



# Colossus: Constitutional Theory in America and France, 1776-1799

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**Colossus:  
Constitutional Theory in America and France, 1776-1799**

*A dissertation presented  
by*

ADAM JONATHAN LEOVITZ

*to*

The Department of Government

*in partial fulfillment of the requirements  
for the degree of*

Doctor of Philosophy

*in the subject of*

Political Science

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## **Colossus: Constitutional Theory in America and France, 1776-1799**

### **Abstract**

This dissertation presents a new intellectual history of constitution-making in America and France, from the publication of *Common Sense* in Philadelphia through the *coup d'état* of Napoleon in Paris. It proposes that constitutional theories, both radical and reactionary, traveled much more freely across the Atlantic in this period than has been understood. And it argues that at the center of these pivotal decades was a confrontation of ideas that began in America in 1776, between exponents and critics of Pennsylvania's first republican constitution, and then moved to France, structuring the key debates about popular sovereignty and constitutional design at the heart of the French revolution. The American revolution in effect *became* the French revolution, as arguments about bicameralism, executive prerogative, and the legitimacy of constitutional conventions that began in Boston and Philadelphia were repeated in Paris, by politicians and intellectuals freely citing American models and ideas. The fulcrum of this exchange was John Adams's *Defence of the constitutions of government of the United States of America* (1787), written as a deliberate response to the political theories of Franklin and Paine, as well as the leading *philosophes* of the *ancien régime*, and was then used as both a foil and a guide by the revolutionaries of 1789, 1792, and 1795.

Following an introduction and a brief sketch of constitutional debates in America during the revolutionary war, the dissertation makes this argument in three parts. Part I offers an intellectual history of the origins and reception of John Adams's *Defence*, tracing his complex dialogues with Mably and Turgot over the Massachusetts and Pennsylvania models. It then analyses the unsparing critiques of his work from Condorcet and the Girondin circle in Paris, who maintained

strong ties of sympathy to Paine, Franklin, and the tradition of Philadelphia radicalism. Part II presents a new history of the Thermidorean constitution, demonstrating the ubiquity of American examples and the centrality of Adams's *Defence*. It argues, in particular, that the most vociferous criticisms of the new constitution originated in the Coppet Circle of Jacques Necker and Madame de Staël, who faulted the new government for failing to adequately separate and balance the parts of government, and cited the work of Adams to bolster their conclusions. And it highlights the survival of Philadelphia constitutional arguments in this period, visible in the writings of Benjamin Vaughan, Thomas Paine, and the Abbé Sieyès. Finally, Part III focuses on a concerted intellectual and political movement for the reform of the American constitution, led by a constellation of radicals based in Philadelphia and inspired by the constitutional example of the French republic. In response to what radical journalists like Paine and Benjamin Franklin Bache perceived to be the monarchial drift of the Adams administration, they began to press for a drastic reform of the U.S. constitution, pointing to the more egalitarian French constitution, with its unicameral legislature and weak plural executive, as their model. The argument presented here thus underlines the surprising fragility and contingency of the American constitution in the early years of the republic, and highlights the powerful Atlantic currents of constitutional theory that began in Philadelphia, traveled to Paris, and ultimately returned to their point of origin.

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## **Dedication**

For Andrea, Russell, and Zach.

## Acknowledgments

John Adams was invariably sarcastic on the subject of the French revolution. But as he surveyed the insurrections cascading across Europe in 1790, centered in Paris but touching Warsaw, Geneva, Brussels, and London, he saw a world galvanized by the republican sentiments he himself had helped to bring into existence. And he was cognizant that his own political ideas, now ramifying across the kingdoms of Europe, had been formed in a very particular milieu. As he put it in a 1790 letter to his cousin Samuel, another scion of Massachusetts, "Your Boston Town Meetings, and our Harvard Colledge have Sett the Universe in Motion."

And so it was for me too. I arrived at Harvard (the Law School and the Graduate School of Arts and Sciences, though not the Colledge) a decade ago, with vague plans to study constitutional law and democracy. What displaced these vague plans was an intellectual universe I had been mainly unaware of—the history of political thought—which I was initiated into in Eric Nelson's seminar on the political thought of the English revolution, and Richard Tuck's lecture course on ancient political philosophy. I learned a great deal of content in these courses, but mainly I learned about different ways of thinking about ideas, and about the extraordinary levels of rigor and creativity that good work in this field could achieve.

This dissertation began its life as a seminar paper for Eric Nelson, when he taught his first course on the political thought of the American revolution, and was refined two years later when I helped him teach its second iteration. The project was gradually expanded, and given form and shape, through repeated conversations in his office that always left me buzzing with new ideas, and reinvigorated about its direction. He was writing his own book on the American founding, from which I learned an immense amount, but our conversations were always about my work, and my intellectual goals. I have seen enough of graduate school to appreciate that this is a rare thing. As I produced drafts Eric read every word, offering edits and encouragement, and expressing confidence that the final product would be of great value. This more than anything is what sustained me, across several years. I can say with assurance that without Eric's supervision, this project simply could not have been written, not only in its present form but indeed in any form.

It was my great fortune that Richard, too, began a project around this time that had a great deal to say about the constitutional history of the American founding, and could speak to the same material from a very different vantage point and theoretical orientation. This is surely more than coincidence, although perhaps the best feature of Richard and Eric as advisors is that they never asked or implied that I should research a particular topic, take a particular stance, or do anything other than what interested me most, following the threads of my research wherever they led. Their warmth and intellectual generosity—and their unflagging belief in this project—made my time in the Government Department not only intellectually transformative, but a genuine pleasure, and gave me the confidence I needed to bring it to completion. The debts I accrued to them are of the kind that cannot be repaid, except in some attenuated form to the next generation. What I hope to replicate, above all, is their freedom from dogmatism, their willingness (indeed, eagerness) to see their own ideas challenged, and their sense that this discipline can speak with unparalleled force and clarity to the puzzles of contemporary politics, without degenerating into



agitprop or mere polemic. I have watched them walk this tightrope for many years in their own writing and teaching, and I am excited to try it for myself.

This project was animated, too, by years of encouragement and advice from Cheryl Welch, whose scholarship on nineteenth-century French intellectual history provided a model for my own work, and who offered highly perceptive suggestions on bringing the story I tell forward into the Restoration. Like Richard and Eric she is not only a superb scholar but an extraordinarily kind person, utterly without ego, and eager to introduce me to figures in my field in France and America. She even opened her home to me one weekend on the Cape, allowing me to live out a longstanding fantasy of graduate school in New England.

Other faculty in the Government Department expressed interest in my work, complimented my efforts, and gave me support at critical times. I am particularly thankful to Nancy Rosenblum, Daniel Carpenter, Eric Beerbohm, Michael Rosen, and Harvey Mansfield, all of whom offered valuable commentary on seminar papers and on drafts in the Political Theory Workshop, which I attended on a weekly basis for many years, and which was the main arena at Harvard in which I learned the contours of my chosen discipline.

Within the Government Department, Thom Wall was simply essential to ensuring that I finished this program successfully, from the moment that I entered it until the day of my defense. There was never a bureaucratic hurdle that he couldn't lift, a complex question about requirements or funding he couldn't answer, a form he couldn't send out on short notice. And he did all of this with unfailing good cheer, and formidable competence. The first thing one hears on entering the Department is that Thom is by far the most adept person in it, and the only person capable of making it run. One learns gradually that this is not at all an exaggeration, and that he is the heart, soul, and brain of the program. I will always be in his debt.

I owe an enormous debt of gratitude, too, to my most important professors at the Harvard Law School, where I completed a degree in 2012. Noah Feldman taught two of the best courses I ever took for credit, and I have done my best to imitate his unfortunately inimitable classroom style—charismatic, rigorous, toughminded, but also somehow very gentle. He was also unfailingly open and generous, commenting on parts of the dissertation that I sent him, and dispensing professional advice of the highest caliber, all of which I am still doing my best to follow. I worked as a research assistant for two years for David Barron, now a federal judge in Boston, and over the years we had many very serious conversations about presidential power in the early republic that helped to steer the direction of my research. Adrian Vermeuele was an inspiration with his omnivorous intellectual appetite, and his utter lack of deference to ordinary political pieties, and if he was not involved in this particular project I nevertheless benefited greatly from his supervision and advice in other domains. Finally, although he was never my teacher in any formal sense, I enjoyed frequent conversations across a variety of academic subjects with Samuel Moyn during (and after) his years at HLS. Sam always made time for me (and even read my work) despite having no obligation and nothing tangible to gain from it, and a dizzying array of other personal and professional commitments to fulfill. All of these professors shared the virtues of Richard, Eric, and Cheryl—sharp minds, high standards, an utter lack of interest in deference, and an eagerness to be contradicted or challenged by bright students. I have come to appreciate

that this is the hallmark of a first-rate scholar, and I am grateful beyond words to have encountered so many.

I was extremely fortunate to spend the 2014-15 academic year in residence at NYU Law School as a Golieb Fellow in Legal History. I presented two long pieces, one of which became Part III of this dissertation, and received exceptional feedback from Daniel Hulsebosch, David Golove, and Bill Nelson. Dan, in particular, became a close friend, and expressed a great deal of interest in my work, for which I am deeply grateful. I learned an extraordinary amount from him about founding history, empire, and legal forms like equity, and his book on New York is one of my models for writing legal history, although it is so good that reading it can occasionally be discouraging.

I was lucky, too, to spend 2015-16 in residence at the Harvard Law School, where I had productive conversations about my dissertation with Bruce Mann, Tomiko Brown-Nagin, Kenneth Mack, and Chris Desan. In this same year Part III of the dissertation was accepted for publication by the *American Journal of Legal History*, and was greatly improved by the edits suggested by Donal Coffey, Al Brophy, and a brilliant but anonymous peer reviewer.

For teaching me to read and speak French I am grateful to Franck Andrianarivo, Isabelle Pascale, and especially Dorothee Valery, who drilled me on vocabulary, read Molière with me, watched Eric Rohmer films, and spoke with me, unfailingly and without interruption, for three hours a week for three years. She saw my spoken French evolve from something barbarous and unintelligible to something highly functional, and, if not quite Parisian then perhaps at least Belgian. This project would have been impossible without her dedication and professionalism.

I spent 2016-17 conducting research in Paris. I was fortunate to be hosted by Michel and Sabine Vigoureux, who treated me like their son, and integrated me into every aspect of their family life. I am grateful to John Harpham for making this connection. I won't ever forget the trips to Normandy, and in particular the visit that Michel and I made to Omaha Beach. I hope at some point on a return visit to be allowed to pay for at least one dinner. I was also cheered and sustained by my friendship with Deborah Furet, whose stock of stories about intellectual life in France and America is simply without parallel, and whose talents and ideas I hope to continue to benefit from in future research.

What made graduate school very much worthwhile was the extraordinary peer group that I encountered among the political theorists in the Government Department. There were older graduate students—Lucas Stanczyk, David Grewal, Daniela Cammack, and (an honorary Harvard graduate student) Alex Gourevitch—who furnished me with an early model of what superb work looks like. And there were peers closer to my age—Sabeel Rahman, Hollie Russon Gilman, James Brandt, Sungho Kimlee, Madhav Khosla—who were great friends, and often provided me with superb comments on my written work, as well as professional advice. An early trip to Cambridge, UK for a graduate conference brought me into contact with Katrina Forrester and Sophie Smith, whose very serious work was an important model for my own. Will Selinger was both a friend and someone whose work turned out to be rather close to my own, and so someone I was able to profit from knowing in every sense. And late in the process I met Sam Garrett Zeitlin, whose work I greatly admire, and who put me in touch with two scholars (René

Koekkoek and Christina Schoenbach) of Dutch political thought who were invaluable in preparing Part I of the text.

In Cambridge I was lucky to have many friends who were not graduate students, or academics. This is what helped to keep me on an even keel. I want to acknowledge in particular John Polley (and Rhiannon, and Hugh) and Rehan Abeyratne, good friends since law school. I want to single out two people I was even closer to, Nabila Hossain and Shakeel Avadhany, with whom I shared thousands of hours of conversation, and who both told me that I would deliver something exceptional. Shakeel, my roommate and friend for six years, was a particular inspiration, as I watched him build his MIT startup into a giant, globe-spanning enterprise. My only goal was to finish my modest dissertation before he earned his first billion dollars; it was a close-run thing, but I appear to have just made it.

But I should say something in particular about two people whose friendship and intellectual kinship traveled beyond the usual tracks of graduate school friendship. Greg Conti was someone whose friendship I enjoyed very deeply, and many of my fondest memories from graduate school involve watching basketball and eating junk food from Basta Pasta with him at my apartment. He was a resolutely *normal* person, a rare thing in graduate school, and our friendship initially had very little to do with intellectual interests or with "work" broadly speaking. But he was also highly intelligent and impressively prolific, and over time he became something like my ideal reader. That is to say, I wrote to explain things to him, and I tried to do work that he would find interesting. He read more or less every word of the dissertation, and provided exceptional feedback, and his interest and excitement in the project never failed to excite me in turn. I look forward to many years of thinking in tandem with him.

The other person is Janet Kwok, and here words begin to fail me. She was more or less the first friend that I made at Harvard, and she was the best friend I made in my decade here. She read every word of the dissertation, provided rapid edits on a tight deadline, formatted the pages you are now reading, and essentially made this project happen and saw it to completion. But underneath this one very specific instance of support is a decade of vibrant friendship—of movies at the Brattle, of songs on Spotify, of burgers at Grafton, of personal and professional trials and triumphs seen and celebrated and survived. There aren't words to describe her years of selfless advice and attention, her warmth and wit, her unfailing solidarity and generosity, so I will simply reproduce the words of a song from her native country: *Il y a longtemps que je t'aime, jamais je ne t'oublierai.*

But the greatest debt of all is owed to my family—Andrea, Russell, and Zach—without whom none of this would have been worth doing in the first place. My education took a long time. Sometimes that worried me. But my family was never worried, never expressed concern, was never anything but loving and supportive. There was never anything I needed or wanted that was withheld from me. No one ever asked me if I would be done soon. No one ever asked if there were really any jobs in my field. Their only concern was that I was happy and comfortable, and they never expressed anything less than full confidence that I would bring this project to a successful conclusion. I was inspired by Andrea's own ferocious work ethic; she often began work at 3 am, around the same time I was ending my work day. And when my faith in myself flagged I saw their confidence in me, and it restored my energy and dedication. This can be

lonely work, but I was surrounded by their love, and so wherever I was I was never alone. I hope to convey to them some day that whatever kind of achievement this dissertation is, it belongs entirely to them.

Thomas Brand Hollis, one of the great early benefactors of Harvard College, wrote to John Adams in 1790 from his estate in England, informing the Vice-President that he had given the name "Harvard" to one of his large farms in Dorsetshire, and had named the individual fields after Adams and other great Massachusetts "patriots and martyrs." I like this passage because it implies that Harvard is not a place but a kind of mentality and orientation. It is something you can take with you wherever you go. I wrote different parts of this dissertation in New York City, in Paris, and in Oakland, and joked about signing the title page with all of these sparkling city names, like the famous final line in Joyce's *Ulysses*. But I see now that when I wrote in all of these places I was still at Harvard, was still thinking in the company of Eric, Richard, and Cheryl, hoping to show them what they taught me. And so it gives me great pleasure to write these final lines from the Phillips Reading Room of Widener Library, Harvard University,

CAMBRIDGE, MASSACHUSETTS, SEPTEMBER 2018

## Introduction

### 1. Boston, Philadelphia, Paris

It was a bitterly cold winter day in Philadelphia, February 1776, when a Massachusetts delegate to the Second Continental Congress prepared a dispatch for his wife and confidante. The short letter contained two pieces of information—first, that he had mailed her a copy of “a Pamphlet intituled Common Sense,” whose spirited attack on royal tyranny he greatly admired. And second, that the Congress would soon dispatch a diplomatic mission to Quebec, proposing an alliance with its discontented colonials against the British empire. The mission would be led by the celebrated scientist and *philosophe* Benjamin Franklin, whose “masterly Acquaintance with the French Language,” and “extensive Correspondence in France” were well-known, and would also include Charles Carroll of Carrollton, a man “educated in some University in France, tho a Native of America, of great Abilities and Learning, compleat Master of French Language.” Paine's incendiary pamphlet had convinced the representative that the breach with Westminster was now irrevocable. And the Quebec mission hinted that the coming war would be international in its dimensions, and conducted in significant part in the *lingua franca* of European diplomacy. Despite his education at Harvard College, his mastery of English common law, and his background in Greek and Latin, the delegate now felt with a sudden twinge his own provinciality. And he petitioned his wife Abigail to help him make up for lost time:

I wish I understood French as well as you. I would have gone to Canada, if I had. I feel the Want of Education every Day—particularly of that Language. I pray My dear, that you would not suffer your Sons or your Daughter, ever to feel a similar Pain. It is in your Power to teach them French, and I every day see more and more that it will become a necessary Accomplishment of an American Gentleman and Lady. Pray write me in your next the Name of the Author of your thin French Grammar, which gives you the Pronunciation of the French Words in English Letters, i.e. which shews you, how the same Sounds would be signified by English Vowells and Consonants.<sup>1</sup>

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<sup>1</sup> John Adams to Abigail Adams (Feb. 18, 1776), in *Adams Family Correspondence* (L.H. Butterfield ed., 1963), 1: 348-9. Quotation on Franklin from John Adams to James Warren (Feb. 18, 1776), *Papers of John Adams* (Robert J. Taylor ed., 1979), 4: 26. || For Adams's immediate and assiduous efforts to learn French, see Editor's Note, [1776 Oct. 13], in *Diary and Autobiography of John Adams* (L.H. Butterfield ed., 1961), 2: 252 (“there follows in this booklet 37 pages of notes on the French language, copied from an unidentified French grammar.”); John Adams to James Lovell (Dec. 24, 1777), in *Papers of John Adams* (Robert J. Taylor ed., 1983), 5: 369 (“this Talent I suppose I

Two years later, nearly to the day, John Adams boarded the frigate *Boston* and set sail for Bordeaux, having been appointed one of three special commissioners to the court of Versailles.<sup>2</sup> On his first night in Paris his colleague Benjamin Franklin entreated him to attend a party at the home of the Baron Turgot, noted *économiste* and former minister of finance to Louis XVI. Adams struggled to be understood, and regretted that he was obliged to rely on Franklin to translate for him. But he was impressed with the magnificence on display, and even more by the wit and originality of the glittering *lumières* who assembled for the occasion. And he found his host “a grave, wise and amiable Man.”<sup>3</sup> As a minister without portfolio—the treaty with France he had been assigned to negotiate was signed while he was still *en route*—Adams’s attention turned to two subjects: his intensive study of the French language,<sup>4</sup> and his interest in forms of

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am too old to acquire, in any Degree of Perfection. However...I will take Books and my whole Time shall be devoted to it.”); John Adams to Abigail Adams (Dec. 10, 1778), in *Adams Family Correspondence* (L.H. Butterfield and Marc Friedlaender eds., 1973), 3: 134 (“You are studying French I hope. Oh that I had studied it, you know when.”). Cf. John Adams to François Adriaan van der Kemp (Apr. 8, 1815), *Founders Online*, National Archives, last modified September 14, 2017, <http://founders.archives.gov/documents/Adams/99-02-02-6451> (“When I arrived in France in 1778, *Lingua Gallica* inscius, Mr Neckars Eloge De Colbert, and his Commerce des Grains, were recommended to me...as models of the Purity and Elegance of the French Language. I Studied them, at 40 years of Age and more, as our Boys At School and Colledge, Study Tully's Orations and Offices”). || On Adams’s intellectual formation prior to 1776, see [1758], in *Autobiography of John Adams, Part One*, in *Diary and Autobiography of John Adams* (L.H. Butterfield, ed., 1961), 3: 271-2 (“What Books have you read?”).

<sup>2</sup> Adams was selected in November 1777 to replace Silas Deane, who was disgraced in a procurement scandal following the leak of incriminating details to Congress by Deane’s secretary, Thomas Paine. See James H. Hutson, *John Adams and the Diplomacy of the American Revolution* (1980), 36-7.

<sup>3</sup> [1778 April 9], in *Autobiography of John Adams, Parts Two and Three*, in *Diary and Autobiography of John Adams* (L.H. Butterfield ed., 1961), 4: 297 (“The Dutchess D’Anville, and twenty others of the Great People of France were there...I was very particularly examined by the Company through my Colleagues and Interpreters Franklin and Lee concerning American Affairs.”). Cf. [Anne-Robert-Jacques] Turgot to Benjamin Franklin (Apr. 8, 1778), in *Papers of Benjamin Franklin* (William B. Wilcox ed., 1987), 26: 259 (“Mr. Turgot a eu l’honneur de rappeler à Mr. Franklin l’esperance qu’il lui a donné...il seroit très flatté que Mr. Franklin pût engager Mr. Adams à lui faire aussi l’honneur de diner chez lui.”).

<sup>4</sup> [April 16 1778], *Autobiography Parts Two and Three*, in *Diary and Autobiography of John Adams* (L.H. Butterfield ed., 1961), 4: 59 (“From my first Arrival in France I had employed every moment of my time...in the Study of the French Language.”); [May 27, 1778], *Autobiography Parts Two and Three*, 4: 118 (“I found it necessary to send Apologies, that I might have some time to study the french Language”); John Adams to James Lovell (Jul. 9, 1778), in [July 9, 1778], *Autobiography Parts Two and Three*, 4: 148 (“I find it less difficult to learn French than I expected, but I have so many Persons to converse with, and so many papers to read and write in English that I can scarce obtain a few minutes every day to study my Lesson, which I should otherwise do like a

government, reignited by his encounters with French philosophy.<sup>5</sup> Keen to refine his own thinking, and to circulate his vision of mixed and balanced constitutionalism in France, he asked Abigail to send his own 1776 *Thoughts on Government* to the ambassadorial residence in Passy, along with a copy of the New York constitution.<sup>6</sup> Adams was struck by the enormous enthusiasm he discovered in France for American constitutional forms,<sup>7</sup> and was eager to make his own contribution to this burgeoning discourse. His urgency stemmed in part from his belief that the free American constitutions represented a propaganda coup of the first order: a correct and complete edition of the state constitutions, he advised the Continental Congress, "would be translated into every Language in Europe, and would fix the Opinion of our Unconquerability, more than any Thing could, except driving the Enemy wholly from the united States."<sup>8</sup> But it derived, too, from an anxiety that Europe was becoming attached to a dangerously deficient model of American constitutionalism, promulgated by a man he increasingly considered a personal and political rival: his housemate and fellow diplomat, Benjamin Franklin.

If on his first reading Adams commended *Common Sense*, and was flattered to be mistaken for its author, his sympathies shifted as he turned his attention from its dazzling argument for

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good Lad."); John Adams to Abigail Adams (Aug. 21, 1778), in *Adams Family Correspondence*, 3: 79 ("I hope you teach [the children] all French, it is so usefull a Language that they should all learn it.").

<sup>5</sup> See, e.g., [Nov. 26, 1778], *Diary and Autobiography of John Adams*, 2: 323 ("Dined with the Abbes C[halut] and A[rnoux]. Returned at Night and found M. Turgot, Abbe Condilac, Mad. Helvetius, and the Abbe &c."); John Adams to Abigail Adams (Feb. 26, 1779), in *Adams Family Correspondence*, 3: 178 ("We expect the Honour of Mr. Turgot, the famous Financier, as well as learned and virtuous Man, to dine with Us.").

<sup>6</sup> John Adams to Abigail Adams (June 16, 1778), in *Adams Family Correspondence*, 3: 44 (also requesting a copy of John Dickinson's *Essay of a Frame of Government for Pennsylvania*).

<sup>7</sup> John Adams to Patrick Henry (July 9, 1778), in [July 9, 1778], 4: 154 ("you would be flattered with the Attention that is shown to our States, and with the high Eulogiums, that are every where bestowed, by learned and ingenious Men, upon our Constitutions, our Laws, our Wisdom").

<sup>8</sup> John Adams to the President of Congress, No. 10 (Sept. 25, 1780), in *Papers of John Adams* (Gregg L. Lint and Richard Alan Ryerson eds., 1996), 10: 176.

independence to the questionable constitutional theories underpinning it. "Indeed," Adams lectured his wife in March 1776, after she pronounced herself "charmed with [its] Sentiments"<sup>9</sup>:

[T]his Writer has a better Hand at pulling down than building. It has been very generally propagated through the Continent that I wrote this Pamphlet. But altho I could not have written any Thing in so manly and striking a style, I flatter myself that I should have made a more respectable Figure as an Architect, if I had undertaken such a Work. This Writer seems to have very inadequate Ideas of what is proper and necessary to be done, in order to form Constitutions for single Colonies, as well as a great Model of Union for the whole.<sup>10</sup>

Adams was scandalized by the pamphlet's unsparing indictment of the "Unlawfulness of Monarchy," which purported to rely on a gloss of the Old Testament. He was equally disturbed by its argument for unicameral government, and its sarcastic assault on the Montesquieuean ideal of constitutional balance; he judged this a "popular" affectation, "flowing from...a mere desire to please the democratic Party in Philadelphia."<sup>11</sup> The leaders of the increasingly assertive radical faction in Philadelphia were a motley assemblage of working-class controversialists like

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<sup>9</sup> Abigail Adams to John Adams (Mar. 2, 1776), in *Adams Family Correspondence*, 1: 352.

<sup>10</sup> John Adams to Abigail Adams (Mar. 19, 1776), in *Adams Family Correspondence*, 1: 362. Adams would grow increasingly harsh towards *Common Sense* every month that elapsed; see, e.g., John Adams to James Warren (May 12, 1776), in *Papers of John Adams*, 4: 182 ("Common sense by his crude, ignorant Notions of a Government by one Assembly, will do more Mischief...than all the Tory Writings together."). || For examples of the attribution of Paine's text to Adams, see William Tudor to John Adams (Feb. 29, 1776), *ibid.*, 1: 41 ("This Peice has been attributed to You, some make Dr. Franklin the Author and others suppose it the Product of a Triumverate"); Joseph Ward to John Adams (Mar. 14, 1776), in *Papers of John Adams*, 4: 53; Mercy Otis Warren to John Adams (Mar. 10, 1776), in *Papers of John Adams*, 4: 50 ("I have Long been an Admirer of A Republican form of Government, And was Convinced Even before I saw the Advantages Deliniated in so Clear and Concise A Manner by your Masterly pen"); "Lettre d'un Banquier de Londres à M. \*\*\* à Anvers" (May 4, 1776), *Les Affaires de l'Angleterre et de l'Amérique*, no. 2, 83 ("Il est intitulé *Sens commun*, & on l'attribue à M. Adams") and *ibid.*, (June 15, 1776), no. 4, 85 ("On assure que le célèbre Docteur Franklin y a travaillé avec M. Adams, ainsi qu'un autre écrivain...nommé M. Dickenson"). It is not clear whether the "Banquier" had John or his cousin Samuel in mind.

<sup>11</sup> John Adams, [In Congress, Spring 1776, and Thomas Paine], in Autobiography Part One, in *Diary and Autobiography of John Adams*, 3: 331. || On the controversy surrounding Paine's scriptural attack on monarchy, see Eric Nelson, *The Hebrew Republic* (2010), ch. 1; Eric Nelson, "Hebraism and the Republican Turn of 1776," *William & Mary Quarterly* (Oct. 2013), 781-812; Nathan Perl-Rosenthal, "The Divine Right of Republics," *William & Mary Quarterly* (July 2009), 535-64. || On the agitation for constitutional reform in Pennsylvania, which was given fresh impetus by the publication of *Common Sense*, and which thereafter demanded that the new government be unicameral, see Steven Rosswurm, "As a Lyen out of his den: Philadelphia's Popular Movement, 1775-1780," in *Origins of Anglo-American Radicalism* (Margaret C. Jacob and James R. Jacob eds., 1983), 300-23, esp. 305-6. || For the constitutional arguments of *Common Sense*, see Thomas Paine, "Common Sense" [1776], in *Complete Writings* (Philip S. Foner ed., 1945), 1: 7 ("To say that the Constitution of England is an *union* of three powers, reciprocally *checking* each other, is farcical"), 1: 29 ("Let the assemblies be annual, with a president only."). For the argument that *Common Sense* is in fact neutral on the question of bicameralism, see Carine Lounissi, *La pensée politique de Thomas Paine en contexte* (2012), 356 ("En toute rigueur, aucun élément de *Common Sense* ne prouve encore l'hostilité de Paine à l'égard d'un législatif composé de deux chambres élues.").



Timothy Matlack, "rationalist, politically-conscious artisans" like James Cannon, and well-heeled radicals like George Bryan, David Rittenhouse, and Thomas Young.<sup>12</sup> With the clarion call of *Common Sense*, Thomas Paine had announced himself as their chief ideologist.<sup>13</sup> But their mascot and spiritual guide was without question Benjamin Franklin, who by 1776 had pivoted from his sweeping endorsement of royal prerogative during the imperial crisis towards a strikingly populist vision of republican politics.<sup>14</sup> Franklin was elected president of the Pennsylvania constitutional convention that convened in September 1776, and he shuttled between its sessions and the meetings of the Second Continental Congress, sitting upstairs in the same building in Philadelphia. If his participation in the convention was sporadic, it also proved decisive: Matlack would recall several years later that it was Franklin who finally convinced the swaying convention to adopt a unicameral legislature.<sup>15</sup>

Dissatisfaction with the constitutional forms inherited from English rule was ubiquitous by the summer of 1776. By the time Franklin affixed his signature to the final draft on September 28, 1776 a new style of thinking about constitutionalism had crystallized in the colonies, one

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<sup>12</sup> Eric Foner, *Tom Paine and Revolutionary America* (1976), 109. In the judgment one contemporary Cannon and Bryan exercised the greatest influence on the composition of the final document, although the latter was not technically a member of the convention. See, e.g., Alexander Graydon, *Memoirs of His Own Time* [1811] (John Stockton Littell ed., Philadelphia, 1846), 288 ("These constituted the duumvirate, which had the credit of framing the Constitution...").

<sup>13</sup> See John Adams to Abigail Adams (Apr. 28, 1776), in *Adams Family Correspondence*, 1: 400 ("The Writer of Common Sense, and the Forrester, is the same Person. His Name is Payne..."). || Paine was not a delegate to the Pennsylvania constitutional convention and had no role in its formation, though he approved of the final result. But, as Eric Foner points out, many who *did* play a role in the convention shared his worldview, and in many cases were directly influenced by his writings. See Foner, *Tom Paine's America*, 131 ("Cannon's political ideas by now were essentially the same as Paine's and the constitution was in line with the governmental structure outlined briefly in *Common Sense*").

<sup>14</sup> Compare Eric Nelson, *The Royalist Revolution* (2014), 33-5 (Franklin's 1766 commentary on the Stamp Act, speculating that the colonies might "be governed as *domains of the crown*, without...parliament") and Benjamin Franklin, "Proposal for the Great Seal of the United States" [before August 14, 1776], in *Papers of Benjamin Franklin* (William B. Willcox ed., 1982), 22: 562 ("Moses standing on the Shore, and extending his Hand over the Sea, thereby causing the same to overwhelm Pharaoh...Motto, Rebellion to Tyrants Is Obedience to God").

<sup>15</sup> Regarding Franklin's role in the framing of the constitution, and Matlack's reminisces, see Part III, 330.

with few precedents in the American political tradition. Its major vector was *Common Sense*, which stated in its opening pages that the "so much boasted Constitution of England" was a relic of the middle ages, "noble for the dark and slavish times in which it was erected," perhaps, but "imperfect, subject to convulsions, and incapable of producing" true liberty for its subjects. It lacked the written form that might make it a reliable instrument for the protection of individual rights, and shackled the "republican" House of Commons to the feudal appendages of a crown and a nobility.<sup>16</sup> The Florentine merchant and physician Philip Mazzei, who like Paine migrated to America scarcely a year before the outbreak of armed hostilities, was of much the same mind about the vaunted mixed constitution, instructing his fellow Virginians in 1775 that "the British government has never been free [even] at the peak of its perfection," and had only oscillated over the centuries between "a despotic monarchy or an intolerable aristocracy." And "our own," he added, has been "nothing more than a bad copy of it, with in addition such handicaps as to render it barely above a state of slavery." The backwards forms of Westminster and Whitehall were a child's coat that the colonies, longing for "free government," had now outgrown.<sup>17</sup>

This sense that the English constitution was incompatible with the free and egalitarian society that many colonists desired in turn stoked a fascination with *novelty*. An article published in July in the *New-York Journal*, under the telling pseudonym "Spartanus," captured this restless and innovatory spirit:

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<sup>16</sup> Paine, "Common Sense," 1: 7-8.

<sup>17</sup> Philip Mazzei, "Fragments published on the principles of the American Revolution by a Citizen of Virginia (1774-1775)," in *Selected Writings and Correspondence* (Margherita Marchione ed., 1983), 1: 68-70. Cf. Philip Mazzei to John Page (June 16, 1776), in *ibid.*, 1: 177 ("the english rotten Constitution"); Philip Mazzei to Duke de La Rochefoucauld (May 30, 1783), in *Writings and Correspondence*, 1: 408 ("In his *Esprit des lois* Montesquieu seems to have meant to praise the English constitution instead of analyzing it. That is why Mazzei has thought it incumbent...to confute him time and again"). || While Mazzei was opposed to kingship and formal aristocracy he did not join Paine in deprecating an upper chamber composed of elites, writing to Patrick Henry that the Virginia constitution then under consideration ought to include a senate comprised "of men endowed with the greatest possible wisdom." See Philip Mazzei to Patrick Henry (June 29, 1776), quoted in *Philip Mazzei: Jefferson's "Zealous Whig"* (Margherita Marchione ed., 1975), 17.

As we are now to assume a new mode of government, I think it ought properly to be *new*. Some are for keeping as near the old form of government in each Province, as can well be. But I think 'tis entirely wrong, 'tis mistaken policy...We must come as near a new form of government as we can without destroying private property. So far as private property will allow, we must form our government in each Province, just as if we had never any form of government before...I doubt not, it will be an argument with many, that we in America must have something like a Senate, or Council, or Upper House, because the Romans and other Republics have had. — But the argument is the other way, it was their imperfection, it was a source of trouble, it was a step towards arbitrary power...Free government can better, much better subsist without it. The author adduced two arguments for unicameralism. First, bicameralism of the kind long familiar from England and the colonial constitutions would produce needless complications and delays and multiply veto points, clogging and defeating salutary measures. Worse still, the practice of assigning a legislative negative to the chief executive would expose the state to paralysis, placing it at the whim and mercy of a single individual. Spartanus contrasted these inefficiencies with the dispatch and resolution exhibited by the "ever-memorable Congress now in *America*," which had expertly steered thirteen geographically and culturally disparate colonies past the shoals of war, and to the verge of independence. Second, "Spartanus" argued that although America was nominally free from hereditary titles, the creation of an upper chamber would give rise to an ersatz aristocracy, a class of ambitious elites that would be tempted to arrogate to itself the privileges and prerogatives of a House of Lords. "[W]e have not, and hope never shall have an hereditary nobility," the Lacedæmonian warned, "but if we admit different branches of legislature, there is danger that there may be, in time."<sup>18</sup>

This current of radicalism coursed through every state, but it struck with particular force in Pennsylvania, long renowned as the freest of the American colonies. As Robert Nix and Mary Schweitzer underline, Pennsylvania's colonial Charter of Privileges, with its unicameral legislature elected with relatively free suffrage, "was already far more radical than many of the state constitutions written after independence." There was little chance that a revolutionary government would now attach "a council of elites...when one had never existed before," or

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<sup>18</sup> Spartanus, "The Interest of America. Letter II.," *New-York Journal*, June 13, 1776, 1. For evidence of this essay's popularity, see reprints in *New-Hampshire Gazette*, June 15, 1776, 1; *Pennsylvania Packet*, July 1, 1776, 4.

augment the prerogatives of a governor whose "insolent Tribunitial veto" had been deplored by Franklin in the strongest terms during his decades-long struggle against the proprietary government of the Penn family.<sup>19</sup> This was particularly true in Philadelphia, whose restless working class rapidly organized itself into a series of extra-legal committees and citizen militias on the outbreak of war; by the summer of 1776 these bodies had become crucibles of radical sentiment.<sup>20</sup> The new popular politics was given vivid expression in a broadsheet entitled *To the Several Battalions of the Military Associators*, circulated by the Philadelphia Committee of Correspondence in June, which advised ordinary citizens to exercise caution in selecting delegates to the upcoming constitutional convention:

A Government made for the common Good should be framed by Men who can have no interest besides the common Interest of Mankind...for this Reason, great and over-grown rich Men will be improper to be trusted, they will be too apt to be framing Distinctions in Society...Gentlemen of the learned Professions are generally filled with the Quirks and Quibbles of the Schools; and though we have several worthy Men of great Learning among us, yet...we would think it prudent not to have too great a Proportion of such in the Convention. — Honesty, common Sense, and a plain Understanding...are fully equal to the Task.<sup>21</sup>

The levelling impulses animating this passage would underwrite a radical program of constitutional reform, enunciated in a blizzard of pamphlets, posters, and newspaper editorials on the proper form of republican government. The bulk of this literature took as its point of departure *Common Sense*, whether as a blueprint to be realized or as an antithesis to be

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<sup>19</sup> Robert N.C. Nix Jr. and Mary M. Schweitzer, "Pennsylvania's Contributions to the Writing and Ratification of the Constitution," *Pennsylvania Magazine of History and Biography* (January 1988), 3-24, 8; Benjamin Franklin, "Cool Thoughts on the Present Situation of Our Public Affairs" (April 12, 1764), reprinted in *Papers of Benjamin Franklin* (Leonard W. Larabee ed., 1964), 11: 153. || The same argument can be found in Christian Lerat, "La première Constitution de Pennsylvanie: son rejet à Philadelphie, ses échos en France," in *Le Discours sur les Révolutions* (Jean-Louis Seurin, James Cesar, and Christian Lerat eds., 1991), 116. || Because Pennsylvania was a "proprietary" colony, the right to appoint its governor (whose prerogatives included an absolute negative over legislation) was vested in perpetuity in the Penn family. The purpose of Franklin's first voyage abroad, in 1757, was to petition the crown to modify this charter and claim Pennsylvania as a royal colony.

<sup>20</sup> Foner, *Tom Paine's America*, 119. Cf. Rosswurm, "As a Lyen out of His Den," 303 (on the Committee of Privates, which "provided for the political education of rank-and-file representatives...[and] a base for the more 'middling' and better-known radicals"); J. Paul Selsam, *The Pennsylvania Constitution of 1776* (1936), 74 ("Military Associations...played a conspicuous part in subverting the established authority, and were, for the most part, the disenfranchised element...the mechanics and artisans of Philadelphia who had been denied any share in the government by the ruling aristocracy").

<sup>21</sup> Committee of Correspondence (Thomas Nevil, John Chaloner, James Cannon, Andrew Epley, William Thorne), *To the Several Battalions of the Military Associators* (Philadelphia, June 26, 1776).

overcome. "Between January and July of 1776," Eric Foner has observed, "scarcely a week went by without a lengthy article in the Philadelphia press attacking or defending, or extending and refining, Paine's ideas." In this febrile atmosphere, rife with possibility, "old ideas were transformed, and new ones entered the political arena with great suddenness."<sup>22</sup>

The ideology that coalesced in Philadelphia had five cardinal points. First, it was a theory of *constitutionalism*—of documents specially-crafted to memorialize the sovereignty of the people, delineating and constraining the powers exercised by ordinary government. Paine threw out an early hint in the course of critiquing the "Ludlow" letters of the patriot and physician Benjamin Rush: a constitution, properly conceived, "*describes* the portions of power with which the people invest the *legislative* and *executive* bodies, and the portions which they *retain* for themselves." For this reason it must be *written*, which is why he could not only blast the English constitution in *Common Sense* as "rotten," and "sickly," but insist in an unsigned work later the same year that "the English have no fixed constitution" at all.<sup>23</sup> The chief characteristic of a constitution was its inviolability by the legislature; for this reason, it was assumed that a constitution could only be framed by a specially-organized body, a popular convention separate from and higher than ordinary lawmaking authorities. "There cannot be a more dangerous doctrine adopted in a state," wrote a pamphleteer with the eye-catching cognomen "Demophilus," "than to admit that the legislative authority has a right to alter the constitution." This would mean chaining the

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<sup>22</sup> Foner, *Tom Paine*, 119.

<sup>23</sup> [Thomas Paine], "Candid and Critical Remarks on a Letter Signed 'Ludlow,'" *Pennsylvania Journal*, June 4, 1777, in *Complete Writings*, 2: 275; Paine, *Common Sense*, 16 and 9; [Thomas Paine], Letter IV, *Four Letters on Interesting Subjects* (Philadelphia, 1776), 20. || The attribution of the *Four Letters* to Paine was first proposed by A.O. Aldridge; its inclusion is now standard in edited collections of Paine's writings. See, e.g., *Common Sense and Other Writings* (Gordon Wood ed., 2003), 57-81. Even J.C.D. Clark, who proposes nearly two dozen Paine de-attributions in a recent monograph, accepts Paine's authorship of the *Four Letters*. See J.C.D. Clark, *Thomas Paine: Britain, America, and France in the Age of Enlightenment* (2018), 261-2.

legislature to the will of the people, while giving it the key to escape whenever it chose.<sup>24</sup> "Consideration," appearing in the *Pennsylvania Gazette* a month after the constitution was finalized, was even more blunt on the division between ordinary and special lawmaking: "whatever man or body of men goes about to alter, add, or *take away* from a Constitution...by any other means than the consent of the community at large...is guilty of high treason," and subject to the harshest penalties. The slavery to which several "people in Europe" had recently been reduced through changes to their constitution, rammed through the legislature without even a pretence of public consultation, testified to the danger of confusing the constitutive power of popular sovereignty with its mere emanation.<sup>25</sup>

Second, as we have seen, it entailed a lacerating critique of constitutional "balance," and a firm rejection of bicameralism. The Philadelphia academician William Smith exaggerated only slightly when he scoffed, two months after the publication of *Common Sense*, that America's patriots now considered the English constitution little "better than a bungling piece of machinery, standing in need of constant checks to regulate and continue its motions."<sup>26</sup> Thomas Paine, in his unsigned *Four Letters on Interesting Subjects* of June 1776, enumerated several reasons to prefer

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<sup>24</sup> Demophilus, *The Genuine Principles of the Ancient Saxon, or English Constitution* (Philadelphia, 1776), 24. Cf. *ibid.*, 4 ("let the constitution, or *sett of fundamental rules* by which even the supreme power of the state shall be governed, be formed by a convention...appointed for that express purpose"). || It has been conjectured that Demophilus is the pseudonym of George Bryan. || Cf. *The Alarm: an Address to the People of Pennsylvania* (Philadelphia, May 9, 1776), 3 ("CONVENTIONS, my Fellow-Countrymen, are the only proper bodies to *form* a Constitution").

<sup>25</sup> Consideration, "In the Day of Adversity Consider," *Pennsylvania Gazette*, Oct. 30, 1776, 2. The author would have had in mind the eighteenth-century Whig canon of states that had seen their liberties eroded: Denmark, Sweden, and the Netherlands. || Note, however, that these radicals did not demand *popular ratification* of the convention's handiwork. Indeed, their failure to submit the 1776 constitution to mass ratification provided a convenient cudgel to their opponents; see Addison, *Pennsylvania Gazette*, May 28, 1777, 2 ("They only request that the inhabitants of Pennsylvania may have an opportunity allowed them [which they have not yet had] of declaring their sentiments, whether the constitution, formed by the late Convention, is or is not agreeable to them."). For evidence that a weakened version of ratification was in fact proposed by a handful of authors, see John N. Shaeffer, "Public Consideration of the 1776 Pennsylvania Constitution," *Pennsylvania Magazine of History and Biography*, vol. 98, no. 4 (Oct. 1974), 415-37, 416.

<sup>26</sup> Cato [William Smith], "To the People of Pennsylvania, Letter III," *Pennsylvania Gazette*, Mar. 20, 1776, 2.

what he called "a more simple form of government" to the baroque architecture of the Montesquieuan legislature. To begin with, a second chamber would present an additional roadblock for legislation, frequently frustrating the will of the majority and generating "ill-will" and mutual animosity between the two houses. "The two best bills in the last sessions" of the British Parliament, he noted, pointing to recent statutes protecting religious liberty and easing restrictions on the importation of grain, "were entirely lost by having two houses." This effect would be intensified if, as proponents of bicameralism often intimated, the division between the two chambers mapped onto wider social cleavages; if "the landed interest" came to dominate "one house, and the commercial interest...the other," Paine speculated, these parliamentary skirmishes might then precipitate not merely legislative gridlock, but violent civil strife. One need not return to the struggle between *optimates* and *populares* in Rome for examples, since as recently as "queen Ann's reign a quarrel arose between the upper and lower house, which was carried to such a pitch that the nation was under very terrifying apprehensions." Even if these extreme scenarios failed to materialize, the division would impoverish parliamentary deliberation, since "by separating men you lessen the quantity of knowledge," losing the opportunity for wealthy citizens to consider the perspective of ordinary tradesmen and for urban merchants to take into account the views of landowners, and thus accelerating the tendency of the legislature towards ignorance and fanaticism.<sup>27</sup>

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<sup>27</sup> Paine, Letter IV, *Four Letters*, 20-1. The reference to parliament under Queen Anne is likely an allusion to the struggle to pass a law extended toleration to Protestant Dissenters, which lasted from 1702 to 1711 and became particularly acute in 1705. || Cf. Massachusetts, "To the Freemen of Massachusetts," April 30, 1776, in *American Archives: Fourth Series* (Peter Force ed., Washington, 1844), 5: 1156-7 ("my advice is...that...the Council and House of Representatives of the people unite in one congregation...To act separately is aping the two Houses of Parliament in the *British* Constitution, which is a relict of the old feudal system, which was founded in injustice, and supported by lawless tyranny. I appeal to common sense...whether the two houses, acting separately, can enter into each other's sentiments and views...and whether acting separately [each having a negative upon the other] has not a direct tendency to breed ill-will and resentment").

