result in “confusion and anarchy,” the author contended that it was nonetheless an obstacle to winning the War for Independence, not an asset.<sup>91</sup>

A circular published in May of 1777 contended that the constitution had transformed Pennsylvania from a model Patriot state to an ineffectual participant in the struggle for independence. At the outset of the conflict with Britain, “Vigour and union prevailed in her Councils, and in her actions. She was considered as a pattern for other governments. Her exertions in the general cause were great and important. The enemies of liberty beheld her with dread, and its friends with pleasure.” However, the constitution had produced an absence of effective government, evidenced by the Assembly’s abandonment of the state the previous winter, an absence of laws “adequate to our present very critical situation,” the spread of disaffection with the Revolutionary cause, the depreciation of currency, and a shortage of necessities. Although the circular acknowledged the presence of “Whigs on both sides of this dispute about the Constitution,” it argued that the constitution was the source of Pennsylvania’s failure to effectively contribute to the war effort. While the piece recognized the sincere Whiggism

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<sup>91</sup> *Pennsylvania Journal*, May 14, 1777.

of the Constitutionals, it suggested that their faith in the constitution as an embodiment of Revolutionary principles had been contradicted by its failure to effectively unify the state's partisans of the Patriot cause.<sup>92</sup>

Benjamin Rush voiced a similar opinion of the constitution's authors, noting their sincere commitment to the Patriot cause but describing them as completely incapable of creating an effective government. He identified the members of the constitutional convention as "true Whigs" who "aimed sincerely at forming a free and happy government" but remarked that "if [Robert] Filmar (sic) and [Thomas] Hobbes had sat among them, they could not formed a government more destructive of human happiness." Neither, he believed could "Lord North or General Howe" have created a government "more destructive of union and vigour, in our public affairs." Rush avoided the common tendency to characterize the Constitutionals as Loyalists but concurred with fellow Republicans in noting that the constitution was scarcely more favorable to the interests of Pennsylvania than British rule had been.<sup>93</sup>

An author writing in late 1778 contended that the precedent of the Patriot effort to secure independence should serve as an indication of the lengths to which Pennsylvanians should resort in replacing the constitution. Noting that Pennsylvanians' "support of the present revolution" had been animated by "indignation" against "an attempt made upon your liberties by the people of Great Britain," the author questioned what measures might be necessary to replace a "constitution inconsistent with the principles of liberty." The

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<sup>92</sup> *Pennsylvania Evening Post*, May 24, 1777.

<sup>93</sup> Rush, *Observations*, 20.

essayist questioned the commitment of Constitutionals to the Patriot cause, noting the presence of “persons who have assumed the title of Whigs; and, by bawling against Tories, have imposed themselves upon us as sound patriots.” In contrast to these pretend Patriots, Republicans were “men who have spiritedly, from the beginning, opposed the tyranny of Great Britain.” The author identified “the purpose of the revolution” as “establish[ing] and secur[ing] the liberties of America” and suggested that the constitution had fundamentally betrayed those objectives.<sup>94</sup>

The prospect of winning the war also influenced direct political appeals. When six representatives in the state Assembly from Bedford County refused to take their seats in the legislature out of opposition to the constitution, some of their constituents appealed to the pressing need to direct all the state’s energies towards the military conflict. They argued that the prosecution of the war should take precedent over internal debates about the constitution and rather poetically raised the charge to combat: “Come, brave boys, let us hasten to the field, and contend for our liberties with the sword, and lay aside all fruitless disputes, lest a yoke be forced upon our necks, bigger than our father’s loins.”<sup>95</sup>

Although the concurrent claims to Patriot legitimacy and accusations of Toryism made by Constitutionals and Republicans rarely explicitly addressed the content of the constitution, they were nonetheless steeped in clashing understandings of its effect on the conduct of the war in Pennsylvania. The constitution’s supporters contended that it had successfully guided the state through the travails of conflict, serving as a source of

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<sup>94</sup> *Pennsylvania Evening Post*, October 12, 1778.

<sup>95</sup> “To the six gentlemen chosen and appointed by the freemen of the county of Bedford,” *Pennsylvania Evening Post*, March 15, 1777.

martial unity. Its critics argued that the state's soldiers were fighting to overthrow British control over the state and that they were not at all motivated by a desire to preserve the constitution. The essayists on both sides seemed to make little distinction between the Revolution as a political process and the conduct of the war itself—suggesting by implication that, because the constitution was either an asset or an obstruction to the prosecution of the conflict, it was either an essential part of the Revolutionary struggle or an obstacle to its fulfillment.

### III. Continuity vs. Change

The extent to which the Frame of Government differed from the proprietary government in place throughout Pennsylvania's colonial history was another source of contention among those who engaged in newspaper debates over the constitution. Critics of the constitution argued that the document's authors had gone to extreme lengths in their efforts to upend the proprietary system and had produced a form of government inconsistent with the state's conventions. While they advocated for a replacement of the monarchical and hereditary characteristics of the proprietary system with republican and elective ones, they argued that the basic structure of the government already in place should have been retained. The wholesale abandonment of the proprietary system revealed an inattentiveness to the "prejudices and habits of the people."<sup>96</sup> "Scavola" expressed a conviction that the constitution conflicted with the "genius, manners, habits, and prejudices of the people of Pennsylvania."<sup>97</sup> The attendees of an anticonstitutionalist

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<sup>96</sup> *Pennsylvania Journal*, September 18, 1776.

<sup>97</sup> *Pennsylvania Journal*, October 16, 1776.

gathering in the statehouse yard in Philadelphia summed up this view by noting that the constitution “unnecessarily deviates from all resemblance to the former government of this state, to which the people have become accustomed” and observing that the people only wanted an abolition of the “kingly, parliamentary, and proprietary powers.”<sup>98</sup>

A subsequent Republican gathering issued a similar criticism, arguing that the constitution’s authors had failed to account for the state’s governing traditions. Urging a group of incoming legislators to propose amendments to the constitution, they stressed the representatives’ responsibility to account for “influence of ancient habits upon the minds of your constituents,” and to thus “oppose unnecessary alterations in the late form of government of Pennsylvania.” They contended that the basic structure of the proprietary government needed to be retained and that the only “innovations” that were necessary were those that “abolish the late regal and proprietary power of the state” and “place the whole executive power of the government in the hands of the servants of the people.” They wanted the government of Pennsylvania to be cleansed of the vestiges of monarchical and proprietary rule and become representative but argued that further deviations from colonial tradition were unnecessary. This suggested that they viewed the act of constitution-making not as a transformative and decisive abandonment of prior precedent, but as an opportunity to retain the basic elements of existing government practice while rejecting those which were unrepresentative.<sup>99</sup>

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<sup>98</sup> *Pennsylvania Evening Post*, October 22, 1776.

<sup>99</sup> Resolve from “a number of the citizens of Philadelphia, in the Philosophical Society-Hall, the 8<sup>th</sup> of November, 1776,” *Pennsylvania Packet*, November 12, 1776.