Third, these writers argued for an etiolated executive branch, expressing what Gordon Wood termed the "Whig fear of magisterial power" that gripped the colonies in the first phase of independence, and "found its fullest expression" in revolutionary Pennsylvania.<sup>28</sup> John Dickinson was one of a number of writers to detect regal overtones in proposals for Pennsylvania to retain a version of the colonial governorship:

Some Gentlemen I have conversed with, are of opinion, the Governor should have a greater power assigned to him, for the sake of vigour, secrecy and dispatch. The idea seems to be too monarchical...No person questions the vigour, secrecy and dispatch, with which affairs are conducted in the Venetian Government; and yet the Doge has much less power, than is assigned in the Essay, to the Governor...A Cromwell or a Frederick may sometimes arise: But it is not certain, that the minervas that have sprung from such heads have done much good to mankind. A single person ought not to have a negative in a Commonwealth, to the acts of the other branches of the Legislature, nor to be vested with the whole executive power. The Councils ought to partake of the nature of the State. A great share of authority lodged in one man, would imply an advantage in that form of government we have renounced, that ought not to be held out. It may have an influence in prejudicing some persons in favour of the old Government, or of a new one, by degrees, approaching nearly towards it. Would the affairs of America have been managed better, if the conduct of them had been vested in one man.

In the model constitution appended to his *Essay*, Dickinson made his "Governor" the *primus inter pares* on a fifteen-member executive council, distinguished only by the privilege of chairing its sessions, and an extra vote in its deliberations.<sup>29</sup> He was to be denied the negative voice; as the pseudonymous "Whitlocke" would write in the *Pennsylvania Evening Post* the next year, speaking for many of his cohort, the "power of forbidding any thing to be law, but what [the governor] pleases...[is] a monstrous disproportion in the distribution of power," one which renders its possessor "absolute" over his fellow citizens.<sup>30</sup> Others, not content with dissipating the prerogatives of the executive branch, sought to excise it from the constitutional order entirely. Thus an editorialist for the *Pennsylvania Packet* recommended making him a federal

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<sup>28</sup> Gordon Wood, *Creation of the American Republic, 1776-1787* [1969] (2d. ed., 1998), 135-7. For a sense of Paine's importance in fostering this skepticism, see William Gordon, "Letter I.—To the Inhabitants of the Massachusetts-Bay" (Aug. 31, 1776), in *American Archives: Fifth Series* (Peter Force ed., Washington, 1848), 1: 1285 ("The author of that celebrated pamphlet *Common Sense*, judiciously observed...that it was too much for any one man whatsoever to be intrusted with the power of negating the acts of two large legislating bodies...while men are fallible, changeable, and mortal").

<sup>29</sup> A.B. [John Dickinson], *Essay of a Frame of Government for Pennsylvania* (Philadelphia, 1776), 4, 6.

<sup>30</sup> Whitlocke, "Letter I. To Ludlow.," *Pennsylvania Evening Post*, May 24, 1777.



official, appointed and removable by the Continental Congress at all times. And in Boston, a sympathetic correspondent thought that the unicameral house might "choose, for the sake of dispatch in business, one or more of the wisest of their number, to act in the executive department, during the session," effectively abolishing it as an independent constitutional force.<sup>31</sup>

Fourth, the Philadelphia ideology trumpeted the Whig mantra of annual elections and rotation of office. Thus "Demophilus" used as his epigraph a modified quotation from the British reform tract *An historical essay on the English constitution* (1771): "Where ANNUAL ELECTION ends, TYRANNY begins." Similarly, an editorial in the *Pennsylvania Gazette* listed "annual elections" and "rotation of offices" alongside "liberty of conscience" and "freedom of the press" as essential pillars of popular liberty. And Paine, in the *Four Letters*, spoke of "[a]nnual elections, strengthened by some kind of periodical exclusion," as the "best guard against" usurpation by representatives and magistrates.<sup>32</sup> It was a point with which the moderate faction, ambivalent about much of the radical agenda, could agree. John Dickinson thought it essential that the "Assembly...be chosen annually," although he preferred a senate and an executive installed for longer terms. And John Adams, advising the North Carolina legislator William Hooper on the correct design of republics, would have applied the principle of annual elections

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<sup>31</sup> *Pennsylvania Packet*, Nov. 5, 1776; *Massachusettensis*, "To the Freemen of Massachusetts," 5: 1157.

<sup>32</sup> Demophilus, *Genuine Principles*, 3-4. For the original quote, see [Obadiah Hulme or Allan Ramsay], *An historical essay on the English constitution* (London, 1771), 115 ("WHERE ANNUAL ELECTION ENDS, THERE SLAVERY BEGINS"). I refer to the author as "Hulme" for the sake of simplicity. On the background of this work, published anonymously but with the imprimatur of the British Society for Constitutional Information, see Caroline Robbins, *Eighteenth-Century Commonwealthmen* (1959), 363-4. || "To George Clymer, et al," *Pennsylvania Gazette*, Nov. 13, 1776. || Paine, Letter IV, *Four Letters*, 21. || Here, as in many other domains, Adams remained a staunch Whig throughout 1776; see John Adams to John Penn (before Mar. 27, 1776), in *Papers of John Adams*, 4: 80 ("there is not in all science a Maxim more infallible than this 'Where Annual Elections End, there Slavery begins'").

to *all* state officers, including the Governor, reasoning that frequent popular mandates would embolden the chief executive to make free use of his prerogatives.<sup>33</sup>

Finally, Pennsylvania radicals appealed from the English constitution of Montesquieu and Jean Delolme, with its careful equilibrium of powers and corporate orders, to a more ancient and democratic image of the polity: the mythic Anglo-Saxon constitution, dating to the time before King Alfred.<sup>34</sup> Hulme offered a pithy summary of this constitution, as it was reconstructed by seventeenth and eighteenth-century radicals, at the outset of his *Historical essay*, in the form of a contrast with the pathological republic of ancient Rome:

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<sup>33</sup> Dickinson, *Essay of a Frame of Government*, 5; John Adams to William Hooper (Mar. 27, 1776), *Papers of John Adams*, 4: 76. Cf. Justin Du Rivage, *Revolution Against Empire* (2017), 170 ("By the time John Cartright [sic] published [his] radical call for parliamentary reform...in 1776, even a future prime minister had endorsed the call for annual elections.").

<sup>34</sup> The hypothesis of a "Saxon golden age," in which the people governed themselves through a combination of direct and representative forms of democracy, was a legacy of the Levellers, whose unorthodox reading of medieval legists was revived a century later by Whigs stalwarts like Hulme and Cartwright. According to Hulme, the principle of the Saxon constitution was a kind of federal pyramid. Its base was the "tithing," in whose assemblies every property owner "that paid his shot, and bore his lot," was eligible to participate. Each tithing exercised police powers within its borders, and elected representatives to a shire, which in turn elected deputies to the national parliament, "the wittena-gemot...which composed their national council, and legislative authority." The executive power of the combined shires was exercised by a king, a "chief magistrate" with strictly circumscribed prerogatives and little capacity for independent action, appointed for a life term by the shires. No parliament could be continued for more than a single year before submitting to reëlection. Great landholders—the "barons" and "knights" of the shire—formed a council for the king, whose assent was requisite for great acts of state. Despite its democratic trappings, the purpose of Hulme's essay was to refute the call of American colonists for representation in Westminster: if England is constituted by its shires, then the right of election is vested *only in those original territories*, and not in new cities like Birmingham, or colonies like Massachusetts. Nevertheless, his vision of England as a kind of popular democracy struck a chord with Pennsylvania radicals in search of constitutional blueprints. See Hulme, *Historical essay*, 15-20 and 194-5. On the influence of this essay in Pennsylvania, see Chilton Williamson, "The Artist in Politics: Allan Ramsay and the Revolution in Pennsylvania," *Pennsylvania Magazine of History and Biography*, vol. 77, no. 4 (Oct. 1953), 452-6. For background, see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* [1957] (2d. ed., 1987), 131, 232-3; Christopher Hill, *Intellectual Origins of the English Revolution* [1965] (2d. ed., 1997), 362; John W. Osborne, *John Cartwright* (1972), 22. || Already in 1773, John Adams had opined that it would be a mistake "to lay any great stress" on the Saxon constitution, which both "monarchical and democratic factions" had attempted to claim for their own benefit, since the details of its true workings were lost to time. See his article in the *Boston Gazette*, Feb. 1, 1773, reprinted in *The Works of John Adams* (Charles Francis Adams ed., 1851), 3: 543. But the idea of a "Saxon constitution" that joined the principles of representative democracy to escalating tiers of government was not the exclusive property of radicals; James Wilson, in his 1791 Lectures on Law, declared that the "original frame of the British constitution" bore a marked resemblance "to some of the constitutions which have lately been formed, and established in America...this venerable frame may be considered as of Saxon architecture." It is not clear if his referent is the 1787 federal constitution, or the revised 1790 Pennsylvania constitution. See James Wilson, "Lectures on Law" [1791], in *Collected Works of James Wilson* (Kermit L. Hall and Mark David Hall eds., 2007), 2: 769.

[T]he norther nations, that over-ran Europe, at the dissolution of the Roman empire, introduced a model of government, for the preservation of the common rights of mankind, as far superior to the Greek and Roman commonwealths, as these surpassed the governments of the Medes, and Persians...Whatever...the love of natural liberty, among the Romans...they seem to have had no conception of any model of government, where the elective power of individuals, could diffuse itself through the whole body of a nation, containing some millions of men, living perhaps a thousand miles distant, from the seat of government. And yet to be so conducted, as to unite, into one point of action, parts so numerous and remote, and form a legislative authority, commodiously fit for action, without anarchy or confusion; in which every man, who had so far distinguished himself, as to become a housekeeper...might give his consent to every law, that was made for his obedience.<sup>35</sup>

"The Saxon form of government, in its native purity and simplicity," would be a favorite theme of Whig reformers throughout the late eighteenth century.<sup>36</sup> And it would be the polar star, too, of Philadelphia reformers, who mocked tributes to the "wisdom" of the British constitution as "savour[ing] more of Norman than Saxon politics," and insisted that this lost ideal might plausibly be recreated in the new world. "This Colony," proclaimed a writer calling himself Demophilus, in a pamphlet he titled *Geunine Principles of the Ancient Saxon, or English Constitution*, "having now but one order of freemen in it...will need but little argument to convince the bulk of an understanding people, that this ancient and justly admired pattern...will be the best model, that human wisdom...has left them to copy."<sup>37</sup> The neo-Saxon ideology lent support to a diversity of constitutional programs. Demophilus was enamored with its picture of "small republics," a kind of primeval town democracy in which ordinary smallholders could meet to discuss their "common concerns." Another writer, carrying the ominous name "Cassandra," argued that the essence of the Saxon constitution was the free election of all magistrates by those over whom they exercised authority. And Thomas Young, writing for the *Pennsylvania Packet*, maintained that the lesson to be taken from "Saxon Government" was its

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<sup>35</sup> Hulme, *Historical essay*, 3-4. This passage was quoted triumphantly in "To the Worthy Inhabitants of the Province of Pennsylvania," *Pennsylvania Packet*, May 20, 1776, 2.

<sup>36</sup> Francis Stone, *An Examination of the Right Hon. E. Burke's Reflections* (London, 1792), 62-3. For the persistence of this narrative into the nineteenth century, see John Cartwright, *The English Constitution Produced and Illustrated* (London, 1823), 209.

<sup>37</sup> Eudoxus, "For the Pennsylvania Packet," *Pennsylvania Packet*, Apr. 22, 1776, 2; Demophilus, *Genuine Principles*, 17-19.

free and open franchise—"riches with them," he marveled, "gave no power or authority over the poorest person in the state"—whose basic form was preserved today in the constituency of Westminster.<sup>38</sup> Nevertheless, these writers converged on the proposition that the constitutions prepared for the newly independent American states should represent a dramatic break with all existing models of government. In October 1776 they had every reason to believe they had succeeded. "The capital objection our constitution," Demophilus gloated, "is its simplicity...The ancient Saxon constitution, which has commanded universal applause, was just as simple."<sup>39</sup>

The Pennsylvania constitution of 1776 was a phenomenon; from the moment of its dissemination it commanded the attention of America's political and intellectual class, and the admiration of its most radical citizens. One sardonic commentator, alluding to its spokesperson Franklin, joked that the "States of *America* look up at it, as people do at a kite with a lanthorn fastened to it."<sup>40</sup> When, several weeks after it entered into force, a group of dissident citizens gathered at the Philosophical Society to protest its "*strange innovations*," they enumerated the many respects in which it departed "not only" from the colonial charter "to which the people have been accustomed, but *in many important articles* from every Government that has lately been established in America." Among its most alarming features was its concentration of all legislative power in a single chamber (Sec. 2), and its dispersion of executive power into a council of twelve members (Sec. 3) whose annual president was to be chosen with the assent of the legislative assembly (Sec. 19). The legislature would remain symbolically transparent to the public (Sec. 13), while all bills implicating the public interest were required to be printed for

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<sup>38</sup> Demophilus, *Genuine Principles*, 16; "Cassandra to Cato. Number III.," *Pennsylvania Packet*, Apr. 29, 1776, 2; An Elector [Thomas Young], "To the Free and Independent Electors of the City of Philadelphia," *Pennsylvania Gazette*, May 15, 1776, 2.

<sup>39</sup> Demophilus, "To the Printer of the Pennsylvania Packet," *Pennsylvania Packet*, Oct. 22, 1776, 4.

<sup>40</sup> "Dialogue between Orator Puff and Peter Easy, on the Proposed Plan or Frame of Government," *Pennsylvania Ledger*, Nov. 2, 1776, 1.

public supervision, and their passage delayed until the following legislative session (Sec. 15). The franchise was guaranteed to all taxpaying citizens (Sec. 6). Every seventh year a Council of Censors would meet to determine whether the constitution had been violated, and during its session would be empowered to subpoena documents, order the impeachment of delinquent officers, and recommend the calling of a convention to pursue further constitutional reforms (Sec. 47). In response to this profusion of alien ideas, the men assembled at the Philosophical Society-Hall could only sputter in small type that the new instrument contravened "the sentiments of the most distinguished writers on the subject of Government," quoting from Montesquieu's *Spirit of the Laws* and Joseph Addison's *On the excellence of the British constitution*.<sup>41</sup> Reformers praised the new text unreservedly. "The gentlemen of the Convention," Paine gushed two years later, "seem to have studied mankind, and to have founded the constitution on that knowledge." He approved its "generous" franchise, indifferent to a man's "fortune or his state," which he argued would defeat corruption by creating an electorate too massive to bribe. And he strongly backed the division of the executive, and in particular the evaporation of its military prerogatives, which he thought would inevitably be abused to stretch a temporary emergency into a permanent despotism.<sup>42</sup> We find an analogous thought at work in the letters of "Whitlocke," who congratulated Pennsylvania on emasculating its governor. Where the chief executive is accorded both control of the armed forces and a negative voice, as were America's governors under the colonial charters, "[t]his monstrous disproportion in the distribution of power" renders him "absolute." Any lingering defects in the constitution,

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<sup>41</sup> *A Meeting Held at the Philosophical Society-Hall on Thursday, October 17, 1776. Colonel Bayard unanimously chosen Chairman* (Philadelphia, 1776). Cf. Montesquieu, *Spirit of the Laws* (Anne M. Cohler et al. trans. and ed., 1989), IX, ch. 6; [Joseph Addison], "No. 287, January 29," *The Spectator* (10th ed., London, J. Tonson, 1729), 4: 142.

<sup>42</sup> "A Serious Address to the People of Pennsylvania," Dec. 1 and Dec. 10, 1778, *Pennsylvania Packet*, reprinted in *Complete Writings*, 2: 285 and 2: 294.

Whitlocke added, would be easily corrected by the Council of Censors.<sup>43</sup> By December its fame had spread to England, where the Whig minister Lord Camden, renowned in America for his conciliatory stance towards the colonies, gloated to the patriot merchant Samuel Wharton that "the bad Part of the British Laws is therein wisely corrected," while the constitution in general was "wonderfully replete with true Wisdom and Liberality."<sup>44</sup>

The ink was still drying on the Pennsylvania's instrument of government when the struggle to overturn it began.<sup>45</sup> By 1777, much of the opposition was driven by the leading lights of Pennsylvania politics, including Robert Morris, James Wilson, and Benjamin Rush. But its survival quickly became a national question, propelled by the utter strangeness of its form, as well as the clustering of the national elite in Philadelphia for the Second Continental Congress. The visceral reaction of William Hooper, a member from North Carolina, lucidly captured the disgust felt by many of these delegates at the constitution's unveiling:

You have seen the constitution of Pennsylvania—*Humano capite cervix equinna juncte*—the motley mixture of limited monarchy, and an execrable democracy—a Beast without a head. The Mob made a second branch of Legislation—Laws subjected to their revisal in order to refine them, a Washing in ordure by way of purification. Taverns and dram shops are the councils to which the laws of this State are to be referred for approbation before they possess a binding Influence...It is truly the Excrement of expiring Genius & political Phrenzy. It has made more Tories than Lord North; deserves more imprecations than the Devil and all his Angels. It will shake the very being of this once flourishing Country.<sup>46</sup>

Hooper might have been channeling his friend John Adams; Benjamin Rush would remember several years later that Adams had a nearly identical reaction on scanning the constitutional draft for the first time.<sup>47</sup> Their concurrence makes sense if we recall that Adams's 1776 broadside

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<sup>43</sup> Whitlock, "Letter I. To Ludlow.," *Pennsylvania Evening Post*, May 24, 1777, 2.

<sup>44</sup> Samuel Wharton to Benjamin Franklin, in *Papers of Benjamin Franklin* (William B. Willcox ed., 1983), 23: 61.

<sup>45</sup> See, e.g. Cassius, "To the People," *Pennsylvania Evening Post*, Oct. 8, 1776, 499 ("The Convention had scarcely met when your enemies began, in low whispers...to traduce them.").

<sup>46</sup> William Hooper to Samuel Johnston (Sept. 26, 1776), in *Colonial Records of North Carolina* (William Saunders ed., Raleigh, 1890), 10: 819.

<sup>47</sup> Benjamin Rush to John Adams (Oct. 12, 1779), in *Letters of Benjamin Rush* (L.H. Butterfield ed., 1951), 1: 240 ("I often think of, and sometimes mention to friends that I can trust, a speech of yours the first time you saw a

*Thoughts on Government* began its life as a private letter to Hooper, outlining his philosophy of republicanism as North Carolina organized its own constitutional convention.<sup>48</sup> In that text he introduced what would become the gravamen of the moderate assault on the Pennsylvania constitution—that its unbalanced constitution opened the door to tyranny. "A single Assembly," he predicted, "is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual," in the manner of the Long Parliament.<sup>49</sup> This criticism would be repeated *ad nauseam* by Rush and his confederates. Thus the 1779 circular "To the Citizens of Pennsylvania," which carried the signature of the state's most elite citizens, headed by Franklin's son-in-law Richard Bache, charged that "a single Assembly, without any constitutional controul," could be expected to violate individual rights with impunity. "[F]or if the Assembly choose to disregard" its limits, "to whom shall we apply for relief? To the Assembly? Shall the lamb...apply to the wolf for protection?" Under the terms of the constitution this check, apart from annual elections, was meant to come from the Council of Censors. But the signatories of "To the Citizens" saw this institution as merely a replica of the single assembly, enhanced by a special grant of fundamental powers, calling its regular advent "a jubilee of tyranny to be celebrated at the end of every seven years," a moment when all laws would be suspended and Pennsylvania thrust into a state of nature:

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printed copy of the Constitution of Pennsylvania. 'Good God!' said you, 'the people of Pennsylvania in two years will be glad to petition the crown of Britain for reconciliation in order to be delivered from the tyranny of their Constitution.'). For his reaction as recorded at the time, see John Adams to Francis Dana (Aug. 16, 1776), *Papers of John Adams*, 4: 465 ("The Convention in Pensilvania has voted for a single Assembly...and what Surprizes me not a little is, that the American Philosopher, should have So far accommodated himself...as to be a zealous Advocate for it").

<sup>48</sup> In his autobiography, composed in 1802, Adams would remember *Thoughts on Government* as wholly directed against *Common Sense*—"I dreaded the Effect so popular a pamphlet might have, among the People, and determined to do all in my Power, to counter Act the Effect of it." See John Adams, [In Congress, Spring 1776, and Thomas Paine], 3: 331. This is accurate, though it omits the fact that in early 1776 Adams was equally concerned to confront "the Reluctance of the Southern Colonies to Republican Government," and, indeed, implied that the powerful See John Adams to Horatio Gates (Mar. 23, 1776), *Papers of John Adams*, 4: 58.

<sup>49</sup> John Adams, *Thoughts on Government* (Philadelphia, 1776), 12.

Glorious period! When the foundations of government shall be torn up! When anarchy and licentiousness and force shall roam unawed and unrestrained! When there shall be no fixed laws, to which you can appeal for the justification of your conduct! When there shall be no Courts, to which you can have recourse for protection! When trials by jury, those odious obstructions that lie in the way of tyrants, shall be happily removed!<sup>50</sup>

Another common reply to the charge of uncontrolled power was that, in the words of Thomas Paine, the requirement that all bills be printed and distributed to the public before passage meant that "[t]he people...stand in the place of another House," since they have ample time to mobilize in opposition to bills that harm the public liberty. Moderates rejoined that this transferred the legislative veto from an enlightened upper chamber, drawn from a broad section of the professions in every corner of the state, to the tap-rooms of Philadelphia. "It gives a part of the people," snapped a writer calling himself K., "particularly such as frequent public houses where the laws are always to be posted up for consideration, a negative upon the proceedings of the whole state."<sup>51</sup>

Many of these criticisms had already been articulated by Rush, who in his "Ludlow" letters of 1777 repeatedly flayed the unicameral assembly as mercurial, tyrannical, and incompetent. "The liberty, the property and life of every individual in the State," he inveighed in the third letter, "are laid prostrate by the Constitution at the feet of the Assembly," which would legislate them into oblivion to please its voters. The populist tendencies of the legislature, guaranteed by the lack of property qualifications attached to the ballot, would be exacerbated by the printing of bills for popular assent, which raised the specter of a Philadelphia mob dictating laws to representatives, who would act as mere stenographers and rubber-stamps. "It has been said

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<sup>50</sup> "To the Citizens of Pennsylvania," *Pennsylvania Packet*, Mar. 25, 1779, 1. It is important to understand that the danger of "despotism" was not thought to be merely hypothetical; it was argued by many moderates that the assembly had already entrenched on basic rights and liberties under the cover of wartime necessity in its zeal to extirpate Toryism. See, e.g. K., "Remarks in the Constitution of Pennsylvania," *Pennsylvania Packet*, Oct. 15, 1776, 4 ("What reception would the Ordinance for punishing persons who condemn any of the measures of the Congress, have met with from a wise Legislative Council or Governor...Such proceedings are fit only for the dominions of Turkey.").

<sup>51</sup> Thomas Paine, "Dissertations on Government," in *Collected Writings*, 2: 390; K. "Remarks in the Constitution of Pennsylvania," 4.



often," Rush lamented, "that 'all power is derived from the people,' but it has never yet been said that all power is *seated* in the people." The Council of Censors was an inquisition, a "commission of the Grand Turk" entrusted "with absolute power for one whole year to censure and condemn, without judge or jury." Its septennial appearance would be a reign of terror. Ultimately the masses would "grow weary of the folly" and inconstancy of this tumultuous regime, and like the citizens of the English commonwealth would embrace dictatorship, bringing the republican experiment to a close. "They prefer a Julius Cæsar to a Senate, and a Cromwell to a perpetual Parliament." In private, and in retrospect, he credited these ideas to John Adams, telling the Massachusetts politician that "[y]ou were my first preceptor in & the Science of Government. From you I learned to discover the danger of the Constitution of Pennsylvania." But even in 1777 he made no effort to disguise the source of his arguments, trumpeting *Thoughts on Government* in the second of the *Ludlow* letters, and lauding Adams as "second to no man in America" in his "attachment to the liberties of this country."<sup>52</sup>

These dueling constitutional paradigms, having collided in Philadelphia, quickly rippled across North America. In January 1777 the Philadelphia radical Thomas Young met with delegates petitioning Congress to recognize their breakaway republic in the Green Mountains, encompassing territories claimed by both New York and New Hampshire. Young gave them a copy of the new Pennsylvania constitution, and suggested a name for the new state—"Vermont." Three months later he published an address to Vermont's newly-assembled constitutional convention recommending it take "the Constitution of Pennsylvania for a model," which he called a "digest drawn from the purest fountain of antiquity, and improved by the readings and observations of the great Doctor Franklin." He also encouraged them to revisit their existing

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<sup>52</sup> "Ludlow" [Benjamin Rush], Letter II/Letter III [1777], in *Selected Writings of Benjamin Rush* (Dagobert D. Runes ed., 1947), 70-1, 75 (Letter III), 57 (Letter II); Benjamin Rush to John Adams (Feb. 12, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-5755>.

draft, which allowed its Executive Board a negative over legislation, and to reduce this to a mere right to review and propose amendments. The people, he intoned, in "are the supreme constituent power...and as soon as the delegate power gets too far out of the hands of the constituent power, a tyranny is in some degree established."<sup>53</sup> His advice was accepted without reservations. The final version of the Vermont constitution, approved in December 1777, is a nearly exact copy of its Pennsylvania forebear. Fewer than fifty lines are altered, and it retains all of the key rights and institutions, including manhood suffrage, a unicameral legislative assembly, and a Council of Censors.<sup>54</sup>

Adams's philosophy of balance and prerogative, too, won adherents. In Virginia, Richard Henry Lee circulated the private letters on government Adams wrote to him in November 1775 and to George Wythe in March 1776, ultimately arranging with Adams to print the latter as the pamphlet *Thoughts on Government*, and to publish his own paraphrase of the former in the *Virginia Gazette*. These texts were read with approval by Patrick Henry, and left an obvious imprint on George Mason, who borrowed several phrases from Adams verbatim in the constitutional plan he submitted to Virginia's constitutional convention in June.<sup>55</sup> William Hooper, too, made free use of Adams's ideas and phraseology when advising North Carolina's constitutional convention at Halifax in October of the same year. "I am well assured," he declaimed, "that the British Constitution in its purity...was a system that approached as near to

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<sup>53</sup> Thomas Young, *To the People of the Grants* (Philadelphia, Apr. 11, 1777), reprinted in *Documentary History of the State of New-York* (E.B. O'Callaghan ed., 1851), 4: 934-5.

<sup>54</sup> "The First Constitution of the State of Vermont, July 2-8 and Dec. 24, 1777," in *Records of the Council of Safety and Governor and Council of the State of Vermont, From July 1775 to December 1777* (E.P. Walton ed., Montpelier, 1873), 1: 81. Cf. John N. Shaeffer, "A Comparison of the First Constitutions of Vermont and Pennsylvania," *Vermont History* (1975), 36-9; Matt Bushnell Jones, *Vermont in the Making, 1750-1777* (1939), esp. 379-92. On Thomas Young and Vermont see Pauline Maier, "Reason and revolution: the radicalism of Dr. Thomas Young," *American Quarterly*, vol. 28 (1976), 229-49, esp. 234.

<sup>55</sup> Julian P. Boyd, "Editorial Note: The Virginia Constitution," *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1950), 1: 333-6.

perfection as any could." North Carolina should appropriate its tripartite structure, what he called with evident approval "the essence of a mixed Monarchy," which unites the "virtue" of the people, the wisdom and "superiour Talents" of the "selected few," and the "sudden and decisive execution" of a single outstanding individual. He was emphatic, too, that the convention should avoid any imitation of the new Pennsylvania constitution, "a many headed Monster" whose single legislature would readily devour all popular liberties, and was viewed "with horror" by that state's most esteemed citizens.<sup>56</sup> In April of the following year in New York City, James Duane helped to design a constitution featuring a triple division, as well as a limited veto for the governor sitting with his executive council. According to Adams, Duane sent him a copy shortly after it was finalized, asking him "if it was not agreable to my Ideas, as I had published them in my Letter to Mr. Wythe."<sup>57</sup> Already by June 1776 Adams would pronounce himself "amazed" to see the popularity of his constitutional ideas "throughout all the southern and middle Colonies," even if they had not yet gained purchase in resolutely "democratic" New England.<sup>58</sup>

Adams received a second opportunity to shape the contours of constitutional politics in America in September 1779, when he arrived in Boston after the abrupt lapse of his French commission, and was appointed by Braintree as its delegate to the convention then assembled in Cambridge "at last to frame a Constitution." Adams relished his "new Trade of a Constitution monger," and was given substantial latitude by his fellow delegates to structure the final report,

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<sup>56</sup> William Hooper to the Convention at Halifax (Oct. 1776), in *Colonial Records of North Carolina*, 10: 866-8. || North Carolina, like Virginia, adopted a tripartite division of powers, but declined to grant the executive a veto.

<sup>57</sup> [July 16, 1776], *Diary and Autobiography of John Adams*, 3: 398. Cf. William Duer to John Jay (May 28, 1777), in *Correspondence & Public Papers of John Jay* (Henry P. Johnston ed., 1890), 1: 138 ("I congratulate you on the completion of the task of...organizing our new Government...in almost every other State...from a want of proper power being vested in the executive branches...an unhappy languour has prevailed in the whole political system").

<sup>58</sup> John Adams to James Warren (June 16, 1776), in *Papers of John Adams*, 4: 316; John Adams to James Warren (May 12, 1776), in *ibid.*, 4: 182 ("In New England, the 'Thoughts on Government' will be disdained, because they are not popular enough.").

which featured "Three Branches in the Legislature," and an executive laden with prerogatives sufficient to confront the "Men of Wealth" who would, by design, populate his upper chamber.<sup>59</sup> By the time of its ratification Adams once was again in Europe, tasked with negotiating a loan from Holland; he carped, half in jest, that he was happier "making Constitutions in the dead of Winter at Cambridge or Boston" than enduring the hardships of diplomatic service. But his cousin Samuel updated him as to the progress and popularity of his instrument, alluding to a thinker who had left a discernible mark on John's constitutional thought: "the Ship which was set up in Massachusetts while you was there, and which, it was proposd, should be named, the *Oceana*, has since been compleatly finishd and is now afloat."<sup>60</sup> The craft was widely admired. James Wilson, still meditating his line of attack on the hated government of his native Pennsylvania, wrote to Adams that the "Constitution of every State in the Union is interesting to the Citizens of every other State," but that Adams's balanced monument to republican reason had left him particularly gratified.<sup>61</sup> Adams took more solace from a note by Edmund Jennings, jotted down at a spa in Aachen, that his constitution had already been printed in England, where it was teaching the lesson that American constitutionalism might mean orderly, balanced government, and not just wild democracy. It had "imprint[ed] on the minds of the people there," in Jennings's words, "that there is something more than Common Sense in America."<sup>62</sup> Indeed, it became *de rigueur* in London, when writing of the new American constitutions, to call attention to the

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<sup>59</sup> John Adams to Benjamin Rush (Sept. 10, 1779), in *Papers of John Adams*, 8: 140; Adams to Rush (Nov. 4, 1779), *ibid.*, 8: 279; Adams to Elbridge Gerry (Nov. 4, 1779), *ibid.*, 8: 276; Adams to Edmund Jennings (June 7, 1780), in *Papers of John Adams*, 9: 388.

<sup>60</sup> John Adams to Samuel Adams (Feb. 23, 1780), in *Papers of John Adams*, 8: 353; Samuel Adams to John Adams (Dec. 17, 1780), in *Writings of Samuel Adams* (Harry Alonzo Cushing ed., 1907), 4: 233.

<sup>61</sup> James Wilson to John Adams (Apr. 20, 1780), in *Papers of John Adams*, 9: 222.

<sup>62</sup> Edmund Jennings to John Adams (Sep. 14, 1780), in *Papers of John Adams*, 10: 147. Cf. Jennings to Adams (Sep. 27, 1780), *ibid.*, 10: 182 ("[Europe] must see with Admiration that the Science of Government founded on the Nature of Man is so well understood in the New World...They will Confess that the English Know nothing of it, and...the Americans will improve the very language of that haughty People.").

diversity of forms now on display there. Thus the editor of the first British edition of the American constitutions could write in his preface that:

In framing their respective Constitutions, each Colony has followed its own particular views; from which it has resulted that their Governments are all different from one another. In the Colony of Pennsylvania, for instance, they have especially directed their endeavours, not only towards establishing public frugality, but also towards preventing too much power of any kind falling into the hands of any individual; while the Colony of Massachusetts have shewn in that respect much greater confidence, and have allowed the *Governor* of their *Commonwealth* a degree of power at least equal to that possessed by the Stadtholder, in the Dutch Government: only; he is to be chosen annually.<sup>63</sup>

It was not the last time that a European commentator would be struck by the distance between these two polar stars in the galaxy of the new republic.

When Franklin sailed from Philadelphia to Paris in December 1776<sup>64</sup> he was armed with a copy of the new constitution, which he promoted indefatigably in Europe as a paradigm of free government. A translation, executed by the Duc de La Rochefoucauld, appeared two months after his arrival in the newly-founded journal *Affaires de l'Angleterre et de l'Amérique*,<sup>65</sup> funded secretly by the Versailles government. And although Franklin facilitated the translation of a diverse array of state constitutions,<sup>66</sup> writing with evident pleasure to Samuel Cooper in Massachusetts that "they read the Translations of our separate Colony Constitutions with

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<sup>63</sup> Preface, *The Constitutions of the several Independent States of America* (London, 1782), vi.

<sup>64</sup> On Franklin's extraordinary personal popularity in France, which verged on a cult of devotion, see Durand Echeverria, *Mirage in the West: A History of the French Image of American Society to 1815* [1958] (2d. ed., 2015), 45-52.

<sup>65</sup> "Lettre d'un Banquier de Londres" (Feb. 24, 1777), *Les Affaires de l'Angleterre et de l'Amérique*, 4: lx-cxxi. The *Affaires* was edited by a collective that included La Rochefoucauld, Court de Gébelin, Jean Baptiste Robinet, Edmé Jacques Genet, Edward Bancroft, and Turgot. For details see George B. Watt, *Les Affaires de l'Angleterre et de l'Amérique and John Adams* (1965); Madeline Fabre, "L'indépendance américaine: des gazettes américaines aux *Affaires de l'Angleterre et de l'Amérique*," in *Gazettes et information politique sous l'Ancien Régime* (Henri Durantion and Pierre Réat eds., 1999), 107-16.

<sup>66</sup> Louis Alexandre de La Rochefoucauld d'Enville to Benjamin Franklin and Silas Deane (Jan. 20, 1777), in *Papers of Benjamin Franklin*, 23: 213 (enclosing the translation of the Articles of Confederation); La Rochefoucauld to Benjamin Franklin (before Feb. 24, 1777), *ibid.*, 23: 375 ("...beggs from him the favour of having for few moments the Minutes of the Convention held at Philadelphia for the Pennsylvanian Legislation...for seeeing and adding to his translation"); La Rochefoucauld to Benjamin Franklin (Apr. 21, 1777), *ibid.*, 23: 598 (reporting that the translation of the Virginia constitution is complete, and asking for an edition of the Maryland charter).

Rapture,"<sup>67</sup> it was his own Pennsylvania charter that became the fixation of European radicals and reformers. It was widely read, not only in the pages of the *Affaires*, in Claude Regnier's 1778 *Recueil des loix constitutives des colonies angloises*, and in La Rochefoucauld's 1783 *Constitutions des treize états-unis de l'Amérique*, but also as the appendix to *La science du bonhomme Richard*, a loose translation of Franklin's *Way to Wealth* by the librettist François-Antoine Quétant that became one of the best-sellers of the *ancien régime*.<sup>68</sup> Franklin, assumed in France<sup>69</sup> as in America<sup>70</sup> to be the document's primary author, was habitually compared to the great lawgivers of antiquity—"this worthy imitator," in the starstruck phrase of one editorialist for the *Affaires*, "of Lycurgus and Montesquieu."<sup>71</sup> A young journalist named Jacques-Pierre Brissot published a history of the Geneva revolution in 1783, condemning the imperfections of

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<sup>67</sup> Benjamin Franklin to Samuel Cooper (May 1, 1777), in *Papers of Benjamin Franklin* (William B. Willcox ed., 1984), 24: 6. Cf. Benjamin Franklin to Thomas Mifflin (Dec. 25, 1783), in *Papers of Benjamin Franklin* (Ellen R. Cohn, 2014), 41: 41 ("from all Parts I have the Satisfaction to hear that our Constitutions in general are much admired. I am persuaded that this Step will not only tend to promote the Emigration to our Country...but will facilitate our future Treaties with Foreign Courts"); Observations extracted from the private papers of Congress, 14 April 1783 to 22 July 1783, *Founders Online*, <http://founders.archives.gov/documents/Washington/99-01-02-11057> ("Our Constitutions translated into French, and much admired by the Politicians; who wonder that during War & while the Enemy were in the Bowels of our Country our Sages should have firmness of Mind sufft to set down calmly & form such compleat Plans of Government.").

<sup>68</sup> *Recueil des loix constitutives des colonies angloises* ([Claude-Ambrose] Regnier ed., Philadelphia [Paris], 1778), 15-53; *Constitutions des treize états-unis de l'Amérique* ([Louis Alexandre duc de La Rochefoucauld trans.,] Philadelphia [Paris], 1783), 183-220; *La science du bonhomme Richard* ([François-Antoine Quétant ed.,] Philadelphia [Lausanne], 1777), 82-145. On the success of this last text, see Manuela Albertone, *National Identity and the Agrarian Republic* (2014), 128 ("four editions were published in two years and another five before the end of the century...*Bonhomme Richard* became the most widely read American work in France").

<sup>69</sup> See, e.g., Charles Millon to Benjamin Franklin (Dec. 17, 1777), in *Papers of Benjamin Franklin* (William B. Willcox ed., 1986), 25: 301 ("I render you homage as the man whom the public credits with authorship of the Pennsylvania constitutions."). Cf. Claude-Ambrose Regnier to Benjamin Franklin (before May 26, 1778), in *Papers of Benjamin Franklin* (William B. Willcox ed., 1987), 26: 529 ("on sçait que la plus-part...des Constitutions de votre Pays sont votre ouvrage même").

<sup>70</sup> See, e.g., "A Serious Address to the People of Pennsylvania," *Pennsylvania Packet*, Dec. 1, 1778, 1: 280 ("They had the wisest and ablest man in the State, Dr. Franklin, for their President, whose judgment alone was sufficient to form a constitution..."); Philadelphia Constitutional Society to Benjamin Franklin (Sept. 17, 1785), in *Papers of Benjamin Franklin*, 43: 422 ("we view You as the Father of our free and excellent Constitution").

<sup>71</sup> "Lettre d'un Banquier de Londres" (Feb. 24, 1777), 4: lix. Cf. Barthélmy-Pélage Georgelin du Cosquer to Benjamin Franklin (June 11, 1778), in *Papers of Benjamin Franklin*, 26: 611 ("The Lycurgus of the new Sparta, the oracle of politics as well as physics...").

that city's aristocratic constitution in terms anyone might understand: "Consult the Code of Pennsylvania, published in France with so much approval. Read the first chapter, and the beginning of the second, and judge Geneva on its principles."<sup>72</sup>

Adams, shuttling between The Hague and Amsterdam from 1780 to 1782, and in Paris from 1783 to assist in peace negotiations, proselytized his own constitution with equal fervor, and saw it reprinted in the *Affaires* and the *Gazette de Leyde*, as well as in a number of Dutch-language commentaries.<sup>73</sup> Like Franklin, Adams noticed how avidly the American constitutions were read and discussed in Europe. He proudly recorded in his diary for March of 1783 that, at a dinner with several leading lights of the French government, the marquis de Chastellux "said to the Abby Morlaix that I was the Author of the Massachusetts Constitution, and that it was the best of em all."<sup>74</sup> Like Franklin, Adams discovered how closely the European intelligentsia was monitoring the American experiments in popular government, and the extreme hopes those documents could engender. The Whig legal reformer Samuel Romilly would remember in his *Memoirs* meeting Franklin in Passy, on Easter break from his studies at Gray's Inn, and shortly after the publication of La Rochefoucauld's 1783 edition of the American constitutions. "I remember his reading us some passages out of them," Romilly recalled, "and expressing some surprise that the French government had permitted the publication of them...They certainly

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<sup>72</sup> [Jacques-Pierre Brissot], *Le Philadelphien à Genève, ou lettres d'un américain* (Dublin [Paris], 1783), 66 ff. 1.

<sup>73</sup> John Adams to Jean Luzac (Sep. 1, 1780), in *Papers of John Adams*, 10: 119 ("I find many Gentlemen here are inquisitive, concernig the American Forms of Government...I am ambitious of Seeing it translated..."); Adams to Edmé-Jacques Genêt (Feb. 29, 1780), in *Papers of John Adams*, 8: 378 ("As soon as the Massachusetts shall have established a [new one]...I will send them without [Loss of time to you]"). For further details see Chapter 1.

<sup>74</sup> March 9 [i.e. 8]. Saturday, *Diary, 1782-1804*, 3: 110.

produced a very great sensation at Paris."<sup>75</sup> Emblematic of this zeal was a phrase in a 1783 letter to Franklin from the minor noble the baron de Jouilly Thomassin, fêting the "liberation" of America: "at last the frightening interval which separates our borders disappears, and their inhabitants, now co-citizens, discover Philadelphia and Paris everywhere."<sup>76</sup>

## **2. Cosmopolitan constitutional history**

The preface to George Bancroft's exhaustively-researched *History of the Formation of the Constitution of the United States* includes a fulsome tribute to the French historian and statesman François Guizot, whom he befriended during a research trip to Paris in 1847. Guizot, then serving as minister of foreign affairs, made it a priority to socialize with Bancroft, and to facilitate his access to the archives. "Nothing was refused me for examination," Bancroft remembered fondly, "nor was one line of which I desired a copy withheld."<sup>77</sup> In an April 1847 letter to his wife Bancroft recorded the conversation at their first meeting, making clear that, although he was then an American minister of high rank, Guizot welcomed him to Paris chiefly in his capacity as a historian:

"You are no stranger to me; your work I have read with the greatest interest. I esteem it the best historical work that has appeared on your side of the water." If it has merit it must be in part due to those among the French whose writings contribute so much to vivify thought in America. "How very agreeable, that persons living so many thousand miles apart, learn to appreciate one another, and to point a point of union in the world of intelligence." [...] and so we chatted of the French Revolution and the American; of their different characters; of the influence of France on America...of the aid France gave us in the Revolution.<sup>78</sup>

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<sup>75</sup> *Memoirs of the Life of Sir Samuel Romilly* (London, 1841), 1: 50. Cf. *Mémoires de Brissot* [1793] (Claude Perroud ed., 1912), 132 ("Les constitutions d'Amérique, publiées par Larocheffoucault n'avaient-elles pas jeté une vive lumière sur cette partie de la politique?").

<sup>76</sup> Baron de Jouilly de Thomassin to Benjamin Franklin (June 24, 1783), in *Papers of Benjamin Franklin* (Ellen R. Cohn ed., 2008), 39: 686.

<sup>77</sup> George Bancroft, *History of the Formation of the Constitution of the United States of America* (New York, 1882), 1: xii.

<sup>78</sup> George Bancroft to Elizabeth Bancroft (Apr. 4, 1847), in "Letters and Diaries of George Bancroft, edited by M[ark] A. DeWolfe Howe. III: Paris from 1847 to 1849," *Scribner's Magazine* (Nov. 1905), 587.



Bancroft passed the following days in the archives of the *Ministère des affaires étrangères*, and his evenings with a series of extraordinary men who had survived the revolution. Thierry de Ville Davray, the aged *valet de chambre* to Louis XVI, regaled him with tales of Lafayette, Marie Antoinette, and Frederick the Great. Alexandre Rousselin de Saint-Albin showcased his collection of portraits by David, as well as his prized possession, a letter written by Robespierre from the Hôtel de Ville in the moments before his arrest, still stained with the dictator's blood. He received an interview, too, with Louis Philippe, who recalled meeting Franklin as a boy. "The picture of the scene," the king casually recollected, "is to be seen now in one of the apartments of the Palais Royal. I am painted in it in one corner as a child beating a drum."<sup>79</sup>

Bancroft was an unusually cosmopolitan figure—an accomplished statesman who held a doctorate in history from the University of Göttingen. But his research itinerary, which took him from Cambridge, Massachusetts to the archives and salons of Paris, was well-trod by historians of his generation, for whom it was an article of faith that the history of the American founding could not be wholly disentangled from the revolution in France that followed it. Thus Jared Sparks, publisher of the *North American Review*, relocated to London and Paris in 1828 to research the twelve-volume edition of the *Writings of George Washington* that would establish his reputation. In London he visited James Mackintosh and Jeremy Bentham; in Paris he obtained numerous papers on the American and French revolutions from Lafayette, and contracted with Guizot to produce a French translation of his work in progress.<sup>80</sup> A decade after

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<sup>79</sup> George Bancroft to Elizabeth Bancroft (Apr. 6/11/12, 1847), in *ibid.*, 587-9.

<sup>80</sup> Herbert Baxter Adams, *The life and writings of Jared Sparks* (Cambridge, MA, 1893), 2: 55 (Mackintosh), 2: 63 (Bentham), 2: 97 ("I wrote to him, suggesting that M. Guizot would be a suitable person to translate Washington's works...[Lafayette] could think of only one objection: that was, that M. Guizot is not a Republican...[Lafayette] said that he should hope to persuade [Benjamin] Constant himself to translate the work, were he not so much engaged in politics"), 2: 117 (Lafayette's papers on the French revolution). Cf. Herbert Baxter Adams, *Jared Sparks and Alexis de Tocqueville* (Baltimore, 1898), 42-3 ("Tocqueville also arranged for a French translation of Sparks' edition of the 'Life and Correspondence of Gouverneur Morris.'").

their initial meeting Sparks, now a professor of history at Harvard, wrote again to his former collaborator:

I have now in the course of preparation a history of the American Revolution...When I was in Europe, eleven years ago, my researches related wholly to this period of history...My materials have accumulated from year to year, but I cannot complete them without another voyage to Europe.<sup>81</sup>

Guizot, having now been elevated to the ministry, happily obliged, granting Sparks untrammelled access to every department under his control.<sup>82</sup> We can gauge Sparks's gratitude by the honorary *juris doctor* he conferred on Guizot in 1852, at the end of his four-year term as President of Harvard. The citation singled out the French author's "generous interest...in the historical affairs of the United States." In 1858 Sparks, now *emeritus* at Harvard, made a third trip to Paris, dining again with Guizot and his family, and seizing, in the words of his biographer, "every opportunity to increase his collection of manuscript materials for a history of the American Revolution," which remained incomplete at his death.<sup>83</sup> For Sparks, as for Bancroft, it was unthinkable that a narrative of the American revolution might be written without the French archive, or that the tremors of the American founding might be spoken of without any mention of the aftershocks that followed in Paris.

In a 2013 essay, the Oxford historian Mark Philp calls attention to a line from the 1789 *Discourse on the Love of Our Country*, by the cleric, philosopher, and political economist Richard Price: "Be encouraged, all ye friends of freedom...Behold, the light you have struck out, after setting AMERICA free, reflected to FRANCE, and there kindled into a blaze that lays

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<sup>81</sup> *Ibid.*, 2: 331.

<sup>82</sup> Guizot and his lieutenants took the initiative to copy a great deal of material on their own; about half the material in the Sparks collection taken from Paris was selected by French archivists. See *French Papers Related to the American Revolution, 1776-1782*, Jared Sparks Manuscripts (MS Sparks 80), Houghton Library, Harvard University.

<sup>83</sup> *Ibid.*, 2: 391, 2: 467, 2: 552.

despotism in ashes, and warms and illuminates EUROPE!"<sup>84</sup> Price was voicing a commonplace of his own time; a historian of the period might catalogue hundreds of similar pronouncements from the revolutionary epoch. Neither, as we have seen, would the notion of a vital connection between the two revolutions have surprised Sparks, Bancroft, or other pioneering historians of the American founding. But Price's intuition has become unfashionable—Philps suggests almost illegible—in our own time. "Modern commentators," he writes, "have almost entirely resisted this view; some have treated the French Revolution as a modern, socially transformative, and progressive revolution...others have seen America's as a limited, political revolution, in sharp contrast" to the wild and profound upheaval of 1789.<sup>85</sup> Philps overstates his case, but it is true that in recent decades the signature works of eighteenth century constitutional history have tended to approach 1776 and 1789 as discrete, nationally-bounded events. Standard intellectual histories of the American constitutional moment—by Pauline Maier, Gordon Wood, Bernard Bailyn, and Michael Klarman<sup>86</sup>—make sparing use of francophone sources, and refer only fleetingly to cosmopolitan figures like Condorcet and Mirabeau who corresponded extensively with American diplomats, and offered acerbic commentary on America's constitutions. Even a book as ambitious as J.G.A. Pocock's *Machiavellian Moment*, which treats the American founding as the culmination of three centuries of Italian, French, and British discourse over the proper constitutional ordering of a commercial republic, concludes its narrative in America with the election of 1800, declining to follow these carefully-spun threads back to Versailles. In his conclusion he reports that, when asked by Judith Shklar why he had devoted a study of such

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<sup>84</sup> Richard Price, *A Discourse on the Love of Our Country, delivered on Nov. 4, 1789* (London, 1790 [3d. ed.]), 50.

<sup>85</sup> Mark Philp, "Revolutionaries in Paris: Paine, Jefferson, and Democracy," in *Paine and Jefferson in the Age of Revolutions* (Simon P. Newman and Peter S. Onuf eds., 2013), 137-60, 137.

<sup>86</sup> See Pauline Maier, *Ratification* (2010); Wood, *Creation*; Bernard Bailyn, *Ideological Origins of the American Revolution* [1967] (3d. ed., 2017); Michael Klarman, *The Framers's Coup* (2016).

magnitude to "anything so provincial as British and American history instead of joining that mainstream which flowed toward the Niagara of the French Revolution" he replied that "I study a history which did not shoot Niagara and avoided it as a maelstrom."<sup>87</sup> The same mental geography structures the leading intellectual histories of the French revolution, which only glancingly address contemporaneous events in the United States.<sup>88</sup> Even François Furet, whose seminars at the University of Chicago included "John Adams and the French Debate" and "Comparing the American and French Revolutions,"<sup>89</sup> never produced a work synthesizing his formidable expertise in French constitutionmaking with his late interest in the American founding.

And yet alongside this dominant tradition of national history is a counter-current holding that the two revolutions were inextricably intertwined, either because the French revolution drew crucial inspiration from its American predecessor, or because the two revolutions were nourished by the same fervid soil of philosophical enlightenment and political radicalism. From the fall of the Bastille it became customary in the Atlantic world to compare the two revolutions, often in the service of underscoring the intrinsic superiority of the orderly and moderate American revolution. The underlying assumption was of a radical separation between the two events, which is why Hannah Arendt, in the most famous entry in this genre, could state confidently in 1963 that it was "beyond dispute" that "neither the spirit...nor the thoughtful and erudite political

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<sup>87</sup> J.G.A. Pocock, *The Machiavellian Moment* [1975] (2d. ed., 2016), 572-3.

<sup>88</sup> See, e.g., Albert Soboul, *The French Revolution 1787-1799* (1975); William Doyle, *Oxford History of the French Revolution* [1989] (3d. ed., 2018); Lynn Hunt, *Politics, Class, and Culture in the French Revolution* (1984); Michael Sonenscher, *Sans-Culottes* (2008); Patrice Gueniffey, *La politique de la Terreur: essai sur la violence révolutionnaire, 1789-1794* (2000).

<sup>89</sup> Fonds Furet (EHESS), Box 2, folder 3.

theories of the Founding Fathers had much noticeable impact upon the European continent."<sup>90</sup> But already by the close of the nineteenth century scholars had begun to press beyond the ossified and moralistic clichés of comparative history, asking instead whether there were concrete patterns of influence that could be traced between the two revolutions, and whether American ideas had in fact left their imprint on Europe's revolutionary decade. Lewis Rosenthal inaugurated this project in 1882 with *America and France*, a skillful synopsis of French opinion on America between 1776 and 1794, which proposed that "America influenced France so powerfully by its example, its doctrines, its men, and...the discussion it aroused, that the American Revolution may safely be called a proximate cause of the French."<sup>91</sup> This thesis found an echo in the ensuing polemic between the legal historians Georg Jellinek and Émile Boutmy concerning whether the 1789 *Déclaration des Droits de l'Homme* was, as Jellinek forcefully argued, "for the most part copied from the American declarations," as well as in an essay by Henry Bourne detailing the 1789 confrontation between *Américainistes* and *Anglomanes* in the National Assembly.<sup>92</sup> These researches received a new momentum after the American

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<sup>90</sup> Hannah Arendt, *On Revolution* (1963), 24. For precursors, see Charles Pigott, *Strictures on the new political tenets of the Rt. Hon. Edmund Burke, illustrated by analogy between his different sentiments on the American and French revolutions* (London, 1791), 21 ("The principles that provoked and justified American resistance, are exactly similar with those which brought about the French revolution"); W[illiam] C[abell] Rives, *Discourse on the Uses and Importance of History* (Richmond, 1847), 38 ("Let us now turn to the French Revolution which commenced its convulsive and desolating career almost at the moment when the long and patriotic struggle in America for the blessings of rational liberty and Independence was auspiciously closed..."). For a more historically-informed account, but one that nevertheless stresses the formative role of unbridgeable and trans-temporal national "characters," see Patrice Higonnet, *Sister Republics* (1988).

<sup>91</sup> Lewis Rosenthal, *America and France: the influence of the United States on France in the XVIIIth Century* (New York, 1882). Cf. Lewis Rosenthal, "Rousseau in Philadelphia," *The Magazine of American History*, vol. XII (July-December 1884), 46-55.

<sup>92</sup> See Georg Jellinek, *The Declaration of the Rights of Man and the Citizen* [1895] (Max Farrand trans., 1901), esp. 27-42; Émile Boutmy, "La Déclaration des droits de l'homme et du citoyen et M. Jellinek," *Annales des sciences politiques*, vol. 17 (1902), 415-43; Georg Jellinek, "La Déclaration des droits de l'homme et du citoyen et M. Boutmy" [1903], reprinted in *Ausgewählte Schriften und Reden* (Walter Jellinek ed., 1911), 2: 65-81; H.E. Bourne, "American Constitutional Precedents in the French National Assembly," *American Historical Review*, vol. 8, no. 3 (April 1903), 466-86.

intervention in World War I,<sup>93</sup> culminating in Bernard Faÿ's interwar study of shared revolutionary culture, Louis Gottschalk's biography of Lafayette, Gilbert Chinard's portrait of Thomas Jefferson in France, and Alfred Owen Aldridge's *Franklin and his French Contemporaries*.<sup>94</sup> These monographs added connective tissue to the skeleton assembled by Rosenthal, and gestured at the existence of a global revolutionary culture. But with the important exception of Chinard, who supplemented Jellinek with two brief studies of American antecedents for the French *Déclaration*, these authors only rarely broached questions of constitutional text or political theory, and focused on the lives and friendships of their subjects rather than the intellectual world they inhabited.<sup>95</sup>

This gap between political-biographical history and the history of ideas would be narrowed considerably by two seminal works that arrived at the end of the 1950s: Durand Echeverria's *Mirage in the West* and Robert Palmer's *Age of Democratic Revolution*. The former, which began its life as a doctoral dissertation under the supervision of Chinard, anatomized French ideas about America between the close of the Seven Years War and the collapse of the Napoleonic regime in 1815. The latter presented a kaleidoscopic perspective on the revolutionary wave that crested in 1789, touched the steppes of Russia and the peaks of Ecuador, and had as its twin epicenters France and the United States. The two works are united by their attention to political theories and, in the case of Palmer, constitutional debates. But they are divided not only by the

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<sup>93</sup> For examples of war propaganda celebrating the mutual influence of the two revolutions, see *France Amérique 1776-1789-1917* (P.-H. Loyson and J.H. Woods trans., 1918).

<sup>94</sup> See, e.g., Bernard Faÿ, *L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIIIe siècle* (1925); Gilbert Chinard, *Thomas Jefferson, the apostle of Americanism* (1929); Louis Gottschalk, *Lafayette between the American and French Revolution* (1950); A.O. Aldridge, *Franklin and his French Contemporaries* (1957). See also Gottschalk's 1948 lecture at Lafayette College, "The place of the American Revolution in the causal pattern of the French Revolution," subsequently published as a pamphlet, as well as the essays collected in *Liberté, égalité, fraternité: the American revolution & the European response* (Charles W. Toth ed., 1989).

<sup>95</sup> See Gilbert Chinard, *La Déclaration des droits de l'homme et du citoyen et ses antécédents américains* (1945); Gilbert Chinard, "Notes on the American Origins of the 'Déclaration de Droits de l'Homme et du Citoyen,'" *Proceedings of the American Philosophical Society*, vol. 98 (1954), 383-96.

differently-sized apertures through which they view the French revolution, but also by their sharply divergent conclusions about the existence and possibility of a genuine transatlantic dialogue. Echeverria's skepticism is announced in his title: when French intellectuals looked westward they saw "not a representation of reality but in a very literal sense a mirage." His book is a history of misprisions and misconceptions, as a two-dimensional idea of a "virtuous" America constructed by the *philosophes* gave way after 1789 to an equally flat picture of a vast and disjointed nation sinking into moral decadence and ideological reaction. Without denying the naïveté and factual ignorance that could sometimes cloud considerations of American politics in Europe, Palmer wrote an opposite history—of American constitutional ideas ramifying "from the Mississippi to the Milanese," expounded by figures who understood their essential points, even as they were adapted and amended for local audiences. Palmer was attentive, too, to the irony by which concepts that began their life in Boston or Philadelphia in 1776 might resurface France in 1789, and then return to America as "revolutionary" ideas from the continent. In an essay for the festschrift of his former teacher Louis Gottschalk, Palmer offered a kind of thesis statement, calling this decades-long process of intellectual exchange "a grand transcontinental transvestism."<sup>96</sup>

Palmer's volume, alongside studies of similar heft and sweep by Franco Venturi and Jacques Godechot,<sup>97</sup> traces out a map for future research, and offers a particular opportunity to

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<sup>96</sup> Echeverria, *Mirage in the West*, 281 (adding, for good measure, that "[w]e shall always be a mirage to the French, and to every people"), 224; R.R. Palmer, *The Age of the Democratic Revolution* [1958] (2d. ed., 2013), 756; R.R. Palmer, "Reflections on the French Revolution," *Political Science Quarterly*, vol. 57, no. 1 (1952), 64-80, 80; R.R. Palmer, "The Great Inversion: America and Europe in the Eighteenth-Century Revolution," in *Ideas in History* (Richard Herr and Harold T. Parker eds., 1965), 3-17, 8.

<sup>97</sup> Franco Venturi, *The End of the Old Regime in Europe, 1776-1789* [1984] (2 vols., R. Burr Litchfield trans., 1991) (a political history of revolution in Europe, with a special emphasis on Italian sources); Jacques Godechot, *France and the Atlantic Revolution of the Eighteenth Century* (Herbert H. Rowen trans., 1965) (a political history of revolution in America and Europe between 1768 and 1792, with significant detours into Geneva, Poland, Ireland, and Hungary). Godechot spent the 1954-55 academic year in Princeton, at Palmer's invitation.

intellectual historians interested in exploring the theories underpinning these movements in greater detail than breathless, world-spanning surveys can allow. But in fact it is only in recent years that intellectual historians have begun to mine its potential, due in part to the controversy that Palmer's book engendered among French revolutionary historians, and in part to a disciplinary shift towards cultural and material history that took hold shortly after its publication.<sup>98</sup> This has been true of the intellectual histories of the American and French foundations, with several notable exceptions,<sup>99</sup> until relatively recently. Within the past decade, however, a loose network of researchers, mainly based in Europe, has begun to excavate the deep intellectual interconnections between American founders and European social thinkers, and to trace the reception history of key American texts in republican Holland and revolutionary France.<sup>100</sup> In recent years these narrow but highly precise studies have been joined by two synoptic works of encyclopedic scale, James Kloppenberg's *Toward Democracy* and Jonathan Israel's *Expanding Blaze*. The contribution of the former is its unique periodization, which ties the French and American revolutions together as middle chapters in the unfolding of a

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<sup>98</sup> On the controversy, see .R.R. Palmer, "La 'Révolution atlantique—Vingt ans après," in *Die Französische Revolution—Zufälliges oder notwendiges Ereignis?* (Eberhard Schmitt and Rolf Reichardt eds., 1983), 89-104. On the turn to transatlantic *social* history, see Marcus Rediker, "Book Reviews: *Women & Politics in the Age of the Democratic Revolution*," *Pennsylvania Magazine of History and Biography*, vol. 115, no. 2 (April 1991), 257-8 ("Palmer's liberal capitalist Atlanticism...is now being challenged in a variety of ways by social historians who wish to draw upon radical scholarship of the past twenty-five years to rewrite the history of Atlantic revolution 'from the bottom up.'").

<sup>99</sup> See, in particular, J. Paul Selsam and Joseph G. Rayback, "French Comment on the Pennsylvania Constitution of 1776," *Pennsylvania Magazine of History and Biography*, vol. 76, no. 3 (July 1952), 311-25; Joyce Appleby, *An American Pamphlet in Paris* (Ph.D. dissertation, Claremont Graduate University, 1966); C. Bradley Thompson, "The American Founding and the French Revolution," in *The Legacy of the French Revolution* (Ralph C. Hancock and L. Gary Lambert eds., 1996), 109-50.

<sup>100</sup> See, e.g., Albertone, *National identity and the agrarian republic*; Annie Jourdan, *La révolution batave: entre la France et l'Amérique* (2008); Antonino De Francesco, "Traduzioni e Rivoluzione, La Storia Meravigliosa Della Prima Versione In Francese del *Federalist*," *Rivista Storica Italiana* (2011), 61-110. See also the edited collection *Rethinking the Atlantic world: Europe and America in the age of democratic revolutions* (Manuela Albertone and Antonino De Francesco eds., 2009). For accomplished studies of networks and personalities, retracing the paths of Americans revolutionaries and French counter-revolutionaries abroad, see Philipp Ziesche, *Cosmopolitan Patriots: Americans in Paris in the Age of Revolution* (2013) and François Furstenberg, *When the United States Spoke French* (2015).



"democratic" idea across two centuries, terminating with Lincoln and the American Civil War. The latter discovers American examples, authors, and models of government inspiring radicals in nearly every European and American nation between 1780 and 1848, and offers eminently clear depictions of Adams's work as a diplomat and propagandist in the Hague and Jefferson's tenure in Paris. But neither author is greatly concerned with the *constitutional* theories that circulated so freely across the Atlantic in this period. And neither is particularly attentive to the singular role of the U.S. state constitutions in these debates as both catalyst and end result.

This dissertation attempts to chart the transatlantic trade routes of French and American constitutional theories, revealing a cycle of debate, experimentation, and conceptual cross-pollination. It was a diverse and prolific intellectual commerce, packaged in every form in which political thought can be transmitted—from weighty treatises, to translations and commentaries, to parliamentary speeches, to marginalia and private letters. It involved the intersection of a multiplicity of philosophical schools that are rarely discussed in conjunction, forging surprising connections between late physiocracy and American radicalism, early French liberalism and seventeenth century English republicanism, Montesquieu and Mably. It is attuned, too, to the ironies by which reactionary ideas developed in America might come to support revolutionary programs in France, and vice-versa.

The red thread running through each of the three episodes is the transmission and transformation of the constitutional ideas embedded in the Massachusetts and Pennsylvania state constitutions, as they were received and applied in pre-revolutionary and Thermidorean France, and as they continued to reverberate (at times with a French timbre) in the newly United States. The balance of the dissertation concerns events after 1795, mindful that, in the words of Bernard Bailyn, it "is now conventional among historians...of the democratic revolutions to say that after

a brief flurry in the first two years of the French Revolution the constitutional ideas and institutions of the American Revolution had little influence on the development of European...constitutionalism."<sup>101</sup> As we will see, this is one of several stories about the two revolutions that can no longer be sustained. But the dissertation is also intended to gesture at future versions of this project, in which the full spectrum of constitutional theories that made these two revolutions can be mapped and analyzed, and the careers in translation of texts like the *Federalist Papers* and the *Defence* traced as they wended their way through England, Holland, and the Americas. The age of the democratic revolution is over. But the age of *The Age of the Democratic Revolution* may still be unfolding.

### **3. Plan of the work**

This dissertation proceeds in three parts. Part I presents a new narrative of the debate over constitutional theory and design that erupted in Europe and America in the 1780s, framed around the writing and reception of John Adams's *Defence of the constitutions of government of the United States of America* (1787). In the decade between 1781 and 1789 Europe was galvanized by a series of republican uprisings—in Holland, Switzerland, Belgium, and Ireland—which took explicit inspiration from the American insurrection. In each of these nations, rebels issued manifestos modeled on the Declaration of Independence and produced detailed commentaries on America's state constitutions and Articles of Confederation. The revolutionary shockwave could be felt, too, in Paris and London, generating widespread expectations of liberalizing and democratizing reforms, and turning the attentions of journalists and intellectuals in both countries towards the study of free constitutions, and the political theories necessary to sustain them. The first part of the chapter gives a *tour d'horizon* of this intellectual terrain, before offering a close, contextual reading of two texts that enjoyed special prominence in European

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<sup>101</sup> Bernard Bailyn, *To Begin the World Anew* (2007), 132.

debates, and that would ultimately provoke Adams to write his magnum opus: Gabriel Bonnot de Mably's *Observations sur le gouvernement et les loix des États-Unis* from 1784, and Anne-Robert-Jacques Turgot's March 1778 letter to Richard Price on the American constitutions, published as an appendix in Price's *Observations on the Importance of the American Revolution* the same year. The second half of the chapter presents a taxonomy of the major ideas of Adams's magnum opus, climaxing with a discussion of France's first constitutional moment in 1789, and the critique of Adams presented there by Condorcet, Du Pont de Nemours, and other friends and fellow-travelers of Turgot.

Part II is an intensive study of constitutional debates in Thermidorean France, tracking the surprising resurgence of American Federalist political theory in the post-Robespierriest republic. This chapter illustrates four major propositions. First, that the "democratic" constitutions of 1793, authored by Condorcet and Héault de Séchelles, were definitively rejected in 1795, in part with the aid of Federalist arguments about the limits of popular sovereignty. Second, that 1795 witnessed a major renewal in the *république* of intellectual interest in John Adams and the *Defence*, anchored in the Coppet Circle of Jacques Necker and Madame de Staël, but extending outward towards figures like Jean-Denis Lanjuinais, Adrien Lezay, and Pierre-Bernard Lamare, forgotten today but of great significance at this constitutional moment. Third, that despite the fact that the official report of the *Commission des Onze* quoted Adams, and disparaged the anarchy of Pennsylvania democracy, this was a feint: those most responsible for reviving Adams's ideas in this period were determined *critics* of the new constitution, which they railed against for its inadequate grasp on the constitutional and social physics of "balance." Finally, I follow the intellectual trajectories of three constitutional thinkers affiliated, to varying degrees, with the legacy of Benjamin Franklin, in order to determine what remained of the Pennsylvania model of

the democratic republic that capsized with the Girondins. In the speeches and writings of Benjamin Vaughan, Thomas Paine, and Emmanuel Sieyès, each of whom adopted a radically different approach to the *Constitution de l'an III*, we see how fragmented the Pennsylvania program, and its accompanying critique of constitutional balance, had become.

Part III focuses on a concerted intellectual and political movement for the reform of the American constitution, led by a constellation of radicals based in Philadelphia and inspired by the constitutional example of the French republic. In response to what radical journalists like Thomas Paine and Benjamin Franklin Bache perceived to be the monarchical drift of the late Washington administration, they began to press for a drastic reform of the U.S. constitution, pointing to the more egalitarian French constitution, with its unicameral legislature and weak plural executive, as their model. A survey of radical newspapers, pamphlets, and letters reconstructs this mostly unknown constitutional polemic, as well as the sharp response it drew from Adams, Hamilton, and other committed American defenders of the British constitutional tradition. A prologue establishes the enduring importance of Franklin and the Pennsylvania constitution of 1776 in revolutionary France. The first part of the chapter then examines the radical argument for restricting the prerogatives of the upper chamber, which proliferated in the aftermath of the Jay Treaty, and pivoted on the supposedly more egalitarian unicameralism of the French constitutions of 1791 and 1793. The second part of the chapter traces the radical argument for replacing the presidency with a plural executive committee, modeled on the French Directory of 1795, on the grounds that such an arrangement was not only less warped by monarchism, but also more suited to times of war and exigency, as demonstrated by the astonishing military success of the French republic. The argument presented here thus underlines the surprising fragility and contingency of the American constitution in the early years of the

republic, and highlights the powerful Atlantic currents of constitutional theory that began in Philadelphia, traveled to Paris, and ultimately returned to their point of origin.

In 1791, at the height of revolutionary optimism and transatlantic enthusiasm, the political journalist Nicolas de Bonneville delivered an impassioned keynote to the freethinking society *Amis de la Vérité*, predicting the republicanization of the world and the coming reign of what he called "la fraternité universelle." He capped the *discours* with an arresting image—that of a giant whose legs stretched across the Atlantic:

Do you count for nothing, in the balance of justice, this federal colossus, with one foot resting in America and the other in France, who upon waking has cried out in his terrible voice: "All men are equal in rights!" And so Bastilles have disappeared, like houses of cards toppled by a child's breath.<sup>102</sup>

Bonneville viewed this colossus through his own slanted perspective. He could not yet perceive that it would build Bastilles as well as demolish them, and multiply ranks and hierarchies as well as pull them down. But he was correct to see that an intellectual force had been awakened in France and America whose steps would now shake the world.

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<sup>102</sup> Nicholas Bonneville, "Les trois questions" [1791], printed in *De l'esprit des Religions* (Paris, 1791) 173. Bonneville was a leader of the Club des Cordeliers; from 1797 to 1802 Paine lodged with Bonneville and his family, and the two men together edited the newspaper *Le Bien-Informé*.

## **1. John Adams and Atlantic constitutional theory, 1783-1791**

### **Introduction**

From their first appearance in Philadelphia's *Independent Gazetteer* in October 1787, Samuel Bryan's *Letters of Centinel* were recognized as landmarks in the increasingly crowded field of antifederal polemic.<sup>103</sup> Bryan's father, then serving as a justice on the Pennsylvania Supreme Court, was a leading exponent of Pennsylvania's radical 1776 frame of government, and thus an inveterate opponent of the new federal charter.<sup>104</sup> Samuel, twenty-eight years old, took up these inherited positions with a righteous fury, inveighing against the "golden phantom" of a new constitution, and the "baneful aristocracy" pursuing it.<sup>105</sup> Federalists lamented his sudden celebrity, and branded him a demagogue plotting to foment "civil wars, rebellion, and murder."<sup>106</sup> It is telling, then, that "Centinel" opened his long series of essays with a slashing attack on John Adams's *Defence of the constitutions of government of the United States*. "I am fearful," he wrote, "that the principles of government inculcated in Mr. Adams' treatise...have

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<sup>103</sup> See Centinel [No. I], "To the Freemen of Pennsylvania," *Independent Gazetteer* [Philadelphia], Oct. 5, 1787, 2. *Centinel, No. I* was quickly reprinted as a broadside by Elezeur Oswald, publisher of the *Gazetteer*. Shortly thereafter it appeared in German as *Un Die Einwohner von Pennsylvanien* (Philadelphia, 1787); notably, the German translation excised Centinel's criticisms of Washington and Franklin, while leaving intact the attack on Adams. Centinels No. I and II were packaged in the studiously neutral *Various Extracts on the Fæderal Government* (Richmond, 1787). Centinels No. I-IX were collected in the Anti-Federal anthology *Observations on the Proposed Constitution for the United States of America, clearly shewing it to be a complete system of aristocracy* (New York, 1788). || On Bryan's charged polemical style, see Bernard Bailyn, *Ideological Origins of the American Revolution* (1967), 333 ("foaming diatribe").

<sup>104</sup> Burton Alva Konkle, *George Bryan and the Constitution of Pennsylvania* (1922), 122-4. The *Centinel* letters were frequently attributed to Justice Bryan; see *New-Haven Gazette*, Nov. 22, 1787, 318 ("The writer is said to be a certain *superannuated* George Bryan of Pennsylvania.").

<sup>105</sup> Centinel [No. II], *To the People of Pennsylvania, Freeman's Journal* [Phila.], Oct. 24, 1787, 2; Centinel [No. VI], *To the People of Pennsylvania, Independent Gazetteer* [Phila.], Dec. 26, 1787, 2.

<sup>106</sup> "The Arraignment of --- Centinel, Esq.," *Pennsylvania Mercury*, Feb. 2, 1788, 2 (holding Centinel responsible for an antifederal riot in the town of Carlisle). On Centinel's popularity, see A Citizen, "To the People of Pennsylvania," *Carlisle Gazette*, Oct. 24, 1787, 1 ("a writer under the signature of centinel, whose performance has been industriously circulated among the people"). For criticism of Centinel as an agent of corruption and disorder, see *IND. GAZ.* [Phila.], Oct. 13, 1787, at 2 ("They will doubtless in their next publications...assert that *Daniel Shays* is the best patriot in the United States, and that *John Franklin* should be king of Pennsylvania."); Philanthropos, *Pennsylvania Mercury*, Mar. 29, 1788, 2 ("he seems to be the enemy of mankind"); A Federalist, "To the Freemen of Pennsylvania," *Independent Gazetteer* [Phila.], Oct. 25, 1787, 3 ("like ravens preying upon our very vitals").

misled some well designing members of the late Convention” to believe that the “*sine qua non* of a good government” is an equilibrium of three powers, representing three incommensurable social orders. Adams’s vision was a mirage, founded on a misprision of the English constitution; taking it seriously would mean remaking America as a stratified society of ranks, and baffling the public will in a maze of powers and counterpowers. As a republican alternative to the camouflaged royalism of the *Defence*, Bryan pointed to the “constitution of Pennsylvania,” with its unified legislature, democratic franchise, and frequent elections, as having broken the spell of “servile dependence upon the *lordly* and *great*.”<sup>107</sup> One year later the federal constitution he despised was a *fait accompli*, and James Wilson boasted of his desire to remake the Pennsylvania charter in its image. But Bryan, gazing wistfully across the rolling Atlantic, remained confident that the constitutional principles of 1776 might yet be vindicated.

France exhibits at this moment one of the most interesting scenes to human nature, and peculiarly instructive to the citizens of the United States...Various causes have concurred to produce this astonishing revolution of sentiments and conduct in the people of France: perhaps the divine writings of Montesquieu laid the foundation, and doubtless the able, animated discussion of the native rights of mankind occasioned by the late contest between America and Britain, must have been very instrumental in effecting this general illumination and inspiring this ardent love of liberty in France...Our *grandeess*, apprehensive that the opposition making by the French nation to the abolition of their provincial parliaments...might from similarity of principles and circumstances, open the eyes of Americans to the despotism aimed at in our new constitution or *court pleniere*, [have] endeavored to conceal the true nature of the convulsions by which France is at present agitated.<sup>108</sup>

Antifederalists are often caricatured as insular and reactionary; it is striking to see, in this passage, how cosmopolitan their vision could be. Bryan republished his criticisms of Adams in

<sup>107</sup> Centinel [No. I], 2. See also Centinel [No. IX], *Independent Gazetteer*, Jan. 8, 1788, 2 (“in Pennsylvania” the efforts of the “*well-born*...to prostrate the altar of liberty for the purpose of substituing their own insolent sway” have been defeated).

<sup>108</sup> Centinel [No. XXI], *Independent Gazetteer* [Phila.], Nov. 8, 1788, 2. Cf. *Independent Gazetteer* [Phila.], Nov. 12, 1788, 2 (“The tyrant of France, and his accursed minions, would rejoice to make the government of America, similar to their own.”). By the spring of 1788, discontent with Versailles’s new fiscal regime had exploded into view in the national and provincial *parlements*; the *Cour Plenièrè* would have displaced these regional bodies with a centrally-directed organ, appointed by the king, and given charge of modernizing and harmonizing France’s fiscal and criminal laws. This project met furious resistance from Noailles, La Rochefoucauld, and other leaders of the parliamentary opposition, and was abandoned in July. Cf. Thomas Jefferson to John Brown Cutting (July 24, 1788), in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1956), 13: 405 (“If the king has power to do this, the government of this country is a pure despotism.”); Thomas Paine, “Rights of Man, Part I” (1791), in *Complete Writings* (Philip S. Foner ed., 1945), 1: 307 (“It was government dethroning government; and the old one, by attempting to make a new one, made a chasm.”).

1789, declaring them “so applicable to the present, that I cannot forbear repeating them.” He appended a long note on the Constituent Assembly, “an assemblage of the greatest men, of not only France, but perhaps of the world,” whom he praised for perfecting “the science of government” and conclusively demonstrating the superiority of the unicameral legislature. The letter concludes with an extract from a speech by Rabaut Saint-Étienne, delivered on the floor of the Assembly, decrying bicameralism as a vestigial appendage of the “ancient feudal system.”<sup>109</sup>

This complex circuit of intellectual exchange, in which Philadelphia radicals appealed to the authority of avowedly monarchist French reformers, against Federalists brandishing Adams’s republican panegyric on the British constitution, typified constitutional debate in the age of founding and ratification. Disagreements on questions of equality, the physics of power, and the nature of sovereignty, were staged in an arena of international dimensions. The signal work of political theory produced in this moment, John Adams’s *Defence*, exemplifies this outward orientation; it was planned in the Hague, drafted in London, and contested for the next decade by the brightest lights of France’s revolutionary generation. And yet the celebrated historical narratives that structure our understanding of this period have had surprisingly little to say about either the international background against which the American Constitution was written, or the inescapably central role of John Adams in mediating its reception at home and abroad. The American sources of French constitutionmaking between 1788 and 1793, in which Adams’s monograph was invoked tirelessly on all sides as an exemplar to follow or else a foil to reject, have been similarly occluded.

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<sup>109</sup> Centine, “[No. XXXVII],” *Independent Gazetteer* [Phila.], Dec. 2, 1789, 3-4. For further evidence that Bryan remained fixated on Adams throughout the run of the *Letters*, see Konkle, *George Bryan*, 318 and 350 (Centinel’s sarcastic use of the phrase “the well-born”). For the full discourse by Rabaut Saint-Étienne see “Séance du Vendredi 4 Septembre,” *Courier National de Pussy*, Sept. 5, 1789, 1.



This chapter presents a new history of constitutionmaking in the Atlantic world between 1786 and 1791. Like its intellectual predecessors, it will untangle the dense web of personal alliances and intellectual rivalries that joined the two revolutions, and the intersecting trajectories of figures like Thomas Paine, Gouverneur Morris, and Jacques-Pierre Brissot as they cycled between Philadelphia, London, and Paris. And like these earlier histories, it will suggest that these pathways of influence were sufficiently pervasive that it is impossible to bracket the “American” and “French” revolutions as discrete national events; any intellectual history of this epoch is necessarily an Atlantic history as well. But I will also break with these prior inquiries in four crucial respects, comprising the four structuring principles of this chapter. First, I offer a distinctively *constitutional* history—a joint history of the 1787 and 1791 constitutions, and a genealogy of their shared origins. Second, this essay presents a detailed *reception* history of one text in particular—John Adams’s puzzling and frequently misunderstood *Defence*, which set in motion a decade of acrimonious debate on the nature of republican constitutionalism. It is often neglected in intellectual histories of the age of revolutions, and yet the constitutional history of these six pivotal years can largely be written as a chronicle of the *Defence* and its myriad critics and defenders. Third, it is a *translation* history, attentive to the picaresque careers of constitutional dossiers and political theories as they were rendered into English, French, Dutch, and Italian, not always faithfully, and occasionally with annotations that overwhelmed or transformed the original text. Finally, I will advance a novel claim about transatlantic patterns of influence, already hinted at in the earlier passage from *Centinel*. At the core of Adams’s philosophical project was an anxiety that the “wretched Ideas of Government” embraced by Pennsylvania in 1776, having been contained with great difficulty during the war, might now revive and spread.<sup>110</sup> Their primary vector of transmission, he feared, would be the *philosophes*

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<sup>110</sup> John Adams to Abigail Adams (Oct. 4, 1776), in *Adams Family Correspondence* (L.H. Butterfield ed., 1963), 2:

of France, who had long made clear their admiration for Pennsylvania's radically simplified and highly populist constitution. "The best Talents in France," as he would scribble angrily in the margins of Mary Wollstonecraft, "were blind Disciples of Franklin and Turgot."<sup>111</sup> Adams's *Defence* was, in other words, the first salvo in a second, international phase of America's constitutional revolution. By the time its final volume appeared in the winter of 1788, the long rivalry between Adams and Franklin, Massachusetts and Pennsylvania, had been transferred with remarkable fidelity to the salons of Paris and the parliamentary halls of Versailles.

This chapter proceeds as follows. Part I maps the *mise en scène* of the *Defence*, the colliding exigencies that led Adams to pick up his pen and, for the first time in a decade, issue a work of abstract political theory. He was spurred to action by a haunting sense that the constitutional future of the Atlantic world was now dangerously in flux. The American state constitutions appeared to be unraveling under the pressures of populism, a disorder he blamed on the "erronious opinions of Government" circulated by the French physiocrats and their American sympathizers.<sup>112</sup> In Europe it was now commonplace to predict a coming wave of constitutional reform, whether granted beneficently from above, or imposed violently from below. But the most avant-garde political theorists explicitly rejected the desideratum of Adams and his circle—a reinforced version of British mixed government, headed by an executive armed with an extensive prerogative. The *Defence* was a counterstrike at these modish and destructive philosophies,

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<sup>111</sup> John Adams, Annotations (ca. 1796) to Mary Wollstonecraft, *An Historical and Moral View of the Origin and Progress of the French Revolution* (London, 1794) [copy held at the Boston Public Library], 301; See also Jacques Barbeau du Bourg, *Calendrier de Philadelphie, en Pensylvanie; ou, constitutions de Sancho-Pança et du Bonhomme Richard* (Philadelphia [Paris], 1779), 54 ("Les machines les plus parfaites sont celles où l'on emploie le moins de mouvements, de force & de rouages. Cette règle de la mécanique peut très-bien s'appliquer aux gouvernements."); Jacques-Pierre Brissot, *Le Philadelphien à Genève, ou lettres d'un Américain sur la dernière révolution de Genève* (Dublin [Paris], 1783), 66 ("Voyez le code de Pensilvanie publié en France avec approbation.").

<sup>112</sup> John Adams to Richard Price (May 20, 1789), in *Works of John Adams* (Charles Francis Adams ed., Boston, 1854), 9: 558.

expounded by a curious alliance of Shaysite rebels and French *lumières*. And it would become, in turn, the bent lens through which Europeans read the new U.S. Constitution, generating clarity and optical illusion in equal measure. Part II is a study of the *Defence*, its reception in America and France, and its ultimate rejection by the intellectual heirs of Turgot and Franklin. It presents an intellectual map of the *Defence*, whose core idea was that human passion and ambition were not only natural but also indelible, and would not be dissipated by the spread of learning, the waning of religious passion, or the equalization of goods. This anthropological fact demanded a constitutional and social order that would maximize liberty within the limits of human imperfection, anchored by a crowned king, a leadership class with special hereditary privileges, and insuperable protections for private property. These ideas were contested most urgently and intelligently by the marquis de Condorcet, a thinker who wrote five pamphlets in the persona of an American citizen, carefully studied the state and federal constitutions, and shared Adams's determination to regenerate the desiccated republican tradition inherited from Greece and Rome. The collision of these two men in 1788 set the terms of debate for the decade of revolutionary political theory that followed, in America and France.

### **I. Background to the *Defence***

#### "The hope of the world"

François-Jean de Beauvoir the marquis de Chastellux was an emblematic figure of the revolutionary era—a utilitarian philosopher, a devotee of Paris's philosophical and literary salons, and a military officer who served with distinction between 1780 and 1783 in Rochambeau's army. Inevitably, he was also an intimate of Benjamin Franklin. And in 1786 he proudly sent his friend a copy of his latest work, a travelogue of his years in North America.<sup>113</sup>

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<sup>113</sup> For the life of the Marquis, see Alfred de Chastellux, "Notice sur le marquis de Chastellux," in Marquis de Chastellux, *De la félicité publique, ou considérations sur le sort des hommes dans les différentes époques de*

Franklin was slow in responding, but the passage of time allowed him to broach a new subject, one he was quite keen to discuss. “The newspapers tell us,” he wrote, “that you are about to have an assembly of Notables, to consult on improvements of your government. It is somewhat singular, that we should be engaged in the same project here at the same time; but so it is, and a convention for the purpose of revising and amending our federal constitution is to meet at this place next month.”<sup>114</sup> As it happened, the *Assemblée* would be summarily dismissed by a frustrated Louis XVI on May 25, 1787, the same day the “demigods” of America, Franklin among them, gavelled to order their proceedings in Philadelphia. The tendency to view the American and French revolutions as distinct, consecutive, events can be misleading; from the perspective of constitutional history they were almost perfectly coincident. And nothing was more common in the long summer of 1787 than calling attention to this conjuncture.<sup>115</sup> This is the essential background for understanding John Adams’s *Defence*, undertaken in the autumn of 1786—a weapon forged for a newly global battlefield of republican ideas. Scholars have tended to agree with the assessment of Jean Denis, comte Lanjuinais, voiced at the rostrum in 1789, that

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*l'histoire* (1774) (Paris, 1822), i-iv. For the letter, see Marquis de Chastellux to Benjamin Franklin (June 21, 1786), in *Works of Benjamin Franklin* (Jared Sparks ed., Philadelphia, 1840), 10: 262.

<sup>114</sup> Benjamin Franklin to the Marquis de Chastellux (Apr. 17, 1787), in *Works of Benjamin Franklin*, 10: 296. Cf. Benjamin Franklin to Martin Lefebvre de La Roche (Apr. 22, 1787), in *The Writings of Benjamin Franklin* (Albert Henry Smyth ed., 1907), 9: 504 (“You have, as we hear, an Assembly of Notables, to confer and advise on the amendment of your laws & constitutions of government. It is remarkable that we should have the same project here at the same time.”).

<sup>115</sup> See, e.g., Marquis de Lafayette to Alexander Hamilton (Oct. 15, 1787), in *Papers of Alexander Hamilton* (Harold C. Syrett ed., 1962), 4: 284 (“While you Have Been Attending your Most Important Convention, debates were also Going on in france Respecting the Constitutional Rights, and Matters of that kind.”); Pierce Butler to Weeden Butler (Oct. 8, 1787), in *Documentary History of the Ratification of the Constitution* (John P. Kaminski et al ed., 2009), 9: 27 (“America has sett a laudable Example to Civilized Europe. It might be well for the United Provinces, and perhaps, France, to follow it; for I think the latter appears to be verging towards a Change.”); Abbé Morellet to Lord Shelburne (Mar. 15, 1787) (Letter No. XLVI), in *Lettres de l'abbé Morellet a Lord Shelburne, 1772-1803*, 218 (Paris, 1898) (“C’est l’opinion générale ici que l’Assemblée des notables produira des changemens importans dans notre constitution et dans notre administration intérieure”).

Adams was a kind of “Don Quixote of the nobility,” aiming his paper lance at mirages.<sup>116</sup> But Adams was correct to perceive the fortunes of the mixed constitution ebbing, and the rising strength of what he derisively termed “the Franklinian System of a Government in one Center,”<sup>117</sup> which would soon ramify across the Atlantic world. The shadow of this future can be glimpsed in the closing lines of Franklin’s note to Chastellux: “Mr. Paine whom you know, and who undertakes to deliver this letter to you, can give you full information of our affairs.”

This section considers the intellectual climate in America, France, and Britain between 1783 and 1787, as Adams first planned his magnum opus. It makes clear the close interest of French intellectuals in American constitutional developments, their efforts to encourage the rewriting of American state and federal compacts, and their idealization of the “democracy” they saw incarnated in Pennsylvania. And it highlights the longing among European intellectuals for a revitalized and egalitarian public life, a republican order modeled on the free governments of the American states. The question of whether the *Defence* was authored for a domestic or an international audience is thus badly posed; constitutional theory in the 1780s was a Möbius strip without *cæsuræ* or frontiers.

The existence of a cosmopolitan, revolutionary culture was taken for granted by the era’s most prominent politicians and thinkers, and confirmed by their own peripatetic biographies. In 1783 the aspiring reformer Jacques-Pierre Brissot, then resident in London, traced an arc of insurrection across the two hemispheres, marveling at “the revolutions we have seen in recent years in Sweden, Poland, Geneva, Freiburg, Holland, England, and America.” The same year he produced a commentary on the Genevan civil war, which he witnessed firsthand, delivered in the

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<sup>116</sup> Jean-Denis Lanjuinais, Séance du lundi 7 septembre au matin, *Archives Parlementaires* (M.J. Mavidal et al eds., Paris, 1875), 8: 588.

<sup>117</sup> John Adams to Benjamin Rush (Apr. 11, 1805), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-5078>.

persona of a Pennsylvania republican; it carried a Dublin imprint to evade censorship, though it was actually printed in Paris.<sup>118</sup> John Adams, ambassador to the Court of St. James and a former minister in Paris and the Hague, detected signs of turbulence in “France, Holland, Ireland, the Austrian Netherlands, [and] Denmark” in a 1787 letter to the Franco-Dutch journalist A.M. Cerisier, adding with satisfaction that these nations all appeared to be seeking “Somthing like the advantages of the three Divisions of power” elaborated in his recent treatise on government.<sup>119</sup> Cerisier’s own newspaper, *Le Politique Hollandais*, wickedly satirized his critics in 1782 in the form of a reactionary journalist who complains that “one speaks of nothing today in Holland, in Geneva, in Philadelphia except liberty.”<sup>120</sup> In the Brussels of 1787, chafing under the Hapsburg yoke, the lawyer Charles-Lambert d’Outrepoint took stock of the momentous changes in public opinion accomplished in the span of a decade, and linked the cause of Brabant to the growing constellation of republics in revolt. “Never have enlightened peoples,” he intoned, “better understood the dignity of men and the worth of civil liberty.”<sup>121</sup> Looking back on the

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<sup>118</sup> "Suite du Tableau des Réformes politiques, civiles, &c, opérées en Europe pendant l'Année, 1782," in *Correspondance Universelle sur ce qui intéresse le bonheur de l'homme*, (London [Neuchâtel], 1783), 5: 260. || Brissot, *Le Philadelphien à Genève*. Brissot was participating in an ersatz tradition of pamphlets on the Genevan conflict published under “American” pseudonyms, which included the *Lettre d'un Bostonois, écrite de Genève* of 1781. See Sophia A. Rosenfeld, *Common Sense* (2011), 302 ff. 8.