“Christophilus Scotus” acknowledged that the circumstances surrounding the constitution’s framing had been “extraordinary” and that “extraordinary diseases require extraordinary remedies.” Despite this recognition of the extreme situation in which the convention’s members had found themselves, however, the essayist expressed befuddlement at their departure from the colonial charter. The author questioned “why the Convention, in their new frame of government, should have steered so wide of the good old charter and constitution of this formerly happy and flourishing province.” While the authors of the constitution were justified in considering radical measures, prosperity and happiness had prevailed under the proprietorship and “Christophilus Scotus” could see no reason why such a beneficial frame of government should be abandoned.<sup>100</sup>

“Ludlow” believed that the constitution had failed to properly account for the “ancient habits & customs of the people of Pennsylvania.” This was a tremendous error, the author contended, because “The suddenness of the late revolution, the attachment of a large body of the people to the old Constitution of the state, and the general principles of human nature” all made “an attention to ancient forms and habits...a matter of utmost importance.” The essayist believed that maintaining governmental continuity was essential in a crisis as sweeping as the military struggle with Britain.<sup>101</sup>

“A Friend of Mankind” extolled Pennsylvania’s status as a beacon of progress and attributed this success to the proprietorship. In addition to pointing out the proprietary government’s success in securing persons, property, and liberties, the author argued that

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<sup>100</sup> *Pennsylvania Packet*, October 29, 1776.

<sup>101</sup> *Pennsylvania Journal*, May 21, 1777.

it had been essential to Pennsylvania's rapid development into a haven of law, reason, and civilization. Pennsylvania had undergone in under a century an "astonishing progress not only in wealth, trade and manufactories, but in the polite arts and sciences." The essayist could find no other example in which "a wilderness as this country was within the past century, aided by all the powers of the parent state, had made an equal progress with this of Pennsylvania, founded solely on the reason, equity, and mildness of its laws." "A Friend of Mankind" stressed the exceptionalism of Pennsylvania and suggested that its societal and governmental distinctness would be eroded through the abandonment of the proprietorship.<sup>102</sup>

This aspect of the Republican critiques revealed two things. First, it indicated a preference for custom and convention—perhaps unsurprising, considering the extent to which those principles were generally regarded as foundational to Anglo-American constitutionalism. Secondly, and more interestingly, it suggested the notion that governmental structures and governmental forms were not interchangeable. Republicans argued that a concurrent retention of the proprietary frame of government and displacement of "kingly, parliamentary, and proprietary powers," could be achieved. This indicated a notion that governmental structures were not inherently conducive to either popular or monarchical rule. This set them apart from Constitutionists, who believed that institutions of government could be conformed precisely to the interests of the people and that the failure to create a system of government that replicated directly the interests of the people would jeopardize the Revolution. Republicans believed that constitutional

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<sup>102</sup> *Pennsylvania Ledger*, April 22, 1778.

innovation was not necessary to secure the Revolution because the Revolution was primarily a struggle for local autonomy from British control. For them, it was not an effort to establish a government that embodied a direct vision of popular government that required a decisive abandonment of previous constitutional precedents. Even in debating something as simple as the preservation of established customs of governing, the ideological chasm between Constitutionals and Republicans was glaring.

#### **IV. Conclusion**

The debate that emerged in the aftermath of the constitution's adoption encompassed a broad range of issues. Through their assertions about the proper composition and authority of the legislature, the scope of the electorate (a question which entailed consideration of the relationship between the government and the governed), and the constitution's place in the struggle for independence, Constitutionals and Republicans expressed distinct visions of society, government, and the American Revolution. Their understandings of the constitution, and consequently of the course of the Revolution in Pennsylvania, were shaped by convictions about the nature of politics which apparently predated the constitution's creation. While the constitution provided the occasion for these understandings to be expressed, the conflict between the participants' political visions was rooted in fundamentally different conceptions of politics that preceded the document's drafting. These political visions informed the ways in which Constitutionals and Republicans viewed the constitution's Frame of Government. In the domestic conflict within the Patriot movement in Pennsylvania, politics shaped constitutionalism. Constitutionalism in turn became intertwined with the ways in which

the differing Whig factions viewed the Revolution itself. These developments remained essential, if less apparent than they were at the military conflict's outset, throughout the course of the war, and manifested themselves quite visibly during the Council of Censors' deliberations in 1783 and 1784.

### **Chapter Three: Debates on the Pennsylvania Constitution in the Council of Censors, 1783-84**

When the Council of Censors convened in 1783, it wielded a broad mandate to review the Pennsylvania constitution. It was constitutionally empowered to review and strike down enactments by the state legislature, giving it a retroactive negative on the Assembly. It was also authorized to propose amendments to the constitution. The latter power made the Council's meetings, held both in late 1783 and the summer of 1784, an ideal forum for adjudicating the opposing stances on the document assumed by the constitution's supporters and opponents. Republican critics of the constitution, intent on reshaping the constitution to make it more closely resemble conventional notions about the division of powers, made a number of proposals to amend the document. Constitutionalist supporters of the Frame of Government countered by associating the constitution with the spirit and character of the Revolution. Assuming the constitution's alignment with Whig principles, they accused their adversaries of engaging in a campaign to overturn the achievements of the Patriot cause.

These accusations were undoubtedly inspired in part by the expediency of accusing the opposition of Loyalism. However, they also revealed a broader aspect of the constitutional debate. Both Constitutionalist and Republicans believed that their respective constitutional visions were inextricably tied to the character and fate of the Revolution. Constitutionalist thought that the constitution's extensive institutionalization of the doctrine of popular sovereignty made it an ideal model of republican government. Republicans in turn argued that the document made excessive concessions to the people

and set the Commonwealth on the path to legislative tyranny. Adherents of both positions believed that proper constitutional structure was essential to securing the Revolution.

The Council of Censors was the product of a unique provision in the state's Frame of Government. The constitution provided for a septennial gathering consisting of two members from each city and county. This body was charged with both ensuring that the constitution had been "preserved inviolate in every part" and determining "whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the constitution." It was authorized to send for "persons, papers, and records," publicly censure individuals, order impeachments, and recommend the repeal of laws passed in violation of the constitution. The Censors were further given the power to amend the constitution "within two years after their sitting," to alter laws they regarded as "defective," to clarify ambiguous laws, and to introduce new laws deemed "necessary for the preservation of the rights and happiness of the people."<sup>103</sup> The Council's essential purpose was to ensure the "recurrence to fundamental principles" deemed necessary by the constitution's Declaration of Rights.<sup>104</sup>

Of all the powers it possessed, the Council of Censors' authority to amend the constitution was the source of the most attention. Indeed, the prospect of amending the

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<sup>103</sup> Pennsylvania Constitution of 1776, Section 47. Accessed at [http://avalon.law.yale.edu/18th\\_century/pa08.asp](http://avalon.law.yale.edu/18th_century/pa08.asp). While the Council of Censors was a unique feature of the Pennsylvania constitution, it apparently had a predecessor in the British Council of Revision, which possessed a similar range of powers; see John W. Compton and Karen Orrin, "Political Theory in Institutional Context: The Case of Patriot Royalism," *American Political Thought* 3, no. 1 (Spring 2014), 23.