<sup>119</sup> John Adams to Antoine Marie Cerisier (Jun. 12, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0154>. Cf. John Adams to Thomas Brand Hollis (Apr. 5, 1788), in "South-Coast Saunterings in England," *Harper's Magazine*, vol. 47 (1873), 853 (“there is a general fermentation throughout all Europe upon the subject of government than was perhaps ever known...France, Holland, and Flanders are alive to it.”).

<sup>120</sup> "Dialogue entre le Courier du Bas-Rhin & le Politique Hollandais," *Le Politique Hollandais*, Aug. 12, 1782, 13. The *Courier du Bas-Rhin* took a more measured line than the *Politique*, but it nevertheless upheld enlightenment values, and Adams often appeared in its pages to argue the American cause. || In a 1781 letter to Adams, Cerisier neatly encapsulated the cosmopolitan spirit of the age: “Quelqu'un a observé que je n'étois ni bon Anglais, ni bon français et que j'étois encore meilleur Américain que Hollandais.” See Antoine Marie Cerisier to John Adams (Apr. 15, 1781), in *Papers of John Adams* (Gregg L. Lint et al eds., 2003), 11: 259. When Cerisier fled the Netherlands for Paris in 1787, days ahead of the Prussian army, Adams furnished him letters of introduction to Jefferson and Lafayette; see John Adams to Cerisier (Dec. 6, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0280>.

<sup>121</sup> Quoted in Janet Polasky, "Revolutionaries Between Nations, 1776-1789," *Past & Present* (2016), 165, 184.

events of 1776, Adams would select a resonant metaphor for the burst of constitutionmaking that followed the Declaration of Independence: thirteen clocks striking in unison.<sup>122</sup> In the kingdoms and duchies of Europe, too, the clocks were chiming, and the hands seemed close to midnight.

The sudden, synchronous eruption of republican sentiment was hardly coincidental. In the judgment of the Welsh theologian and polymath Richard Price, the insurgent spirit that now possessed “Holland, Brabant and France” had “originated in America,” and would soon oblige despots across Europe to genuflect at the altar of human rights. His fellow radical John Jebb spoke with equal wonder of the “bright example” of America, which had roused the people of Britain and “every other European state, to shake off the shackles of Civil and Religious despotism.”<sup>123</sup> In Amsterdam the bookseller Joseph Mandrillon predicted that events in the western hemisphere would soon “shake the thrones of Europe,” and that the New World, “in recovering its ancient liberty,” would shortly give law to its former colonial masters.<sup>124</sup> In London the Comte de Mirabeau, the debauched noble recently reinvented as a boisterous critic of aristocracy, declaimed that “America is now to decide with certainty, whether the human species were formed by nature for liberty, or for slavery.”<sup>125</sup> This enthusiasm reached its meridian in the oration delivered on July 4, 1787 by the Philadelphia lawyer James Campbell, which credited the American war for independence with inaugurating a Copernican turn in the rights and dignity of

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<sup>122</sup> John Adams to Hezekiah Niles (Feb. 13, 1818), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-6854>. For the origins of the metaphor, see John Adams to Benjamin Kent (June 22, 1776), in *Papers of John Adams* (Robert J. Taylor ed., 1979), 4: 326 (doubting the thirteen colonies possess enough unity to issue a joint resolution on independence).

<sup>123</sup> Richard Price to Benjamin Franklin (Sep. 26, 1787), in *Correspondence of Richard Price* (W. Bernard Peach ed., 1993), 3: 149. Cf. John Jebb to John Adams (Sep. 13, 1785), *Papers of John Adams* (Margaret A. Hogan et al eds., 2017), 17: 457.

<sup>124</sup> [Joseph Mandrillon], Précis sur l’Amérique Septentrionale, in [Alexandre Cluny], *Le Voyageur Américain* [1769] (J[oseph] M[andrillon] trans. and ed., Amsterdam, 1783), 65.

<sup>125</sup> Comte de Mirabeau [with Nicolas Chamfort], *Considérations sur l’ordre de Cincinnatus* (London, 1784), 91 [Fr.], Count de Mirabeau [with Nicolas Chamfort], *Considerations on the order of Cincinnatus* (London, 1785), 72 [Eng.].

man. Standing before the members of the Constitutional Convention, which had adjourned expressly to attend his lecture, Campbell spoke of the legacy of 1776 less as a geopolitical fact than a system of thought running riot through Europe's obscurantist monarchies.

It was by contemplating our Independence that France has become the land of free enquiry and general toleration; Germany, from the same cause, has shaken off an immense load of religious prejudice and bigotry; Spain has caught our spirit of enterprise and innovation; and even *Britain* herself has been taught...to relax in her system of general subjugation...Propitious æra! happy event! which has softened the rigours of tyranny, and taught *even* Kings to revere the great laws of justice and equity.

This was victory by paper shot and folio fusillade—and its most explosive armament was the bulging portfolio of constitutions and political theories that crisscrossed the Atlantic between 1776 and 1787. Campbell singled out two recent “literary productions,” Thomas Jefferson’s *Notes on Virginia* and John Adams’s *Defence*, works “not only calculated to instruct their countrymen, but to enlighten Europe and posterity in the great science of social and political happiness.”<sup>126</sup>

The expectation that America’s constitutional documents would provide the tinder for a revolutionary conflagration in Europe was swiftly fulfilled. In 1781, following Holland’s humiliation in the Fourth Anglo-Dutch War and the loss of its colonies in India, Dutch patriots initiated a series of local revolts against the régime of William V, Stadtholder and Prince of Orange. This uprising generated a voluminous literature, encompassing legal justifications,

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<sup>126</sup> James Campbell, *An Oration in Commemoration of...Independence* (Philadelphia, 1787), 15, 13 (also referring to “the wisdom and energy of many of our constitutions”). || On the attendance of Washington and others, see George Washington: Diary (Wednesday, July 4, 1787), in *Supplement to Max Farrand's The Records of the Federal Convention of 1787* (James H. Hudson ed., 1987), 145, and for additional details *Pennsylvania Packet*, Jul. 6, 1787, at 3. || One finds nearly identical phrasing in a dispatch from Adams to Congress on the incipient Geneva Revolution: “Who and what has given Rise to this assuming Pride of the People as it is called in Europe, in every part of which they have been so thoroughly abased? The American Revolution. The Precepts, the Reasonings and Example of the United States of America, disseminated by the Press through every part of the World, have convinced the Understandings and have touched the Heart.” See John Adams to the President of Congress (Oct. 25, 1781), in *Papers of John Adams* (Gregg L. Lint ed., 2004), 12: 47. || On the circulation of American constitutions and treaties in Europe between 1776 and 1783, see Daniel J. Hulsebosch, “The Revolutionary Portfolio: Constitution-Making and the Wider World in the American Revolution,” *Suffolk University Law Review*, vol. 47 (2014), 759 (detailing the implications for America’s status under the law of nations); Will Slauter, “Constructive Misreadings: Adams, Turgot, and the American State Constitutions,” *Papers of the Bibliographical Society of America*, vol. 105, no. 33 (2011), 49-65 (highlighting important discrepancies and mistranslations in the early French versions of the state constitutions).



philosophies of government, and polemical broadsides, much of which made sophisticated appeal to American sources. The *Grondwettige Herstelling*, a two-volume compendium of moderate constitutional ideas that served as the unofficial *Patriottjendid* program, advocated a written constitution based on popular sovereignty, a legislature rooted in elective representation, and an enumerated guarantee of freedom of religion and secular government. The *Herstelling* alluded to American authorities on all of these points, often in general terms that associated the two revolutions with liberty and opposition to kingship. But when it considered whether the office of Stadtholder should be abolished as an “unrepublican” magistracy, as the most vociferous patriots were beginning to argue, it became clear which aspects of the American constitutional tradition it valued most:

The republics of North America, so jealous of their liberty, have not hesitated to establish under their authority a form of Stadtholdership in the person of their governors. One need only read their constitutions to appreciate how much this dignity resembles our Stadtholders. And the most renowned of these constitutions is the one that has left the most power to its Governor—the state of Massachusetts, whose framing is ascribed to Sir John Adams, presently the minister plenipotentiary of Congress to the United Provinces. The Massachusetts Governor is even afforded privileges that would not be harmful in a person who alternates each year, but could become so in a single Stadtholder, appointed by hereditary right above all members of the Alliance.<sup>127</sup>

A noted doctoral dissertation by Rutger Jan Schimmelpenninck made the same apology for tempered republicanism, with Massachusetts again held out as an exemplar of ordered liberty and reasoned legislative deliberation, in contrast to wild Rousseauian democracy.<sup>128</sup> These

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<sup>127</sup> *Grondwettige Herstelling, van Nederlands Staatswezen* (Amsterdam, 1785), 1: 133. Cf. *ibid.*, 139, 142. The name translates to “Constitutional Restoration,” a clue to the conservatism at its core, manifested in its suspicion of the political aspirations of the *demos*, and any gloss on “popular sovereignty” that might authorize their participation. The *Herstelling* is unsigned; it was likely the collaborative effort of several publicists orbiting the revolutionary noble Joan Derk van der Capellen, including A.M. Cerisier and J.H. Swildens. See I.L. Leeb, *Ideological Origins of the Batavian Revolution* (1973), 188-205 (elective, aristocratic government by propertyholders); Palmer, *Age of Democratic Revolution*, 1: 330-2 (“due precaution against influence of the real lower classes”). || See also Jeremy D. Popkin, “Dutch Patriots, French Journalists, and Declarations of Rights,” *Historical Journal*, vol. 38, no. 3 (1995), 553-65, 553 (postulating Cerisier’s sole authorship).

<sup>128</sup> Rutger Jan Schimmelpenninck, *Dissertatio de Imperio Popolari Rite Temperato* (Leiden, 1784), 14, 15, 28, 84, and in Dutch as *Verhandeling over eene wel ingerigte Volksregeering* (A.B. Swart trans., Leiden, 1785). || Thirteen years later, Schimmelpenninck would serve as a deputy to the National Assembly in the new Batavian Republic, where he was a lonely voice in favor of adopting American constitutional forms. In 1805 Napoleon appointed him Grand Pensionary of the Batavian Republic, and invested him with broad executive powers. See Hendrik Hooft,

admiring invocations of Adams and Massachusetts were hardly accidental; since his arrival in Amsterdam in 1780 the American envoy had made himself a fixture in Dutch intellectual life, cultivating close friendships with the editors of its influential newspapers. Just as he had flooded the *Affaires d'Angleterre et l'Amérique* with American constitutional and diplomatic material several years earlier, he now arranged to have his preferred writings on constitutional theory translated and published in the Netherlands.<sup>129</sup> Most notably, this meant his prized Massachusetts Constitution of 1780, which appeared serially in the francophone *Gazette de Leyde* between October and December 1780,<sup>130</sup> and in two Dutch-language collections of American constitutions the following year.<sup>131</sup> The intention was not simply to establish America's international legitimacy, but to carve the marble of Dutch constitutional thought into an approximate facsimile of the Massachusetts epitome.<sup>132</sup> Every indication is that Adams was

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*Patriot and Patrician* (1999), 192; Matthijs Lok and Martijn van der Burg, "The Dutch Case: The Kingdom of Holland and the Imperial Departments," in *The Napoleonic Empire and the New European Political Culture* (Michael Broers et al eds., 2012), 100-11, 103.

<sup>129</sup> See, e.g., Antoine Marie Cerisier to John Adams (Feb. 26, 1783), in *Papers of John Adams* (Gregg L. Lint et al eds., 2008), 14: 296 (proposing a joint edition of Adams's *Dissertation on the Canon and Feudal Law* and Thomas Paine's *Letter to the Abbé Raynal*); John Adams to Cerisier (Mar. 10, 1783), in *ibid.*, 14: 322 (asking Cerisier to publish his letter to the Abbé de Mably in *Le Politique Hollandais*); John Adams to Cerisier (Jun. 9, 1783), in *Papers of John Adams* (Gregg L. Lint et al eds, 2010), 15: 21 (publication of Adams's *Letters from a Distinguished American*). || Adams continued to furnish the *Affaires* with material during this period—see John Adams to Edmé-Jacques Genet (Feb. 26, 1780), in *Papers of John Adams* (Gregg L. Lint et al eds., 1989), 8: 368 (enclosing the Massachusetts constitution).

<sup>130</sup> "Etat de Massachusett's-Bay. En Convention le 16 Juin 1780," *Gazette de Leyde*, Oct. 3, 1780, 5, and subsequent issues. For Adams's role, see John Adams to Jean Luzac (Aug. 22, 1780), in *Papers of John Adam* (Gregg L. Lint et al. eds., 1996), 10: 83.

<sup>131</sup> "Massachusetts. Constitutie of Zamenstelsel van Regeering," in *Verzameling van de Constutien der Vereenigde Onafhanglijke Staaten van Amerika* (Herman van Brecht trans. and ed., 1781), 1: 73; "Constitutie of Regeervorm, voor het Gemeenebest van Massachusetts," in *Verzameling van Stukken Tot de Dertien Vereenigde Staaten van Noord-Amerika Betrekkelijk* (François Adriaan van der Kemp et al trans. and ed., Leiden, 1781), 1: 145. Cf. Israel, *Expanding Blaze*, 226 (Massachusetts constitution was "a continuing talking point in Patriot circles and among Belgian radicals").

<sup>132</sup> See, e.g., Jean Luzac to John Adams (Sept. 6, 1781), in *Papers of John Adams*, 11: 475 (thanking Adams for transmitting a copy of the 1781 collection of American constitutions compiled by Congress, and adding that nothing could be "plus utile que de faire connoître à nos Compatriotes les excellens principes, qu'on a suivis en Amérique pour assurer la Liberté"). See, more generally, Jan Willem Schulte Nordholt, "Le Troisième Terme de la Comparaison: La Révolution Néerlandaise entre l'Américaine et la Française," *Annales historiques de la révolution*

pleased with the results; he crowed to John Jay that the *Grondwettige Herstelling*, which “recommended the Constitutions of our United States as Models,” was selling briskly in the United Provinces. “Several Cities have reformed their Regencies according to [its] Ideas, and many more, perhaps all, will follow.” It is not clear if it was his incomplete command of the Dutch language or his subconscious sense of the work’s significance that led him to mistranscribe its title as *Grondewellige*—“earthquake.”<sup>133</sup>

A Prussian invasion in 1787 temporarily stabilized the tottering Stadtholderate, but the aftershocks of the Patriot revolution rippled across Europe, and were felt with particular force in neighboring Brabant. Beginning in 1787, a series of quarrels over Joseph II’s efforts to modernize the state and enforce religious toleration gradually intensified, culminating in an armed revolt in 1789 that expelled Hapsburg troops from the Austrian Netherlands. Each province separately announced its independence; Flanders did so, famously, with phrases appropriated from America’s 1776 Declaration.<sup>134</sup> In 1790, as the new United States of Belgium disintegrated amidst internecine strife between aristocratic traditionalists and republican radicals, the lawyer Gérard Poringo compiled an arresting document, intended as an intervention on the side of Belgium’s left wing. Its title—*Les Représentans Légitimes du Peuple*—gestured at its popular sympathies, but not at all at its curious form, since the pamphlet consisted of little more than a compilation of preambles from the American state constitutions. Their text was taken verbatim from the *Constitutions des Treize États-Unis de l’Amérique*, the 1783 translation supervised by Franklin and executed by La Rochefoucauld. But Poringo silently editorialized

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*française*, vol. 277 (1989), 171 (“Il [Adams] discuta avec des Patriotes néerlandais, parmi lesquels Johan van Capellen, Hendrik Kalkoen, Johan Luzac et Rutger Jan Schimmelpennick et les convainquit de l’extrême valeur de sa propre constitution du Massachusetts.”).

<sup>133</sup> John Adams to John Jay (Oct. 3, 1786), in *Papers of John Adams* (Gregg L. Lint et al eds., 2016), 18: 471-2.

<sup>134</sup> J.F. Roheart, *Manifeste de la Province de Flandre* (Gand, 1789); David Armitage, *Declaration of Independence: A Global History* (2007), 113-14.

through redaction and italicization—*consentement du gouvernés, le principe de l'égalité, la dissolution du gouvernement*—emphasizing the right of the people to assemble and remake the state. This leitmotif is the subject, too, of his laconic conclusion, written in his own voice:

*Aristocracy* is a horror in these happy climates, and is expressly and constitutionally forbidden in the United States. This form of government does not suit and cannot suit an *armed people who have declared themselves free and independent*...The sovereignty of the people is recognized, avowed, and declared by the constitution. It is real, it is active, it is not a mere painting. In order for the legislature to declare and decide in the name and with the authority of the people, they must have been duly selected and authorized by the people.<sup>135</sup>

Poringo represented the left edge of public opinion, against both the Statists who preferred the hegemony of unelected intermediate bodies, and the reformers who envisioned a combined National Assembly that would admit merchants, entrepreneurs, and rural landholders on equal terms with barons and clerics.<sup>136</sup> It is revealing that, a year after the fall of the Bastille and the *serment du jeu de paume*, America was still thought by the most ambitious revolutionaries to represent the horizon of democratic constituent power. It is more revealing that the oligarchical Statists, who emerged victorious from the power struggle of 1789-90, promulgated a plan for a *Congrès souverain des États belgiques unis* borrowed substantially from the Articles of Confederation, while the populist opposition rallied to the Declaration and the state constitutions. And to one constitution in particular, which Poringo apostrophized in rhyming couplet on the last page of his leaflet: “Peuple heureux de Pensylvanie, O toi nous fait la leçon, Inspire à ma triste patrie, Au moins une once de raison.”<sup>137</sup>

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<sup>135</sup> [Gérard Mathieu Poringo], *Les Représentans légitimes du peuple* (n.p., 1790), 20. In addition to passages trumpeting popular sovereignty, Poringo made a point of highlighting clauses from those constitutions (e.g., Delaware) that barred ministers from serving as legislators, a frontal assault on the privileges of Brabant’s clerical estate. || Compare with *Constitutions des treize états-unis de l’Amérique* ([La Rochefoucauld ed. and trans.], Philadelphia [Paris], 1783). || *Traité d’union, et établissement du Congrès souverain des États belgiques unis* (Jan. 11, 1790), in *Documents politiques et diplomatiques sur la révolution Belge du 1790* (L.P. Gachard ed., Brussels, 1834), 113. || For additional detail, see Jeroom Vercruyse, “L’Indépendance Américaine et la Révolution Brabançonne,” *Revue Belge de philologie et d’histoire*, vol. 54 (1976), 1098.

<sup>136</sup> See, e.g., Janet L. Polasky, *Revolution in Brussels, 1787-1793* (1986), 173.

<sup>137</sup> Poringo, *Représentans légitimes*, 21.

All of Europe would draw light from the republican sun breaking in the west, but there was wide agreement that France, by virtue of its military and ideological imbrication with the cause of American independence, would be the most powerfully transfigured by its rays. In the words of Condorcet's prize essay of 1786, "France will profit more than any other European nation from the sound ideas Americans have," owing, he thought, to its culture of public enlightenment and its administratively-efficient central government.<sup>138</sup> Following the disastrous meeting of the Assembly of Notables in 1787, which terminated in a forced pledge by Louis XVI to convene an Estates General for the first time since 1614, observers within and without the kingdom began to speak of an imminent constitutional revolution that would convert the etiolated *parlements* into a true national legislature. William Short, Jefferson's secretary in Paris, was most enthusiastic about the coming sea-change. "This will be a revolution completely operated in the government in this country," he wrote to James Madison, which can be expected to make France "the richest & most powerful [nation] in the world in twenty years."<sup>139</sup> Madison, enmeshed in his own set of constitutional disputes in America, monitored these dispatches from France with close attention, and broadcast his satisfaction with "approaching events in that Kingdom which may almost amount to a revolution in the form of its Government," which he attributed to a "spirit of liberty" taking hold across Europe.<sup>140</sup> America's diplomatic and political elite worked itself into a high pitch of excitement as it contemplated France's constitutional future; predictably, it was John

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<sup>138</sup> Condorcet, *Sur l'influence d'Amérique sur l'Europe*, in *Œuvres* (A. Condorcet O'Connor and M.F. Arago eds., Paris Firmin Didot Frères 1847), 8: 31. Translated in Durand Echeverria, "Condorcet's The Influence of the American Revolution on Europe," *William & Mary Quarterly* (1968), 102. Cf. Louis Alexandre La Rochefoucauld to Benjamin Franklin (July 12, 1788), in *Writings of Benjamin Franklin* 9: 666 (Albert Henry Smyth ed., 1907) ("Depuis trente ans que de bons ouvrages, et depuis quatorze que vos bons exemples ont jetté de grandes lumieres..."); "Considerations sur l'Ordre de Cincinnatus...Par le Compte De Mirabeau," in *Critical Review* (Tobias Smollett ed., London, July 1785), 60: 422 ("The spark of liberty imported from America [into France] might be raised into an alarming conflagration at home.").

<sup>139</sup> William Short to James Madison (Dec. 21, 1787), *Papers of James Madison* (Robert A. Rutland et al eds., 1977), 10: 343.

<sup>140</sup> James Madison to Edmund Pendleton (Feb. 21, 1788), in *DHRC*, 8: 398.

Adams who sounded the dissonant note. “All Europe resounds with Projects for reviving, States and Assemblies, and France is taking the lead,” Adams informed Jefferson, who as ambassador to Versailles was in a strong position to judge for himself. But whereas his contemporaries exulted, he worried that the combination of medieval representation and “Simple monarchies” would prove lethally unstable. “Attempts to reconcile Contradictions will not Succeed,” he wrote, alluding to the thesis of his recently-published *Defence*, and would issue only in “Confusion and Carnage, which must again end in despotism.”<sup>141</sup> When Brissot called on Adams in London in 1788, he was scandalized to hear the American ambassador, whose stoic dignity he compared to the heroes of antiquity, warn against any attempt at constitutional reform in France. “He doesn’t think,” Brissot puzzled, “that France can achieve even the liberty enjoyed today in England.” When he published their conversation in 1791 he added a footnote, happy to have the last word: “Events have shown how mistaken he was.”<sup>142</sup>

As the American constitutions came to occupy the imagination of a Europe in revolt, it became common to speculate that the North American states would become the universal legislators of mankind, the prototypes for every nation. Thus La Rochefoucauld, Europe’s leading expert on the American constitutions, could write to Franklin in 1785 that “the entire world fixes its eyes on America, and expects from it a model of sound legislation.”<sup>143</sup> Fortunato

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<sup>141</sup> John Adams to Thomas Jefferson (Dec. 10, 1787), in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 195), 12: 413.

<sup>142</sup> J.-P. Brissot, *Nouveau voyage dans les États-Unis de l’Amérique septentrionale, fait en 1788* (Paris, [April] 1791), 146-7. Brissot, perhaps for dramatic effect, stages his colloquy with Adams in Braintree. Adams, in a letter to his son thirteen years later, clarified that it occurred at the ambassador’s residence in Grosvenor Square, and judged Brissot’s account of their conversation accurate, albeit simplified and stripped of its most interesting details. See John Adams to Thomas Boylston Adams (Jan. 24, 1801), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-0869>.

<sup>143</sup> Louis-Alexandre La Rochefoucauld to Benjamin Franklin (Nov. 30, 1785), in *Papers of Benjamin Franklin*, 43: 582. Cf. Franz Graf von Bilberstein Trembinski to Benjamin Franklin (Feb. 28, 1784), in *Papers of Benjamin Franklin* (Ellen R. Cohn ed., 2014), 41: 379 (“Votre Grande Republique deviendra le Model de tous les Paÿs”); Honoré Mirabeau, *Aux Bataves sur le stathouderat* (n.p., 1788), 185-6 (“...n'est-il pas POSSIBLE DE CONSTITUER UN

de Félice, an Italo-Swiss writer best known as the editor of *Burlamaqui*, called upon Americans the same year to assume the mantle of freeing humanity: “Show men the happiness that results from wise legislation, and guarantee their rights...and future generations, overcome with gratitude, will cry out in concert *it was the conquering arms of the Americans that freed us from oppression.*”<sup>144</sup> The compliment was double-edged, implying both the immense potential of the thirteen colonies to remake the global practice of government, and the deep inadequacy of its present forms. The mixed verdict underscores a point that is often lost amidst breathless talk of constitutional emulation: the state charters of the 1780s were not objects of uncritical adoration abroad. Indeed, in the six years between the surrender at Yorktown and the drafting of the federal constitution, American statesmen were inundated with criticism of its constitutions and advice for reframing them, though French and British *philosophes* hardly agreed whether the goal was to raze or rebuild the shattered remnants of mixed government and colonial hierarchy.

In the decade between 1780 and 1789 the American constitutional order had few admirers more devout than Brissot. In 1781 he informed Franklin of his intention to produce “a simple plan to accelerate legal reform across Europe,” which would “borrow infinitely from the constitutions of your republic.” And a letter from his friend Clavière, prefacing his 1788 travel diary of North America, suggested that the primary purpose of the voyage was to record the inner workings of “these famous American constitutions” now spoken of ceaselessly.<sup>145</sup> But his attachment was not blind reverence, and Brissot consistently maintained that without amendment the American republic could be expected to follow its predecessors into tyranny and decay. This

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PAYS DE FAÇON...QUE LA JUSTICE ET L'INTÉRÊT COMMUN SOIENT RESPECTÉS PAR-TOUT...Le genre humain fait cette grande question aux Etats-Unis d'Amérique...").

<sup>144</sup> [Fortunato de Félice], *Remarques d'un Républicain*, in Abbé de Mably, *Observations sur le gouvernement et les loix des États-Unis d'Amérique, avec des Remarques d'un Républicain* (Dublin [Yverdon], 1785), 276.

<sup>145</sup> J.-P. Brissot to Benjamin Franklin (Dec. 22, 1781), *Papers of Benjamin Franklin* (Ellen R. Cohn ed., 2001), 36: 283; *Lettre Première de M. Clavière a M. Brissot de Warville* (May 18, 1788), in BRISSOT, *supra* note 40, at 2.

is communicated most clearly in a 1783 essay, which opens on an unexpectedly gloomy vista of the new commonwealth: “America is free, independent, and yet it is not happy. New clouds appear, storms gather on the horizon.” The tempest is civic fear, born of the knowledge that every modern republic—from Italy, to Switzerland, to Holland—had collapsed ignominiously into oligarchy or dictatorship. “The experience of past centuries,” Brissot stated baldly, contributes to a universal belief that “usurpation by Congress...will one day overturn the republic. These alarms destroy all harmony, sow discord between citizens...and reduce the state to a phantom.”<sup>146</sup> This anomie is exacerbated by the confused and chimærical character of the Confederation Congress, at once a debating society and a ministerial cabinet, plagued equally by “incertitude in decisions, and slowness in execution.” The state constitutions, meanwhile, are “almost all borrowed” from the “defective” original of England, whose grim masquerade of representation was an article of faith in reformist circles. Amendment, then, was an imperative. But there was little to be gained from rifling through the republican archive for models, whether the Dutch Stadholderate with its uncrowned king, or the Genevan republic with its arrogant civic elite, or the *Code de l’Angleterre* choked and blighted by corruption. Rather, America should confront the utter novelty of its situation, acknowledge the failure of every past attempt at free government, and embrace its responsibility to frame a code of laws for the republican world to come. For this mission Brissot proposed an international convention of lawgivers, comprised of the most brilliant *lumières* in Europe and America. The journalist explained, at delirious length:

This is the proposal that America must make to a small number of philosophers inhabiting every corner of the globe. To make a Code of civil and criminal laws for the thirteen United States; a Code in which the flourishing of both the individual and the republic is assured; a Code whose principles are wholly derived from the original reasoning of societies, and a Code that harmonizes the complex relationships between the various American states, and between America and the old world. Its design will be long, arduous, costly.

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<sup>146</sup> Fear of Congressional usurpation did indeed cast a shadow over political life after the war; see, e.g., Alexander Hamilton, “New York Assembly. First Speech on the Address of the Legislature to Governor George Clinton’s Message (Jan. 19, 1787),” in *Papers of Alexander Hamilton* (Harold C. Syrett ed., 1962), 4: 11 (“Upon every occasion...we hear a loud cry raised about the danger of intrusting powers to Congress”).



What talents, what knowledge, what research it will demand! To that genius which embraces every detail, considers the whole, foresees its effects, must be joined a profound knowledge of ancient and modern legislation, and of history. To the philosophers prepared to devote themselves to such a task, the United States will have to furnish all the necessary expenses for research, travel, and observation. They can collect existing observations and publications on North America in a library, where future legislators will be able to find enlightenment.

The meticulousness of this Solonic fantasy extends to its provisional list of participants: Franklin and Adams from America, the Duke of Richmond and Lord Mansfield from England, Beccaria from Italy, and D'Alembert, Servans, Diderot, Mably, Raynal, and Condorcet from France. This panel of legislators would be compensated by the knowledge that they had given a plan of government not only to the "vast empire" of America, but also to the "hundred peoples" who will follow in its wake. Brissot builds to a millenarian climax: in barren landscapes where today "despotism enchains the mind," a terrestrial paradise will be realized. "The son will learn to love his father, the citizen his country, and arts, commerce, and science will flourish."<sup>147</sup>

Brissot's vision appears fanciful, but in fact during America's "critical period" a number of European theorists, emboldened by reports of disorder and precarity in the new government,<sup>148</sup>

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<sup>147</sup> J.-P. Brissot, "IV. Code Politique, Civil & Criminel de l'Amérique," *Correspondance sur ce qui intéresse* (n.p., 1783), 2: 80-92. Part of this essay is interpolated from Volume IV of his *Bibliothèques des lois criminelles* of the same year. || Brissot recycled this idea of an international panel of legislators in his *Lettres d'un Américain*; see Brissot, *Lettres*, 168 ("un comité composé de personnages graves, choisis dans les Cours de Londres, d'Amsterdam, des États-Unis...").

<sup>148</sup> In Britain: "Sketches of the Present Times," *The Times* [London], Feb. 2, 1786; "Foreign Intelligence," *Morning Post and Daily Advertiser* [London], Sept. 15, 1784 ("the state of their government...very near indeed to anarchy"); J.F.D. Smyth, *A Tour in the United States of America* (Dublin, 1784), 2: 283-4 ("immersed in poverty, and decreasing in population in a degree that might alarm the most powerful...destitute of energy, vigour, and firmness"); Freeholder, *Pou-Rou: an historical and critical enquiry into the physiology and pathology of Parliaments* (Dublin, 1786), 25 ("Witness the Thirteen Colonies of America, now the theatre of fearful confusion!"); Benjamin Franklin to Richard Price (Aug. 16, 1784), in *Papers of Benjamin Franklin*, 42: 130 ("Your Newspapers are full of fictitious Accounts of Distractions in America"). || In France: Brissot, États-Unis Situation, in *Notes de Brissot sur l'état de l'Amérique, la Révolution, la guerre*, Fonds Brissot, 446 AP 5, Dossier 2, at 3 ("Je vois dans les papiers nouvelles de différens États, des plaintes fréquentes sur la durété des tems, la langueur du commerce, la sacrété des espèces..."); "Observations sur l'arreté du Parlement de Paris, séant à Troyes du 19 Septembre 1787," *Journal pour servir à l'histoire du dix-huitieme siecle* (Paris, 1788), 1: 405 ("L'Amérique aujourd'hui & la Hollande, depuis deux siècles, sont des exemples tout au moins aussi frappans des dangers d'une constitution vicieuse, qui affoiblit le pouvoir en le divisant trop."). || In America: "Extract of a letter from a person in Philadelphia to his friend in the New England Provinces, in Sir Guy Carleton's No. 60, of 16 March, 1783," reprinted in George Bancroft, *History of the formation of the Constitution of the United States* (New York, 1889), 299 ("a dissolution of the Federal government...is now at hand"). || In his *Recherches* of 1788, Mazzei spoke bitterly of "les gazetiers d'Europe [who] prétendent...que nous sommes dans l'anarchie & la confusion"; see Philip Mazzei, "Continuation des

offered America sweeping prescriptions for constitutional reform. As Anne-Robert-Jacques Turgot, the *philosophe*, economist, and distinguished government minister, wrote in a 1778 letter to Richard Price that would subsequently become famous, "all enlightened men—all the friends of humanity ought at this time to unite their lights to those of the *American* sages...to assist them in the great work of legislation." America, he added, is "the hope of the world."<sup>149</sup> In the decade that followed, dozens of philosophers and journalists across that Atlantic world would answer this clarion. "Legislators have started up in every part of Europe and America," one spectator to this conversation noted, "who wished to give laws to the new world, and to change the chaos of American anarchy into a regular and orderly system."<sup>150</sup> Their ranks included the foremost thinkers of the era, including several of the savants nominated by Brissot to his international tribunal. And they exerted a force on public opinion that scholars of the founding period have largely ignored, but which registers in newspaper debates, private letters, and the form and substance of the work John Adams would title, tellingly, *A defence of the constitutions of government of the United States of America, against the attack of M. Turgot in his letter to Dr. Price*.<sup>151</sup>

### Abbé de Mably

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Recherches Politiques," *Recherches historiques et politiques sur les Etats-Unis de l'Amérique* (Colle [Paris], 1788), 4: 11.

<sup>149</sup> [Anne-Robert-Jacques] Turgot to Dr. [Richard] Price (Mar. 22, 1778), in Richard Price, *Observations on the Importance of the American Revolution* (Dublin, 1785), 103 [Fr.] and 124 [Eng.].

<sup>150</sup> "Art. I. A Defence of the Constitutions of Government," *English Review, or an abstract of English and foreign literature* (London, 1787), 10: 321. Cf. Honoré Mirabeau to Nicolas Chamfort (Lettre V) (June/July 1784), in *Œuvres complètes de Chamfort* (P.R. Auguis ed., Paris, 1825), 5: 371 ("C'est cependant une chose curieuse et remarquable que la philosophie et la liberté s'élevant du sein de Paris, pour avertir le nouveau monde des dangers de la servitude, et lui montrer de loin les fers qui menacent sa postérité.").

<sup>151</sup> Adams would insist on this title for the second edition; see John Adams to John Stockdale (May 12, 1793), *Founders Online*, National Archives, <https://founders.archives.gov/documents/Adams/99-02-02-1461>.

In 1786 Adams would vent the full measure of his spleen against “philosophers of greatest name” who presume “to write of American affairs, without knowing any thing of them.”<sup>152</sup> So it is noteworthy to recall the degree to which he initially welcomed their interventions. “It is with great pleasure,” he effused to Cerisier, “that I see the Pens, of a De Mably, a Raynal, a Cerisier, a Price, turned to the Subject of Government. I wish the Thoughts of all Academies in Europe, engaged on the same Theme,” since “the Science of Society, is much behind the other Arts and Sciences.” Six months later he would repeat this generous sentiment to in a letter to Franklin, welcoming their interventions on America in particular. “The Philosophers are speculating upon our Constitutions,” he wrote in 1784 from the Hague, “and I hope will throw out Hints, which will be of Use to our Countrymen.”<sup>153</sup> He enclosed an English translation of Mably’s *Observations sur le gouvernement et les loix des États-Unis*, which carried a dedication to “Mr. Adams; Minister Plenipotentiary from the United States.”<sup>154</sup> It is no exaggeration to say that Adams presided over the creation of this work—by encouraging Mably to pursue it,<sup>155</sup> by

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<sup>152</sup> John Adams, Preface, *A Defence of the Constitutions of Government* (London, 1787), 1: xviii. Cf. Joel Barlow to Thomas Jefferson (June 15, 1787), *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1954), 11: 473 (“...those despicable aspersions which have long been thrown upon us and echoed from one ignorant Scribbler to another in all the languages in Europe”).

<sup>153</sup> John Adams to Antoine Marie Cerisier (Feb. 22, 1784), in *Papers of John Adams*, 16: 51 (adding however that readers, Dutch readers in particular, should not adopt Mably’s constitutional ideas uncritically).

<sup>154</sup> Abbé de Mably, *Observations on the Government and Laws of the United States* ([Benjamin Choyce Sowden trans.], London, J.F.R. 1784). Cf. Abbé de Mably, *Observations sur le Gouvernement et les loix des États-Unis* (Amsterdam, J.F. Rosart, 1784). Adams kept a different translation in his personal library, though it is not annotated; see Abbé de Mably, *Remarks concerning the Government and the Laws of the United States of America* [copy held at the Boston Public Library] (London: J. Debrety, 1784). Citations to this text will refer to the French (Amsterdam) and English (London) editions published by Rosart.

<sup>155</sup> Mably, *Observations*, 19 [Eng.] and 29 [Fr.] (“the interest I take in the happiness of America...due to the sentiments of friendship with which you are so kind as to honour me”). The work likely had its origins in a January 1783 dinner party hosted by Benjamin Vaughan in Paris; Adams records in his diary that on this occasion he “[h]ad more Conversation with de Mably than at any Time before,” and that the *philosophe* “meditates a Work upon our American Constitutions.” See Adams, [January 5, 1783], *Diary and Autobiography of John Adams* (L.H. Butterfield ed., 1961), 3: 101 || Adams would maintain in postscript to the first volume of the *Defence* that he invited Mably to write a commentary on the American constitutions as a “mere civility,” and to dissuade him from attempting a more comprehensive history of the revolution that he was unqualified to attempt. See Adams, *Defence*, 1: 383-92. This is

supplying him a syllabus of American constitutions to read,<sup>156</sup> and by laboring to have it published in Amsterdam, beyond the reach of French censors.<sup>157</sup> He was doubtlessly flattered that one of the premier philosophers of the age saw him as a worthy interlocutor; the dedication confirmed his reputation in Europe as a constitutional thinker of the first rank.<sup>158</sup> And he appears to have shared a personal rapport with the abbé, forged over intimate dinners and in the social

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complicated by four facts: (1) Adams repeatedly stated that he looked forward to seeing the work (2) contemporary eyewitnesses testify that he encouraged Mably to write it (3) he plainly wished to influence its composition (4) in 1785 he appears to have supported the abbé in his ambition to draft a “political catechism” for America. Additionally, (5) Mazzei reported a conversation with Arnoux, the mutual friend of Adams and Mably, according to which Adams extravagantly praised Mably’s text after its publication, although this hearsay is not as well founded. See John Adams to Philip Mazzei (Dec. 15, 1785), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0430> (“I told him, I was glad that he intended to write for that I knew his Principles so well...I am now glad he has written because, although there are many Things in which I am not of his opinion, there are many others that deserve the Serious Consideration of our Countrymen”); Abbé de Mably to John Adams (Feb. 25, 1785), in *Papers of John Adams*, 16: 537 (“rien n’est plus glorieux pour Moi...que l’invitation que vous avez la bonté de me faire...à entreprendre la Catéchisme moral et politique”); John Adams to Abbé de Mably (Jan. 17, 1783 [unsent]), in *Papers of John Adams*, 14: 182 (“Tho’ts on Government... This pamphlet was written in the beginning of the year, 1776, when we first began in Congress to see... the necessity of instituting new Governments... It contained a sketch of that idea, which I was afterwards called, in the Convention of Massa. In 1779. To extend and improve”); Abbé Brizard, “Éloge Historique de l’Abbé de Mably” [1787], in *Œuvres complètes de l’Abbé de Mably* (Lyon, 1796), 1: 114 (“M. Adams...semble se défendre d’avoir invité l’abbé de Mably à écrire ce qu’il pensoit sur les constitutions Américaines...[a joint declaration of the Abbés Chalut and Arnoux, now in Brizard’s possession] éclaircit pleinement la question à l’avantage de l’abbé de Mably”); Philip Mazzei to John Adams (Oct. 29, 1785), in *Philip Mazzei: selected writings and correspondence* (Margherita Marchione et al eds., 1983), 1: 502 (“You must have observed, that in his Observations on our Governments, addressed to you, he declares that he has written at your desire. I must \add/ to it, that his \friends make/ have no scruple to say, that as soon as you had read them, you said ‘That book will be the shame or the happiness of America. If we are wise enough as to do what he tells us, \we/ will be a happy People; & if we do not follow literally his good advice, it will be our shame.’ I should not easily have believed such daring assertion, had not Abbé Arnau told it myself in those very words.”).

<sup>156</sup> John Adams to the Abbé de Mably (Jan. 15, 1783), in *Papers of John Adams*, 14: 173. Adams also drew up a letter recommending that Mably consult his own writings, including his *Novanglus* letters and *Thoughts on Government*, but according to his private notes the letter was never sent, Adams thinking it too forward and vain. See Adams to Mably (Jan. 17, 1783) [unsent], in *ibid.*, 14: 181-3.

<sup>157</sup> John Adams to Antoine Marie Cerisier (Oct. 16, 1783), in *Papers of John Adams*, 15: 312 (“I am zealous to have the Work Appear to Advantage in the Impression...it is, probably full of Sentiments and Principles...which will be usefull...to all the virtuous citizens of the united States of America for ages to come”); Cerisier to John Adams (Mar. 3, 1784), in *Papers of John Adams*, 16: 72 (“Si vous pouvez l’assister de vos conseils & de votre crédit...”). The very first copy of the work was sent by the publisher to Adams; see J.F. Rosart & Co. to John Adams (Mar. 21, 1784), *Papers of John Adams*, 16: 93 (“Voÿla la premiere Exemple qui Sorte de nos mains et que nous refusons à toute autre”); On Adams’s efforts to arrange the English translation, see John Adams to J.F. Rosart & Co. (July 18, 1784), *ibid.*, 16: 280.

<sup>158</sup> John Adams to Antoine Marie Cerisier (Oct. 16, 1783), in *Papers of John Adams*, 15: 312 (“it is like to be to me, in particular a distinguished Mark of Respect with Posterity”); John Adams to Cerisier (Feb. 22, 1784), *Papers of John Adams*, 16: 51 (“his Approbation is the more precious to me...”).

whirl of the salon.<sup>159</sup> But he also would have perceived an affinity with Mably at the level of ideas, since the latter's output from 1749 forward cleaved unswervingly to the ideals of the mixed constitution, against physiocrats who stood for the hypertrophic concentration of constitutional authority in the crown.<sup>160</sup> Adams was aware of this before he made the abbé's acquaintance; he opined in 1780 that his Massachusetts constitution was "Locke, Sydney and Rousseau and Mably reduced to Practice."<sup>161</sup> It is worth attending, then, to the full spectrum of Mably's critique; doing so will shed light on both the lineaments of Adams's later political thought and the intellectual atmosphere in which the constitution of 1787 was conceived.

The message of the *Observations* is deeply melancholy: it is too late for North America to become a democratic republic, and its constitutional forms must adjust to this reality. For Mably, a political theorist anchored in the world of classical antiquity, democracy is only possible under certain highly constrained conditions; it "cannot long subsist, except in a republic, like those of ancient Greece, in which all the citizens were acquainted, were mutually the censors of each others conduct, and were constantly under the eye, and within the reach of the magistrate."<sup>162</sup>

Mably found several preconditions for democratic life wanting in the American republics. First,

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<sup>159</sup> John Adams, [Feb. 27, 1783], in *Diary and Autobiography of John Adams*, 3: 109 ("Spent the Evening in Company with the Abby de Mably"); Abigail Adams to Mary Cranch Smith (Sept. 5, 1784), in *Adams Family Correspondence* (Richard Alan Ryerson ed., 1993), 5: 440 ("Mr. Adams'es particular Friends the Abbés"); John Adams to John Trumbull (Apr. 28, 1785), in *Papers of John Adams* 17: 71 ("my sage and amiable Friend the Abby de Mably").

<sup>160</sup> Cf. Abbé de Mably, Lettre X, in "Doutes proposes aux philosophes économistes sur l'ordre naturel et essential des sociétés politiques" [1768], in *Œuvres*, 11: 233-4 ("Le partage de l'autorité, d'où résultent des contre-forces ou un gouvernement mixte, ne permet pas aux hommes qui gouvernent de se livrer à leur paresse, à leur nonchalance, à leur avarice, à leur ambition; il les oblige à penser avant que d'agir"); Abbé de Mably, "Entretiens de Phocion" [1763], in *Œuvres*, 10: 74 ("...par un mélange habile de tous ces gouvernemens, la puissance publique fût partagée en différentes parties propres à s'imposer, se balancer, et se tempérer réciproquement."). This last passage is quoted approvingly by Adams in an 1817 letter to James Madison; see Adams to Madison (Apr. 22, 1817), *Papers of James Madison (Retirement Series)*, 1: 35.

<sup>161</sup> John Adams to Edmund Jenings (June 20, 1780), in *Papers of John Adams*, 9: 446. Cf. John Adams to Abbé de Mably (Jan. 15, 1783), in *Papers of John Adams*, 14: 172 ("your other Writings which are much admired by the Americans, contain Principles of Legislation, Polity and Negotiation perfectly conformable to theirs").

<sup>162</sup> Mably, *Observations*, 25 [Eng.] and 35 [Fr.].

a democracy must be sufficiently circumscribed so that all citizens can meet and deliberate together. Thus Mably waxes poetic about the Swiss cantons whose members “assemble under an old oak...to deliberate without art on public affairs, as in those ages, which reflect the greatest honour on humanity.” He contrasts this idyll of dignified contemplation and reasoned exchange with the nightmarish image of 300,000 citizens collected in one inarticulate mass, a prospect that inspired him with “dread.”<sup>163</sup> Second, a democratic republic requires an exacting spirit of civic virtue, promulgated through ritual and reinforced by military service and moral surveillance. Here Mably is quite blunt: “the citizens must possess the virtues of the best ages of Rome,” the spirit of sacrifice for the *res publica* made legendary by Brutus, Horatius, and Cato the Younger.<sup>164</sup> This meant universal conscription—“les exercices glorieux de la milice”—in order to instill discipline and patriotic fervor, and to forestall the advent of a standing army that might be used to overturn the state. It meant a civil religion, what Mably calls “a moral and political catechism” for the citizenry. And it meant a byzantine architecture of censorship and supervision, proscribing “whatever might be prejudicial to” morals through sumptuary laws and civic education.<sup>165</sup>

It might have been thought that this rigorous civic moralism would give the abbé a natural affinity for the Pennsylvania constitution, which from its first appearance in translation had been the *beau idéal* of Europe’s intelligentsia, praised for its simplicity of morals and its rough-hewn democratic equality. To the shock of his readers,<sup>166</sup> it became Mably’s main target.<sup>167</sup> The

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<sup>163</sup> Ibid., 81 and 25 [Eng.] and 119 and 35 [Fr.].

<sup>164</sup> Ibid., 30 [Eng.] and 43 [Fr.].

<sup>165</sup> Ibid., 47, 63, and 67 [Eng.] and 69, 93, and 99 [Fr.].

<sup>166</sup> Note, for example, the evident surprise in O., “Art. XVIII. Observations sur le Gouvernement et les Loix des Etats Unis,” *English Review* (1784), 4: 451 (“...Pennsylvania, Massachusets and Georgia. The first of these, which

gravamen of his critique was that the manners of Pennsylvania were simply too corrupted to sustain a democratic republic; that is to say, its aristocratic sociology was out of joint with its democratic institutions. For a democracy to survive citizens must renounce personal ambition and devote themselves fully to the *res publica*. This was possible, in turn, only where legislators shared Plato's antipathy for commerce, luxury, and novelty, and abjured the construction of bustling commercial centers where foreign ideas could enter and propagate.<sup>168</sup> And despite the assurances of two generations of *philosophes* about the Quaker sobriety and equalitarian Geist of Penn's woods,<sup>169</sup> Mably insisted that it had contracted all of the ordinary vices of commercial society:

I have been informed that the Pennsylvanians apply much more to agriculture than to commerce, and that those enormous and disproportionate fortunes, which are but too frequently found in the republic of Massachusetts are unknown among them. This may be true; but is this sufficient to vindicate their Democracy?...I observe that the port of Philadelphia affords a favourable avenue to trade and industry. If the Pennsylvanians take a delight in riches produced from their lands, why should they neglect increasing their wealth by following the example of the Bostonians. I ask what measures the laws have taken to stop them on the brink of the precipice? I ask farther if, in a government entirely popular, any such measures can be taken?...Here laws and the government must interpose their assistance; and in this case, I once more ask, what are the resources of a Democracy? I dwell long on this article, Sir, because I most cordially wish that Pennsylvania may either form or adopt political principles more proportioned to its exigencies, to its present circumstances, and to the evils with which it is threatened.<sup>170</sup>

If the malady was not as advanced in Philadelphia as it was in Boston, Pennsylvania was nevertheless in the midst of an irreversible metamorphosis from an agrarian to a commercial

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has hitherto met with the greatest applause, and which exhibits nearly a perfect model of democratical government, is by no means regarded by our author with the extremest complacency.”).

<sup>167</sup> In fact, Mably had voiced admiration for the Pennsylvania constitution in an unpublished work written several years before; see *Notre Gloire ou nos Rêves* [1779], in *Oeuvres complètes de M. l'Abbé de Mably* (Paris, 1791), 14: 237 (“je trouve fort sage la forme de gouvernement que la Pensylvanie a établie, & qui a servi de modèle aux autres provinces”). His turnabout four years later may be due in part to his friendship with Adams.

<sup>168</sup> Mably, *Observations*, 30 and 85 [Eng.] and 49 and 147 [Fr.]. Cf. 18 [Eng.] and 27 [Fr.] (“The love of their country, of liberty, and of Glory forsook not the Romans even in the moments of the most violent civil rage... The Politics of Europe, founded in wealth and commerce, have long destroyed these ancient virtues...”).

<sup>169</sup> Guillaume Ansart, “From Voltaire to Raynal and Diderot’s *Histoire des Deux Indes*,” in *America Through European Eyes* (Aurelian Craiutu and Jeffrey C. Isaac eds., 2009) 76 (“By the time the *Histoire des deux Indes* was published, French liberals were already accustomed to associating Pennsylvania with a few very positive ideas: freedom of conscience, virtue, simplicity, and equality. Raynal and Diderot continue in the same vein.”).

<sup>170</sup> Mably, *Observations*, 42 [Eng.] and 69-71 [Fr.].

republic, and would have to alter its frame of government to meet this reality or suffer the shock of their disjuncture.<sup>171</sup> A nominal democracy, riven by great inequalities of wealth, and stamped with antisocial and egoistic habits of mind, would be easy prey for the rapacious and ambitious.

He sketched the likely denouement with terrifying specificity:

A single man of ability, boldness and an enterprising disposition, who has nothing to lose, but much to hope from public disturbances, is sufficient to effect, or at least, to pave the way to a revolution. But not to mention those adventurers, who from their private influence will create themselves tribunes of the people; who can be certain that no wealthy merchant, by affecting popular politics, shall take advantage of those discontents, hatred and jealousies, which are continually springing up in a Democracy, where property is so unequally distributed, to kindle the flames of civil discord, to make trial of his power, and to establish his tyranny. I shall perhaps be told that I am raising chimeras...but let me intreat you...once more to peruse the history of Florence; and I am much mistaken if you will not have reason to fear lest Pennsylvania should also give birth to its Medici, who from their bank, or their counting house, may ascend a throne.<sup>172</sup>

Pennsylvania could not be returned to the rustic purity of its original mores; it had entered a different stage in the regime cycle. But a creative institutional imagination might indefinitely prolong its existence as a free commercial republic, and hold its Florentine future at bay.

This would necessitate a complete reconfiguration of the state constitution, curbing its most recklessly democratic features while erecting austere institutions of moral instruction and social control. The former prong would consist of the annulment of precisely those democratic rights that had made Pennsylvania the envy of reformers across the globe. Pending legislation, the abbé decreed, should no longer be printed in advance to facilitate collective deliberation before the final vote; such discussions would serve no clear purpose, given that the general populace is “ignorant, weak, and liable to prejudice,” and would provide an opening for sophists and incendiaries to stir up discontent. Nor should the “multitude,” which is “always ignorant and naturally inclined to prefer indulgent magistrates,” be permitted to elect the executive power. Appointment by the legislature would produce a more enlightened choice, and furthermore

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<sup>171</sup> Cf. O., "Observations," 4: 452 ("to set the manners and the laws in opposition to each other"). For a similar view, see John Andrews, *An Essay on Republicans* (London, 1783), 81 ("a great and opulent nation can never be well and peaceably governed under the form of a republic; and must...either be torn by perpetual dissensions, or resolve itself into a monarchy").

<sup>172</sup> *Ibid.*, 26 [Eng.] and 40-41 [Fr.].



would dampen the risk of executive Cæsarism.<sup>173</sup> Equally ill-advised, in the eyes of the philosopher, was the article allowing the people to assemble in ad hoc crowds for the petition and remonstrance of the legislature. Mably allowed that in England, where parliaments are septennial and their membership drawn from rotten or pocket boroughs, this might be a crude but effective means of manifesting the public will. But in a republic like Pennsylvania with transparent annual elections, this mobbing would be “truly anarchical”—a tactic for hijacking representative democracy with the implicit threat of violence. Government is work for experts in closed chambers, not a “tumultuous assembly” brawling in the streets.<sup>174</sup> Mably’s repudiation of Pennsylvania democracy climaxes with an attack on its foundational distinction between sovereign and ordinary lawmaking, which he thought a solecism. He addressed John Adams directly:

I doubt much whether you approve of the constitution of Pennsylvania, when, instead of rendering the legislature as respectable, as extensive, and as compleat as it ought to be, it is deprived of the power of making any addition, or alteration, in the original constitution. This I must confess is a strange law. Could the legislators, assembled at Philadelphia to lay the foundation of an infant republic, possibly be ignorant, that nothing can limit the legislative power? Did that assembly consider itself as infallible? Will not new circumstances, new connections, new manners, new exigencies require either the enacting of new, or some modification of old laws? What power superior, or even equal to the legislative assembly, did the first legislators imagine they possessed...It will tend to diminish that profound respect which every citizen ought to entertain for the legislative body; to give occasion to debates and disputes concerning the nature of new regulations; to authorize lawyers, who are all naturally sophists, to interpret laws as they please, to prove that the new are null and void, because they are not exactly conformable to the old.<sup>175</sup>

This was an extension of a thought he had first developed five years earlier in *De l’étude de l’histoire*, interrogating the notion of “fundamental laws that cannot be abrogated...and to whose spirit all new laws must conform.” These constitutional rules, he countered, “might be vicious, or imposed by an ignorant and unjust legislator,” or simply suited to another era. Mably was

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<sup>173</sup> Ibid., 32-3 [Eng.] and 51-3 [Fr.].

<sup>174</sup> Ibid., 27 [Eng.] and 42-3 [Fr.].

<sup>175</sup> Ibid. 27-8 [Eng.] and 43-4 [Fr.]. Mably took no notice of a contemporary development that would appear, in retrospect, to be of the utmost importance to the history of constitutionalism, and to the special status of constitutional laws—the practice of popular ratification introduced in Massachusetts in 1778.

incredulous that they should continue to command fealty: “Explain to me why laws, because they are called fundamental, should have the privilege of being impossible to annul.” They are made by men, not gods, and must remain subject to amendment if the past is not to tyrannize over the present.<sup>176</sup> Moreover, positing “fundamental” statutes that can be altered only with great difficulty would open the door to juristocracy. Laws that cannot be removed must be continually “reinterpreted.” And this invites judges to read their own prejudices into the basic law, under the guise of exposition, where they can be shielded from political contestation.<sup>177</sup>

The second prong of Mably’s program would entail the reinvention of the Council of Censors, a body which under the terms of the Pennsylvania constitution (Sect. 47) was elected every seven years to “enquire whether the constitution has been preserved inviolate,” and “to call a convention...if there appear to them an absolute necessity of amending any article.” Mably approved of the impulse,<sup>178</sup> but thought that this body would suffer the fate of the Roman censors, who proved impotent to repel the civic corruption that descended on late republican Rome. “In order to enable the Pensylvanian council of censors to fully discharge the duties intrusted to it...it should have the care of anticipating abuses, of attending to the symptoms...[of] any new vice, and of encouraging...any virtuous principle, that may appear to be weakened.”

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<sup>176</sup> Abbé de Mably, *De l'étude de l'histoire* (Maastricht, 1778), 348-9.

<sup>177</sup> Cf. Mably, *Observations*, 74 [Eng.] and 128 [Fr.] (“it is of the utmost importance to the safety and tranquility of the citizens, that no court of justice should at pleasure form a jurisprudence of its own, which might easily degenerate into a most intolerable tyranny”). Note that Mably is not articulating a “dead hand” objection to rule by judges, sounding in democratic theory; rather, his complaint is that jurists are the wrong class of elites to craft binding rules for the people.

<sup>178</sup> Indeed, he recommended a very similar institution at the close of his manuscript *Des droits et des devoirs du citoyen*: “Cette année de réforme seroit l’espérance des bons citoyens, et contiendrait les méchants. Vous verriez qu’elle exciteroit dans tous les esprits une fermentation utile; et en forçant de se rappeler les Lois, elle empêcheroit qu’on ne les oubliât.” See Abbé de Mably, *Des droits et des devoirs du citoyen* [ca. 1758] (Kell, 1789), 355. Jérôme Pétion would cite this passage in 1789, crediting Mably with helping to invent the idea of constitutional conventions. See Pétion, “Sur les conventions nationales” [1789], in *Œuvres* (Paris, 1793), 2: 330-1 ff. 1 (“Mably...veut que tous les vingt ou vingt-cinq ans on établisse une convention...pour examiner avec soin la situation présente du gouvernement.”).

That is to say, it should monitor not only the constitution but also its citizens, continually ensuring that they are fit agents of a free political life. This meant policing their religious exercise, and their political speech, to a much greater degree than citizens had thus far proved willing to accept. The Pennsylvania Declaration of Rights, for example, extended religious freedom to “any man, who acknowledges the being of a God” (Art. II), a freedom that Mably feared would attract persecuted sects from across the globe, and encourage the promulgation of new heterodoxies. Mably foresaw two contradictory possibilities for a society crippled by this “extreme toleration”: fanaticism or deism, that is to say, either the interconfessional violence long familiar on the continent, or else the waning of religious feeling altogether, as the “medly of so many different religions” produces “a general indifference to...public worship.”<sup>179</sup> These twin perils, Mably thought, could be counteracted only through a combination of broad toleration and close regulation. On the one hand, the “various religions of America...should mutually tolerate each other, because Providence tolerates them all with equal indulgence.” And all laws restricting the ability of clerics to serve in government should be repealed. But the precondition for this toleration is that each religion submits itself to ongoing scrutiny by the state. It must, for example, fix “its doctrine and discipline in a catechism” for all time, with no possibility of future revision, and bar converts from joining its ranks. “By these means, in each sect disputes and quarrels would be prevented...different religions would interfere less with each other, and a habit of mutual intercourse...would daily acquire strength.” These lessons would be folded into a new and overarching civic creed, preaching “love of laws, of country and of liberty,” to be drilled into the republic’s children, and into the large number adults who “from the dulness...their

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<sup>179</sup> Ibid., 55-7 and 96-7 [Fr.].

faculties...will resemble children during their whole life.”<sup>180</sup> The vast number of citizens lacking the cognitive capacity for self-government suggested to Mably that political speech, and not just religious ritual, should come under the watchful eye of the censor. This was the standard practice in Greece and Rome:

Not thus did those ancient republics, which claim our admiration, conduct their government. They distrusted the weakness of the human understanding, they knew how easily falsehood establishes it's [sic] empire over mankind...Had the art of printing been known to them, it is not probable they would have suffered rash authors to publish dangerous paradoxes...to excite men incapable of reflection, against those, to whom the laws intrusted government and the public welfare...I should convince you...by reminding you how small is the number of persons capable of thinking for themselves, and of discussing an opinion: the rest are a heap of children, who have no ideas of their own, whom no absurdity shocks, and whose memory is their whole understanding...therefore government is designed to direct the turn of thought of such persons, as parents are to guide their children.<sup>181</sup>

If Pennsylvania was to slow the inexorable energies of republican decline, its “council of censors” would have to be remade—from a periodic convention “assembled every seventh Year” into a permanent body exercising “a vigilant, attentive and perpetual censure” over public morals, and setting limits to its raucous freedom of expression. Otherwise it would prove as precarious, and ultimately as ephemeral, as the republican city-states of the Italian renaissance.

Thus Mably, the greatest theorist of democracy and social equality of his era, dismissed the egalitarian Pennsylvania charter as undisciplined and anarchical. The paradox is deepened when we recall that Mably deplored the influence exerted by “English Laws...formed amidst feudal barbarity” over the state constitutions, while praising the Massachusetts plan of government for having perfected the English system.<sup>182</sup> Reviewers were bewildered by the seeming turnabout: “The government of the state of Massachusetts,” wrote one in exasperation, “which has been regarded by many as too servile an imitation of that of Great Britain, and is in this light

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<sup>180</sup> Ibid., 62-5 [Eng.] and 107-11 [Fr.]. See, similarly, Andrews, *Essay*, 77-8 (“...several nations of antiquity constituted an office among them, for the inspection and scrutiny of the morals and manners of the community...In default of so useful an institution, a well-constituted Government should substitute some sort of equivalent...”).

<sup>181</sup> Ibid., 66-7 [Eng.] and 116-18 [Fr.].

<sup>182</sup> Ibid., 13 and 37 [Eng.] and 22 and 61 [Fr.].

condemned by the venerable Turgot, is regarded in a much more favourable point of view by abbé de Mably.”<sup>183</sup> The royalist Turgot flocked to the standard of American democracy, and Pennsylvania; the utopian democrat Mably cast his lot with Massachusetts and the mixed constitution. But the tension was only on the surface. Mably was quite candid that what he admired in Massachusetts was not perfection but realism. “Upon a democratical basis,” he congratulated Adams, “you have established an aristocracy...which the manners of America, but too similar to those of Europe, now render necessary.”<sup>184</sup> Mably applauded the decision to exclude ordinary workingmen from the ballot—“those who have no property but their labor, and who could only disturb the political administration, were any authority allowed to them.” The ancient republics, regrettably, had made slaves of such men. “Your laws with greater wisdom take the poor under their protection; who may indulge the hope of rising, by industry and frugality,” to the status of freeholder and voter. And by instituting a graduated franchise, in which those of moderate means could vote for the lower house, and those of greater means the upper, the constitution would prevent the wealthy from “engrossing among themselves the whole authority” of the state.<sup>185</sup> The philosopher was equally pleased with Massachusetts's sensible arrangement of powers. The elected governor, subject to term limits, hemmed in by a council appointed by the legislature, and lacking any source of independent revenue, “is not the enemy of public liberty, like a King of England,” and will have no opportunity to build a legislative majority through corruption. But the governor would possess one critical royal prerogative—a

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<sup>183</sup> O., Art. XVIII, 4: 452. In the process, he understated the democratic credentials of the Massachusetts constitution; see Palmer, *Democratic Revolution* 1: 203 (Mably “launched the notion that the one American constitution written during the war that provided for direct popular election of governor, senators, and representatives by a wide franchise was peculiarly undemocratic.”).

<sup>184</sup> Mably, *Observations*, 40 [Eng.] and 66 [Fr.]. See also 94 [Eng.] and 163 [Fr.] (“preparing the republic for its inevitable transition to aristocracy”).

<sup>185</sup> *Ibid.*, 43 [Eng.] and 72-3 [Fr.].

(conditional) negative voice. Massachusetts would thus enjoy the undeniable benefits of England's tricameral legislature, which "by counteracting all precipitation, surprize and infatuation" tends towards inertia, and thus insulates decisionmaking from the vicissitudes of public opinion.<sup>186</sup> Mably approved, too, the tutelary aspirations of the new constitution, which made it the "duty of the legislators and magistrates...to cherish the interests of literature and the sciences...[and] to inculcate the principles of humanity and general benevolence" in its laws, public schools, and seminaries. He voiced only a single reservation: that under Adams's constitution, magistrates and legislators would draw a pension. This, thought the abbé, degraded public service by converting it into a mercenary activity pursued for personal gain. "We can have but little love for our country," he averred, "if we demand a salary for serving it." He asked that such payments be suspended—he took for granted that most magistrates would already "be possessed of a competent fortune"—and proposed the further enactment of sumptuary laws to stem "the progress of luxury," and to definitively sever public honor from private wealth.<sup>187</sup>

Adams spoke habitually of a clash between two distinct constitutional imaginaries—the ordered, hierarchical republicanism of Massachusetts, and the populist democracy of Pennsylvania. At first glance it might appear that Mably fully subscribed to this dichotomy:

I doubt not but those, whose favourite topic is the dignity of man, and the common rights which all derive from nature, will prefer the government of Pensylvania to that of Massachusets. But I am equally certain that they will alter their opinion, as soon as they leave their metaphysical speculations, and consider how limited in most persons is the human understanding. It seems indeed as if nature herself, by the unequal manner in which she distributes her favours, provided for that subordination without which society cannot

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<sup>186</sup> *Ibid.*, 38-9 and 44 [Eng.] and 63-5 and 73 [Fr.] || On Mably's opinion that the English constitution was rapidly moving towards royal despotism, see *ibid.*, 38 [Eng.] and 63 [Fr.] ("...who incessantly and secretly undermines the rights both of the peers and commons; and who, gradually advancing, by means of corruption, towards arbitrary power, enervates their minds, enfeebles the sentiments of liberty, and will at length find a crisis, when by acting with vigour and severity, he may, like Henry VIII, astonish and confound the English, and teach them to bow beneath the weight of his sceptre.").

<sup>187</sup> *Ibid.*, 52-3 [Eng.] and 88-90 [Fr.].

exist. We ought therefore to conform to her laws in the establishment of ours, and not assign the power of government to those whom she has destined to be governed.<sup>188</sup> Certainly Mably and Adams converged on a number of points: that Pennsylvania would ricochet from democracy to oligarchy, that constitutions must be proofed with checks and balances, and that governance must take into account the inequalities of intelligence, charisma, and property that prevail in all human societies. Nevertheless, their superficial accord papered over a fundamental disagreement about the best form of political community. One important clue to their divergence was the praise that Mably lavished on the constitution of Georgia. Its political institutions were nearly identical to those of Pennsylvania—a unicameral legislature, a governor surrounded by an executive council, and a broad franchise. But its demographics—rural, thinly populated, and free of a prosperous urban center—stood out in stark relief. “All their ideas must naturally incline towards agriculture, which alone affords abundance to mankind, preserves the simplicity of their manners, and disposes their souls for grand objects.” It presented, in other words, “a new colony”—a blank canvas where Mably’s agrarian democracy might still be realized.<sup>189</sup> Its population was small enough that its citizens could gather in one place to confer on matters of public concern; its manners were not yet poisoned by the vices of commercial society. Having prohibited entails, it enjoyed a mediocrity of fortunes that fostered political moderation. Under these conditions, it was entirely correct to “steer clear of an Aristocracy by not establishing, like those of Massachusetts, two houses to exercise the legislative power,” and by allowing smallholders the ballot. He urged Georgia to preserve these natural advantages by closing its borders to commerce and immigration, and was scandalized that the seal of the republic included the image a ship. This sent precisely the wrong message; every resource of the

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<sup>188</sup> Ibid., 40-1 [Eng.] and 67-8 [Fr.].

<sup>189</sup> Ibid., 44 [Eng.] and 74-5 [Fr.]. Cf. "Remarks concerning the Government and the Laws of the United States of America," *European Magazine and London Review* (Feb. 1785), 103-4 (calling Mably's writings on Georgia "the very spirit of *Arcadian*, or rather of *Utopian simplicity*...[which] will not be readily reduced to practice in the 18th century").

state should work towards the production of simple, public-spirited citizens who “practice the honorable exercises of the militia, as a relaxation from the labours of the plough.”<sup>190</sup> Nevertheless, Georgia was preëminent among the American republics. Mably did not hesitate to pay it the highest compliment in his repertoire: comparison with the Swiss cantons, which were happily “too poor” to be infected with “the vices of our age.”<sup>191</sup> In the last part of his treatise he asked whether it might be possible to replicate its achievement in larger, more commercially-developed states. And, recalling the Swiss example, he queried what role *confederation*, the project of binding together thirteen newly-independent republics might play in catalyzing this transformation. In his elaborate plans for a unicameral federal government, we find him pulling further apart from Adams, at the levels of both constitutional form and political theory.

Mably ruled out the thought that the United States would need to “constitute new magistracies,” or, worse, “create a Stadholder” to execute its laws.<sup>192</sup> Instead he envisioned a sovereign representative assembly—the Congress established by the Articles of Confederation, inflected with new powers. “This august assembly,” he lectured, “was the ring, the chain, that held that thirteen states closely united...But it will not subsist, unless you take those measures which are best calculated to secure to Congress...the respect it now enjoys,” and the authority “which it must have in order to cement your union.” Mably, with his fondness for Hellenic

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<sup>190</sup> Ibid., 45-7 and 76-7 [Eng.] and 75-80 and 132-3 [Fr.].

<sup>191</sup> Ibid., 77-9 [Eng.] and 133-7 [Fr.]. Cf. *ibid.*, 6 [Eng.] and 9 [Fr.] (“you will afford to America a spectacle similar to what the Swiss present to Europe, of which she has not sufficient wisdom to know the value”); Mably, *Des droits et des devoirs*, 192 (“Les Suisses sont libres, et le seront tant qu'ils conserveront une barrière impénétrable entr'eux et le luxe.”); Johnson Kent Wright, “Mably and Berne,” *History of European Ideas* (2007), 427-39, 427 (“the Swiss cantons had no greater external admirer in the eighteenth century”).

<sup>192</sup> Ibid., 107 [Eng.] and 186 [Fr.]. Mably, in *Des droits et des devoirs du citoyen* (p. 193), argued that the Stadholder was too volatile an element to permit in a republic—the powers of a dictator, unwisely concentrated in a permanent magistracy. As he memorably phrased it, the “Stathouder n'est encore qu'une lionceau qu'on tient à la chaîne; mais il peut la rompre et devenir un lion.”



flourishes, likened this body to the Amphictyonic Council.<sup>193</sup> And he proposed a number of reforms to strengthen its prerogatives and embolden its members, including extending the term of delegates and preventing their premature recall by state legislatures,<sup>194</sup> and entrusting the Congress with control over the continental army. Crucially, he also wanted to expand the mandate of what had been primarily a diplomatic council, granting it capacious authority to police the wealthy and ambitious in the style of the Roman tribunate:

If citizens, who may imagine that they have just cause of complaint, have not legal means of obtaining an impartial hearing, you may be certain that as they will act with impetuosity, and...will proceed to the last extremities. It is for this reason, that all politicians, have greatly admired the establishment of tribunes in the republic of Rome. The people, certain of having protectors, depended upon them for the care of their interests...You have not the manners of the ancient Romans, and I fear your tribunes would resemble those of the later periods of Rome, who...sacrificed the interests of the republic to that of their passions. The authority of Congress, if you give it the extent and credit which it ought to possess, will amply supply the place of those magistrates...I can see only one resource for the Americans, which is, to render the continental Congress the supreme judge of every difference that may arise between the several ranks of citizens, in all the states of the union...I rather hope, that...[the rich] will with pleasure behold a power established in your confederacy, that is favorable to equality, that will preserve the first class of citizens from an ambition, which would terminate in their ruin, and the lowest ranks from a servility and wretchedness...[that] would soon recoil upon the wealthy.<sup>195</sup>

Three years before the Philadelphia convention, Mably could already envisage a Congress acting directly on American citizens, without the mediation of state governments. “The continental Congress” will thus become “the common center in which every private interest will be blended together, and form one that will be general and invariable.”<sup>196</sup> This was very near to what Adams

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<sup>193</sup> Ibid., 108 [Eng.] and 187-8 [Fr.]. || This analogy would subsequently be picked up by Madison; see his Notes on Ancient and Modern Confederacies [Jan. 1786], in *Papers of James Madison (Congressional Series)* (Robert A. Rutland et al eds., 1975), 9: 7-8; [James Madison, with Alexander Hamilton], Federalist No. 18 [1787], in *The Federalist Papers* (Terence Ball ed., 2003), 82-3 (“The Abbé Mably...says that the popular government...caused no disorders in the members of the Achæan republic, because it was there tempered by the general authority and laws of the confederacy”). || The same historical analogy would be seized upon by opponents of the new republic; see “Extract of a Letter from New York, dated April 11, 1782,” in *Public Advertiser* [London], May 23, 1783, 3 (“A little time, and the authority of Congress will sink to that of the Council of Amphictyons...separate views, and separate interests, must for ever divide them”) and “America,” in *Public Advertiser*, Aug. 20, 1785 (“The Amphictyonic council...did not, however, preserve internal concord”).

<sup>194</sup> Ibid., 115-16 [Eng.] and 199-200 [Fr.]; *ibid.*, 109 [Eng.] and 189 [Fr.].

<sup>195</sup> Ibid., 112-14 [Eng.] and 195-8 [Fr.].

<sup>196</sup> Ibid., 6 [Eng.] and 9 [Fr.]. The English translation is slightly garbled; the French reads “sera le centre commun où tous les intérêts particuliers iront se confondre, pour n’en former qu’un general & toujours le même.”

would execrate, several years later, as unicameral dictatorship, the “government in one centre” desired by Turgot and his disciples. But Mably did not expect that this new-modeled Congress would do more than delay the onset of civic corruption. Indeed, its primary purpose was to ensure that the transition to aristocracy would be orderly and pacific, free from both revolutionary violence and predatory plunder. Never shy about issuing prophecies, Mably looked forward to a future America, stratified by rank but largely contented. “The Poor, not being oppressed, will be reconciled by custom to their lot; subordination will be no longer offensive to the people, who, as they are happy, will conclude that the distinctions enjoyed by the rich are legally their due.”<sup>197</sup>

Mably’s pamphlet was read with great interest in both Europe and America.<sup>198</sup> The poet Jean-François de la Harpe advised the Russian statesman Andrei Shuvalov that “of all the works of Europe, those of the abbé de Mably [are] the most appropriate to the situation of the colonies, now independent states.” The *Westminster Magazine* gave it an enthusiastic review, and guessed that the abbé's "new American allies, are, no doubt, obliged to [him] for this investigation of their infant government." And Laurent-Pierre Bérénger, one of Mably's earliest intellectual biographers, judged it a "worthy" ambition to "want to enlighten a new people...wishing to correct their constitution." But not everyone was so favorably impressed. The Italian-born radical Philip Mazzei attacked Mably's “mad presumption as a Legislator, his false reasoning, his constant contradictions, &...his dogmantic insolent pedantry.” Edmund Randolph, the sitting governor of Virginia, spoke contemptuously of his “levities...concerning America.” And a Paris

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<sup>197</sup> Ibid., 116-7 [Eng.] and 203-4 [Fr.]. Cf. *ibid.*, 120 [Eng.] and 211 [Fr.] (“prescribe limits to rapacity”); *ibid.*, 102 [Eng.] and 180 [Fr.] (“revolutions will happen in the United States...they will not be effected...without disturbance, violence, and commotions”).

<sup>198</sup> Reprinted in America: *New-York Morning Post*, Apr. 21/May 12, 1785, at 2; [Boston] *Independent Ledger*, Dec. 26, 1785, at 1. Summarized: Extract of a letter from a gentleman in Ostend to his friend in Philadelphia, *Columbian Herald* [South Carolina], Mar. 14, 1785, at 3; On the important Subject of our falling into an Aristocracy, &c., *Daily Advertiser* [New York], Apr. 17, 1786, at 2.

correspondent of Franklin pronounced the great philosopher a quack—“a gentle surgeon, caressing the folds that will prove fatal to your country if the scalpel is not quickly and carefully applied.”<sup>199</sup> The London gazettes delighted in inventing farcical reports of Mably’s fluctuating reputation in America, relating first that he had been voted a handsome reward by Congress in recognition of his achievement (“a service of plate, valued at 500l. sterling”), and, two months later, that his book had “been proscribed by the Americans, ignominiously dragged by the populace through the channels, and the author hanged in effigy.”<sup>200</sup>

We can gauge the influence of Mably’s *Observations* by the breadth and depth of the opposition it engendered. William Vans Murray, an American law student in London and a protégé of John Adams, subjected it to withering criticism in his *Political Sketches* of 1787. Mazzei dedicated the second tome of his *Recherches historiques et politiques sur les États-Unis* to an exhaustive rebuttal of “the good natured and uninformed Abbé de Mably.” Jean Nicolas Dêmeunier, a friend and correspondent of Jefferson, published a multivolume study of the American constitutions, in which he rapped Mably repeatedly for errors of fact and

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<sup>199</sup> Jean François de La Harpe to Count Andrei Petrovich Shuvalov (Sept. 1, 1784) [Electronic Enlightenment]. Cf. “Translation of a Letter from Mr. Target, to a particular friend of his in Philadelphia, dated Paris, Oct. 24, 1783,” *South-Carolina Gazette*, Sept. 2-4, 1784, 4 (“Of all our works, those of *Abbe de Mabli*, are best adapted to the situation of the English colonies, become independent States.”). || “Observations sur le Gouvernement et les Lois des Etats Unis d’Amerique,” *Westminster Magazine* (Nov. 1784), 604. || Laurent-Pierre Béranger, *Esprit de Mably et de Condillac* (Grenoble, 1789), 1: 43. || Philip Mazzei to John Adams (Jan. 23, 1786), in *Papers of John Adams*, 16: 121. || Edmund Randolph to James Madison (Aug. 13, 1788), in *Papers of James Madison (Congressional Series)* (Robert A. Rutland and Charles F. Hobson eds., 1977), 11: 214. || Author of *Le Developpement de la Raison* (unpublished) to Benjamin Franklin (Jan. 15, 1785), in *Papers of Benjamin Franklin*, 42: u604 (641927).

<sup>200</sup> [London] *General Evening Post*, Nov. 25, 1784 (“This present was to be sent to Paris, and delivered by Dr. Franklin.”); *London Chronicle*, Jan. 22, 1785 (“However, though thus disgraced in America, he is highly extolled in France.”). Cf. Articles divers tirés des Papiers Anglois & autres, *Mercure de France*, Jan. 25, 1785, 144 (“Le dernier Ouvrage publié par M. l’Abbé de Mably, sur les Constitutions des Etats-Unis de l’Amérique, a révolté les Américains...Dans plusieurs Etats, on l’a pendu en effigie, comme *ennemi de la liberté & de la tolérance*, & son Livre a été traîné dans la boue.”).

interpretation. And Brissot issued a scathing review in his *Journal du Lycée du Londres*, accusing the abbé of harboring aristocratic fantasies and “contempt for the people.”<sup>201</sup>

These authors coalesced around three main axes of critique. First, the philosopher had a weak grasp on his ostensible subject, the sociology and constitutional theory of the American states. Massachusetts was not at all the enlightened aristocracy of his imagination; it recognized no form of authority that could not be traced ultimately to the people, and placed only minimal restrictions on the suffrage. Indeed, the franchise was more accessible in the Bay State than in many of its sister colonies; this was no coincidence, Mazzei added, since the state's famous “spirit of equality” had made it the center of resistance to Westminster during the prolonged imperial crisis. This did not mean that Massachusetts was free from the dangers of usurpation, Mazzei hastened to add, but Mably was confused about the nature of this threat: “it was Massachusetts that was most likely to fall *under the yoke of an oligarchy, or a sole master*,” owing to its strong chief executive, “and Pennsylvania that was most in danger of becoming an *aristocracy*” due to its combination of democratic cacophony and extravagant commercial wealth.<sup>202</sup> Mably, lacking firsthand knowledge of the continent, treated North America as a screen on which his philosophy, culled haphazardly from ancient histories, could be projected.

And this generated a second flaw in the abbé's analysis: his tendency to view American representative democracy through the distorting prism of the classical world. Condorcet spoke

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<sup>201</sup> William Vans Murray, Dedication, in *Political sketches, inscribed to his excellency John Adams* (London, April 1787), [no pagination] (“...the following sheets, which were written in 1784 and 1785, immediately after the publication of ‘Abbé Mably’s Remarks.’”). || [Philip Mazzei], Réponse aux observations de l’abbé de Mably, in *Recherches historiques et politiques*, 3: 1-257. For the quote, see Mazzei to Adams (Oct. 29, 1785), 1: 502. || Jean Nicolas Démeunier, *L’Amérique Indépendante, ou les différentes constitutions des treize provinces* [1788] (Gand, 1790), 1: 48-9. Cf. Jean Nicolas Démeunier to Thomas Jefferson (Apr. 9, 1786), in *Papers of Thomas Jefferson (Main Series)* (Julian P. Boyd ed., 1954), 9: 382 (“Après avoir eu L’extrême complaisance de m’instruire de vive voix et par écrit de ce qui a rapport aux nouvelles republicques d’Amerique...”). || Jacques-Pierre Brissot, “Observations de M. Mably,” *Journal du Lycée du Londres* (Nov. 1784), 2: 5: 282.

<sup>202</sup> Mazzei, Réponse, 2: 76-7. Cf. Jean-Nicholas Démeunier, “Massachusett,” in *Encyclopédie méthodique, économie politique et diplomatique* (Paris, 1788), 3: 287.

for many of his peers when he mocked the abbé as a "pedant" in thrall to "the tyrannical anarchies of Italy and Greece."<sup>203</sup> And this, added William Vans Murray, had badly marred his analysis of America, since the ancient governments "could furnish but a slight resemblance to the American Democracies."<sup>204</sup> America spanned a vast continent, and comprised a patchwork of thriving interlinked republics, while the republicanism of antiquity and the Renaissance existed only within the framework of highly circumscribed city-states. As Charles-Joseph Mayer, former editor of the prestigious *Mercure de France*, observed in 1787, "it would be foolish to fear" that an American Medici could come to power through the kind of *coup d'état* that was routine in Renaissance Florence; given the relative equality that prevailed in cities like Philadelphia, as well as the superior opportunities for personal enrichment available on the frontier, there existed neither the means nor the motivation.<sup>205</sup> Moreover, the classical city-states were necessarily blind to the distinction between special and ordinary lawmaking that was American constitutional democracy's distinctive contribution to political theory. Dêmeunier explained in an aside in his article on the Pennsylvania constitution:

No doubt in Athens every general assembly could reform or change the constitution, because there the citizens congregated and deliberated themselves. But what does this fact about Athens have to do with the American republics? And is it not clear that the citizens of America can set limits to the authority of their representatives?<sup>206</sup>

That is to say, the American states were *limited governments*, answerable to a written constitution, and ultimately to the final judgment of the people. Athens, by contrast, possessed a government of unlimited authority, which could drastically reorganize the distribution of

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<sup>203</sup> Condorcet, *Vie de Voltaire* (1789), in *Œuvres*, 1: 183.

<sup>204</sup> Murray, *Political sketches*, 5. Cf. J.P. Brissot de Warville, Introduction, Étienne Claviere and J.P. Brissot de Warville, *De la France et des États-Unis* (London, March 1787), xi ff. 1 ("M. l'abbé Mably...s'etoit depuis trop longtems rouillé dans l'étude des vieux gouvernemens de l'Europe; il s'etoit trop enthousiasmé des républiques de la Grece, pour pouvoir écrire...sur les républiques Américaines, dont la constitution est infiniment supérieure...").

<sup>205</sup> Charles-Joseph Mayer, *États-Unis de l'amérique septentrionale, comparés avec les ligues achéenne, suisse et hollandaise* (Geneva, 1787), 2: 267-8.

<sup>206</sup> Dêmeunier, "Pensylvanie," in *Encyclopédie*, 3: 581; Mazzei, Réponse, 2: 49.

collective powers and individual rights in response to the whims of the *ecclesia*. Dêmeunier argued that, as a consequence, classical and modern "democracies" were of fundamentally different types. "The American government," he clarified, "is democratic, but it is not a democracy in the sense given to that term by Aristotle and the Abbé de Mably."<sup>207</sup> But many of Mably's critics were intent on pushing this further, maintaining that the ancient "democracies" were in fact disguised oligarchies, and that only contemporary democracy was worthy of the name. It was in this spirit that William Vans Murray contrasted the "purely and unalterably Democratic" American constitutions with the "heterogeneous" constitutions of the ancient republics, overseen by patricians who monopolized "all the dignities, offices, and emoluments of state." America had not, like Rome after the flight of the Tarquins, exchanged "the tyranny of the one, for the oppression of the many"; it had no class of hereditary elites, and no religious dogma meant to keep the masses in cringing subjection. Its revolution had not been a conspiracy of patricians to divide the spoils of the commonwealth among themselves, but rather "an universal struggle for an universal right."<sup>208</sup>

Mably's interest in the highly stratified classical world, his detractors asserted, was a marker of his fundamental elitism, his belief that ordinary people were not equipped for self-government. "The root of Mably's preference for aristocracy over democracy," Brissot inveighed, "is his contempt for the people." But the quotidian reality of politics had little in common with the portrait painted by the abbé of a philosophical colloquy safely pursued only by those steeped in the esoteric learning of the humanities. The kind of knowledge required of republican magistrates, to say nothing of voters, is in fact quite ordinary—a rudimentary understanding of political economy and national geography. "One need not be a Grotius or a Montesquieu," he

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<sup>207</sup> Dêmeunier, "États-Unis," in *Encyclopédie méthodique, économie politique et diplomatique* (Paris, 1786), 2: 364

<sup>208</sup> Murray, *Political sketches*, 5, 16, 19.

rejoined, to legislate for a great nation, "ordinary common sense and moderate intelligence should suffice." The idea that America's future might hinge on the cultivation of a cognitive elite, empowered to censor and direct the thinking of the citizenry, was utterly anathema.<sup>209</sup>

As we have seen, one of the imagined task of this intellectual elite was to foster the rigorous virtues of republican citizenship. Mably believed, with Montesquieu and other prominent thinkers,<sup>210</sup> that the prosperity occasioned by global commerce would breed luxury, which would in turn destroy the ascetic spirit that sustained republican institutions. Hence his proposal that republics curtail their international trade and closely regulate the morals and ideas of their citizens. Some, like Brissot, professed to agree with Mably about the superiority of Lacedemonian civilization, while questioning (like the abbé himself) whether it could still be realized. "No one would like more than me," the journalist declaimed, "to see the United States isolate themselves from the rest of the world, and rediscover the austerity of the Spartan regime." Unfortunately this was an impossibility; America had already developed a taste for European opulence it could not now unlearn, and so would have to make its peace with commercial modernity.<sup>211</sup> Other critics, led by William Vans Murray, attempted to prise apart the imagined nexus between social wealth and aristocratic government, adding their voices to the century-long debate over "luxury." "The idea is but too prevalent," Murray declared, "that as luxury hath extended, liberty hath receded."<sup>212</sup> In fact the "liberty" enjoyed by the ancients was an optical

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<sup>209</sup> Brissot, "Observations de M. Mably," 2: 5: 282. Cf. Mayer, *Les ligués*, 2: 271 ("Mais pourquoi tant de mépris pour le peuple?").

<sup>210</sup> See Istvan Hont, "The early Enlightenment debate on commerce and luxury," in *Cambridge History of Eighteenth-Century Political Thought* (Mark Goldie and Robert Wokler eds., 2008), 379-419, esp. 407-9 on Montesquieu, corruption, and classical republicanism.

<sup>211</sup> Brissot, *Nouveau voyage*, 3: 106.

<sup>212</sup> Murray, *Political sketches*, 45. Cf. *ibid.*, 23, summarizing Mably's position ("...this hackney'd assertion—that what is usually understood by the term virtue...is the root of democracy—that relaxation of manners wounds this

illusion, a "phantasmas of scientific superstition, and misplaced admiration," produced by moderns venerating a past they failed to fully understand. Athens and Rome were violent societies that lacked basic liberties; Sparta, Mably's paragon, was more akin to a military barracks than a republic.<sup>213</sup> The superiority of modern commercial republics is evident in "the lustre of the understanding, and in the multiplication of social relations" enjoyed by their citizens, an expansion of learning and sympathy underwritten by the gradual extension of travel and trade between nations. And so it should not be surprising that in England "the circulation of wealth, and the necessary introduction of luxury and refinement" sounded the death knell of feudalism. It was commerce, not Lacedemonian virtue, that had leveled hierarchy and introduced a measure of liberty into the English constitution. In the words of Murray, trade "will always create a fluctuation of opulence favourable to Democracies, and fatal to perpetuities of power."<sup>214</sup>

The essence of these critiques was that Mably had too little faith in the incipient American republics; in the assessment of Mayer, "Mably n'a calculé que les vices des Américains."<sup>215</sup> That is to say, he rejected out of hand the possibility that a representative democracy committed to individual liberty might take hold, in order to force an impossible choice between spartan democracy and merchant aristocracy. But if Murray, Mazzei, and Brissot recoiled at the reflexive

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root; and that in the progress the progress of luxury, the advances of aristocracy are evidenced—nay, it invites them"). For a similarly skeptical précis of Mably on this point, see Brissot, *Nouveau voyage*, 3: 95-6.

<sup>213</sup> Murray, *Political sketches*, 31, 35, 40. Murray discusses Sparta in terms of Montesquieu's admiration, but Montesquieu and Mably are nearly interchangeable in his polemic.

<sup>214</sup> *Ibid.*, 55.

<sup>215</sup> Mayer, *Les ligués*, 2: 264.



conservatism of Mably's vision, the legal philosopher F.-B. Félice<sup>216</sup> regretted that it had not gone far enough. Thus in 1785 he published a new edition of the *Observations*, joined to 150 pages of his own critical commentary. Although Félice signed this pseudonymous text "Un Républicain,"<sup>217</sup> he insisted even more stridently than Mably that the republican experiment in North America was doomed to failure. "Its mores," he thundered, "are already corrupt," its citizens desperate to become rich, and its politicians eager to adopt the meretricious values of the British and French upper classes. Growing commerce would mean stratification—"an infinite inequality in the fortunes of private individuals"—which would be worsened by the ongoing immigration of "European rabble and foreign speculators." Under these bleak conditions there was no hope of republican values surviving. At the same time that the moral life of America was being deformed by cupidity, its political life was mired in impotence and gridlock, as the Continental Congress struggled to enforce its writs in the states. As Félice put it, "the physical and moral circumstances" of the continent "militate against any confederation, indeed against any kind of republican government." There was simply too much territory to govern,<sup>218</sup> and Congress had at its disposal only the dubious armaments of "mildness and persuasion." Massive inequality, social anomie, and a weak state formed a toxic combination, and "could only be regarded as the forerunner of tyranny." Félice repeated Mably's equivocal prophecy in a more confident tone: "A powerful and ambitious individual will easily seize one of the larger

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<sup>216</sup> Félice's encyclopedia of international law, titled the *Code de l'Humanité ou la législation universelle* (13 vols., Yverdon, 1778), was cited by Madison in Federalist No. 18 and 20, as well as in his contemporaneous "Additional Memoradums on ancient and Modern Confederacies." The book was transmitted to him by Jefferson, who called it "an excellent work" in a 1785 letter to Edmund Randolph.