<sup>104</sup> Pennsylvania Constitution of 1776, Declaration of Rights; Cecelia Kenyon, "Constitutionalism in Revolutionary America," *Nomos* 20 (1979), 104-05.

constitution was the subject of enormous debate within the convention. Those dissatisfied with the contents of the Frame of Government established in 1776 and with the nature of the state's politics in subsequent years proposed a series of changes intended to make the state government more balanced. These included the replacement of the Executive Council with a governor possessing the authority to veto bills and appoint officials, the creation of an upper house of the state legislature, and the creation of fixed salaries and life terms (contingent on "good behaviour") for members of the Pennsylvania Supreme Court.<sup>105</sup> These measures would have reshaped the government of Pennsylvania along lines similar to those established by most of the other state constitutions adopted at the beginning of the American Revolution.<sup>106</sup>

The Constitutionalist members of the convention decried these proposals, claiming that they would remold the Senate in the image of an "aristocratic nobility" and throttle the popular will in favor of the interests of the "wealthy and great."<sup>107</sup> While the debates over these proposals did not produce any changes to the constitution, they did reveal the extent to which its critics and supporters diverged on fundamental questions of constitutional philosophy. Constitutionalist were committed to preserving the state's

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<sup>105</sup> *The proceedings relative to calling the conventions of 1776 and 1790: the minutes of the convention that formed the present constitution of Pennsylvania: together with the charter to William Penn, the constitutions of 1776 and 1790, and a view of the proceedings of 1776, and the council of censors* (Harrisburg, PA: John Wiestling, 1825), 72; 74-76. Hereafter cited as *Proceedings*.

<sup>106</sup> On the state constitutions of the Revolutionary period, see Wood, *Creation*, Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Chapel Hill: University of North Carolina Press, 1979); Donald S. Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge: Louisiana State University Press, 1980); Marc Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997).

<sup>107</sup> Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781-1788* (New York: Norton, 1961), 42.

ongoing experiment in exalting the popular will as the prime directive in government, while Republicans were determined to craft a system of government similar to those of the other states. Both parties recognized popular sovereignty. They differed, however, on the extent to which they thought it should be institutionalized. Constitutionalist wished to see it unfettered, while Republicans wished to constrain it within clearly prescribed bounds.

Tensions within the convention of Censors hinged on questions concerning the proper bounds of legislative authority. The revisionist element, comprised principally of Republicans who had from the outset opposed the state constitution, charged that the state legislature had completely abused its authority under the document and in the process reduced the supreme executive council and state supreme court to phantoms. They pointed to these actions as evidence of fundamental flaws in the constitution, contending that it had failed to impose the restraints on legislative power necessary to prevent the Assembly from becoming tyrannical.<sup>108</sup> Constitutionalist argued that the constitution had created a proper distribution of powers. While they recognized that the legislature had on occasion violated the constitution, they believed that these incidences were not evidence of essential defects in the constitution, but simply isolated examples of the abuse of power.<sup>109</sup>

The debates that occurred between Republican and Constitutionalist members of the Council revealed an enormous rift in constitutional ideology. Republicans emphasized

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<sup>108</sup> *Proceedings*, 86-7.

<sup>109</sup> *Ibid.*, 90.

the importance of a tightly regulated balance of powers between the branches of government, arguing that it was the cornerstone of a viable political order. Constitutionalists, by contrast, esteemed the unrestrained expression of popular sovereignty as the foundation of good government. They viewed the introduction of amendments to the constitution intended to establish a clearly delineated balance of power as an impediment to popular government. They believed that the constitution had established a government genuinely accountable to and controllable by its constituents, and that the creation of a conventional balance of powers would undermine, if not outright obliterate, this state of affairs.

### **I. Debates in the Council's First Session**

In the Council of Censors' first meeting, the constitution's critics wielded a narrow [13-12] majority. While they did not possess the two-thirds majority necessary to call for a convention to amend the constitution, they hoped to publicize their criticisms of the document and thereby generate enough popular pressure on their Constitutionalist counterparts to force a convention.<sup>110</sup>

From their slight majority vantage, Republicans issued a systematic critique of the distribution of power created in 1776. They argued that the unicameral nature of the state legislature was dangerous because it afforded factions with the opportunity to arise to dominance. Perhaps more tellingly, they submitted that the legislature's single-chamber design offered opportunities for the body to "usurp" "legislative and judicial authority" --

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<sup>110</sup> Brunhouse, *Counter-Revolution in Pennsylvania*, 156-7.

a prospect against which the people would have no recourse except revolution.<sup>111</sup> To remedy these problems, they proposed a familiar solution: the creation of a bicameral legislature consisting of an upper house and a lower house. This was by no means an innovative solution. Bicameralism was a staple of Anglo-American political thought, expressed most notably in John Adams's *Thoughts on Government*.<sup>112</sup> Arguing that the state constitution was riddled with fatal defects, Republicans had a conventional remedy in mind.

In addition to criticizing the preeminence of the legislature, the constitution's critics also contended that the plenary design of the Executive Council made it a poor vehicle for decision-making. Rather than creating a Governorship, the constitution vested executive power in a nominal, mostly ineffectual, President and a twelve-person Supreme Executive Council.<sup>113</sup> The revisionists saw the lack of a figurehead in instances of executive mistakes as a problem. They believed it was necessary to have someone in a position of accountability should the executive branch misbehave. The critical Censors also thought that a council was more dangerous to the Commonwealth than a governor would be, arguing that groups of men might be persuaded to engage in collective blunders they might not commit if left to their individual judgment.<sup>114</sup>

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<sup>111</sup> *Proceedings*, 69-70.

<sup>112</sup> *Proceedings*, 71; Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988), 91; Richard Alan Ryerson, *John Adams's Republic: The One, the Few, and the Many* (Baltimore: Johns Hopkins University Press, 2016), 176-81.

<sup>113</sup> Pennsylvania Constitution of 1776, Sections 3, 19, and 20. Accessed at [http://avalon.law.yale.edu/18th\\_century/pa08.asp](http://avalon.law.yale.edu/18th_century/pa08.asp).

<sup>114</sup> *Proceedings*, 70.

They further quibbled with the method of elections for the Executive Council's President. The constitution provided for his election by the council's members and the members of the general assembly. The Republican contingent of Censors argued that this mode of selection was dangerous because a President wielding a popular mandate might operate in ways detrimental to the good of the Commonwealth.<sup>115</sup> The perennial fear of a demagogue taking advantage of popular support and becoming a tyrant seems to have animated this concern. However, in an apparent contradiction of the logic underpinning their concern, the revisionists proposed popular election to the Governorship.<sup>116</sup> Republicans proposed the creation of a governor's position to streamline the decision-making process and aggregate responsibility in the person of a single figurehead.<sup>117</sup> They advocated granting the Governor a robust array of powers. The most important stipulation among these was that the governor possess a veto and thus wield a negative against any undesirable laws passed by the general assembly.<sup>118</sup>

The constitution's opponents expressed concerns about the executive branch that indicated they were not simply worried about the general assembly's exercise of excessive power. Their abiding preoccupation with checking power and preventing tyranny from arising evidenced itself in their concern with restraining every branch of government. While the Republican members of the session were determined to expand the powers of the executive, they were not motivated by an overriding intention to establish it as the supreme branch, as their adversaries alleged. Rather, they were

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid., 74.