<sup>217</sup> His authorship, however, was widely known; see, e.g., *Journal des Sçavans* (Jan. 1786), 180.

<sup>218</sup> Félice was hardly the only European observer to revive the Montesquieuean dictum on the impossibility of extensive republics in the context of the new American republics; see, e.g., Andrews, *Essay*, 18-24, 80-1; William Paley, *Principles of Moral and Political Philosophy* (London, 1785), 462 ("To what limits such a republic might, without inconvenience, enlarge its dominions...is about to be tried in America upon a large scale."); and more generally, Gerald John Ghelfi, *European opinions of American republicanism during the "Critical Period,"* (Ph.D. dissertation, Claremont Graduate School, 1968), 7-15.

provinces, and, like a Medici, will place his state, and perhaps the entire confederacy, in chains." The nation, whose continental expanse rivaled the Roman empire, was simply too large to be governed with republican measures; "one feels the necessity of a master." But, as in the SPQR, this reality would likely be acknowledged only after the cataclysm of a civil war. Félice asked pointedly whether passions in the America of 1785 were any less violent "than those of Rome in the time of Marius, Sulla, Cæsar, and Augustus," insinuating the live possibility of a *bellum civile americanum*. The superficial sheen of cosmopolitanism and enlightenment that supposedly defined the age, underwritten by self-interest and *doux commerce*, left him unconvinced.<sup>219</sup>

Mably, to his credit, had intuited that the existing confederal structure would not hold, and so petitioned his American friends to consider far-reaching revisions. As we have seen, his preference was to bolster the capacities of the Continental Congress so that it could function like a true national government, on the example of the Amphictyonic Council. Félice thought this clever, but ultimately more suited to an assemblage of "small and virtuous nations," forced by external dangers to fuse into a single polity, than to thirteen self-sufficient republics accustomed to independent action. The proper analogy was not to the weak city-states of the ancient world, as Mably supposed, but rather to the wealthy commercial republics of Switzerland and the United Provinces, both of which would have balked at having their internal workings dictated from Geneva or the Hague. Allowing a federal legislature to "derogate, even indirectly, the rights of sovereignty" in formerly independent states was a recipe for discontent and revolt. And so only two years after independence, the American republic seemed to be speeding towards a desolate future of belligerency and dismemberment. Americans, Félice mused, might even come to "regret the passing of British rule," as it dawned on them that they had exchanged the

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<sup>219</sup> Félice, *Remarques*, 147, 156, 197, 191.

benevolent administration of London for the hollow independence of the state of nature.<sup>220</sup> But there was one institution that might yet prove the young republic's salvation:

The prince-*Stadtholder* is the final arbiter in all disagreements that may arise between the seven provinces [of the Netherlands]. I would have thought M. de Mably disposed to counsel the establishment in the United States of a *Stadtholder*, or at any rate a chief executive who would be at the center of the American union. The remedy that he has proposed instead to extinguish the fires of discord is quite foolish, and more likely to inflame them instead.<sup>221</sup>

A nakedly regal office of this kind—Félice noted approvingly that the *Stadtholderate* was finally "made hereditary" in Holland—would resolve a number of impasses in the nascent republic. It would offer a symbolic *point de ralliement* to bind the various states into a common political project, without threatening their internal autonomy. It would serve as a *conseil suprême*, defusing highly combustible disputes over the geographic boundaries between the states, and so opening a path to the settlement of the western territories. And it would present a unified foreign policy to the courts of Europe, which might otherwise be tempted to play *divide et impera* and carve the new nation into warring client-states. Félice built to a rapturous vision of American as a limited monarchy, a republican kingdom "which would have the advantages of the English and Polish crowns, without their faults."<sup>222</sup> He elaborated:

If the United States were to establish monarchical government, tempered so as to ensure true liberty, these Machiavellian cabals would collapse on themselves, and the monarch at its center would animate both the center and the periphery through his prompt decisionmaking, the efficacy of his orders, and the deep interest he would take in the prosperity of the state and the happiness of the nation. The word *monarch* must not frighten Americans; it is no more a synonym for *despot* than the word *republic* is a synonym for *liberty*.<sup>223</sup>

The philosopher put forward a remarkably detailed blueprint for the construction of an American crown, what he called a "constitutional hereditary monarchy, suited to the physical and moral

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<sup>220</sup> Ibid., 186-8, 201, 156, 151. The fear of devolution and civil war was widely shared; see, e.g., Price, *Observations*, 66-7 ("The points of bayonets and the mouths of cannon settling disputes...and perhaps one restless and ambitious State rising by bloody conquest above the rest, and becoming a *sovereign* State...I shudder when I consider how possible it is").

<sup>221</sup> Ibid., 186.

<sup>222</sup> Ibid., 195.

<sup>223</sup> Ibid., 201-2.

circumstances of North America." It would be inaugurated by the election of a special college of thirty-nine members, three from each state, which would assemble in Philadelphia "like the cardinals during the papal conclave in Rome." An exhaustive search would be made of the leading citizens of America and Europe, with special emphasis on their piety, offspring, and family reputation. The new king would be elected by acclamation, in order "to avoid having any state opposed" to the final result; "if, after this unanimous election, a province nevertheless refuses to submit to this choice, it will be declared in rebellion," and pacified by force of arms.<sup>224</sup> Americans would retain a large number of "republican" rights after the establishment of this monarchy, including the election of deputies to Congress, as well as numerous lesser magistracies. These elective bodies would remain quite powerful; indeed, Félice hoped to augment the prerogatives of Congress, and to extend the term of its delegates to twelve years.<sup>225</sup> But, as he repeatedly underscored, "the happiness of America, indeed its liberty and its independence, requires a figure invested with sovereign power, and above all the executive power."<sup>226</sup> The mistaken idea that sovereignty is the inalienable possession of the people, rooted in "une source dangereuse telle que le *Contrat Social*," was the animating principle of the chaotic

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<sup>224</sup> Ibid., 195, 207-8. Félice broaches the possibility of inviting "une famille illustre de l'Europe" to occupy the throne (pp. 204-5), before rejecting this plan on the grounds that (1) it would provide too tempting a target for manipulation by the European powers, who would be eager to "faire tomber l'élection sur leurs enfans, sur leurs freres, sur leurs dévoués" (2) it would raise the possibility of a single royal family in control of both America and a major European power, creating a dangerous hegemon that "donneroit la loi au reste de la terre." But he adds that it would be entirely safe to import a less prominent family of nobles, giving as an example the House of Mecklenburg-Schwerin.

<sup>225</sup> Ibid., 214.

<sup>226</sup> Ibid., 203.

Articles of Confederation, now visibly coming apart at the seams. Without the expedient of a crown, Félice announced tersely, it would not survive another quarter century.<sup>227</sup>

But the most significant critic of Mably's *Observations* was its dedicatee, John Adams. His skepticism registers not only in his contemporary letters, where he complained of the abbé's plans to expand the powers of Congress and do away with administrative salaries,<sup>228</sup> but also in his cantankerous marginal notes to the abbé's 1776 treatise *De la législation* and the posthumously published *Des droits et des devoirs du citoyen*. Adams's ambiguous relationship to these works is signaled by a quip from the *encyclopédiste* Jean-François Marmontel, a version of which he scratched onto the flyleaf of both copies: "Marmontel at din[n]er with me said 'De Mably n'a jamais écrit rien que des choses très communes et en style commune.' His writings are indeed common place, but I love to read them."<sup>229</sup> And if Mably's ideas were merely a digest of the conventional wisdom in Europe, this made it all the more urgent to confront and combat them.

In his running dialogue with the abbé Adams advanced three major claims. First, the abbé's obsession with equality was quixotic, and if pursued seriously would generate a spiral of

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<sup>227</sup> Ibid., 215, 203. Cf. *ibid.*, 217-18 ("comment contenir les individus des Etats-Unis, infatués d'être membres de la souveraineté...Je ne conçois pas qu'une nation qui contient de grands politiques, ait pu accorder au peuple un pouvoir si exorbitant, sans en prévoir les suites funestes pour l'Etat").

<sup>228</sup> See, e.g., John Adams to Francis Dana (Nov. 4, 1784), in *Papers of John Adams*, 16: 366 ("Many Gentlemen in Europe think the Powers in the Confederation are not adequate. Abby de Mably and Dr Price have taken the Pains to publish their Advice."); John Adams to John Jebb (Sept. 25, 1785), in *Works of John Adams*, 9: 544 ("...the Importance of salaries to Governors and Judges. my friend de Mably...expresses great indignation against it...I loves the Abby and revere his memory: but I was sorry that so crude an Idea should be scattered in America where many will be greedy to lay hold of it").

<sup>229</sup> Mably, *Des droits et des devoirs du citoyen* [copy held at the Boston Public Library]. Cf. Mably, *De la législation* [copy held at the Boston Public Library]. In most cases, transcriptions of Adams's marginalia are adapted from Zoltan Haraszti, *John Adams & the Prophets of Progress* (1952), ch. 7. || The literary form of these two texts is slightly complicated; the former is a dialogue between an Englishman ("Milord Stanhope") and an unnamed French narrator, while the latter is tripartite discussion between an Englishman, a Frenchman, and a Swedish philosopher, the last of whom generally serves as the *porte-parole* for the abbé's own ideas. Adams ignores these literary artifices to address what he considers to be the abbé's own considered views, a practice I will follow here.

tyrannical measures. Although Mably often spoke breezily of the imperative to equalize fortunes, this was a practical impossibility; Adams labeled his pæan to "the community of goods" in Sparta "stark mad."<sup>230</sup> And he peppered the margins with sarcastic commentary on what Mably described as the problem of "laziness" under egalitarian regimes, the inescapable fact that "we do not work for others with the same ardor with which we work for ourselves." When Mably adverted to the necessity of "proscribing laziness" in the social republic of the future, Adams answered in French that this was "pas si facile." And when Mably listed the authoritarian measures that might be necessary to generate a truly equal society, including the consolidation of private land into collective farms, economic planning by a central authority, and an architecture of surveillance to guard against idleness, Adams issued a sardonic judgment: "here it always must end."<sup>231</sup> Violent coercion, he meant, was the inevitable terminus of the hopeful flight towards equality, a lesson confirmed by the increasingly lawless course of the French revolution. And yet it was entirely futile; even if property were to be made level by a *lex agraria*, inequality would quickly reëmerge through the process of free exchange, forcing a repetition of the procedure every generation.<sup>232</sup> And in the unlikely case that this hard-won equality could somehow be preserved, hierarchies of wealth would simply be displaced by alternative orderings—intelligence, charisma, and family name—distinguishing certain "extraordinary" men from the republican herd. Thus when Mably queried rhetorically in *De la législation* whether "nature has created Briarei, men with a hundred arms, to rule over the human race," hoping to

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<sup>230</sup> John Adams, Annotations (1791/1806) to Mably, *De la législation*, 1: 74. Cf. *ibid.*, 2: 238 ("M: si vous ne voulez pas que les vices des riches profitent des vices des pauvres, proscrivez la pauvreté. A: how?").

<sup>231</sup> *Ibid.*, 1: 83-6.

<sup>232</sup> See John Adams, Annotations (1791/1806) to Mably, *Des droits et des devoirs*, 171 ("M: soyez sûr, poursuivait Milord, que l'égalité ne règnera plus entre les citoyens à la troisième génération. A: No! nor after 3 days. Old Jo. Hayden, the Pauper said 80 years ago to my Parents, 'The World is unequally divided but I don't care nothing about it. For if it was divided equally to day, in a fortnight it would be as unequal as ever.'").

prove a point about natural equality, Adams could reply forcefully that "every man of genius has more than a hundred arms...[a] figure a face has a thousand arms."<sup>233</sup> Steep gradations of rank, that is, are an ineradicable part of being human; "[n]ature has made some strong, some weak, some handsome, some ugly," and in Mably's classless utopia these natural distinctions could be expected to birth severe forms of social stratification.<sup>234</sup> And so despite the abbé's expectation that a regime of equal property would naturally be administered by experts and savants,<sup>235</sup> it was just as likely to end in the rule of the beautiful, the cunning, and the silver-tongued.

Second, Mably's emphasis on equality was connected to his belief in the overriding importance of civic virtue, a concept Adams rejected vehemently. Mably, as we have seen, associated republicanism with penury, purity, and an ethos of civic self-sacrifice. "I am not frightened of poverty," he wrote in his treatise on legislation, "because I know that poor citizens are more disposed to respect justice and laws than rich citizens." For this reason he prescribed a raft of regulations meant not only to curb extremes of wealth, but also to maintain the citizenry itself in a state of simplicity and austerity. Thus he professed to be unconcerned that an agrarian law might lessen the productivity of agriculture and impoverish the state, so long as it prevented the formation of a privileged class capable of subverting social democracy. "Laws," he announced, "ought to teach citizens to be content with very little." By the same token he regretted that young men in France were permitted to travel abroad "without first being taught to

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<sup>233</sup> Adams, Annotations, *De la législation*, 1: 65. When, two pages later, Mably allowed that "Je ne nie pas que la nature ne nous distribue inégalement ses bienfaits," Adams crowed that "This is giving up the argument," and pronounced the concession a complete "destruction of [his] system." Cf. John Adams, *Discourses on Davila* [1790] (Boston, 1805), 78 ("We are told that our friends, the National Assembly of France, have abolished all distinctions...Have they made all men and women equally wise, elegant, and beautiful? Have they annihilated the names of Bourbon and Montmorency...?").

<sup>234</sup> *Ibid.*, 4: 163. Cf. *ibid.*, 1: 124 ("The Abbe has not seen the true sources of the passions. Ambition springs from the desire of esteem...not from Property.").

<sup>235</sup> On the connection between redistribution and rule by an epistemic aristocracy in the thought of Mably, see Eric Nelson, *The Greek Tradition in Republican Thought* (2004), 176-83.

despise the splendor and luxury" prevalent in foreign nations, which they must not think to imitate. "How right Lycurgus was," he rued, "to forbid the Spartans from intercourse with other Greeks!"<sup>236</sup> Adams thought this an absurd affectation in a modern age of commercial prowess. Are the French, he asked, "to be confined in a cage, den or cave" while their rivals establish trading outposts in every corner of the globe? Nor was there anything particularly admirable about the ancient republics lauded by Mably, which exemplified not equal liberty and stoic self-denial but rather "Patrician tyranny," the monopolization of the state's resources by a grasping elite. The institutions they constructed to impart and enforce civic norms, from sumptuary laws to the censorship, had the distinction of being stiflingly oppressive without being at all educative.<sup>237</sup> Adams did not deny Mably's truism that a well-constructed state must be composed of virtuous citizens, but as he explained in the *Defence*, the classical republicans had the chain of causation precisely backwards: "the virtues have been the effect of the well-ordered constitution, rather than the cause." Judicious institutional design, proceeding from correct principles of constitutional balance, would ensure that even "highwaymen" and "knaves" could be molded into mutually respectful citizens and, through the imprint of habit, into "honest men."<sup>238</sup> Civic virtue was not the expression of individual ethics, but of enveloping social structures.

Unfortunately (and third), Adams judged Mably utterly at sea on matters of constitutional theory. To begin with, the abbé scorned the British constitution for the surfeit of prerogatives it

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<sup>236</sup> Mably, *De la législation*, 1: 21, 2: 161, 3: 96, 4: 148.

<sup>237</sup> Adams, Annotations to Mably, *De la législation*, 4: 148, 3: 7, 2: 150, 3: 98. For a related critique, see [Élie Fréron], "Observations sur le gouvernement & les loix des Etats unis...", *L'année littéraire année M. DCC. LXXXIV.* (Paris, 1784), 8: 293-4 ("Et comment dans un siècle aussi corrompu que le nôtre, où l'argent & le commerce sont regardés comme les deux sources du bonheur public...on entendre le langage d'un homme qui vient nous dire...que la simplicité & la pauvreté sont les gardiennes des mœurs...une doctrine si simple, si lumineuse, mais en même temps si impracticable, que cela dégoûte absolument de raisonner sur la politique...tout état très-étendu & très-riche...est nécessairement corrompu").

<sup>238</sup> Adams, *Defence*, 3: 504. Cf. Adams, Annotations to Mably, *De la législation*, 2: 198 ("Have as many regulations against luxury as you will, but without a balance they are idle.").



afforded the crown, most notably the king's immunity from legal process, his negative voice, and his sprawling machinery of place and patronage; he warned that these powers were the skeleton of a future absolutism, and urged the English to protect themselves by confining and "gradually diminishing the royal prerogative." It would be safest, he thought, to "divide the executive power into different parts, entrusted to different citizens," so that each member of the executive might keep watch against the depredations of his colleagues. Participants in this executive council should serve truncated terms of office; Mably gave the example of the Roman dictators, who enjoyed untrammelled authority, but were appointed for a maximum of six months. And as in the classical republics, Mably thought it essential that outgoing magistrates be subjected to a comprehensive scrutiny of their time in office, and punished remorselessly for any corrupt or illegal action.<sup>239</sup> All of this struck Adams as folly—"pitiful ignorance and weakness," as he seethed in the margins. After rejecting the principle of antagonism between the executive and the legislature, the abbé had clumsily relocated the idea of "balance" inside the executive branch itself. It was easy to foresee that Mably's plural executive would be paralyzed by infighting; any commonwealth adopting it would kindle "jealousy, rivalry, divisions, seditions, wars." And this disarray would defeat the major purpose of the executive branch: holding in check the ambitious nobility who populated the diets and parliaments of Europe and North America. If executives in the Netherlands, Denmark, and Sweden had recently solidified and expanded their prerogatives, this was because they often functioned as the mailed fist of the people, channeling the

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<sup>239</sup> Mably, *De la législation*, 3: 51, 2: 262, 2: 223-8, 2: 197.

democratic desire to bring these aristocrats to heel. In Adams's words, the "populace is forever seeking a protector against the gentlemen and sooner or later will have him."<sup>240</sup>

Mably was not, however, inattentive to the despotic "vanity of the great and rich," and understood that the Danes had given "themselves a master in order to avenge the injuries done to them by the nobility." Those "grown weary of a tyrannical government," he noted, "almost always end by replacing it with another."<sup>241</sup> He responded with an inventive solution, one fully consistent with the classicizing spirit of his work:

I note...in England and in Sweden too much inequality between the different orders of the state; this vice of our constitution is productive of great evils, and will produce greater evils still if this inequality continues to grow. But Roman history comes once again to my rescue, and instructs me that this vice can perhaps be corrected. The patricians had seized for themselves all of the authority formerly usurped by kings...Tyranny and evils of every kind then seemed inevitable, but to raise up liberty all that was necessary was to pass a new law creating the Tribune...The people began to love a country where they feared neither injustice nor vexation. The great, apprised that a magistrate now waited outside the doors of the Senate to oppose those of their decrees that wounded the dignity of the people, began to act with more circumspection, and in their timidity learned to be just. Morals gradually changed, and the most perfect equality was at last established.<sup>242</sup>

As he opined in an earlier study on Roman history, it was the reforms carried out by first tribunes that "restored to the people the exercise of their sovereignty," and transformed Rome into "a perfect commonwealth."<sup>243</sup> The secession of the plebs and the constitutional revolution that followed transmitted to posterity not only a set of arguments about class equality, but also an institutional blueprint for its realization. Mably outlined its potential revival in England in a passage heavily marked up by Adams:

I ask whether...the establishment of a tribunate in the Roman republic was not a good thing, and here I will not let myself be intimidated by the cries and complaints of the patricians...I wish for the establishment of a kind of tribunate in England...a power that would be continually directed against the offshoots of the royal prerogative that are incompatible with true liberty. So long as you lack this resource, you will complain of

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<sup>240</sup> Adams, *Annotations to Mably, De la législation*, 2: 197, 2: 226-7, 2: 237. Cf. Palmer, *Democratic Revolution*, 1: 205 (Adams's "reading of European history taught him, what it never taught most democrats...that monarchy over the centuries had often protected the people against the nobles.").

<sup>241</sup> Mably, *De la législation*, 3: 91.

<sup>242</sup> *Ibid.*, 3: 47-8.

<sup>243</sup> Abbé de Mably, *Observations sur les Romains* (Geneva, 1751), 1: 40.

the abuse of your government without being able to correct it. And so long as you cling to your ancient prejudices...you will make no progress, and fortune will continue to send you useless revolutions that you will applaud without taking from them any lasting advantage.<sup>244</sup> Indeed, through its idiosyncratic culture of political parties England had already arrived at a crude approximation of the tribunate, the so-called "legitimate opposition," whose role was to sound the tocsin when Westminster entrenched on vital liberties; Mably praised it as "a barrier against the ambition of the king and the corruption of Parliament." A constitutional Tribune would formalize this function, and grant it legal status and enforcement powers beyond the desperate, Lockean appeal to heaven that was its only current recourse.<sup>245</sup> But Adams remained impassive, asking why, if one set of counterforces was so indispensable to a well-ordered constitution, "three" might not be "still more beneficial." A bifurcation of the state into mass and elite institutions, he added, would polarize citizens into one of two classes, mapping the battle lines of a future civil war.<sup>246</sup> It was an argument he developed more fully in his *Defence*, where he impugned the Roman tribunes as the worst of both worlds, bereft of the "power to protect [the people] effectively," but nevertheless possessed of sufficient sway to "head every popular tumult, and blow up every spark to a flame."<sup>247</sup> A constitutional "equilibrium between the one, the many, and the few" would produce stability; a stark division of "rich and poor...unbalanced by some third power," would produce only brief interregnums of civil order between spasms of mutual atrocity.<sup>248</sup>

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<sup>244</sup> Ibid., 3: 89-90.

<sup>245</sup> Ibid., 3: 49-50 ("...& dans le cas où le Roi profiteroit avec assez d'art de sa puissance pour conjurer, de concert avec le Parlement, la ruine de la liberté, les Opposans jeteroient l'alarme; il se feroit une révolution").

<sup>246</sup> Adams, Annotations to Mably, *De la législation*, 2: 89. Cf. *ibid.*, 2: 10 ("This [a powerful tribunate] would have set up a Cæsar in Mâlius Cassius or Manlius or Gracchus" had it been attempted).

<sup>247</sup> Adams, *Defence*, 1: 338.

<sup>248</sup> Ibid., 1: 95, 3: 187.

Turgot

Adams purported to welcome Mably's intervention, even as he harshly criticized its substance; many of his ideological allies were less forgiving. In the seventeenth installment of the *Anarchiad*, a mock epic on American politics produced by a circle of Hartford poets and satirists between October 1786 and December 1787, the European *philosophes* who presumed to "instruct poor America in her own history and politicks" were taken to task for having "wasted" such prodigious "fountains of ink." Ranged among this rogue's gallery of "Gallic scriblers" we find naturalists like the Comte de Buffon and Cornelius de Pauw, who doubted the capacity of North America to sustain civilization and genius, as well as political writers like Jean Nicolas Dêmeunier, ridiculed as "Grave Demeunier with borrow'd tales and weak" for his blind reliance on Jefferson's *Notes on Virginia* for his encyclopedia entries on the American confederation. The historian Michel-René Hilliard d'Auberteuil, author of the *Essais Historiques et Politiques sur les Anglo-Américains* (1782) is sarcastically congratulated for having "so ably displayed his creative talents in embellishing the American revolution." And the parliamentary lawyer and *académicien* Guy-Jean-Baptiste Target is thanked effusively for having discerned "that no laws existed in the United States," and for having "humanely proposed to Congress to supply that deficiency and furnish a code for the use of the empire." Amidst the chatter of these personalities (this chapter of the poem takes place in a spectral world called "the LAND OF ANNIHILATION"), the "Abbe Mably is" of course "mentioned with particular respect." But if any figure is singled out for special invective it is the libertine noble Honoré Gabriel Riqueti, comte de Mirabeau, "who having lately immerged from the Bastile, has employed his tremendous pen on 'the Cincinnati'...and numerable other knotty points." A series of rhymed stanzas make clear the hostility of the authors for Mirabeau's newfound role as a political pamphleteer:

Sear'd at the shade of Cincinnatus' name,

The envious Burke denied that road to fame,  
 Stars, ribbands, mantles crowding on his brain,  
 "Blows the loud trump" and calls the jealous train,  
 Fills gaping herds with visionary fears,  
 Of landless nobles and of penceless peers; [...]  
 Then shall their souls to human forms advance;  
 And spring to light the Mirabeaus of France.  
 Yet not alone to carnal views confined,  
 The younger shade for mental toils design'd,  
 Profuse of lies, and obstinate in ill,  
 On ev'ry theme shall try his gall dipt quill,  
 In Burke's proud steps shall equal honours claim,  
 A learn'd associate of Demeunier's fame.<sup>249</sup>

The reference is to Mirabeau's *Considérations sur l'ordre de Cincinnatus* (1784), a translation and expansion of a 1783 treatise by the South Carolina soldier and judge Ædanus Burke. The text is an impassioned protest against burgeoning oligarchical tendencies in the young republic, and carried obvious relevance, too, for an *ancien regime* honeycombed with privileged orders and unjust distinctions.<sup>250</sup> Its significance to the history of transatlantic republicanism comes more sharply into focus when we recall two facts. First, it incorporated the insights not only of the South Carolinian Burke, but also of Benjamin Franklin, who gave Mirabeau the original impetus for the project, and may have communicated to him a draft on the Society of the Cincinnati he judged too inflammatory to publish under his own name.<sup>251</sup> And second, its

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<sup>249</sup> "American Antiquities, [No. XII.] Extracts from the Anarchiad, Book 17th," *New-Haven Gazette, and the Connecticut Magazine* (Sept. 27, 1788), 201. || The authors of the *Anarchiad* were the so-called "Hartford Wits": David Humphreys, Lemuel Hopkins, John Trumbull, and Joel Barlow. On the construction and politics of this text, which was initiated in response to Shays's Rebellion, see J.K. Van Dover, "The Design of Anarchy: *The Anarchiad*, 1786-1787," *Early American Literature* (1989), 237-47. On the incongruous participation of Barlow, who would soon reveal himself as a political radical, see William C. Dowling, "Joel Barlow and the Anarchiad," *Early American Literature* (1990), 18-33.

<sup>250</sup> See, e.g., Albertone, *Agrarian Republic*, 134 ("Mirabeau used the work to launch a violent attack on the hereditary principle in pre-Revolutionary France."); Markus Hünemörder, *The Society of the Cincinnati* (2006), 131 ("an implied attack against the *ancien regime*").

<sup>251</sup> Bernard Fay, "Franklin et Mirabeau Collaborateurs," *Révue de Littérature Comparée* (Jan. 1928), 5-28, 14 ("il trouva en M. le comte de Mirabeau un agent enthousiate et capable"). Cf. Benjamin Vaughan to Benjamin Franklin (Feb. 23, 1785), in *Papers of Benjamin Franklin*, 42: u670 (641993) ("I have given Count M--- some notes. And in the greater part of them I had named you, or alluded to your principles."). || For Franklin's unpublished criticisms of the Society, see Benjamin Franklin to Sarah Bache (Jan. 26, 1784), in *ibid.*, 41: u281 (640875) ("the *descending Honour*, to Posterity...is not only groundless and absurd, but often hurtful to that Posterity"); Benjamin Franklin, *From the Society of the Cincinnati: Circular Letter and Institution* (May 3, 1784) (unpublished), in *ibid.*, 41: u600 (641194) ("...that the hereditary Succession should be abolished; that all Intercourse with political Subjects should

appendix contained a commentary on Richard Price's *Observations on the Importance of the American Revolution*, and a new edition of Turgot's famous letter to Richard Price on the American state constitutions, both of which would prove of decisive importance to the political thought of John Adams.

Mirabeau proclaimed allegiance to the ideals of the American revolution in his first significant published work. In the 1777 pamphlet *Avis aux Hessois* he appealed to the German mercenaries enlisted by George III to refuse orders to "aid insolent tyrants in ravaging the other hemisphere," and instead to side with the Americans "who fight only to maintain their natural rights, and to secure their liberty."<sup>252</sup> And in his 1782 history of *lettres de cachet*, he recalled hearing news of the "sublime manifeste des États-Unis" of 1776 while imprisoned in Vincennes. "Had I not been in chains," he blustered, "I would have gone there to instruct myself, and to fight for them," adding boldly that Louis XVI, despite his inclination towards an alliance with the thirteen colonies, "could not have dared to read this manifesto, or interrogate [his] conscience after having read it."<sup>253</sup> The French king might have been equally perturbed by Mirabeau's assault on the English constitution, which turned on a sweeping denunciation of royal power. In particular, the comte scolded English Whigs for fixating on seventeenth-century ideas of kingship, such as the right to dissolve Parliament, while permitting the crown a welter of menacing new financial prerogatives that made it the supreme power in the constitution. In the

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be done away—and that the Funds should be placed under the immediate Cognizance of the several Legislatures"); Benjamin Franklin to George Whatley (May 23, 1785), in *ibid.*, 43: u149 (642220) ("What you call the Cincinnati is...so universally dislik'd by the People that it is suppos'd it will be dropt. It was consider'd as an Attempt to establish something like an hereditary Rank or Nobility. I hold with you that it was wrong...").

<sup>252</sup> [Honoré Mirabeau], *Avis aux Hessois* (Cleves, 1777), 4-5.

<sup>253</sup> [Honoré Mirabeau], *Des lettres de cachet et des prisons d'état* (Hamburg [Neuchâtel], 1782), 1: 284-5. *Des lettres* pretends to be a "posthumous" collection of letters by an anonymous author, with occasional introjections by an unnamed "editor." All of the writing, however, is by Mirabeau. On authorship and dating, see the collection of primary sources in *Mémoires biographiques, littéraires et politiques de Mirabeau* (Paris, 1834), 4: 64-9.

century since 1688 England had constructed a formidable fiscal-military state whose administrative tentacles reached into "every port, every border crossing, every interior district of the kingdom," and whose officers were "named immediately by the crown, and removable at its will." The most inauspicious of these executive agencies was the national army, nominally responsible to Parliament but "immediately paid by the king, commanded by him...and once raised, entirely at his disposal." There was much in the English constitutional order worthy of preservation, above all its robust tradition of civil liberties in the form of *habeas corpus* and trial by jury. But its bribed legislators, "mercantile and venal" middle class, and prerogative-laden executive branch, "who appears to respect the constitution, but is acquiring all the power necessary to overturn it," portended a coming disaster.<sup>254</sup>

Mirabeau had every opportunity to become acquainted with the British constitution when he relocated from Holland to London in August 1784, in part to evade the reach of French police, and in part to gather the materials necessary to complete his tract on the Cincinnati.<sup>255</sup> There he was introduced to radical circles by Franklin,<sup>256</sup> a longtime friend and collaborator of his father,<sup>257</sup> and a thinker whose views on constitutional matters were closely aligned with his own. In his *Lettres de cachet* Mirabeau had called the Pennsylvania frame "the best-organized" of the new state constitutions; he went further in a 1779 manuscript, declaring that the American states

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<sup>254</sup> Mirabeau, *Lettres de cachet*, 2: 231-5. Cf. Mirabeau, *Aux Bataves*, 2: 184 ("Il faut gémir sur le malheureux sort de l'espece humaine, quand on réfléchit que des Philosophes ont cru voir, dans la constitution angloise, le plus parfait modele de la liberté civile & politique.").

<sup>255</sup> *Mémoires...de Mirabeau*, 4: 143-4.

<sup>256</sup> Benjamin Franklin to Benjamin Vaughan (Sept. 7, 1784), in *Papers of Benjamin Franklin*, 42: u194 (641520) ("I recommend him to your Civilities and Counsels, particularly with respect to the Printing of a Piece he has written on the subject of *hereditary* Nobility...some of the best Judges think it extremely well written, with great Clearness, Force and Elegance.").

<sup>257</sup> Albertone, *Agrarian Republic*, 8 ("[Franklin's] meeting with Quesnay and the Marquis of Mirabeau [in 1767]...was a turning point that marked an accelerated development in his economic thinking"), 115 ("His closest rapport was with Mirabeau").

that had divided the legislature into two chambers had given birth to "a kind of aristocracy," while Pennsylvania, with its unified legislature, was "on the contrary excellent."<sup>258</sup> Franklin reciprocated, expressing his esteem for the *Considérations*,<sup>259</sup> and readily obliging when Mirabeau requested an introduction to the radical philosopher Richard Price in order to arrange for its publication in London.<sup>260</sup> This connection would be determinative for the final form<sup>261</sup> of *Considérations sur l'ordre de Cincinnatus*, a four-hundred page omnibus of radical thought featuring (1) an expansive translation of Burke by Mirabeau, with the assistance of the Nicolas Chamfort and Antoine Léonard Thomas, (2) a letter by George Washington in his capacity as president of the Cincinnati, with accompanying commentary by Mirabeau, (3) a translation of Richard Price's *Observations on the Importance of the American Revolution*, with annotations by

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<sup>258</sup> Mirabeau, *Lettres de cachet*, 1: 183 ff. 1; Honoré Mirabeau, *Précis de la révolution des Etats Unis de l'Amérique*, Archives du Ministère des Affaires Etrangères, Etats-Unis, Mémoires et Documents, vol. 1888, feuilles 66-9, 68. || Per Benjamin Vaughan, Mirabeau also discussed starting a new magazine on politics, bilingual in French and English, which would print (*inter alia*) selected older essays by Franklin; see Benjamin Vaughan to Benjamin Franklin (Nov. 21, 1784), in *Papers of Benjamin Franklin*, 42: u423 (641747).

<sup>259</sup> Benjamin Franklin, Private Journal, Entry for July 13, 1784, in *Papers of Benjamin Franklin*, 41: u716 (641309) ("Messrs. Mirabeau and [Nicolas] Champfort came and read their Translation of Mr. Burke's Pamphlet against the Cincinnati which they have much enlarg'd, intending it as a Cover'd Satyr against Noblesse in general. It is well done."). || On the involvement of Chamfort, necessary because of his superior English, see Doyle, *Aristocracy and its Enemies*, 122. Chamfort, who would achieve fame during the revolution as a republican orator, and posthumously for his acerbic epigrams, served at the time as secretary to the king's sister, Madame Élisabeth. || On the participation of Thomas, a moralist and rhetorician who enjoyed great fame in the reign of Louis XV, see Mirabeau to Chamfort (Letter VII) (June/July 1784), in *Œuvres...de Chamfort*, 5: 385 ("le manuscrit [Franklin's letters on the Cincinnati] que M. Thomas a gardé pour y faire ses notes...").

<sup>260</sup> [Louis-Guillaume le Veillard] to Benjamin Franklin (Sept. 5, 1784), in *Papers of Benjamin Franklin*, 42: u190 (641516) ("comme il craint d'estre trompé par les imprimeurs et libraires de Londre, il desirerait avoir de vous quelqu'avis sur cet objet, et que vous luy donnassiez un mot de recommandation pour le Docteur Price"); Benjamin Franklin to Richard Price (Sept. 7, 1784), in *ibid.*, 42: u197 (641523) ("The Bearer, Count Mirabeau...has desired a Line of Introduction to you...is himself an excellent Writer, and has prepared for the Press a small Piece, much admired by the best Judges here, on the Subject of hereditary Nobility..."). || Equally important was Mirabeau's connection to the Whig radical Samuel Romilly, an admirer of Franklin and a close friend of Franklin's protégé Benjamin Vaughan, who agreed to translate Mirabeau's French text into English (with Mirabeau's supervision and corrections). Romilly was introduced to Mirabeau by the exiled Genevan lawyer François d'Ivernois. See Romilly, *Memoirs*, 1: 78-9.

<sup>261</sup> The first edition, brought out in September 1784, carried only the "translation" of Burke's *Considerations*, including a long postscript describing recent political developments relative to the Cincinnati, and Turgot's letter to Price. The second edition was published later the same year.



Mirabeau and a review essay by Target,<sup>262</sup> and (3) a copy of Turgot's March 1778 letter to Price. In the words of the historian William Doyle, "Mirabeau had brought together...all the most important documents available to Europeans in the mid-1780s on American public affairs."<sup>263</sup> It is reasonable, then, to ask what message was being transmitted, and why this unwieldy assemblage of texts and commentaries was read with such close attention on both sides of the Atlantic.<sup>264</sup>

The various authors involved in the *Considérations* converged on three major anxieties about the American constitutional order. One was the necessity of vigilance against incipient aristocracy, despite the fact that feudal ranks and titles were unknown in North America, and explicitly outlawed by the Articles of Confederation. This is the central theme of Burke's pamphlet on the Cincinnati, a private honor that he advised would quickly assume immense public significance, ultimately hardening into an invidious political caste. "The Cincinnati," he cautioned, "would soon *have and hold* an exclusive right to offices, honors and authorities," founded on the nobility of their descent from America's heroic founders. "And the whole country besides themselves, a mere mob of plebeians...[will be correspondingly] degraded in the eyes of our patricians, as the Roman people were." Mirabeau and Chamfort, in their unabashedly free translation, spoke similarly of the Cincinnati as "une race éternelle d'Aristocrates, qui bientôt peut-être usurperont tous ces titres insultans dont la Noblesse Européenne écrase le simple citoyen." And Richard Price, in the midst of praising America for its nominal abolition of titles

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<sup>262</sup> On Target's contribution, see *Mémoires...de Mirabeau*, 4: 160.

<sup>263</sup> Doyle, *Aristocracy and its Enemies*, 126.

<sup>264</sup> France: Entry for July 24, 1785, in *Mémoires secrets...ou journal d'un observateur* (Louis Petit Bachaumont et al. eds., London, 1786), 29: 160-1 ("Un ouvrage de Mr. le Comte de Mirabeau, annoncé depuis long-tems, a percé enfin dans cette capitale & se lit avec plus d'intérêt que ceux dont on a parlé récemment."); "Lettre de Mr. de B. à Mr. de L.," in *Amusement des gens du monde* (Jean-Pierre-Louis de La Roche Du Maine Luchet ed., Paris, 1785), 1: 344 ("...ses observations sont presque toujours dictées par la raison & par l'expérience journalière"). || America:

of nobility, nevertheless fretted that "tyrannical aristocracy" might emerge out of the inequalities generated by primogeniture and foreign trade. As in Rome, added Mirabeau and Chamfort, this widening chasm of wealth and status might open an abyss of partisan rancor and civil war, with "new Sullas leading the nobility, and new Mariuses directing the people."<sup>265</sup>

Second, like Mably,<sup>266</sup> the authors anthologized by Mirabeau were generally leery of the values of commercial society.<sup>267</sup> Richard Price, who shared few presuppositions about politics in common with Mably (he deprecated civic patriotism, and dismissed the Roman republic as a "band of robbers"), nevertheless agreed that America should close its borders to international commerce, to avoid both spiraling inequality and a degradation of its morals. "I tremble," he confessed, "when I think of that rage for trade which is likely to prevail among" denizens of the thirteen states. "It may do them infinite mischief," corroding their "manliness of spirit, [and] disdain of tinsel," replacing them with the "[e]ffeminacy, servility and venality" that blossom in the greenhouse of luxury and civilization. Moreover, the multiplication of economic ties to Europe would ensnare the United States in the net of continental alliances and great power politics, with potentially catastrophic results. And the American states, spanning a great diversity of climates and soils, and joined by a vascular network of lakes and rivers, were well-positioned

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<sup>265</sup> Cassius [Ædanus Burke], *Considerations on the Society or Order of Cincinnati* (Philadelphia, 1783), 6; Mirabeau, *Considérations*, 50 and 78 [Fr.]; Richard Price, *Observations on the Importance of the American Revolution* (London, 1784), 71-2 [Eng.] and Richard Price, "Observations," in *Considérations* (Honoré Mirabeau ed. and trans.), 283-4 [Fr.]. || Turgot's friend and former adjutant Condorcet would suggest, six years after the death of his mentor, that suspicion towards groups like the Cincinnati followed naturally from Turgot's principles; see his *Vie de M. Turgot* (London, 1787), 2: 106 ff. 1 ("M. Turgot...craignoit pour les Etats-unis d'Amérique l'influence de l'esprit mercantille et celle des préjugés Anglois relativement à la Constitution...Même aujourd'hui il le seroit encore de prononcer sur leur avenir, puisque le sort de la Liberté Américaine est attaché à l'existence de l'Aristocratie héréditaire & militaire, que les Officiers de l'Armée ont essayé d'établir sous le nom d'Ordre de Cincinnatus.").

<sup>266</sup> Mirabeau and Chamfort expressed shock that Mably, whose principles they had believed consonant with their own, had criticized the democratic constitutions of America so severely; see Mirabeau [and Chamfort], *Considérations*, 52 ff. 1 ("...un homme de mérite qu'on ne croyoit pas devoir donner pour premiers conseils aux États d'Amérique de *restreindre* & de ne pas ÉTABLIR TROP ENTIÈRE la *Démocratie*...").

<sup>267</sup> Turgot, as we will see shortly, was the exception to this rule.

to experiment with economic autarky; "[t]hey are spread over a great continent," he counseled, "and make a world within themselves." The answer, Price thought, was something like a closed commercial state, albeit in the form of high tariffs rather than a draconian prohibition on traffic.<sup>268</sup> The younger Mirabeau was in full agreement, calling Price's wary attitude to external commerce "the wisest, the most important advice that he has given to the Americans," and mourning "the multitude of absurd errors and fantastic illusions that the passion for commerce has disseminated among the nations" of the earth.<sup>269</sup> Price, who first achieved fame in Britain for his jeremiads against the national debt,<sup>270</sup> argued that an America exposed to the currents of global trade would find itself increasingly vulnerable to bubbles, panics, and crashes, as its hard currency flooded outward to purchase European luxury goods, and it came to rely on the twin abstractions of revolving credit and paper money to keep the wheels of commerce in motion. This was the unenviable situation of contemporary Britain, whose immense debt "now *astonishes*, and may hereafter produce a catastrophe that will *terrify* the world."<sup>271</sup> Mirabeau, commenting on this passage, held that a trade surplus (unless liquidated immediately as consumption) would be equally calamitous: a nation accumulating specie without end would be battered by inflation, and forced to seek projects beyond its borders through which it could "disgorge these torrents of gold." Under these conditions even England, the polished commercial nation *par excellence*, would revert to barbarism, grasping desperately at universal monarchy:

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<sup>268</sup> Price, *Observations*, 75-7 [Eng.] and Price, "Observations," 287-90 [Fr.].

<sup>269</sup> Mirabeau, "Notes détachées sur l'ouvrage de M. le Docteur Price," in *Considérations*, 371. Unlike the doctor, Mirabeau looked to the "les républiques anciennes" for his model of "les vertus des hommes," and the "reconnaissance que les Citoyens doivent à la Patrie"; see Mirabeau [and Chamfort], *Considérations*, 62-3.

<sup>270</sup> See, e.g., Jack Fruchtman, *The Apocalyptic Politics of Richard Price and Joseph Priestley* (1983), 76-80.

<sup>271</sup> Price, *Observations*, 78-80 ("*ideal* wealth will take place of *real*, and their security come to depend [as the security of BRITAIN does] on the strength and duration of a *Bubble*"). Cf. Price, "Observations," 291-3 [Fr.].

Then would this dazzling, this estimable, this so many ways respectable nation...be obliged to excite and cherish wars for the sake of unburthening itself from such an intolerable weight of gold, which would deprive it of activity and of life. Then would all the kingdoms of the world be forced to league together, for the purpose of effacing it from the book of life, as the common enemy of every other people, and unable to subsist without bloodshed.<sup>272</sup>

These were the last words of the *Considérations*, and they struck an ominous note for its American readers: global markets were spaces of omnipresent threat, and uncorrupted republics like the United States should enter them with great caution.

Finally, the *Considerations* was received as a work of constitutional theory, and was widely noted for its cutting appraisal of the American constitutional order. This owed something to the contributions of Richard Price, who advocated "an enlargement of the powers of CONGRESS," and in particular its right to organize the state militias into a federal force that might be used, *in extremis*, to coerce recalcitrant states.<sup>273</sup> But its reputation stemmed primarily from the electric letter to Price from Baron Turgot, first published in the 1784 edition of Price's *Observations* at the urging of Benjamin Franklin, translated into English by Mirabeau, and included in every edition of Mirabeau's *Considérations*.<sup>274</sup> Mirabeau spoke of the letter with unreserved praise:

It contains the most profound and judicious observations that ever have been made upon the defects of the American constitutions, and the means of removing them. Never was a sublime genius more successfully actuated by the philosophy of a statesman, and of a sincere friend of liberty and of mankind, than in this work: it discovers the heart of Fenelon, united with a much more comprehensive understanding.<sup>275</sup>

But it was not only the comte who responded ecstatically. The marquis de Luchet singled out Turgot's missive as the best part of Mirabeau's *Considérations*, enthusing that "the more I read it,

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<sup>272</sup> Mirabeau, "Notes détachées," 385 [Fr.] and 284 [Eng.].