<sup>117</sup> Ibid., 71.

<sup>118</sup> Ibid., 75.

committed to achieving a more conventional balance of power in the state government than existed under the 1776 constitution.

The proponents of the constitutional *status quo* responded to these criticisms by first stating their belief in the “essential principle” that constitutions should not be “lightly changed,” and by noting the roadblocks to changes in “fundamental principles” established by the constitution. They observed the constitution’s requirement of a 2/3 majority in the Censors for the calling of a convention to amend the document--noting by implication, it seemed, that “faults of so alarming a tendency” as to generate overwhelming demand for reform had not become apparent. They praised the stability this provision had provided and warned of the “continual fluctuations” in which its abandonment would result.<sup>119</sup>

Constitutionalists further defended the constitution by appealing to the spirit of patriotic unanimity that had, they submitted, animated its framing and adoption. They painted a portrait of consensus and general devotion to the principles of the Patriot cause. The constitution had been adopted “with great harmony” at a time “when the flame of liberty shone brightest.” The people of the state had been “impressed with no other idea than that of acquiring and maintaining to themselves and their posterity, equal liberty.” The Constitutionalist members of the Council contrasted the unity and cohesion that existed at the time of the constitution’s adoption with the subsequent emergence of “factions” harboring “ambitious or mercenary motives.” They disregarded the rancor and contention that pervaded the post-convention debates of 1776. In their narrative of the

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<sup>119</sup> Ibid., 78.

constitution's reception, the document had enjoyed an uncontested adoption. It had subsequently proven its merit by securing the state's "safety and happiness" against the assaults of both "a most formidable enemy without," [the British] and "a most indefatigable and insidious party within [Republicans]." <sup>120</sup>

The Constitutionalist members of the Council were equating the critics of the constitution with the British--an extreme comparison which attested to their intense reverence for the document. To them, it seemed a direct product of the harmony, patriotism, and principles that set the Revolution in motion. In their eyes, the state constitution had encapsulated the "flame of liberty" and ensured its defense by establishing a sturdy governmental foundation capable of withstanding the exigencies of the war. By seeking to introduce significant changes to the constitution, the reformist element of the state's political scene was engaged in a campaign to reverse the course of Independence and undermine the Revolutionary legacy. For Constitutionals, the constitution was an embodiment of the Patriot cause, and any effort to substantively reshape it was an effort to undermine the accomplishments of the American Revolution in Pennsylvania. The constitution's opponents were thus not working merely to amend Pennsylvania's Frame of Government, but to abandon the American Revolution. Their campaign to uncover "faults and imperfections" was merely an "excuse" to dislodge a document that had "withstood the most arduous trial." Further questioning the character

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<sup>120</sup> Ibid., 79.

of the Republicans, Constitutionals raised doubts about the “purity” of residents of “some parts of the state.”<sup>121</sup>

The Constitutionalist counter against the Republican reform effort was steeped in rhetoric similar to that employed by the English Country school and revealed a profound immersion in the Whig paradigm.<sup>122</sup> Constitutionals appealed to the Whig apprehension about the dangers of government by elite interests, contending that the changes proposed by Republicans would produce a decidedly aristocratic frame of government. Referring to Republicans’ proposals for the creation of a bicameral legislature, Constitutionals warned against the creation of “aristocratic ranks” among the citizenry. They dubbed the proposed governorship a “chief magistrate” and argued that his proposed scope of authority surpassed “those of the ordinary lot of kings.” They appealed to the people’s “love” for “equal liberty” and abhorrence toward “all attempts to lift one class of citizens above the heads of the rest, and much more the elevating any one citizen to the throne of royalty.” For Constitutionals, the constitution’s genius and value derived from its simplicity: it assumed a homogeneous society, in which social rank and economic interests were not directly reflected in the structure of government.<sup>123</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> On the transmission of the rhetoric and ideology of the English “Country” school to America, see Caroline Robbins, *The Eighteenth Century Commonwealthman: Studies in the Transmission, Development, and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies* (Cambridge: Harvard University Press, 1958); H. Trevor Colbourn, *The Lamp of Experience: Whig History and the Origins of the American Revolution* (Chapel Hill: University of North Carolina Press, 1965); Bailyn, *Ideological Origins*; Wood, *Creation*; Pocock, *Machiavellian Moment*; Murrin, “The Great Inversion”.

<sup>123</sup> On this “homogeneous” conception of society, see Owen, *Political Community*; Donald S. Lutz, “The Theory of Consent in the Early State Constitutions,” *Publius* 9, no. 2 (Spring, 1979), 19; Koschnik, “*Let a Common Interest Bind us Together*”.

Republicans countered by presenting an account of the circumstances surrounding the constitution's creation entirely different from the narrative cast by their opponents. They argued that the constitution was established under incredibly precarious circumstances: the "passions of the state" were "unusually agitated" in the midst of hostilities with Britain. Several "wise and able men" were absent from the state due either to obligations in the Continental Congress or the Continental Army. Under such unusually pressing circumstances, they asked "whether it was reasonable to expect that a constitution could be formed proper for a great and growing state?" Challenging the picture of constitutional consensus depicted by their opponents, they noted that there was significant opposition to the constitution's adoption and that many had acceded to the document only under the assumption that it would be amended once the Council of Censors convened.<sup>124</sup>

The Republican Censors appealed to the deliberative nature of the Council of Censors and the relatively peaceful circumstances that now existed in the state as reasons for amending the constitution. The "passions and prejudices" they saw as the source of the state constitution could be overturned in favor of "cool deliberation,"; indeed, "the intricate science of government" demanded it. Alluding to their status as the elite stewards of the state, they noted that "few have had either leisure or opportunities to turn their thoughts" towards the subject of government. Expressing an unabashedly deferential conception of politics, they suggested that those who had the leisure and opportunities necessary to consider matters of government should be placed at the forefront of affairs

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<sup>124</sup> *Proceedings*, 81.

of state. The people at large--or at least the relative political newcomers who had been present at the constitutional convention in the summer of 1776--were not, in their evaluation, as qualified to engage in the process of forming a government as their superiors.<sup>125</sup> At the time of the constitution's adoption, the state's "political knowledge was in its infancy." It had now matured and was sufficient to correct the deficiencies of the constitution.<sup>126</sup>

The revisionists further challenged the Constitutionals' assertions about the constitution's success in guiding the Commonwealth through the war. They denied that the constitution was the source of the state's successes against Britain. Rather, "all the exertions of Pennsylvania," were attributable to the "virtue of the people." This virtue, not the constitution, had enabled Pennsylvanians to withstand the travails of wartime. If anything, the constitution had been a burden on the people and an obstacle to their successes in the war. Unlike Constitutionals, Republicans did not identify the cause of the Revolution with the constitution. Nor did they think the constitution a suitable mechanism for realizing its fulfillment. They believed that the principles of the Revolution were carried by the people, not inscribed in the constitution. The people, and the people alone, had the potential to achieve independence and secure liberty.<sup>127</sup>

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<sup>125</sup> Ibid., 81. On the authors of the Pennsylvania constitution, see Selsam, *Pennsylvania Constitution of 1776*; Foner, *Tom Paine and Revolutionary America*; Middlekauff, *The Glorious Cause*, 637; Nash, "Philadelphia's Radical Caucus that Propelled Pennsylvania to Independence and Democracy," in Alfred F. Young, Gary B. Nash, and Ray Raphael, eds., *Revolutionary Founders: Rebels, Radicals, and Reformers in the Making of the Nation* (New York: Vintage, 2011), 67-85.

<sup>126</sup> *Proceedings*, 81.

<sup>127</sup> Ibid.

## II. Making the Debate Public: The Pamphlet War

Republicans took to the press to support their claims about the Constitution, publishing a number of pamphlets to present their views to the public. They succinctly presented the essence of their case against the document in *An Address of the Council of Censors to the Freemen of Pennsylvania* and presented a systematic exposition of their positions on the Constitution in *A Candid Examination of the Address of the Minority of Council of Censors to the People of Pennsylvania*. While the arguments presented in those pamphlets largely resembled those issued in the course of the Council's proceedings, they provide an enhanced understanding of the nature of Republicans' grievances.

*An Address* acknowledged the Republicans' fixation on the constitution, recognizing its amendment as "the most weighty matter" addressed within the Council. Apparently intending to highlight its differences from the other state constitutions, the Republicans remarked that the Council had "compared it with the constitutions of the other states." They emphasized that their proposed amendments to the constitution would bring the Frame of Government into alignment with the governmental structures established under other state constitutions, noting that their proposals were "not experiments," but were "founded on the reason and the experience of our sister states." In their appeal to the people, the Republicans were explicit about their intention to create a state government that adhered to the conventional wisdoms about government represented in most of the other state constitutions.<sup>128</sup>

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<sup>128</sup> *An Address of the Council of Censors to the Freemen of Pennsylvania* (Philadelphia, 1784).

They also asserted their Patriot credentials. They denied the notion that their interests in any way differed from those of their constituents. Rather, they presented their motives as grounded in a vigor for the Whig cause. Their “political principles,” were proven, they argued, by their place as “the consistent opposers of our British foes.” This status as ardent Patriots was confirmed by the fact that “most of us have risked our lives and fortunes during the whole of the contest.” In a state where Loyalist sentiment was seemingly strong, and a large segment of the population was accused of supporting the British cause by refusing to take part in the war effort, Republicans were trying to demonstrate that their brand of constitutionalism was inspired by and consistent with the military valor they displayed through individual sacrifice and bravery on the battlefield.<sup>129</sup>

Where *An Address* was cursory, *A Candid Examination* was much more substantial in scope. The Republican authors essayed a broad range of topics and provided an exhaustive presentation of their stances on the constitution. In the process of criticizing the constitution, the authors disclosed a number of their fundamental assumptions about the nature of power, the relationship between the government and the governed, and the implications those notions had for governmental structure.

The authors presented perhaps the most compelling explanation of any Republican apology regarding the need for a strong Executive. They argued that semantic distinctions “A King, a Governor, [or] a President,” were of little importance. What really mattered was that such a “Chief Magistrate” be established, because “our nature and the

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<sup>129</sup> Ibid.

social state,” required the existence of an executive element of the government. The alternative, they contended, was a degeneration of Pennsylvanians into “savages to a state of society.” While they acknowledged that constraints on executive power were indispensable, the natural inclinations of humanity towards disorder required that a counterposing force be applied in the form of a strong and viable executive figure. In the same passage, however, they asserted that this constraining force needed to itself be subjected to restraints. They emphasized the importance of a balance of power, stating: “Power must be delegated; and if that power is not balanced, give your government what name you please, you will find it but a name, and you are slaves.”<sup>130</sup> The authors argued that because their proposed governorship would be elective, the executive branch would be more accountable to the people than the Supreme Executive Council in place under the constitution, while still possessing the energy necessary to counteract the legislative and judicial branches.<sup>131</sup>

*A Candid Examination* also addressed Republicans’ perception that the constitution had failed to safeguard the state judiciary against political pressures. The authors argued that the document’s twenty-third section, which made members of the state supreme court “removable for misbehavior at any time by the general assembly,” effectively gave the legislature undue leverage over the court’s justices and “annihilates the liberties of Pennsylvania in a single blow.”<sup>132</sup> It made the legislature “at once the

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<sup>130</sup> *A candid examination of the address of the minority to the council of censors of the state of Pennsylvania* (Philadelphia: 1784), 7.

<sup>131</sup> *Ibid.*, 30.

<sup>132</sup> Pennsylvania State Constitution, accessed at [http://avalon.law.yale.edu/18th\\_century/pa08.asp](http://avalon.law.yale.edu/18th_century/pa08.asp); *A candid examination*, 31.

accusers, the witnesses, and the judges” of the state judiciary.<sup>133</sup> Just as they contended that the executive needed to be free of legislative influence, they argued that the judiciary should be completely independent from outside pressures. Courts, they argued, “should be incapable of influence or corruption.” They needed to be not only independent, but “*wholly* independent—of the Assembly, of the Council—nay more, of the people.” The authors warned that “Liberty, property, and life,” were all imperiled when such a degree of absolute judicial independence was not maintained. They believed that even the slightest participle of legislative influence compromised the judiciary, which served a similar purpose to the state as “the powers of conscience” did to the mind.<sup>134</sup>

Another aspect of the authors’ critique of the constitution was their contention that the document was in no sense connected to the war effort in Pennsylvania. The Republican critics assailed the idea that the constitution’s preservation had been the object of the state’s participants in the military contest with Great Britain. They found the notion that the constitution had been paid for by “the blood of thousands,” inconceivable. They questioned the commitment of the constitution’s authors to the Patriot cause, noting that “The friends to the constitution have indeed assumed the name of whigs,” but that a number of them “withdrew themselves from the *field of danger*, immediately” upon the constitution’s adoption. The genuine supporters of the Revolutionary cause, “Those who persevered in support of the liberties of America,” were generally opposed to the

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<sup>133</sup> Ibid., 32.

<sup>134</sup> Ibid., 31.

constitution, being “too much enlightened, to shed their blood in support for a system that was to render them unhappy and their country despicable.”<sup>135</sup>

The Republican authors equated the system of government established under the constitution with the “British tyranny” the newly formed United States were fighting to overthrow. They questioned whether it was possible “that the men who have *fought* through the whole course of the war, and submitted to *hardships* that in age or country an army ever sustained before, to emancipate you from British tyranny, should be the friends of that tyranny?” Drawing a connection between Pennsylvania soldiers’ opposition to Britain and their hostility towards the state constitution, the authors asked, “are they not, almost to a man, averse to the present constitution?” Not only did the constitution fail to attain the credence of an embodiment of Revolutionary principles, the authors further suggested that it was little better than the British policies that had prompted the Americans’ effort to separate themselves from the empire.<sup>136</sup> The authors concurrently questioned the commitment of the constitution’s authors to the Patriot cause by throwing doubt on their military service and made it clear that they distinguished between the cause of the war effort and the maintenance of the constitution.