<sup>273</sup> Price, *Observations*, 16-17 and 66-7 [Eng.]. Cf. Price, "Observations," 227 and 279 [Fr.]. As we will see below, a version of this idea was first introduced by Turgot in his letter to Price, though with a focus on avoiding military competition between the states rather than adding steel to the spine of Congress.

<sup>274</sup> Benjamin Franklin to Richard Price (Aug. 2, 1784), in *Papers of Benjamin Franklin*, 42: u90 (641416) ("it is excellent in itself, and will do us a great deal of Good"); Richard Price to Jonathan Trumbull, the Elder (Oct. 8, 1784), in *Correspondence of Richard Price* (D.O. Thomas ed., 1991), 2: 232 ("a translation of it into English...will soon be done by the Count de Mirabeau in a tract which he is now printing..."). Price would nevertheless commission a new translation for the 1785 edition of the *Observations*.

<sup>275</sup> Mirabeau, *Considérations*, 96 [Fr.] and 107 [Eng.]. Cf. *ibid.*, 186 ff. 1 [Fr.] and 154 ff. 1 [Eng.] ("Of all those who have ever held the reins of government, Marcus Aurelius, perhaps, alone was worthy to have left behind him such a work.").

the more I feel my soul expand, and the more I speak of it, the more I marvel at it."<sup>276</sup> And the Liège bimonthly *L'Esprit des Journaux*, reviewing Price's *Observations*, raved that "[t]his letter of M. Turgot...is the most wise and profound thing yet written on the vices of the American constitutions, and the means of ameliorating them...it breathes the love of liberty and humanity."<sup>277</sup> There was nothing casual, occasional, or extemporaneous about the letter; it was the fruit of two decades of dialogue on modern politics with luminaries like Franklin, Hume, and Quesnay, culminating in Turgot's brief but ambitious term as *contrôleur général des finances* from 1774 to 1776. Through his friendship with Franklin he took a special interest in the American insurgents,<sup>278</sup> and his secretary and collaborator Pierre-Samuel Du Pont de Nemours reports that the letter to Price was abstracted from a longer projected work titled *Réflexions sur la Situation des Américains*, which would have conveyed "the advice necessary for a young republic, the institutions it required...the laws that it ought to promulgate, and the jurisprudence it ought to adopt."<sup>279</sup> We can surmise that this work would have been quite critical; as Turgot states

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<sup>276</sup> Jean-Pierre-Louis de La Roche de Luchet, *Amusement des gens du monde* (n.p., 1785), 1: 348.

<sup>277</sup> "Observations on the importance, &c. *Observations sur l'importance de la révolution de l'Amérique*," *L'Esprit des Journaux* (July 1785), 7: 204-24, 220. *L'Esprit* frequently appropriated material from other periodicals, and this review is credited to the London *Monthly Review*. But while some of the material on Price is indeed taken from a review essay in that magazine, the passages on Turgot appear to be wholly original. Indeed, the *Monthly Review* devotes only one short sentence to Turgot's letter in its seven-page review essay, against nine full pages in *L'Esprit*. Compare R., "Art. II. *Observations on the Importance of the American Revolution*," *Monthly Review, or, Literary Journal*, vol. 72 (April 1785), 260-6.

<sup>278</sup> Anne-Robert-Jacques Turgot to Benjamin Franklin (Dec. 17, 1777?), *Papers of Benjamin Franklin* (William B. Willcox ed., 1986), 25: 302 ("Toutes les occasions de voir Mr. Franklin luy sont precieuses, et il est impatient de temoigner aux amis de la liberté sa joye de leurs succès."). Indeed, the first words of Turgot's March 1778 letter to Price, the foil against which Adams constructed his *Defence*, are "Mr. Franklin," who is credited with introducing Turgot to Price's political writings. See Turgot to Price (Mar. 22, 1778), in Price, *Observations*, 107 [Eng.] and 88 [Fr.].

<sup>279</sup> Samuel Du Pont de Nemours, *Mémoires sur la vie et les ouvrages de M. Turgot* (Philadelphia, 1782), 2: 259. See the note added by Du Pont in "Mémoires sur la vie, l'administration et les ouvrages de M. Turgot," in *Œuvres de M. Turgot* (Samuel Du Pont de Nemours ed., Paris, 1811), 1: 415 ("On peut juger de ce que ce livre aurait contenu par sa Lettre au Docteur Price sur le même sujet").

early on in the epistle to Price, "I am not satisfied with the Constitutions which have hitherto been formed by the different States of America."<sup>280</sup>

Turgot raised three critical objections to the state constitutions. To begin with, they granted inappropriately broad powers to the government,<sup>281</sup> which now threatened to upset individual and commercial liberty. They had travestied freedom of worship by instituting religious tests for office, while at the same time barring clergy from serving in government.<sup>282</sup> And, like the despotic regimes of Europe, they had delegated broad police powers to the executive to restrict the trade of commodities, in contravention of natural rights. "So far are they," Turgot sighed, "from being sensible that the right to an entire liberty of commerce is the consequence of the right of property. So much are they still involved in the midst of European illusions." The baron lamented, too, that no state constitution had enshrined in law the special status of landholders—"their different rights respecting legislation, the administration of justice and police, [and] their contributions" to the public fisc. The result was a political order that was simultaneously too authoritarian and too popular, that intruded inexcusably into the private lives of ordinary citizens, while failing to confer appropriate deference to the minority whose cultivation of the soil generated the bulk of the national wealth.<sup>283</sup>

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<sup>280</sup> Turgot to Price (Mar. 22, 1778), in Price, *Observations*, 113 [Eng.] and 92 [Fr.]. Citations of this letter will be to the 1785 Price edition, in English and French, since this is the version Adams consulted; variations in the Mirabeau edition will be noted where relevant.

<sup>281</sup> See, e.g., *ibid.*, 115 [Eng.] and 94 [Fr.] ("I do not think they are sufficiently careful to reduce the kind of business with which the governments of each State is charged, within the narrowest limits possible").

<sup>282</sup> *Ibid.*, 113-15, [Eng.] and 92-4 [Fr.]. The words "qu'on croi à la divinité de Jesus Christ" are censored in the French, though fully translated in the English; they included in full in "Lettre de M. Turgot," in Mirabeau, *Considérations*, 198, implying that Mirabeau or his coauthors had access to the original manuscript.

<sup>283</sup> *Ibid.*, 115-16 [Eng.] and 94-5 [Fr.]. Cf. *ibid.*, 118 [Eng.] and 97 [Fr.] ("that sacred principle, liberty of commerce considered as a natural right"). Regarding Turgot's views on liberty of commerce, see Emma Rothschild, "Commerce and the State: Turgot, Condorcet and Smith," *Economic Journal*, vol. 102 (September 1992), 1197-1210, esp. 1203 (on his aversion to state intervention in the grain trade) and 1208 (on his willingness to abrogate property rights in certain limited circumstances). On Turgot's beliefs about the special relationship between land

Second, Turgot rebuked what he took to be the structural incoherence of the American confederation,<sup>284</sup> which he feared would metastasize into a destructive antagonism between the states. Having learned of Burgoyne's surrender at Saratoga, Turgot pronounced American independence a foregone conclusion. But there was every possibility that this triumph would be followed, not by a warm spirit of national unity, but by a chill wind of mutual suspicion, armed hostility, and jealousy of trade. "In the general union of the States," he remarked, "I do not observe a coalition, a fusion of all the parts to form one homogeneous body." In part this was the natural effect of separate histories and trajectories of development—the thirteen states encompassed charter, royal, and proprietary colonies, embodied sharply contrasting racial and religious demographics, and depended on economies spanning slave-based agriculture, commercial shipping, and factory manufacturing. This was what the former minister intended when he called the new union "a jumble of communities too discordant, and...retain[ing] a constant tendency to separation, owing to the diversity in their laws, customs, and opinions." But the issue was not simply the failure of the states to fully cohere. It was that these differences also tracked disparities in wealth and power, and there was every reason to suspect that these inequities would be exacerbated by independence. The confederation, he deplored, "is only a copy of the Dutch republic; with this difference, that the *Dutch* republic had nothing to fear, as

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ownership and the right to representation, see Manuela Albertone, "Fisiocrazia e proprietà terriera," *Studi settecenteschi*, vol. 24 (2004), 181-214. On his distinction between property rights and feudal rights, which he thought illegitimate, see Condorcet, *Vie de M. Turgot*, 2: 19.

<sup>284</sup> Turgot would have known the Articles of Confederation via a translation of an August 1776 draft, printed and circulated for the use of delegates. Franklin brought a copy to Europe, and arranged for a translation to be carried out by La Rochefoucauld, and published in early 1777 in *Affaires de l'Angleterre et de l'Amérique*. The final text varied significantly from this early draft, though mainly in ways that would have magnified Turgot's anxieties had he known of it; it introduced a new article (Art. 2) emphasizing the "sovereignty, freedom and independence" of the states, and introduced a clause (Art. 9) making clear the severity of overlapping territorial claims among the various states. See Slauter, "Constructive Misreadings," 49-57.

the *American* republic has, from the future possible increase of any one of the Provinces."<sup>285</sup> He foresaw two interlocking scenarios by which the tenuous union of 1776 would degenerate into something resembling the jagged and belligerent map of Europe. First, states would contend with one another for economic superiority, leading to ruinous tariffs and spiteful beggar-thy-neighbor policies: "not purchasing foreign merchandize, and compelling foreigners to consume their produce and manufactures," spurred by the hope of establishing some fleeting ascendancy. This competition would only intensify what Price, in a footnote to Turgot's letter, called "[t]he great inequality now existing...between the different States," which were divided between wealthy commercial centers like New York and Pennsylvania, and backwaters like New Hampshire, Georgia, and Delaware. Given these conditions, it would be only natural for one of the large states to make a bid for hegemony.<sup>286</sup> Second, there would be a scramble to settle and incorporate the western territories, whose legal status was a patchwork of overlapping state claims, grounded on defunct and mutually-contradictory royal charters. Any resolution would provoke backlash from the states excluded from these domains, while enriching the minority with territorial claims judged to be valid. This would deepen the already troubling inequality between the states. And it would impart a dangerous lesson to members of the confederation: that they had an "interest in possessing more extensive territories," inspiring their neighbors "with awe, and gaining a superiority over them."<sup>287</sup> The colonies on the frontier would have, Turgot fretted, a "dreadful incentive to ambition," having developed large and sophisticated militaries

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<sup>285</sup> Turgot to Price (Mar. 22, 1778), in Price, *Observations*, 117-18 [Eng.] and 96-7 [Fr.]. Cf. *ibid.*, 120-1 [Eng.] and 99-100 [Fr.] ("In New England, a rigid puritanical spirit...In Pennsylvania, a very great number of inhabitants laying it down as a religious principle, that the profession of arms is unlawful...In the Southern Colonies, an inequality of fortune too great; and what is worse, a great number of Blacks, whose slavery is incompatible with a good political constitution").

<sup>286</sup> [Richard Price], in *ibid.*, 119 ff. 1. This same note appears in the 1784 edition at page 101, and (reworded, shortened, and not credited Price) in Mirabeau's *Considérations* edition of Turgot at page 196 [Fr.] and 165 [Eng.].

<sup>287</sup> *Ibid.*, 116-18 [Eng.] and 95-7 [Fr.].



to wage war on the Indian tribes,<sup>288</sup> which might in time be deployed against their neighbors in the confederation. In short, there were ample reasons to believe that the ties of affection and obligation underpinning the Articles of Confederation would strain, and perhaps snap, under the pressures of independence. In the decade after 1776 it would become a cliché to say that the American principle of federation might inspire the bellicose states of Europe to put aside their differences and form "a Federal Union and One Grand Republick."<sup>289</sup> Turgot's proposition was that this might have it backwards: the American confederacy was equally likely to fracture into something resembling the Westphalian anarchy that defined the continent.<sup>290</sup>

But it was Turgot's third critique, of the structure and organization of the state constitutions, that would become most notorious, and earn him the lasting enmity of John Adams. This is remarkable, since it hardly exceeds a few sentences:

I confess that I am not satisfied with the Constitutions...I observe that by most of them the customs of England are imitated, without any particular motive. Instead of collecting all authority into one center, that of the nation, they have established different bodies; a body of representatives, a council, and a Governor, because there is in England a House of Commons, a House of Lords, and a King. —They endeavour to balance these different powers, as if this equilibrium, which in *England* may be a necessary check to the enormous influence of royalty, could be of any use in Republics founded upon the equality of all the Citizens; and as if establishing different orders of men, was not a source of divisions and disputes. In attempting to prevent imaginary dangers they create real ones...<sup>291</sup>

In the Preliminary Observations of the first volume of his *Defence*, Adams returned repeatedly to this "extraordinary passage," and in particular the opaque phrase "all authority into one centre,

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<sup>288</sup> *Ibid.*, 122 [Eng.] and 101 [Fr.].

<sup>289</sup> Benjamin Franklin to Rodolphe-Ferdinand Grand (Oct. 22, 1787), in *Papers of Benjamin Franklin*, 45: u229 (643843) ("I do not see why you might not in Europe carry the Project of good Henry the 4th into Execution...").

<sup>290</sup> Turgot to Price (Mar. 22, 1778), in Price, *Observations*, 123-4 [Eng.] and 102-3 [Fr.] ("*America* must...take care to avoid being what your ministerial writers are frequently saying She *will* be—an image of our *Europe*—a mass of divided powers contending for territory and commerce, and continually cementing the slavery of the people with their own blood.").

<sup>291</sup> *Ibid.*, 113-14 [Eng.] and 92-3 [Fr.]. Cf. Target, "Reflections on the Observations, &c. of Dr. Price," in Mirabeau, *Considerations*, 220 [Eng.] and 226 [Fr.] ("All that was necessary to be said about [the American constitutions] is contained in the letter of the immortal Turgot...Ill betide those corrupted nations, among whom the master-piece of the human intellect has been to create a phantom of peace by means of discord, and to excite a contest of the passions in order to obtain their equilibrium!").

and that centre the nation," which he pronounced "difficult to comprehend." He bruted two possible meanings:

Did Mr. Turgot mean, that the people of Virginia, for example, half a million of souls scattered over a territory of two hundred leagues square, should...have no other authority by which to make or execute a law, or judge a cause, but by a vote of the whole people, and the decision of a majority! Where is the plain large enough to hold them...Shall we suppose then, that Mr. Turgot intended, that an assembly of representatives should be chosen by the nation, and vested with all the powers of government; and that this assembly shall be the center in which all the authority shall be collected, and shall be virtually deemed the nation. After long reflection, I have not been able to discover any other sense in his words, and this was probably his real meaning.<sup>292</sup>

He settled quickly on this interpretation, and by the end of the volume referred confidently to Turgot's ideal of "a single assembly...possessed of all authority, legislative, executive, and judicial."<sup>293</sup> There is every reason to believe that Adams was speaking sincerely; he expressed the same puzzlement about Turgot's letter on first encountering it in 1785.<sup>294</sup> But, as the historian Will Slauter has emphasized, it is not obvious that this is an accurate reconstruction of Turgot's position, and the French text—*Au lieu de ramener toutes les autorités à une seule, celle de la nation, l'on établit des corps différens*—is sufficiently ambiguous to sustain alternative readings. Slauter raises the possibility that Turgot's objection was not to "the idea of a 'balanced' constitution...so much as the division of society into different 'bodies,'" endowed with special privileges reminiscent of the French estates. This, he guesses, is why Turgot is so concerned to contrast the American state governments with "Républiques fondées sur l'égalité de tous les citoyens," and why in the same paragraph the baron cautions against attaching legal disabilities

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<sup>292</sup> Adams, *Defence*, 1: 6-7.

<sup>293</sup> *Ibid.*, 1: 304, 1: 372. For his infatuation with the catchphrase "all authority in one centre," which would remain the preferred epithet for his ideological opponents, see John Adams, Annotations (1798/1811) to Condorcet, *Outlines of an historical view of the progress of the human mind* (London, 1795) [copy held at the Boston Public Library], 268; John Adams, "Political Miscellany (Feb. 9, 1812)," *Boston Patriot*, Apr. 15, 1812, 2; John Adams, Annotations (1813) to *Discourses on Davila* [1790] (Boston, 1805) [copy held at the Boston Public Library], 10, 139.

<sup>294</sup> John Adams, Annotations (1785) to Richard Price, *Observations*, copied by Franklin into his own edition of the same work, and reprinted in Haraszti, *John Adams*, 145 ("What does he mean collecting all authority into one center? What does he mean by the center of a nation?"). Cf. John Adams to Richard Price (Apr. 8, 1785), in *Works*, 8: 232 ("Some time since I received from Dr. Franklin a copy of the first edition of your Observations...and lately a copy of the second.").

to the clergy, since this would convert them into a bloc with an independent set of interests—*un corps étranger à l'Etat*.<sup>295</sup> Turgot, on Slauter's reading, is preoccupied less with the arrangement of powers and counterpowers, and more with avoiding the multiplication of ranks and castes inside the state. We might fortify this revisionist account by noting that that only two years prior Turgot had seemed to imply, in a private memorandum for Louis XVI, that Britain's mixed constitution might be made authentically republican, provided its expected national bankruptcy shifted the balance of power in the state from the royal court to the mass of landowners.<sup>296</sup> And so rather than accept Adams's resentful portrait of "Mr Turgots System"<sup>297</sup> at face value, as scholars have tended to do,<sup>298</sup> we should reconstruct the minister's constitutional theory by considering the full sweep of his fragmentary corpus, juxtaposed against the ideas and recollections of his contemporaries.

We should begin with Turgot's censure of checks and balances *à l'anglaise*, which, contra Slauter, was entirely genuine, and altogether in keeping with his philosophical background.<sup>299</sup> Although Turgot at times disclaimed membership in the school of Physiocracy, which he charged with conducting itself with the high "tone of a sect," and endorsing excessively

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<sup>295</sup> Turgot to Price (Mar. 22, 1778), 92-4 [Fr.]; Slauter, "Constructive Misreadings," 47.

<sup>296</sup> [Anne-Robert-Jacques Turgot], "Réflexions rédigées à l'occasion du Mémoire sur la manière dont la France & l'Espagne doivent envisager les suites de la querelle entre la Grande-Bretagne & ses colonies" (1776), reprinted in Mazzei, *Recherches historiques et politiques*, 3: 221-2 ("...rendit la constitution britannique plus solidement républicaine qu'elle ne l'est aujourd'hui").

<sup>297</sup> John Adams to Thomas Jefferson, in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1955), 12: 56.

<sup>298</sup> See Slauter, "Constructive Misreadings," 36-7 (citing Joyce Appleby, Philippe Raynaud, and C. Bradley Thompson).

<sup>299</sup> See Manuela Albertone, "Que l'autorité souveraine soit unique: la séparation des pouvoirs dans la pensée des physiocrates et son legs," in *Les usages de la séparation des pouvoirs/The uses of the separation of powers* (Sandrine Baume and Bianca Fontana eds., 2008), 38-68, 50 ("L'opposition de Turgot à la constitution de l'Angleterre et aux petites républiques de l'Europe découlait donc de la même hostilité des physiocrates à l'égard des réclamations corporatives et du système des contre-forces").

authoritarian measures to govern the kingdom,<sup>300</sup> his emphatic refusal of British constitutionalism was perfectly in accord with the political theory of the *économistes* François Quesnay, Pierre-Paul Mercier de la Rivière, and Victor Riqueti, marquis de Mirabeau, who presided over his intellectual formation.<sup>301</sup> For these thinkers, the purpose of legislation was to reflect back into the world the divinely-ordained laws of nature, whose basic principle was the creation and perpetuation of material abundance, and whose substance was absolute non-interference with the prerogatives of landowners. The burden of those who governed was to deduce for themselves these laws and their provisos, which were readily accessible to human reason, and to implement them in full. As Dupont de Nemours put it in a 1768 prospectus of physiocratic doctrine, "sovereign authority is not instituted to *make laws*, since *all laws are made* by the hand of the supreme being, who is responsible for all *rights* and *duties*." Rather, "ordinances of the sovereign...are *declaratory acts*" confirming these natural laws, and remaining valid only insofar as they comport with them.<sup>302</sup> It followed that the checks and balances discovered by Montesquieu in the English constitution and lauded so inordinately had no legitimacy. They displaced reasoned order, growing from sacred law, with improvised and arbitrary bargains struck between rival social forces. They appealed to medieval legal precedents

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<sup>300</sup> See, e.g., Emma Rothschild, *Economic Sentiments* (2001), 35-6; Liana Verdi, *The Physiocrats and the World of the Enlightenment* (2012), 244; Anthony Mergey, *L'État des Physiocrates* (2010), 21 ff. 28.

<sup>301</sup> For a sense of Turgot's own positioning, see his "Sur les économistes [Éloge de Gournay]" (1759), in *Œuvres* ([Pierre-Samuel Dupont de Nemours ed.], Paris, 1808), 3: 316 ("Entre les deux écoles [of Physiocrats, one led by Gournay and the other by Quesnay], profitant de l'une et de l'autre, mais évitant avec soin de paraître tenir à aucune, se sont élevés quelques philosophes éclectiques, à la tête desquels il faut placer M. TURGOT, l'abbé de CONDILLAC, le célèbre Adam SMITH...").

<sup>302</sup> Pierre-Samuel Du Pont de Nemours, *De l'origine et des progrès d'une science nouvelle* (London [Paris], 1768), 29-30 ("si elles défendaient de respecter la propriété, si elles commandaient de brûler les moissons...ce seraient des actes insensés qui ne seraient obligatoires pour personne").

rather than philosophical ratiocination.<sup>303</sup> And they insisted on a prophylactic division between legislative and executive powers that was simply nonsensical if the task of public order was not to ensure consensus, but rather to instantiate, with a maximum of force and efficiency, a series of divine commandments. This was the line taken by Mercier in his 1767 study *L'ordre naturel*, deriding the "system of counter-forces" as "a bizarre idea" and a "self-evident chimera," tending naturally to "anarchy and the dissolution of society."<sup>304</sup> He was echoing Quesnay, who a decade earlier had dubbed the "système des contreforces" an "opinion funeste," in that it furnished the great with a permanent veto over popular initiatives, and taught citizens to view themselves as representatives of "particular interests" rather than servants of the common good.<sup>305</sup> A loathing of Montesquieuan "balance" remained a golden thread in the braid of physiocratic thought, even as adherents of the school shifted their allegiances from royal despotism, to a supervisory judiciary, to tentative forms of republicanism. Thus Condorcet, writing on the eve of revolution, could still denounce "the principles of counterweights or equilibrium," in terms that would have been familiar to Quesnay thirty years earlier: "supposedly the safeguard of liberty, but in reality the guarantor of the authority of the rich, the nobility, the magistrate, and the priest."<sup>306</sup> Given the persistence of this trope, it is scarcely surprising that it would be invoked by Turgot in his evaluation of the American state constitutions.

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<sup>303</sup> See, e.g., [Anne-Robert-Jacques Turgot, with Pierre-Samuel Dupont de Nemours], "Mémoire sur les municipalités à établir en France" [1775], in *Œuvres posthumes de M. Turgot* (Pierre-Samuel Dupont de Nemours ed., Lausanne, 1787), 6 ("Les droits des hommes réunis en société, ne sont point fondés sur leur histoire, mais sur leur nature; il ne peut y avoir de raisons de perpétuer les établissemens faits sans raison.").

<sup>304</sup> Pierre-Paul Le Mercier de La Rivière, *L'ordre naturel et essentiel de sociétés politiques* (London [Paris], 1767), 1: 272, 2: 461-3. Mercier argued that in a properly-constituted regime the sovereign would have every incentive to respect property rights, since his continued rule would depend on the economic flourishing of his subjects. No other individual liberty, in Mercier's view, merited guarantees against the state.

<sup>305</sup> François Quesnay, "Maximes générales du gouvernement économique d'un royaume agricole" (1758), in *Physiocratie, ou constitution naturelle du gouvernement* ([Pierre-Samuel] Du Pont [de Nemours] ed., Yverdon, 1768), 1: 85-6.

<sup>306</sup> Condorcet, "Essai sur la constitution et les fonctions des assemblées provinciales" (1788), in *Œuvres*, 8: 557.

It is nevertheless too simplistic to ascribe to Turgot the views of Mercier or Quesnay, with whom he remained in significant disagreement. And plainly Turgot did not think enlightened absolutism feasible in America, whatever its merits in France. And so to grasp his positive vision for the possibilities of an American constitution, and not merely his negative injunction against an "équilibre de forces," we should attend carefully to the hints interspersed in his letter to Price. Far from the dire centralizer of Adams's imagination,<sup>307</sup> Turgot's first admonition to the republic was to devolve administrative power to local and municipal authorities: "separate the objects of legislation," he enjoined, "from those of the general administration...[and] institute local permanent assemblies, which by discharging almost all the functions in the detail of government, make it unnecessary for the general assemblies to attend to these things."<sup>308</sup> The state capital would become a site of lawmaking, while the execution of most laws would be overseen by local councils of great citizens. This renovation of the state governments would be accompanied by an enhancement of the powers of Congress, and a reimagination of the relationship between continental and provincial government. States could no longer be allowed to set their own levels of taxation, since they would inevitably deploy this power "contrary to the interest of the other states," stamping tariffs on goods made abroad, and slashing personal taxes in a bid to attract the residents of other states.<sup>309</sup> With equal brio, the baron advised America to cast aside its reflexive

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<sup>307</sup> Adams was flummoxed by Turgot's insistence on devolution and local administration in the letter to Price, scrawling in the margins that the "idea is totally repugnant to what he said against the equilibrium." See Adams, Annotations to Turgot, in Haraszti, *John Adams*, 146. Nor was Adams himself at all averse to centralizing authority in the national capital; see John Adams to William Tudor Sr. (June 12, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0617> ("Are the Separate States in our national Government, Sovereign and independent? If they are, We had all better go home. ").

<sup>308</sup> Turgot to Price (Mar. 22, 1778), 115 [Eng.] and 94-5 [Fr.].

<sup>309</sup> *Ibid.*, 116 [Eng.] and 95 [Fr.].

opposition to standing armies<sup>310</sup> and to establish a federal force "to which every State should contribute in proportion to its population," the only antidote to an "inequality of military force" between the states.<sup>311</sup> Most drastically, in his discussion of disputed sovereignty in the western territories he implied that it might be necessary to redraw America's jurisdictional map in order to assure a durable balance of power between the states:

The question, whether such a canton or such a village belongs to such a Province or such a State, ought not to be determined by the interest in it pretended by that Province or that State; but by the interest the inhabitants of the canton or village have in assembling for transacting their affairs in the place most convenient for them. This interest, measured by the greater or less distance that a man can go from his home to attend to important affairs without injuring his private concerns, forms a natural boundary to the jurisdiction of States, and establishes an equipoise of extent and strength between them, which must remove every danger of inequality, and every pretence to superiority.<sup>312</sup>

Three ideas in this paragraph should be unpacked. First, that a true republic requires not just representation but also some quantum of democracy—the direct participation of citizens in public life. Turgot stipulated that the demands of citizenship must not impinge unduly on "affaires journalieres," but did not think it sufficient for members of the body politic to designate agents to serve in their place. Second, he appealed to this democratic idea to cut the Gordian knot of the Northwest Territories, reasoning that the principle of assembly placed firm limits on the geographic extent of states. To demand that residents living on the western shores of Lake Michigan journey to Boston or Hartford to enjoy self-government, because an antiquated charter granted by a former colonial master assigned these disparate territories to Massachusetts and Connecticut, was conspicuously irrational. More daringly, Turgot hinted that the same precept might be applied to recalibrate the boundaries of the thirteen original states. The size and incongruity of states like Virginia (then encompassing present-day West Virginia and Kentucky), New York (Vermont, as well as much of the Ohio Valley), and Massachusetts (Maine), left them

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<sup>310</sup> See, e.g., [Alexander Hamilton], Federalist No. 26 [1787], in *The Federalist Papers*, 121 ("the people of America may be said to have derived a hereditary impression of danger to liberty from standing armies in time of peace").

<sup>311</sup> Turgot to Price (Mar. 22, 1778), 122 [Eng.] and 101 [Fr.].

<sup>312</sup> *Ibid.*, 118-19 [Eng.] and 97-8 [Fr.].

politically incoherent, a heteroglossia of interests impossible to synthesize into a single political unit. Worse, the gap between the large commercial and small rural states rendered the confederation an asymmetrical partnership, generating resentments that would slowly gnaw at its foundations. The solution Turgot appeared to contemplate was the dissolution of the states from above and below—parceling out administration to townships, while concentrating military and legislative authority in the national capital.

In these maneuvers we find Turgot resuscitating for America a version of the reform program he had presented two years earlier to Louis XVI: an ascending ladder of primary and representative assemblies that would link the smallest units of village life to the high politics of Versailles in a single, organic relational chain.<sup>313</sup> France's towns and cities, Turgot observed, drawing on his decade of service as the *intendant* in Limoges, were typically governed incompetently, by a myopic bureaucracy directed from Paris that knew little of the people it ruled, and whose leading offices were often sinecures obtained through graft. Augmenting the confusion, different cities enjoyed different legal privileges stemming from medieval concessions, so that each constituted, in effect, "its own quite distinct republic."<sup>314</sup> "Your majesty must feel the necessity," Turgot chirped hopefully, "of substituting for this spirit of disorder and exclusion a spirit of union, peace, and reciprocal support."<sup>315</sup> This was to be accomplished through *municipalization*—on the one hand, turning over day-to-day administration to local assemblies of notable citizens, and on the other, binding these assemblies together into a comprehensive national architecture, a pyramidal structure he called a "hiérarchie des

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<sup>313</sup> Turgot and Dupont de Nemours, "Mémoire sur les municipalités," 69 ("L'objet des municipalités...seroit de lier les familles au lieu du domicile que leurs propriétés leur indiquent...[and] d'établir une chaîne par laquelle les lieux les plus reculés puissent correspondre avec Votre Majesté").

<sup>314</sup> Ibid., 55 ("Cet esprit tend à bien séparer chaque ville du reste de l'état, à en faire une petite république bien séparée...").

<sup>315</sup> Ibid., 20-1, 55.



municipalités."<sup>316</sup> At the lowest level, that of the village or town, would be primary assemblies, whose responsibilities would include the distribution of tax revenue, the planning and execution of major infrastructure projects, the maintenance of political and commercial relations with neighboring towns, and the supervision and relief of the poor.<sup>317</sup> Participation in these bodies would be restricted to owners of significant landed property, and suffrage would be apportioned on the basis of tax payments. In a typical village of 100 families, Turgot projected that only "five or six" would qualify for full citizenship, although smaller landholders might participate on a "fractional" basis in proportion to their wealth.<sup>318</sup> This asperity was justified, in part, with an arsenal of pragmatic arguments long familiar from elite theories of republicanism; Turgot advised that "les assemblées trop nombreuses sont sujettes à beaucoup d'inconvénients, de tumultes, de querelles," while "la pauvreté des votans les rendroit faciles à corrompre."<sup>319</sup> But it was rooted more profoundly in Turgot's physiocracy, which taught that landholders, unlike mobile capitalists, traveling artisans, and the itinerant poor, shared a tellurian connection with the soil that gave them a permanent interest in the health of the community, and thus a moral right to determine its future. "It is possession of the earth," he intoned, "that not only produces" the wealth of the nation, "but also indelibly ties its possessor to the state, and thus constitutes the true

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<sup>316</sup> Ibid., 89.

<sup>317</sup> Ibid., 20, 31, 37, 66.

<sup>318</sup> Ibid., 31, 29.

<sup>319</sup> Ibid., 23. Cf. *ibid.*, 33 ("ceux qui ont reçu le plus d'éducation, il rendroit les assemblées beaucoup plus raisonnables, que si c'étoient les gens mal instruits & sans éducation qui y prédominassent"), 52 ("les assemblées étant peu nombreuses...leurs délibérations se seront assez unanimement"; il ne pourra s'y trouver diversité d'opinions").

right of citizenship."<sup>320</sup> Given the correlation between the interests of *propriétaires* and that of the nation, he added, there was no risk of this power being misused to oppress the poor.<sup>321</sup>

In Turgot's rubric, each primary assembly would appoint a deputy to meet at a secondary level, where together they would determine policy and elect administrators for a cluster of towns or villages. This canton would in turn elect representatives to sit at the *provincial* level, and each province would elect a deputy to the *Municipalité générale du royaume* at Versailles, whose deliberations would be attended on occasion by the king.<sup>322</sup> The *contrôleur* concluded his memorandum with a sketch of its ordinary functioning: "Your majesty will declare, through his minister of finance, the sums needed from the provinces, to satisfy the expenses of the state, comprising the cost of the public works you will have judged necessary, leaving the assembly perfectly free to award, by a plurality of votes, whatever additional funds...it judges necessary." The mechanics of raising these revenues *ex ante*, and distributing them *ex post*, would be left to the reasoned discretion of provinces and towns.<sup>323</sup>

Observers were struck by the force and creativity of these measures. Richard Price, not yet personally acquainted with Turgot, termed his ministry "a *phænoménon* of the most extraordinary kind...[a]n absolute King rendering a voluntary account to his subjects, and inciting his people to *think*," and regretted that palace intrigue had prevented these visionary projects

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<sup>320</sup> Ibid., 26. Contrast this with his depiction of skilled laborers and capitalists at *ibid.*, 24-5 ("Mobiles comme leurs jambes, ils ne s'arrêtent jamais qu'à celui où ils se trouvent le mieux. C'est aux propriétaires de chaque canton à les attirer chez eux, en raison du besoin qu'ils peuvent en avoir: l'Etat lui-même n'a sur eux qu'un droit moral & une autorité de police...Loin de les fixer à un village, il ne peut pas même les conserver au royaume, autrement que par des bienfaits qui déterminent leur libre choix...Les richesses mobilières sont fugitives comme les talents; & malheureusement qui ne possède point de terres, ne sauroit voir de patrie que par le cœur, par l'opinion, par l'heureux préjugé de l'enfance: la nécessité ne lui en donne point; il échappe à la contrainte, il esquivé l'impôt").

<sup>321</sup> Ibid., 33.

<sup>322</sup> Ibid., 69-70, 77-8, 81.

<sup>323</sup> Ibid., 81.

from coming to fruition.<sup>324</sup> The whisper campaign that swept Turgot from power centered on the charge that he was an iconoclast, "an enemy of religion and royal authority, who was going to overturn the state."<sup>325</sup> So it should be remembered that Turgot's program, despite its reliance on democratic participation, as well as representative election, was not in any sense republican; the *contrôleur* was careful to cabin the powers of these bodies so as not to create a rival to Versailles. He assured his friend the Abbé de Véri that they would be entirely mute on questions of "great national interest," that is to say, "war, peace, the laws, and the levels of public taxation."<sup>326</sup> Rather, their responsibilities would be twofold: *advisory* at Versailles, and *administrative* in the provinces. All legislative power would remain in the hands of Louis Seize, who, liberated from the quotidian tasks related of national administration, would be free to "govern like God through general laws."<sup>327</sup>

There is, nevertheless, an obvious correspondence between Turgot's reverie of networked municipalities organized under the ægis of a powerful central government, and his blueprint for an American republic with a dynamic Congress, an archipelago of "local permanent assemblies," and a pious devotion to the "great distinction...between landholders, and those who are not landholders."<sup>328</sup> Republican North America was chastised for lacking "une coalition, une fusion

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<sup>324</sup> Richard Price, *Additional Observations on the Nature and Value of Civil Liberty, and the War with America* (London, 1777), 150-1.

<sup>325</sup> Condorcet to Voltaire (June 12, 1776), *Œuvres complètes de Voltaire: Correspondance* (Paris, 1882), 18: 38 ("Il fit dire au roi, par M. de Maurepas, que M. Turgot était un ennemi de la religion et de l'autorité royale, et qu'il allait bouleverser l'État."). Cf. Gustave Schelle, *Turgot* (1911), 210 ("la Reine...avait fini par se persuader qu'il était un ambitieux capable de vouloir bouleverser le Royaume pour devenir quelque chose comme un Cromwell").

<sup>326</sup> Abbé de Véri, *Journal* (Jehan Gaspar Marie baron de Witte ed., 1928), 2: 148.

<sup>327</sup> Turgot and Dupont de Nemours, "Mémoire sur les municipalités," 9. Cf. Condorcet, *Vie de M. Turgot*, 1: 151-2 ("C'étoit uniquement à des fonctions d'Administration que M. Turgot croyoit devoir appeller ces Assemblées; & il ne pensoit pas que ces fonctions dussent s'étendre au-delà de l'exécution des reglemens généraux, des loix émanées de la puissance souveraine.").

<sup>328</sup> Turgot to Price (Mar. 22, 1778), 115-16 [Eng.], 95 [Fr.].

de toutes les parties, qui n'en fasse qu'un corps *un*, et homogène," while Bourbon France was critiqued in nearly identical terms for its "esprit de désordre & d'exclusion," and its omission of any "esprit d'union."<sup>329</sup> And if the submerged target of Turgot's letter to Price was the unjustified privileges accorded to the states, who pretended to represent an autonomous interest detached from that of the nation, much of this ire was transposed directly from his polemic in the *Mémoire* against the *États-Généraux*, which are arraigned in nearly identical terms for their selfish efforts to be exempted from national taxation, their corporatism, and their "mutual animosities and prejudices."<sup>330</sup> Turgot's answer, in both cases, is a revivification of the center, and a subordination and incorporation of the periphery.

After his death in 1781 it was left to the baron's friends and interpreters to draw out the republican potential latent in his constitutional ideas. Condorcet, in his 1786 *Vie de M. Turgot*, opted for apology, contending that the memorandum on municipalities had, for all of its evident limitations, represented an enormous stride towards Turgot's ideal of free government. Had his tower of stacked assemblies been erected, France would have enjoyed a "representation...much more equal than it had ever been in any country in the world," though the marquis quickly clarified that it would not have run to "an excess, as is the case in those countries where the right of voting is fixed at a very low income."<sup>331</sup> Condorcet added that Turgot's plan had a projected second phase, omitted from the *Mémoire*, and far more radical than what preceded it: following a

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<sup>329</sup> Compare *ibid.*, 96 [Fr.] and Turgot and Dupont de Nemours, "Mémoire sur les municipalités," 55.

<sup>330</sup> Compare Turgot to Price (Mar. 22, 1778), 119 and 121 [Eng.] and 98 and 100 [Fr.]; Turgot and Dupont de Nemours, "Mémoire sur les municipalités," 95 and 41-2. || Compare, too, Condorcet's remarks on the clergy in his *Vie de M. Turgot*, 1: 149 (summarizing the *Mémoire*), and Turgot to Price (Mar. 22, 1778), 114-15 [Eng.] and 93-4 [Fr.]. || On Turgot's deep animus towards the Estates General, see Paul Friedland, "Parallel Stages: Theatrical and Political Representation in Early Modern and Revolutionary France," in *The Age of Cultural Revolutions: Britain and France, 1750-1820* (Colin Jones and Dror Wahrman eds., 2002), 218-50, 245-6.

<sup>331</sup> Condorcet, *The Life of M. Turgot* ([Benjamin Vaughan trans.,] London, 1787), 195-6 [Eng.], 1: 145 [Fr.]. Condorcet was surely thinking of the United States, and likely Pennsylvania.

transitional period of national education, imparting to citizens the "new ideas" they would require "to act in a new sphere," he would have urged Louis XVI to share legislative powers with the municipal assemblies, effectively converting himself into a constitutional monarch, while at the same time liquidating the Estates General. The *contrôleur* "would have shown him all the glory which such a sacrifice, without example in history, would have merited; an instance of patriotism superior to those virtues which have acquired to Trajan and to Marcus Aurelius the just admiration of all ages."<sup>332</sup> Brissot, not privy to this secret annex, was less favorably disposed. His pamphlet *Observations d'un républicain* (1788), published anonymously<sup>333</sup> on the eve of the first meeting of the Estates General, acknowledged Turgot's genius, and used it as a lash against the perceived incompetence of Jacques Necker, his successor as finance minister.<sup>334</sup> But when the journalist turned to Turgot's plan for municipal assemblies he recognized "neither safety, nor liberty" for the people. Its impossibly high bar for suffrage (600 livres/year in rent for landowners, a minimum fortune of 18,000 livres for city residents) ensured "the total exclusion of the people" from the assemblies, entrenching the hegemony of a small number of great families. If "today arbitrary power" in the provinces "is manifested through a single channel, that of the royal *intendants*," Brissot fumed, Turgot's hydraulic system of municipalities would replace this with "a host of channels, but the same result."<sup>335</sup>

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<sup>332</sup> Ibid., 209 [Eng.] and 1: 155-6 [Fr.] ("Il lui eût dit en même temps, que dans une constitution ainsi formée le vœu général de la nation seroit le seul obstacle à l'autorité..."). Cf. *ibid.*, 340-1 [Eng.] and 2: 106 [Fr.] (For Turgot, "Une Constitution républicaine est la meilleure de toutes.").

<sup>333</sup> Cf. Entry for Oct. 20, 1787, in *Mémoires secrets* (Louis Petit de Bachaumont ed., London, 1789), 36: 123 (attributing the work to Condorcet).

<sup>334</sup> [Jacques-Pierre Brissot], "Observations d'un républicain," reprinted in Dupont de Nemours, *Œuvres posthumes de M. Turgot*.

<sup>335</sup> Ibid., 155.

It was a point on which Adams agreed wholeheartedly, grousing in the margins of his copy of Price that the minister "was no judge of a good constitution: it was a subject he had not studied, and he had not practice and experience enough" to define responsibly.<sup>336</sup> But Turgot's constitutional theory circulated with surprising velocity and reach in the Atlantic world of letters. The letter to Price was reproduced freely in American newspapers,<sup>337</sup> while in Paris Jefferson acquired copies of Condorcet's *Vie de Turgot* for himself, Franklin, Robert Morris, and John Jay.<sup>338</sup> There are indications that this flood of European writing on the American constitutions left an impression.<sup>339</sup> Thus Arthur Campbell, a former member of the Virginia constitutional convention, could advise his friend James Madison in 1785 that:

Doctor Price, Abbe Mably, and Monsieur Turgot, hath lately said a number of good things, that ought to be attended to. I suppose we must agree with the latter, that it will take years, yet to come, to perfect our governments. When you, and I, sat in Convention in 1776, I thought the Virginia Constitution, was a specimen of consummate wisdom. I see many defects now; and it would perhaps surprize the World, if Frankland, those wild half civilized People, would produce a Form, as much superior to it, as Massachusetts is to Georgia.<sup>340</sup>

Others, like the Boston writer known as Jonathan of the Valley, loudly excoriated Price and Turgot as propagandists for "unlimited federal power," whose fortified Congress resembled the Roman Decemviri, and would end by "establish[ing] a tyranny" over the states and their

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<sup>336</sup> Adams, Annotations to Turgot, in Haraszti, *John Adams*, 145.

<sup>337</sup> Reprinted: *Salem Gazette*, Feb. 8, 1785, 4; *New-Hampshire Mercury and General Advertiser*, Mar. 8, 1785, 1; *Independent Chronicle* [Boston], Mar. 24, 1785, 1; *South Carolina State Gazette*, June 15, 1785, 3; *Newport Herald*, Aug. 23, 1787, 1 ("...contains sentiments of the first importance, and cannot be too deeply impressed upon the mind of our legislature at this critical and decisive period"). || Quoted: Americus, *Pennsylvania Evening Herald*, July 30, 1785, 6 (on constitutional reform); "We Hear That the City Council...", *Charleston Evening Gazette*, Jan. 19, 1786, 2 (on religious tests); Rough Hewer, *New-York Packet*, Apr. 21, 1785, reprinted in *Freeman's Journal* [Philadelphia], Apr. 27, 1785, 2 (on confederation).

<sup>338</sup> C.W.F. Dumas to Thomas Jefferson (Sept. 12, 1786), in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1954), 10: 354 (enclosing copies for Jefferson, Franklin, Robert Morris, and John Jay); Thomas Jefferson to James Madison (Aug. 2, 1787), in *Papers of Thomas Jefferson*, 11: 665 (transmitting a copy to Madison).

<sup>339</sup> See, generally, An American, "The Establishment of the Worship of the Deity, essential to National Happiness," *American Herald* [Boston], Sept. 4, 1786, 3 ("Doctor Price...merits the applause of...every American. I esteem it a special favour that he and other foreigners of enlarged minds have given us their enlightened thoughts on the momentous subject of government...").

<sup>340</sup> Arthur Campbell to James Madison (Oct. 28, 1785), in *Papers of James Madison (Congressional Series)*, 8: 383.

citizens.<sup>341</sup> These authors were test-driving arguments against centralization that would be resurrected two years later. Indeed the literary celebrity Hector St. John de Crèvecoeur, then serving as French consul in New York, thought it obvious in 1787 that the newly-publicized draft of the Constitutional Convention, with its fierce commitment to centralization, owed an intellectual debt to European political theory. "You can well observe," he wrote to Baron de Castries, Secretary of the Navy, "that this is no longer a Confederation of 13 separate & distinct States. It is a new general Government...They followed, as far as Circumstances permitted them, the principles of the late Mr. Turgot & of Doctor Price."<sup>342</sup> We should not exaggerate the impact of these writings; the Federalist lawyer Jonathan Jackson, who greatly admired "M. *Turgot's* letter," nonetheless complained that it "has been so little attended to here."<sup>343</sup> But it was not mere delusion that led Adams to train "the artillery of his arguments," in the apt idiom of one reviewer, against Turgot's short, sharp critique.<sup>344</sup> The epistle to Price exerted a particular fascination in France, as politics in the *ancien regime* edged ever closer to insurrection. From the tranquility of the July Monarchy the former terrorist Bertrand Barère recalled the heady days

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<sup>341</sup> Jonathan of the Valley, "To the General Court," *Boston Chronicle*, June 16, 1785, reprinted in the *New-York Journal*, June 30, 1785, 1 ("I wish the Doctor to consider how long we could be a free people, after our separate assemblies are rendered useless, and all the governments reduced from a democratical form, and turned into one aristocracy.").