The authors also stressed the resemblance between their proposed revisions to the constitution and the governmental structures created under the constitutions established by the majority of the other states. They noted that “Maryland and Delaware on one side, and New-Jersey, New-York, Connecticut, Rhode-Island, and New Hampshire, all have

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<sup>135</sup> Ibid., 8.

<sup>136</sup> Ibid., 19.

governments similar to that we have recommended to you.” They pointed to those states’ constitutions as evidence that the governors and upper houses did not necessarily have to morph into “either a King or a House of Lords.” It was possible, they argued, to establish “wisdom in their legislatures” and “energy in their executive branches” without producing a tyrannical regime. By placing their proposals within the mainstream of American constitutionalism during the Revolution, the Republicans were both endorsing conventional governmental structures and suggesting that their program was in alignment with the prevailing wisdom of the time.<sup>137</sup>

*A Candid Examination* also presented a decidedly republican account of the proper scope of the electorate. They argued that the constitution’s failure to require of voters and officeholders anything greater than a “common interest” with the community was an insufficiently high threshold for political participation. They presented “This *tie*, by means of *life*” as “the most common of any that men can have to a government,” but argued that it was “by no means sufficient to entitle a man to dispose of the *liberty* or *property* of his fellow citizens.” By granting direct political authority to every individual, the constitution had, the Republicans argued, made it possible for those without a substantial stake in the interests of the commonwealth to abuse their authority and divest their fellow citizens of their liberty and property.<sup>138</sup>

The authors identified property as the cornerstone of government. They argued that “Nine tenths of all laws relate to the disposal of *property*,” noting that government’s

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<sup>137</sup> *Ibid.*, 18.

<sup>138</sup> *Ibid.*, 25.

origins could be traced to the emergence of the concept of property. They contended that liberty and life needed fewer legal protections to survive than did property. They argued that it was “absurd therefore for any man to dispose of his neighbor’s property, who has no property himself.” A government that facilitated such a state of affairs was inherently “unequal” and productive of aristocracy or monarchy.<sup>139</sup> Appealing to the civic humanist ideal of the independent freeholder, they posited that “An independent share of property in an elector is the only thing that can make him independent, or secure the state against the various species of corruption which prevail at elections.”<sup>140</sup>

The authors were presenting a vision of society that clashed directly with the more socially egalitarian vision articulated by Constitutionalists. Constitutionalists viewed the community as a corporate entity animated by the popular will and not particularly reliant on individual virtue. They thought that a constitutional order that upheld the interests of society by heeding the voice of all white men was the best way of promoting the common good. Republicans differed, arguing that, while the interests of society were paramount, the individual property-holder was the foundation of society. Republicans believed that the virtuous individual was the cornerstone of a free society and that such virtue could only exist under a government that carefully protected individual rights, especially the right to hold property. This required serious restrictions on the political power of those who did not hold property and were therefore not virtuous. On this issue, both factions were living up to their names. Constitutionalists believed that

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<sup>139</sup> Ibid., 26.

<sup>140</sup> Ibid., 27. See J.G.A. Pocock, “Civic Humanism and Its Role in Anglo-American Thought” and “Machiavelli, Harrington, and English Political Ideologies” in *Politics, Language, and Time: Essays on Political Thought and History* (University of Chicago Press, 1971), 80-147.

a proper constitutional order (which they believed meant a system that promoted societal interests and the popular will) was the best way of achieving a free society. Republicans thought that individual virtue was the basis of a free society and that extensive constraints on the political power of a large segment of the population were necessary to ensure that government could survive.

Constitutionalist members of the Council of Censors countered the Republican appeal to the electorate by publishing their own pamphlets intended to generate public opposition against the reform campaign in which Republicans were engaged. The authors of *To the freemen of Pennsylvania* depicted the contest over the constitution as a struggle between “liberty and slavery”—a dreadful prospect, they argued, in a state “where the light of science the love of liberty shine with peculiar lustre.” They appealed to concerns about the transfer of property—although, unlike Republicans, they were unconcerned about the dangers of the masses using political power to seize the property of elites. Rather, they expressed apprehension about “the people, and their property, being delivered into the hands of a set of tyrants,” and argued that such a development was inevitable if Pennsylvanians ever decided to “suffer the executive to intrench upon the other branches.”<sup>141</sup>

While *To the freemen of Pennsylvania* expressed a general concern about the dangers of executive power without exploring the ways in which such a threat was facing Pennsylvania, the writers of *An Alarm. To the freemen and electors of Pennsylvania* were

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<sup>141</sup> *To the freemen of Pennsylvania. Friends and countrymen as the sitting of the Council of Censors is nearly at an end...* (Philadelphia, 1784), 1.

more specific. They accused Republicans of attempting to place “the principal part of the power of the state” in the Supreme Executive Council. They painted Republicans’ accusations of wrongdoing by the Assembly as a series of unfair slights against “the dignity of the Legislature,” which occupied a special place in the state government, “compos[ing] a just and equal representation of the people.”

The pamphlet also questioned Republicans’ commitment to the war effort, challenging the assertions made by the constitution’s opponents that they had been ardent and longsuffering in their devotion to the conflict. It presented Republicans as ineffectual in their support for the military conflict and suggested that some might be concealing past support for Britain:

With all their boasted pretensions to early and decided whiggism, most of them were skulkers under petty offices, or pretended indisposition. Their patriotism has seldom extended beyond bawling in a Coffee-House or Tavern, or insulting the persons or seizing the property of the tories. Many of them were downright tories themselves in the beginning of the war, and now affect a mighty zeal for your liberties, only to throw a cover on their former baseness.<sup>142</sup>

Republicans emerged from this scathing characterization as, at best, insubstantial in their contributions to the War for Independence, or, at worst, as Loyalists who were currently feigning support for the Patriot effort. Both *A Candid Examination* and *An Alarm* indicated the extent to which partisans in the constitutional debate attempted to solidify their status as active contributors to the war effort and dismiss their opponents as obstacles to American victory. They also suggested that the constitution’s supporters and opponents equated the Revolution as a

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<sup>142</sup> Ibid.

political process with the War for Independence and therefore sought to demonstrate the validity of their respective stances on the constitution by pointing to their own experience in fighting the war and thus making the Revolution's fulfillment possible.

### **III. Contesting the Constitution in the Second Session**

Debates over the state constitution were not conclusively settled when the Council of Censors adjourned early in 1784, the Republican majority having failed to produce the amending convention they initially hoped for. The body reconvened late in the summer of that year and picked up where the first session left off. Both sides continued to grapple, as heatedly as before and still to little apparent avail, over the viability of the constitution. Republicans' prospects of amending the constitution appeared even *dimmer* than they had previously--a Republican member of the Council resigned and was replaced by prominent Constitutionalist George Bryan, three other Constitutionlists were added to the Council, and a Republican member decided not to attend the second session. These developments gave the Constitutionlists a clear majority in the Council and effectively foreclosed the possibility of an amending convention being called.<sup>143</sup> The deliberations of the Censors' second session were unfruitful, yet they warrant attention because of the insights they provide into the attitudes towards altering the constitution voiced by both sides of the debate.

In the second session, the constitution's defenders again asserted that popular sovereignty was the basis for the document. They explicitly recognized its concessions to

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<sup>143</sup> Brunhouse, *Counter-Revolution in Pennsylvania*, 161.

popular control of government. They posited that it reposed “all civil power on the authority of the people only, in whom the sovereignty resides.” The government enshrined “the natural rights of individuals” as the source of political authority. They argued, contrary to the assertions of their Republican adversaries, that the constitution had successfully divided power among the executive, legislative, and judicial branches. They found the constitution “clear in its principles, accurate in its form, consistent in its several parts, and worthy of the veneration of the good people of Pennsylvania.”<sup>144</sup>

One of the best features of the constitution, in their appraisal, was its preclusion of the “accumulation of influence, in the hands of one or few.” The Constitutionalists described such a development as “subversive of all public justice and private right” and favorable to the “capricious, unsteady domination of prejudice, party and self-interest,” not government by “laws prescribed, promulgated, and known.” They believed that the emergence of elite political factions was incompatible with the rule of law. In their eyes, the “capricious” and “unsteady” nature of aristocratic rule precluded the kind of steady and deliberative government administered under a legally attuned regime.<sup>145</sup>

As if performing a suite of familiar compositions, the Constitutionalists were playing on a number of well-known themes without exploring any of them in great depth or detail. In the same passage, the Constitutionalists appealed to popular sovereignty and the enshrinement of individual rights while concurrently expressing hostility towards elite factionalism and arbitrary government. For the constitution’s supporters, popular control

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<sup>144</sup> *Proceedings*, 84

<sup>145</sup> *Ibid.*

of government, individual rights, and the rule of law were mutually reinforcing and inextricably interwoven.<sup>146</sup> Unchecked popular sovereignty, as represented in the existing legislature, was in their estimation the foundation for the enjoyment of individual rights and protection against the domination of aristocratic interests determined to impose their arbitrary will upon the Commonwealth.

Revisionists countered by charging that the legislature had operated in a manner that was excessively energetic and insufficiently deliberative. They invoked John Locke--perhaps an interesting choice, given the abundance of sources on the rule of law from which they could have chosen--in submitting that the law necessitated stability and should not be the result of arbitrary actions on the part of the legislature.<sup>147</sup> They contended that the legislature's conduct had been subversive of the rule of law--it was as unpredictable as the "aristocratic" mode of government assailed by the convention's Constitutionalist contingent. This pointed to what they regarded as a fatal defect with the constitution: its failure to constrain the legislature to an established sphere of authority and pattern of behavior.

After a series of debates over various actions taken by the legislature since the Constitution's adoption, the clashing parties resumed debate over the nature and bounds

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<sup>146</sup> A conception of these phenomena as interrelated and inseparable was arguably a mainstay of eighteenth-century Anglo-American thought. See John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution* (University of Chicago Press, 1988).

<sup>147</sup> *Proceedings*, 83. Locke's influence on the American Revolution has been the object of considerable historiographical debate. Locke once commanded nearly universal acknowledgment as a central influence on those who sought independence from Britain, but the "Republican School" of the 1960s and 1970s, headed by Bernard Bailyn and Gordon Wood, afforded Locke a minimal role in their accounts of the intellectual tapestry of Revolution. Subsequent historians, most notably Joyce Appleby and Craig Yirush, rehabilitated Locke's reputation as one of the principle touchstones for the American Patriots. However, Locke's connection to the rule of law has been largely discounted. For discussion of the development of the concept of rule of law, see Reid, *Rule of Law*.

of popular sovereignty. Rejecting the reformers' argument that the power to appoint officers to positions not enumerated by the constitution by default resided with the Supreme Executive Council, the Constitutionalists appealed to the legislature's role as the representative of the popular will.<sup>148</sup> The legislature was the "proper depository of all power not expressly placed elsewhere; for there, every man in the community is equally represented." In contrast, the Executive Council was not subject to popular oversight and could operate in ways contradictory of the wishes of the people. Worse yet, the people were left with little recourse against such violations of the popular will. The legislature's proximity to and accountability to the people made it a better vehicle for realizing the interests of the people. Constitutionalists' exposition of the virtues of legislative primacy was telling. They believed that any obstructions to the people's ability to dictate governmental policy were invitations to arbitrary rule.<sup>149</sup>

The preservationist faction believed that reformers were intent to establish the Executive Council as the principal lawmaking body and effectively strip the legislature of its power. They pointed to a 1779 proposal that the executive be given the authority "to prepare such business as to them shall seem necessary to lay before the general assembly" as evidence of an effort to grant the council the ability to dictate the terms upon which pieces of legislature were introduced. They greatly exaggerated the scope of this proposal; it did not openly curtail the legislature's power to introduce legislation. They equated motive with substance and assumed that their opponents' proposals had been animated by a desire to establish the Executive Council as the chief lawmaking

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<sup>148</sup> *Proceedings*, 101-2.

<sup>149</sup> *Ibid.*, 102

body. The preservationists claimed that the measure would quickly result in the Council claiming sole authority over the process of introducing laws and control over debate.

They argued that affairs would shortly operate under the premise “that no law should pass that had not originated with the council.” In their depiction, the proposal was part of an effort to produce an executive wielding “the appointment to all offices; the originating all laws; and a negative before debate.”<sup>150</sup>

Despite these charges, the revisionist element remained adamant about the importance of preserving executive power against perceived encroachments by the legislature. They again emphasized the importance of allowing the executive to draw funds from the treasury, a claim Constitutionalists rejected by asserting the legislature’s exclusive power over drawing money from the treasury.<sup>151</sup> Reiterating the importance of judicial independence, they argued that the Executive Council’s ability to draw funds from the treasury was essential to the fixing of state supreme court justices’ salaries. They portrayed this measure as necessary to insulate justices from constant pressure to accord with popular sentiment in their rulings.<sup>152</sup>

Constitutionalists countered the allegations made against them by their opponents, issuing the strongest accusations yet fielded by either party in the debates of the Council of Censors. They railed against that the revisionists’ interpretation of the constitution in favor of executive prerogative, arguing that it evidenced a plot to construct “the most complete system of aristocratic tyranny, that has ever appeared in the world.” Here were

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<sup>150</sup> Ibid., 104.

<sup>151</sup> Ibid., 106-107.

<sup>152</sup> Ibid., 106-108.

explicit charges that their adversaries were conspiring to swiftly and fundamentally transform the state government from a popular model to an aristocratic one. They noted that such changes in government had historically occurred “by slow and almost insensible changes.” However, Republicans had forgone the usual method of instituting aristocracy through a series of gradual steps. Rather than subtly and slowly working towards the establishment of an aristocratic regime, they had resolved to implement it “by one stroke of a pen, and to persuade the people that they ought always to have been so governed.” Despite their admonitions against this effort to suddenly foist an aristocracy upon the Commonwealth, the Constitutionals expressed faith in the resoluteness of the people. The citizens of Pennsylvania were in their estimation “too enlightened...too high spirited, and too fond of liberty” to submit to becoming the “mere registers of their haughty and imperious masters.”<sup>153</sup>

Yet again, Constitutionals appealed to what they regarded as the principles of the American Revolution: enlightenment, the high-spiritedness of the people, and liberty. Their identification of the reformers’ construction of the state constitution as evidence of an aristocratic conspiracy, as well as the seemingly hyperbolic epithets they attached to their opponents, are indicative of the Constitutionals’ preoccupation with the spirit of the Revolution and their indebtedness to the Country outlook on politics.

The debates that took place both in the meetings of the Council of Censors in 1783 and 1784, and in members’ published efforts to secure the backing of popular sentiment revolved around questions of popular sovereignty and the proper distribution of powers

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<sup>153</sup> Ibid., 107.

between the branches of government. They also implicated competing visions of the American Revolution and its meaning that were connected indissolubly to the Censors' fundamental disagreements on those questions. While Republicans and Constitutionals alike recognized and affirmed popular sovereignty, they altogether disagreed on its implications.

Republicans believed that in order to secure the Revolution, a clearly delineated balance of powers between the three branches of government needed to be achieved. This contention was largely motivated by their belief that constraints on legislative power needed to be established. Republicans cited a litany of misdeeds committed by the state legislature since the constitution's adoption. While these abuses of power undoubtedly informed the Republican outlook on the nature and proper scope of legislative power, they were not the source of the preservationists' conception of a rightful constitutional legislature. Underpinning their allegations against the transgressions of the state legislature was a conviction that it simply possessed too much power. Republicans were philosophically opposed to the preeminence of the legislature and believed that until written constraints on its power were established, it would continue to misbehave. They thought that an excess of legislative power threatened to jeopardize the Revolution. Despite arguing that the people had sustained Pennsylvania through the War for Independence and acknowledging the sovereignty of the people, they still submitted that restraints on the direct expression of the people's will needed to be established.<sup>154</sup>

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<sup>154</sup> *Proceedings*, 81-2; 72-4 and 85-86.

Constitutionalists could scarcely have been any farther away from Republicans on these issues. They associated the constitution and its concessions to direct popular rule with the spirit of the Revolution. They thought that unrestrained control of the government by the people was interchangeable with the cause of the American Revolution. Therefore, they argued, proposals for establishing constraints on the political agency of the people were, by extension, overtures towards an abandonment of the Revolution. This explains their seemingly irrational contention that Republicans were scarcely more congenial towards the cause of the Revolution than the British Empire was. These arguments were informed by the rhetoric and outlook of the Whig tradition. But they were not simply its product. Rather, they evidenced a fervor for popular sovereignty that cannot be ascribed solely to the influence of the “paranoid style” in Anglo-American politics.<sup>155</sup> It was a mania shaped indelibly by the Constitutionalists’ understanding that their conception of popular sovereignty, which was reflected in the state constitution, was inseparable from the cause of the American Revolution. For them, the Revolution was a project in realizing the possibilities of direct legislative representation.

The Council of Censors’ deliberations did not ultimately produce any changes in the structure of the Pennsylvania government. The constitution remained intact, the revisionists flustered in their efforts to amend it and the preservationists satisfied that they had blocked an effort to sacrifice popular government on the altars of aristocratic domination and executive prerogative. However, the issues over which the two parties

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<sup>155</sup> See Bailyn, *Ideological Origins*; Richard Hofstadter, *The Paranoid Style in American Politics, and Other Essays* (New York: Vintage, 1964); Gordon S. Wood, “Conspiracy and the Paranoid Style: Causality and Deceit in the Eighteenth Century,” *William and Mary Quarterly* 39, no. 3 (July, 1982), 401-441.

within the Council of Censors clashed continued to inspire debate and define the contours of state politics.<sup>156</sup> The constitution of 1776 remained a point of intense contention, inspiring unflagging support from its partisans and inexorable criticism from its detractors. Perhaps most importantly, the debate over the constitution revealed both parties' conscious identification with the spirit and cause of the Revolution.

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<sup>156</sup> On the continued debates over these issues, see Brunhouse, *Counter-Revolution*, Chapters VI and VII; Arnold, *Republican Revolution*, Chapters V, VII, and VIII; Owen S. Ireland, *Religion, Ethnicity, and Politics: Ratifying the Constitution in Pennsylvania* (University Park: Pennsylvania State University Press, 1995).

## Conclusion

The Pennsylvania constitution remained intact until 1790, when its critics finally succeeded in replacing it with a constitution that accorded more closely with traditional notions about government. In the interim, it remained a consistent object of debate. The constitutional debate extended well beyond the conclusion of hostilities with Britain and overlapped with the state's debates over ratifying the Federal Constitution in 1787. Constitutional discord was a persistent source of tension throughout the 1780s.

The length and intensity of the constitutional debate prompt several questions. Why would a constitution adopted by partisans of the Patriot movement provoke such controversy among the state's proponents of independence? How could such an embattled document withstand constant assaults and outlive the United States' first founding document, the Articles of Confederation? In light of the extensive disagreement over the document's suitability for guiding the state through the War for Independence, why would the debate rage on after independence had been gained and the war concluded?

The only satisfactory answer to these questions is that disagreement on the constitution arose from such fundamental division over central questions of governmental order that compromise was unthinkable. Constitutionalist and Republicans believed they were vying for the direction of the Revolution in their battle over the constitution

Constitutionalists argued that a governmental structure that closely adhered to the notion of popular sovereignty was crucial to maintaining liberty. They contended that direct representation of the popular will, coupled with an abandonment of traditional

mechanisms for dividing power, were the best means of achieving this. Republicans countered that such an arrangement flew in the face of prevailing arguments about the importance of balancing power and the dangers of conferring an excess of direct control to the people.

At its core, the debate between the constitution's supporters and critics was an internal contest to determine the nature and course of politics in Pennsylvania. They were not concerned merely with achieving home rule, and the central issue at stake was not determining which societal interest should govern. Both parties agreed that independence was essential. And while socioeconomic considerations were sometimes voiced, they did not predominate, and Constitutionals and Republicans were not clearly divided along social or economic lines. A Whiggish interpretation stressing the unanimity and concord of Patriots does not provide a satisfactory understanding of Pennsylvania's politics during the Revolutionary period. Neither does the Progressive approach, with its emphasis on the disorder wrought by a multiplicity of adversarial interests.

The Pennsylvania political debate can best be explained as an internal contest animated primarily by conflicting visions of government. While these visions cannot be neatly attributed to clearly identifiable sources of inspiration, they were apparent from the constitution's adoption. This indicates that the ideologies were latent, embedded somewhere within the state's political consciousness. The coinciding of hostilities with Britain and the adoption of the constitution provided the impetus for these distinct visions of governmental order to be expressed. The constitution's authors envisioned a political community bound together by a common commitment to the principles of popular

government. Instead, they created a governing document which inspired extensive conflict, demonstrating the centrality of constitutional principles to political debate and the ways in which Patriots of various stripes understood the American Revolution.

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