<sup>342</sup> [John Hector] St. John de Crèvecoeur to Maréchal de Castries (Sept. 25, 1787), in *DHRC*, 13: 226. Cf. George Walton, "Savannah, October Term, 1785. The Chief Justice's Charge in Chatam," *Charleston Evening Gazette*, Oct. 24, 1785, 2 ("It is the opinion of as zealous a friend to the United States as they ever had and who is one of the best and most enlightened men in the world, that the powers of the Congress are deficient. It is also that of the political commentator, who has a particular predilection for our state."). Footnotes confirm that these references are to Price and Mably. || One wit satirized the reliance of his countrymen on foreign opinions, jesting that "doctor Price has been so uniform a friend to the United States, there is no doubt he will take infinite pains to shew us whether we ought, or ought not, to adopt the new constitution, and therefore it is proposed, that not a single thing be said, written, or done upon the subject till that gentleman's opinion arrives." See "Federal Constitution," *Massachusetts Gazette*, Oct. 30, 1787, 3.

<sup>343</sup> Jonathan Jackson, *Thoughts upon the political situation of the United States of America* (Worcester, 1788), 144. Jackson thought the letter (aside from the single unfortunate remark seized upon by Adams) a kind of Federalist manifesto, and printed eight pages of extracts, asking rhetorically: "Can any one trace the benevolence discovered in these sentiments, and not be enamoured with the author of them?" (p. 153).

<sup>344</sup> *American Magazine* (Dec. 1787), 1.

before the revolution, and his encounter with several luminaries of the Atlantic enlightenment in the drawing room of the Duchess d'Enville:

I saw, in her salon, MM. Condorcet, Jefferson, Lafayette...M. le Duc de La Rochefoucauld-Liancourt...We spoke a great deal of America, and its perfected constitution. For my part, I dared to voice a few ideas about the more pressing needs of France regarding individual and civil liberty. "Monsieur," the duchess then said to me, "you probably don't know about the letter written by Turgot to Doctor Price, in London, on civil liberty. I want to give you a copy. The great principles of this able statesman might be useful to you one day."<sup>345</sup>

The Duchess dispatched an edition of the letter to the Hotel des Prouvaires, where Barère was lodging, in the care of the Italian radical, Virginian revolutionary, and now Polish intelligence agent Philip Mazzei. Decades later, writing the *Mémoires* of his eventful life, Barère was still sufficiently struck by the letter to reprint it in full.

## **II. The Defence in context**

In May 1782 Colonel Lewis Nicola, a British *émigré*, deist philosopher, and publisher in civilian life, and more recently the founder of the Continental Army's Invalid Corps, prepared a letter for General Washington from his army outpost in Fishkill, New York. The war for independence had been decided by the Franco-American victory at Yorktown nine months earlier, but Nicola was not in a triumphant mood. The soldiers in his camp had gone without pay for several months, which he attributed to the inept administration of the Continental Congress and financial chicanery in the state governments, and Nicola now feared that they would be abandoned to "beggary," financial hardship, and exploitation by speculators when the army disbanded. The failure to secure their salaries, he wrote to his commander, was symptomatic of Congressional maladministration more generally; while Nicola did not doubt "Congresses

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<sup>345</sup> *Mémoires de B. Barère* (Hippolyte Carnot and Pierre Jean David d'Angers, eds., Brussels, 1843), 1: 327. On the connection between d'Enville and Turgot, see [Anne-Robert-Jacques] Turgot to Abbé de Véri (May 10, 1776), in *Journal de l'Abbé de Véri: le règne de Louis XVI et la révolution française, 1774-1799* (Philippe Haudrière ed., 2016), 1: 436 ("Mais je partirai sans honte et sans remords...Je crois que j'irai d'abord à la Roche-Guyon chez Mme d'Enville.").



intention to act uprightly," it now appeared indisputable that its "abilities will not be equal to the task," not only of providing for the soldiery but also of governing the new nation. The realization prompted the colonel to reflect on the nature and theory of political order, and to challenge the pervasive assumption that the ideal government for a free United States was necessarily republican. "I own I am not that violent admirer of a republican form of government that numbers in this country are." Surveying the world's only extant republics—Venice, Genoa, and Holland—he descried both a common tendency towards oligarchic capture, and a disastrous mismanagement of the national security. The United Provinces rose from penury to become "Mistress of nearly half the commerce of the earth," but at war with Britain in 1780 their clattering, inefficient government proved unable to extract and organize the national wealth, and their forces crumpled at the first blow. "Does not the great similarity...between her form of government & ours give us room to fear our fate will be like hers?" Monarchy was hardly a perfect regime, and might easily become tyrannical, but Nicola thought it beyond doubt that it possessed superior "energy," while republics like Holland struggled "to plan or execute vigorous" actions. The question was whether the political liberty the United States desired could be made to comport with the executive prowess it required. There was, Nicola thought, one possible archetype:

In the British Government we have a sketch of this, [far,] it is true of perfect, but no despicable basis of a good one...Were elections annual, & confined to representative for counties & few large trading cities only, & all contributing to the support of government privileged to elect, and had no command of money beyond what is requisite to the support of his family & court I believe the constitution would approach much to the degree of perfection to which sublunary things are limited. In a well regulated legislative body I conceive a third branch necessary—Montesquieu observes that a hereditary nobility is requisite in a monarchy and incompatible with a republic, taking this for granted, some degree of nobility may be proper in a mixed government, but limited, suppose not hereditary.

Nicola understood that his "heterodox" beliefs on constitutional design would not find great favor, and that "Republican bigots" would clamor to have him burnt at the stake.

"When we assumed independence, & each State formed a plan of government for itself," he disclosed to Washington in a subsequent letter, "I was astonished that none of the thirteen had adopted the English constitution purged of its defects," a lapse he blamed on the democratic enthusiasm of 1776. Undaunted, he contrasted the dispatch and vitality displayed by Washington as commander in chief with the lassitude of Congress, insisting that it would be reckless to jettison this magistracy in peacetime. As "[s]ome people," he regretted, "have so connected the ideas of tyranny & monarchy as to find it very difficult to separate them, it may therefore be requisite to give the head of such a constitution as I propose, some title apparently more moderate," though if Americans proved mature enough to embrace it, "the title of king...would be attended with some material advantages."<sup>346</sup>

Washington, stationed only nine miles away, received Nicola's missive within a few hours, and sent his reply the same day: "no occurrence in the course of the War," he answered, carefully measuring his words, "has given me more painful sensations" than this communication, which "I must view with abhorrence, and reprehend with severity." The letter was embossed with his personal seal and delivered under armed guard, and Washington asked two aides-de-camp to certify, in writing, that the copy of the letter retained in his personal papers was identical in every particular to the one dispatched to Nicola.<sup>347</sup> The incident has been remembered by historians as a pivotal episode in which Washington definitively debarred monarchical constitutional forms from America.<sup>348</sup> What is curious is that only five years later John Adams would propose a

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<sup>346</sup> Lewis Nicola to George Washington (May 22, 1782), *Founders Online*, <http://founders.archives.gov/documents/Washington/99-01-02-08500>; Lewis Nicola to George Washington (May 28, 1782), *Founders Online*, <http://founders.archives.gov/documents/Washington/99-01-02-08548>.

<sup>347</sup> George Washington to Lewis Nicola (May 22, 1782), *Founders Online*, <http://founders.archives.gov/documents/Washington/99-01-02-08501>.

<sup>348</sup> For a critical review of the literature on this letter, which has tended to wrongly assume that Nicola was (1) proposing a *coup d'état* against the Congress and (2) advocating that Washington himself be made king, see Robert

substantially similar constitutional ordering—"giving to the Governours of every state the same Authority which the British King has, under the true British constitution"—in a tome published to great acclaim on both sides of the Atlantic. And in January 1789, Washington would accept Adams as America's first vice president.<sup>349</sup>

John Adams penned the first volume *Defence* in a feverish burst of activity between September 1786 and January 1787. "[H]e is so much Swallowed up in the persuit of his Subject," Abigail informed John Quincy, an ocean away at Harvard College, "that you must not wonder if you do not receive a line from him."<sup>350</sup> Its rushed composition—"I lament," he confided to his brother-in-law Richard Cranch, "that it is so hasty a production"—accounts for its undeniably "Strange" form: a thousand-page tapestry of quotations and paraphrases on the history of republics, stitched together with obsessive commentary by Adams on the necessity of "a triple balance of equal powers."<sup>351</sup> Paradoxically, it is also a work of great subtlety and originality. The idea for a series of books on constitutional theory descended on him, Adams said, in a dream, during his return to London from an August mission to the Netherlands. Having signed a

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F. Haggard, "The Nicola Affair," *Proceedings of the American Philosophical Society*, vol. 146, no. 2 (June 2002), 139-69, esp. 142 and 169. For a charitable reconstruction of Nicola's views, and the nexus between his interest in monarchy, his desire to see justice done for America's veterans, and his advocacy of westward and northern expansion, see Louise Burnham Dunbar, *A Study of "Monarchical" Tendencies in the United States from 1776 to 1801* (1922), 40-7.

<sup>349</sup> Abigail Adams to JQA (Mar. 20, 1787), in *Adams Family Correspondence* (Margaret A. Hogan et al eds., 2005), 8: 11.

<sup>350</sup> Abigail Adams to JQA (Nov. 22, 1786), in *Adams Family Correspondence* (C. James Taylor et al eds., 2007), 7: 395 (adding that "I think he enjoys better Health this fall than I have known him to have for Several years.").

<sup>351</sup> John Adams to Richard Cranch (Jan. 15, 1787), in *Papers of John Adams*, 18: 542; Adams, *Defence*, 3: 433. || For the accusation that the work verges close to plagiarism, see Haraszti, *John Adams*, 158 (estimating that three-quarters of the first volume of the *Defence* is quotation or paraphrase, from sources as diverse as Pope's translation of Homer and William Mitford's *History of Greece*, although only about three percent of these quotations actually appear in inverted commas). For a more generous assessment of Adams's methodology, see Jacob Soll, "J.G.A. Pocock's Atlantic Republicanism Thesis Revisited: The Case of John Adams's Tacitism," *Republic of Letters*, vol. 2, no. 1 (Dec. 15, 2010), 34 ("Adams...was engaging in the old practice of choosing passages he believed were useful...and commenting on them in the vein of Machiavelli's *Discourses*...[and] Amelot de La Houssaye's *La Morale de Tacite*.").

commercial treaty in the Hague, the minister plenipotentiary had then ventured to Utrecht to visit acquaintances from his term as minister to Holland, and witnessed by happenstance the public swearing-in of new magistrates following a successful Patriot revolution:

I happened to be at Utrecht, on the Day of the memorable Ceremony of Administering the Oaths to the new Magistrates. The Novelty, the Dignity and Majesty of that Scene, made a deep Impression on my Spirits. An old established Government, laid in the Dust, and a new one erected from the Foundation, by the Sovereign Will of a Free People, is a Spectacle if not new, at least very rare in Europe. The Order, and Decorum as well as the Solemnity and Gravity, which I Saw, in the great Square at Utrecht, were astonishing...[and] threw me into a train of thinking...Having a long Passage from Helveæt[sluis] to Harwich, I fell into a deep Sleep and had a long Dream...I thought that the natural Principles of Government had taken so deep root, as to have produced Revolutions in America, Ireland, and Holland, and seemed to be pushing forward, with great vigour. But it was a question whether there might not be more heat than light, and whether there was not danger that Innovations might not be judiciously made which would require other Changes before mankind would be satisfied. Where shall we go for Advice? I dreamed that I made a Visit to the other World to my friend De Mably in the Celestial Regions, whom I found in company with Aristotle [and] Plato consulting upon the best *advice* to be given to the United States, Holland Ireland and all Peoples and Countries in Similar Circumstances.<sup>352</sup>

But even before the first volume was typeset Adams was deëmphasizing the formative effect of this detour to Utrecht, instead framing his *chef d'œuvre* as an intervention against the simultaneous outbreak of unrest in Massachusetts and France. The volumes "were written, as he later recalled to the minister William Walter in 1797, "with a view of not only composing the ferment in America which produced Shay's Rebellion, but with a hope of laying before the French Nation and all Europe, some considerations...the want of which I then feared and foresaw would produce such horrors as have since terrified the world."<sup>353</sup> This account is somewhat

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<sup>352</sup> John Adams to William Stephens Smith (September/October 1786), Adams Family Papers, Reel 188, quoted in Richard Alan Ryerson, *John Adams's Republic* (2016), 278. On the revolution in Utrecht, see Antoine Marie Cerisier to John Adams (Aug. 10, 1786), *Papers of John Adams*, 18: 423 ("la fermentation qui règne généralement pour le rétablissement de la Constitution vraiment libre & Républicaine est une suite des principes que la Revolution d'Amerique a heureusement répandus.").

<sup>353</sup> John Adams to Rev. William Walter (Oct. 24, 1797), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-2187>. Cf. John Adams to François Adriaan van der Kemp (Jan. 30, 1800), *Founders Online*, <http://founders.archive.gov/documents/Adams/99-02-02-4160> ("The French assembly of Notables on one side of me, and the Country resolves which produced Shases rebellion in the other filled my soul with such gloomy forebodings..."); John Adams to Mercy Otis Warren (Aug. 19, 1807), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-5208> ("in opposition to Chaises's Rebellion, to the disorganizing Votes of County Committees and Conventions and especially to the weak vain Projects of...my particular Friends Rochefaucault and Condercet, who...were about Setting the Universe in a blazing Bonfire"); John Adams to Samuel Perley (April 18, 1809), *Founders Online*, <https://founders.archive.gov/documents/Adams/99-02-02-5343> ("I published Three Octavo Volumes in Defence of our Massachusetts Constitution with a view to suppress Chaises Rebellion."). || Adams and his family would accord to the *Defence* a decisive role in quelling Shays's

exaggerated; Adams learned of Louis XVI's decision to convene the Assembly of Notables only in January 1787, and does not betray any sense in the first volume of the *Defence* that he expected imminent upheaval across the Channel.<sup>354</sup> What *is* clearly articulated from the first pages is his belief that Shays and his followers derived their radical politics from the theoretical literature prepared in Europe.

There has been, from the beginning of the revolution in America, a party in every state, who have entertained sentiments similar to these of Mr. Turgot. Two or three of them have established governments upon his principle: and, by advices from Boston, certain committees of counties have been held, and other conventions proposed in the Massachusetts, with the express purpose of deposing the governor and the senate, as useless and expensive branches of the constitution; and as it is probable that the publication of Mr. Turgot's opinion has contributed to excite such discontents among the people, it becomes necessary to examine it, and, if it can be shown to be an error...it is to be hoped they will not be misled by his authority.<sup>355</sup>

There is more conjecture than fact in this account of Massachusetts politics, which Adams could only view at a distance. The insurgency in Hampshire County certainly included a constitutional dimension—the first grievance listed by the ersatz constitutional convention that met in Hatfield in August 1786 was the "existence of the Senate."<sup>356</sup> And Turgot's 1778 letter was excerpted in most of the American states, including in Massachusetts. But the suggestion of a link between the two appears to be Adams's own invention.

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rebellion; see, e.g., JQA to John Adams (June 30, 1787), in *Writings* (Worthington Chauncey Ford ed., 1913), 1: 32 ("I have indeed great hopes that the 'Defence of the Constitutions' will produce an alteration in their sentiments. It will certainly have great weight.").

<sup>354</sup> John Adams to Lafayette (Jan. 12, 1787), *Founders Online*, National Archives, <http://founders.archives.gov/documents/Adams/99-02-02-0012> ("With equal Surprize & Satisfaction I learnt that the King had determined to call together an assembly of Personages...from all Parts of this Kingdom"). Nevertheless, Adams did perceive a turn towards liberalization in France and the other "simple monarchies" of Europe. But see Adams, *Defence*, 1: i ("The checks and balances of republican governments have been in some degree adopted by the courts of princes...a controul has been established over ministers of state...which approaches, in some degree, the spirit of republics").

<sup>355</sup> Adams, *Defence*, 1: 4. Cf. the account in the sympathetic *Concord Republican Gazette*, Nov. 29, 1796 ("Mr. Adams had heard of the intended views of a faction in Massachusetts to introduce monsieur Turgot's theory there;-- to abolish their separate executive, and their senate—and wrote this book vol. I. to prevent their anarchy.").

<sup>356</sup> "Convention, Hatfield, August 25th, 1786," *Boston Gazette*, Sept. 11, 1786. See also "Charge of the Chief Justice to the Middlesex Grand Jury," *Massachusetts Spy and Worcester Magazine*, Nov. 23, 1786, 4 ("There are other votes directly attacking some of the most vital parts of the Constitution, particularly holding up the existence of the Senate, and mode of representation prescribed by the Constitution, as *publick grievances*...Thereby endeavouring to stir up insurrection...and the overthrow of that Constitution").

As of 1785 Adams's political philosophy, as enunciated in *Thoughts on Government*, the Massachusetts constitution, and his scattered letters and speeches, could be abridged as four principal ideas. First, the only sound form of government is *republican*, defined, in a phrase copied from James Harrington, as the reign of *impersonal rules* rather than individual wills, "an Empire of Laws, and not of Men." Second, while there exist "an inexhaustible variety" of republics, the only secure arrangement of powers is a "complex" legislature, split into three segments: a popular assembly, infused with the passions and desires of ordinary citizens, a council of extraordinary individuals, and a governor, annually elected, encircled by a privy council, but given an absolute veto over legislation. Partitioning the state between a popular house and a chief executive would ignite civil war; a single assembly, presiding alone, would exhibit a disastrous combination of autocracy and frailty. Adams suggested annual elections for all magistracies, although he made clear that "the great offices of state" might also be constituted for longer terms, "or for life," without thereby becoming illegitimate.<sup>357</sup> Finally, although he maintained a strategic ambiguity on this point in *Thoughts on Government*,<sup>358</sup> in the *Novanglus* letters of 1775 Adams made clear his preference for what he termed "the British constitution in its purity," and indicated that in the future America might be happily reconciled to a "hereditary nobility," and even now was primed to accept "a nobility for life."<sup>359</sup> Each of these points would reappear in the *Defence*, absorbed into a wider philosophical framework that Adams hoped

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<sup>357</sup> Adams, *Thoughts on Government*, 8, 11-15, 18. The same basic outline can be found in John Adams to Richard Henry Lee (Nov. 15, 1775), in *Papers of John Adams*, 3: 307.

<sup>358</sup> Compare John Adams to William Hooper (Mar. 27, 1776), 4: 74 ("The British Constitution itself is Republican"); Adams, *Thoughts on Government*, 7-8 ("there is no good government but what is Republican...the only valuable part of the British constitution is so").

<sup>359</sup> Novanglus [John Adams], "VI. To the Inhabitants of the Colony of Massachusetts-Bay," in *Papers of John Adams* (Robert J. Taylor ed., 1977), 2: 304. Cf. Novanglus, "II. To the Inhabitants of the Colony of Massachusetts-Bay" (Jan. 30, 1775), 2: 240 ("the peculiar excellence of the British constitution"); "V. To the Inhabitants of the Colony of Massachusetts-Bay" (Feb. 20, 1775), 2: 278 ("I have not such an horror of a republican spirit...[which] is so far from being incompatible with the British constitution").

would elevate his musings on politics and his marginal commentaries to the rank of a *science*, a "plan which takes into consideration all the principles in nature, and provides for all cases that occur."<sup>360</sup>

The question reverberating through the *Defence* is posed most lucidly in the final chapter of the trilogy: why is it that, since the fall of Athens and Rome, so many republics have proved transient, have "foamed, raged, and burst, like so many water-spouts upon the ocean?"<sup>361</sup> The most prominent theorists of the eighteenth century had discussed republicanism as emerging only under certain narrow conditions—of climate, of stadial historical development, or of extreme civic morality.<sup>362</sup> The boldest gambit of the *Defence* is to discard each of these contingencies, and to reduce the question to a purely technical investigation of constitutional and social physics:

All nations, from the beginning, have been agitated by the same passions...The vegetable and animal kingdoms, and those heavenly bodies whose existence and movements we are as yet only permitted faintly to perceive, do not appear to be governed by laws more uniform or certain those those which regulate the moral and political world. Nations move by unalterable rules; and education, discipline, and laws, make the greatest difference in their accomplishments, happiness, and perfection...The world has been too long abused with notions, that climate and soil decide the characters and political institutions of nations. The laws of Solon and the despotism of Mahomet have, at different times, prevailed at Athens; consuls, emperors, and pontiffs have ruled at Rome. Can there be desired a stronger proof, that policy and education are able to triumph over every disadvantage of climate? Mankind have been still more injured by insinuations, that a certain celestial virtue, more than human, has been necessary to preserve liberty...we may hazard a conjecture, that the virtues have been the effect of the well ordered constitution, rather than the cause.<sup>363</sup>

Geography is not an alibi for despotism. Neither should lawgivers premise free institutions on the prior existence of a virtuous and self-sacrificing citizenry. This marked a break with Adams's prior work; in *Thoughts on Government* he had argued that the state must take responsibility for the morality of its citizens by providing for "the liberal education of youth," and, in times of war,

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<sup>360</sup> Adams, *Defence*, 3: 265.

<sup>361</sup> *Ibid.*, 3: 502.

<sup>362</sup> See, e.g., Richard B. Sher, "From Troglodytes to Americans: Montesquieu and the Scottish Enlightenment on Liberty, Virtue, and Commerce," in *Republicanism, Liberty, and Commercial Society* (David Wootton ed., 1994), 368-404, esp. 392-3 (discussing Montesquieu and Adam Ferguson).

<sup>363</sup> Adams, *Defence*, 3: 503-4.

through sumptuary laws that banish "levities and fopperies," and cultivate "manly and warlike virtues."<sup>364</sup> Now, in a letter to his cousin Samuel, Adams cited David Hume for the proposition "that all Projects of Government founded in the Supposition...of extraordinary degrees of Virtue are evidently chimerical." This was in part because the evangelists of civic patriotism had confused cause and effect—good structures made good citizens, rather than vice-versa. But, more fundamentally, Adams subscribed to an anthropology holding that mankind was naturally prone to ambition, selfishness, and mutual conflict. "Human Appetites, Passions, Prejudices and self Love," he chided his cousin, "will never be conquered by Benevolence and Knowledge." They are ineradicable. Thus in the second volume of the *Defence* he ridicules Machiavelli for expressing disappointment that the nobility, on taking power for the third time in Florence, did not conduct itself more moderately, a fact the *secretario* imputed to the "ambitious" humor of their caste. "The seeds," Adams rejoined, "were in the human heart, and were as ready to shoot in commons and plebeians as they had been in nobles...The evil destiny is in human nature."<sup>365</sup> The *naturalness* of self-interest meant that, contra Machiavelli, it was not the exclusive property of any social grouping. It meant, too, that no nation could expect to escape its gravitational pull. Least of all the United States: writing to Benjamin Rush, Adams scoffed that the motto of Americans was *Alieni Appetens Sui*, appropriate for a nation more preoccupied with lucre "than

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<sup>364</sup> Adams, *Thoughts on Government*, 24. This text marked the zenith of his interest in sumptuary laws; already by 1778 we find him qualifying his support, or framing it exclusively as a wartime expedient. See John Adams to Ralph Izard (Oct. 2, 1778), in *Papers of John Adams* (Gregg L. Lint et al eds., 1989), 7: 96 ("It is with great Pleasure that I see you mention Sumptuary Laws? But is there Room to hope...that the People have or can be perswaded to acquire those Qualities which are necessary to execute such Laws?"); John Adams to Hendrik Calkoen (Letter 13) (Oct. 26, 1780), in *Papers of John Adams* (Gregg L. Lint and Richard Alan Ryerson eds., 1996), 10: 255 ("The Americans might, and rather than the English should prevail against them they would be brought to impose Duties upon Articles of Luxury...").

<sup>365</sup> John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1081>; Adams, *Defence*, 2: 52, 2: 46.



any other Nation that ever existed the Carthaginians and Dutch not excepted."<sup>366</sup> But America was only an extreme instance of the rule that citizens of every state were suffused at every moment with *desire*, for goods both tangible and ineffable. And that any republicanism founded on the suppression of those desires would be short-lived.<sup>367</sup>

Anthropologically, then, men are equal, in the limited sense that they are animated by the same drives. "There is no reason to believe," as he concludes in Book III of the *Defence*, that one class or nation is "much honester or wiser than the other; they are all of the same clay," and they are all equally driven to "usurping others rights."<sup>368</sup> But this *natural* equality contains within it the germ of *social* inequality, since the force that grips all men is a mania for emulation, distinction, and exclusion, which is to say, for hierarchy.<sup>369</sup> And so if in one breath Adams testifies that "all men have one common nature," and so must have "equal rights and equal duties" under the law, with the next he makes clear that they will also have vastly different levels of intelligence, social fluency, and beauty, and this will in turn generate varying levels of education and property.<sup>370</sup> And so, having taken this intellectual detour, we arrive at a modified but nevertheless recognizably Machiavellian social taxonomy:

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<sup>366</sup> John Adams to Benjamin Rush (Apr. 4, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0903>.

<sup>367</sup> Adams, *Defence*, 3: 339 ("If mankind must be voluntarily poor in order to be free, it is too late in the age of the world to preach liberty...mankind in general had rather be rich under a simple monarchy, than poor under a democracy.").

<sup>368</sup> *Ibid.*, 3: 218.

<sup>369</sup> The essential text here is Adams's *Discourses on Davila*; see 24-6 ("As nature intended [men] for society, she has furnished them with passions, appetites, and propensities...to render them useful to each other in their social connections. There is none among them more essential or remarkable, than the *passion for distinction*. A desire to be observed, considered, esteemed, praised, beloved, and admired by his fellows...This passion, while it is simply a desire to excel another...is properly called *Emulation*. When it aims at power...it is *Ambition*."). On *Davila's* "borrowings" from Adam Smith's *Theory of Moral Sentiments*, see Haraszti, *John Adams*, 169-70.

<sup>370</sup> John Adams to Thomas Brand Hollis (June 11, 1790), in *Works*, 9: 570 ("That all men have one common nature, is a principle which will now universally prevail: and equal rights and equal duties...but equal ranks and equal property never can be infered from it, any more than equal understanding agility, vigour or beauty.").

The people, in all nations, are naturally divided into two sorts, the gentlemen and the simplemen...By gentlemen are not meant the rich or the poor, the high-born or the low-born, the industrious or the idle; but all those who received a liberal education...whether by birth they be descended from magistrates...or from husbandmen, merchants, mechanics, or laborers; or whether they be rich or poor. We must, nevertheless, remember, that generally those who are rich, and descended from families in public life, will have the best education in arts and sciences, and therefore the gentlemen will ordinarily, notwithstanding some exceptions to the rule, be the richer, and born of more noted families...The distinctions which have been introduced among the gentlemen...are perfectly immaterial to our present purpose; knights, barons, earls, viscounts...even princes and kings, are still but gentlemen...But the gentlemen are more intelligent and skilful, as well as generally richer and better connected, and therefore have more influence and power than an equal number of the common people.<sup>371</sup>

The stratification of society into an elite of the propertied and educated and a horde of undistinguished laborers is both intrinsic to human nature, and, crucially, impossible to staunch or reverse.<sup>372</sup> Men cannot be decreed equal in abilities or charm. Neither can aristocracy be eliminated through massacres, in the brutal manner prescribed by Machiavelli; as the index of hierarchy is comparative rather than absolute, their places will simply be taken by others.<sup>373</sup> And the forcible redistribution of goods, a specter haunting all popular regimes since "a great majority of every nation is wholly destitute of property," would be self-defeating; it would destroy of the incentive to labor, and so pauperize the collective,<sup>374</sup> without affecting birth, talent, or beauty, the primary vectors of inequality.

Pursuing equality through an infusion of neo-Roman values—the disdain for affluence evinced by Cato the Elder and Manius Curius Dentatus—would be even more senseless, not only because of the limitless opportunities to accrue wealth on the American continent, but also because contempt for gain was only ever the studied pose of a small number of Roman

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<sup>371</sup> Adams, *Defence*, 3: 457-8.

<sup>372</sup> *Ibid.*, 1: 116 ("These sources of inequality, which are common to every people, and can never be altered...").

<sup>373</sup> *Ibid.*, 1: 117 ("The moment they were dead, another aristocracy instantly arose, with equal art and influence...and behaved more intolerably than the former"). Cf. John Adams to François Adriaan van der Kemp (Mar. 19, 1793), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1446> ("I know not that your time could have been better employed than in reading Machiavel...The French have adopted his Maxim that it is necessary to destroy a numerous nobility...but their Example has not converted me to a faith in his Doctrine").

<sup>374</sup> Adams, *Defence*, 3: 216-17 ("The idle, the vicious, the intemperate, would rush into the utmost extravagance of debauchery...and then demand a new division of those who purchased from them."), 3: 329 ("the idle, vicious, and abandoned, will live in constant riot on the spoils of the industrious, virtuous, and deserving").

aristocrats, eager to distinguish themselves from the masses through their asceticism. In the wider SPQR "[a]varice raged like a fiery furnace," which is why the controversy over the *lex agraria* ultimately sundered the republic.<sup>375</sup> Ultimately, a correct constitution—one founded on "the threefold balance"—is both necessary and sufficient, "capable of preserving liberty among great degrees of wealth, luxury, and dissipation," while poorly-constructed republics are forced to make exhausted appeals to "frugality, simplicity, and moderation" to establish even a modicum of social stability.<sup>376</sup>

There is no question that the people, in Adams's schema, are the "fountain and original of all power and authority," and he reiterates throughout the *Defence* that, as a matter of sovereign right, they have the authority to constitute any political order they prefer.<sup>377</sup> But we see, already, how Adams's foundational commitment to private property constrains the choice of regime type, ruling out various forms of majoritarian democracy. "When the People who have no Property," he admonished his more democratic cousin in 1790, "feel the Power in their own hands to determine all questions by a Majority, they ever attack those who have Property," unleashing a

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<sup>375</sup> Ibid., 3: 229, 3: 234 ("...do you suppose Americans would make or submit to a law to limit...the acres of land which a man might possess?"), 3: 238 ("our author quotes examples of virtues which grew up only in a few aristocratical families, [and] were cultivated by the emulation between the two orders").

<sup>376</sup> Ibid., 3: 337.

<sup>377</sup> Ibid., 3: 419-20 (adding that "the body of the people have authority, if they please, to empower the legislative assembly...to appoint the executive power...but it would be a fatal error in policy to do it"). Cf. *ibid.*, 3: 367 ("The people are the fountain and original of the power of kings and lords, governors and senates, as well as the house of commons, or assembly of representatives"); *ibid.*, 3: 437 ("Resistance...to a despotism, or simple monarchy or aristocracy, or a mixed government, is as really treason against the majesty of the people, as when attempted against a simple or representative democracy."). || Crucially, Adams was content to leave the originary sovereignty of the people a legal fiction, and did not insist that they reassume their rights even for the purpose of framing a constitution. Thus in 1786 he argued for the new federal constitution to be written by Congress, rather than by a special convention. See Rufus King to John Adams (Oct. 2, 1786), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-01-02-0779> ("I am fully convinced that your Opinion is a just and political one, that congress can do all that a convention can, and certainly with more safety to original principles").

cycle of reprisals, and ultimately toppling the state.<sup>378</sup> The masses, he reflected, "ought to have some check to restrain them" when they fly heedlessly towards the pursuit of "injustice, cruelty, and the ruin of the minority."<sup>379</sup> But rule by what he called a majority "faction"<sup>380</sup> was not merely an undesirable outcome; it was a contravention of the basic principles of republicanism. For one, unbridled majoritarianism would hollow out the "rule of law" through the appointment of judges and juries sympathetic to the ruling clique, and through a flotilla of *ex post facto* laws to persecute their enemies. The slogan of such licentious majorities, Adams foresaw, will be the same as that of the Stuart kings: "As long as we have the power of making what judges and bishops we please, we are sure to have no law nor gospel but what shall please us."<sup>381</sup> But the point was not simply that majoritarianism would sap the authority of the rule of law; he argued further that the phrase "rule of law" must itself be understood capaciously. Thus in the third book of the *Defence* he emended his Harringtonian definition of the *res publica*, specifying that if "republic" meant the rule of law this did not imply mere legal formalism, but rather "a government, in which the property of the public, or the people, and of every one of them, was

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<sup>378</sup> John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online*. Adams's belief that the *system* of private property must be placed beyond democratic contestation is agreement that particular claims of property rights merit protection. On encountering the proposition in Turgot's letter to Price that natural law dictated "complete freedom of commerce," he replied that this was carrying things to excess: "personal liberty must be restrained in some caes, so must property." This contrasts with his treatment of freedom of religion, all regulation of which Adams thought illegitimate and "explicitly reserved out of every social compact." See Haraszti, *John Adams*, 144-7.

<sup>379</sup> Adams, *Defence*, 3: 271. Already by 1790, Adams saw this dynamic playing itself out in France. See John Adams to Henry Marchant (Mar. 20, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0877> ("The Vulgar Envy and malignity will not be content with plundering the helpless and defenceless...They will never be content till all are equally Knaves Fools and Brutes. Equality! Perfect Equality!").

<sup>380</sup> *Ibid.*, 3: 287 ("It may sound oddly to say that the majority is a faction; but it is, nevertheless, literally just. If the majority are partial in their own favour, if they refuse or deny a perfect equality to every member of the minority, they are a faction..."). Cf. [James Madison], Federalist No. 10 [1787], in *Federalist Papers*, 41 ("By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse...adverse to the rights of other citizens").

<sup>381</sup> *Ibid.*, 3: 358.

secured and protected by law."<sup>382</sup> Elsewhere, as in his 1781 *Memorial to the States General*, Adams supplemented property with other individual rights that no government could suppress, including "Freedom of Inquiry, the Right of private Judgment and the Liberty of Conscience."<sup>383</sup> To be fully legitimate, indeed, to be fully *republican*, a republic must vouchsafe special protections for these natural liberties.

But these rights are only words on parchment in the absence of a mechanism for *enforcing* them, that is to say, for preserving the minority from despoliation by the majority. This is impossible where government is "simple," that is to say, concentrated in a single assembly; protecting the minority would mean either abandoning any group that could not mobilize a significant fraction of the electorate, or else giving every member a kind of *liberum veto* to guard against oppression. In that case "[o]ne fool, or one knave...bribed by an intriguing ambassador of some foreign power," might prevent "measures the most essential to the defence, safety, and existence of the nation."<sup>384</sup> And so if a republic cannot exist without a *substantive* vision of the rule of law, permitting the minority to speak and worship freely and amass property, it followed that any coherent definition of the republic necessitates a *structural* vision of the rule of law—that is, a balance of three orders. "If, in this Country," he predicted to his cousin, a "Republick should be generally understood, as...inconsistent with a mixture of three Powers forming a

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<sup>382</sup> Ibid., 3: 160.

<sup>383</sup> John Adams, "Memorial To their High Mightinesses, the States General of the United Provinces of the Low Countries" (Apr. 19, 1781), in *Papers of John Adams*, 11: 277. Cf. Adams, *Defence*, 3: 326 ("the people themselves, if uncontrouled, will never long tolerate a freedom of inquiry, debate, or writing...upon pain of popular vengeance, which is not less terrible than that of despots or sovereign senators").

<sup>384</sup> Adams, *Defence*, 3: 291. Cf. *ibid.*, 3: 356 ("no good government was ever yet founded upon the principle of unanimity...[and] none such ever can exist").

mutual ballance," the free republic would soon become as abominated in America as it is in England.<sup>385</sup>

For Adams, then, inequality is both ingrained and irradicable, and for this reason any "simple" government will quickly degenerate into expropriation and class warfare. His answer—what he specifies is the only valid form of republic—is a government that is architecturally complex in its arrangement and interlacing of authorities. But his objective is to balance *orders*, not abstract *powers*, and he is emphatic that a constitution composed only of the latter will have only the appearance of stability. In the second book of the *Defence*, a sketch of the "tragedy, comedy, and farce, which was called the liberty of Florence,"<sup>386</sup> Adams illustrates this point with reference to one particularly ill-starred constitution, implemented after an aristocratic revolution in 1240:

Now we come to a new plan...but instead of a judicious plan, founded in the natural divisions of the people, it is a jumble which common sense would see, at this day, must fall to pieces. The buonhomini, the credenza, and the thirty of the hundred and eighty, wore an appearance of three orders; but instead of being kept separate, they are all huddled together in the general council. Another council still, of an hundred and twenty, equally chosen out of the nobility, citizens, and commonalty, was to confirm whatever was resolved on by the others. Here are two branches, with each a negative. But the mistake was, that the aristocratical and democratical parts of the community were mixed in each of them; which shows, at first blush, that there never could be harmony in either, both being naturally and necessarily split into two factions.<sup>387</sup>

Class identity is the motor of Adams's republic; in its absence the separation of powers remains inert, because society's natural aristocrats will inevitably rise to dominate any political body they participate in. "The aristocratical part of mankind," he cautions, through the magnetism of their wealth, education, and manners, "ever will...overawe the people, and carry what votes they please," both in mass elections and in the legislative chamber. Balloting, Adams explains, follows a kind of universal law, and will almost always be ruled by those of "superior art,

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<sup>385</sup> John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online*.

<sup>386</sup> Adams, *Defence*, 2: 25.

<sup>387</sup> *Ibid.*, 2: 17-18.

address, and opulence...splendid birth, reputations, and connections."<sup>388</sup> Canvassing the historical arc of republican regimes, Adams finds the same elite ascendancy in ancient Rome, Renaissance Florence, and revolutionary France.<sup>389</sup> Indeed, "if you begin at New Hampshire, and proceed...to Georgia, you will at once be able to fix your thoughts upon some five or six families in each state" looming over its political and economic life with the stature of the Medicis in Florence, or the Gracchi in Rome. "The εὐγενεῖς of the Greeks, the bien neés of the French, the Gewellgebornen of the Germans & Du[t]ch, the Beloved Families of the Creeks," are all manifestations of the same phenomenon, which he assured Samuel Adams could be found in "every nation on Earth."<sup>390</sup>

The tendency of elites to dominate electoral contests might have reassured Adams of the impossibility of organizing a majority in favor of property confiscation; in fact, it redoubled his fears. Adams was deeply concerned about the possibility of class violence—that envy, *ressentiment*, and "mobbish Spirit" might combine to "produce another Wat Tylers Rebellion."<sup>391</sup> But the history of Rome, with its endless roster of Catilines and Cæsars, suggested to him that

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<sup>388</sup> Ibid., 3: 255, 3: 284. For the most cogent and organized contemporary argument that elections have been seen, historically, as "intrinsicly aristocratic," see Bernard Manin, *The Principles of Representative Government* (1997), who cites Adams but does not seem to appreciate the degree to which the *Defence* vindicates his argument.

<sup>389</sup> Rome: *ibid.*, 3: 255 ("the people...when they meet in one assembly with the senators...dare not vote against the opinion or will of the nobles"). Florence: *ibid.*, 3: 331 ("It is plain that the people would have chosen such, and such only, for representatives as Cosimo and his friends would have recommended...and he would have been absolute"). France: Adams, *Discourses on Davila*, 108 ("For commoners, this project of one assembly, is the most impolitic imaginable...It is the highest flight of aristocracy.").

<sup>390</sup> Ibid., 3: 124; John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online* ("You and I have seen four noble Families rise up in Boston the Crafts's [Gares], Dawe's and Austins. These are really a Nobility in our Town, as the Howards, Sommersets, Berties &c in England."). Cf. John Adams to François Adriaan van der Kemp (Mar. 27, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0887> ("...if you Substitute Langdon and Sullivan, Hancock and Bowdoin, Clinton and Yeates; instead of Cherchi and Donati...the History of New Hampshire Massachusetts & New York will be the History of Florence Siena Bologna and Pistoia.").

<sup>391</sup> Ibid., 3: 124; John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online* ("You and I have seen four noble Families rise up in Boston the Crafts's [Gares], Dawe's and Austins. These are really a Nobility in our Town, as the Howards, Sommersets, Berties &c in England."). Cf. John Adams to François Adriaan van der Kemp (Feb. 27, 1790), <http://founders.archives.gov/documents/Adams/99-02-02-0854> ("Shase was the Wat Tyler of the Massachusetts").

the original spring of violent populism is often aristocratic ambition, and that the most avid among the well-born will often rise to power on a platform of revolt against the elite. This is why he could write that, in government by a single assembly, "[t]he poor and the vicious would instantly rob the rich and virtuous...or, to speak more intelligibly...some of the rich, by debauching the vicious to their corrupt interest, would plunder the virtuous, and become more rich."<sup>392</sup> Adams phrased this lesson from Livy as a kind of universal law, linking the glittering mirage of "simple" and "democratic" government not only to class animus and predation, but also to Rome's sordid history of internecine war and dictatorship:

Camillus, the Quinctii, and Manlius will all be chosen into that one assembly by the people; the same emulation and rivalry, the same jealousy and envy, the same struggles of families and individuals for the first place, will arise between them. One of them will have the rich and great for his followers, another the poor; hence will arise two, or three, or more parties, which will never cease to struggle till war and bloodshed decide which is the strongest. Whilst the struggle continues, the laws are trampled on, and the rights of the citizens invaded by all parties in turn; and when it is decided, the leader of the victorious army is emperor and despot.<sup>393</sup>

Franklinian constitutionalism, Adams contends, is caught in the jaws of a contradiction: it refuses to take any formal notice of social class and its manifold radiations, from the misguided belief that doing so would traduce equality. At the same time it relies exclusively on instruments—the ballot, parliamentarism, and persuasive oratory—demonstrated by the history of republicanism to give every advantage to the highborn and well-spoken. And so Adams throws the charge of elitism and aristocracy, which had trailed him since *Thoughts on Government*, back against his opponents: only by making our peace with rank and hierarchy can we hope to mitigate its most pernicious effects.

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<sup>392</sup> Adams, *Defence*, 3: 295.

<sup>393</sup> *Ibid.*, 3: 257.



It has become fashionable to say that the major preoccupation of Adams's political theory was the restraint of oligarchy and the containment of elites.<sup>394</sup> "You are Apprehensive of Monarchy," as Adams told Jefferson in what has become his most famous letter, "I of Aristocracy."<sup>395</sup> For this reason Adams often spoke of a Senate as a means not of empowering but of controlling the aristocracy, extracting them from popular bodies they might otherwise dominate, and enclosing them in a staid institution with a limited reach or public appeal. This, at least, is how Adams would sometimes shade the argument, as when he discussed his preference for bicameralism with his more democratic cousin: "The only Way, God knows, is to put those [distinguished] Families into an Hole by themselves, and sett two Watches upon them," an executive and a popular chamber.<sup>396</sup> Although the theory is never straightforwardly expressed in *Thoughts on Government*, it is given a lucid exposition by his friend and protégé Benjamin Rush in the *Ludlow* letters of 1777. "By a representation of the men of middling fortunes in one house," he writes, "their *whole* strength is collected against the influence of wealth."<sup>397</sup>

This dimension of Adams's thought has been overinterpreted—unlike contemporary theorists who set themselves in opposition to "oligarchy," Adams sought not only to write into law, but even to amplify the legal prerogatives of his "natural aristocracy," ensuring their fortunes against legislative encroachment and making their place in the legislature hereditary.<sup>398</sup>

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<sup>394</sup> See, e.g., Luke Mayville, *John Adams and the Fear of American Oligarchy* (2017), esp. 35-42; Ryerson, *John Adams's Republic*, 12, 287-8.

<sup>395</sup> John Adams to Thomas Jefferson (Dec. 6, 1787), in *Papers of Thomas Jefferson*, 12: 396. He goes on to say that he greatly mistrusts "Elections," particularly "to offices which are great objects of Ambition."

<sup>396</sup> John Adams to Samuel Adams (Oct. 18, 1790), *Founders Online*.

<sup>397</sup> Ludlow [Rush], Letter II, 62.

<sup>398</sup> Fortunes: Adams, *Defence*, 3: 294 ("The rich...ought to have an effectual barrier in the constitution against being robbed, plundered, and murdered...and this can never be without an independent senate."); *ibid.*, 3: 328 ("it is essential to liberty that the rights of the rich be secured"). || Hereditary: *ibid.*, 3: 283 ("First magistrates and senators

He wavered on the crucial question of whether bicameralism was meant to protect commoners from the malign influence of gentlemen, or gentlemen from the rabble.<sup>399</sup> And he refused to acknowledge the legitimacy of the French revolution after 1789, when it dispossessed the aristocracy of its traditional privileges,<sup>400</sup> making him an odd kind of mascot for democratic theory. Nevertheless, there is no question that he deplored aristocratic power when taken to the extreme, and this is made explicit in the counterintuitive reading of Livy's *Ab urbe condita libri* given in the third book of his *Defence*. It was axiomatic for the republican tradition founded by Machiavelli that only with the expulsion of the Tarquin kings did Rome become free, priming the state for conquest and military glory.<sup>401</sup> Adams stands this facile narrative on its head: it was under the Tarquins that Rome enjoyed its maximum of liberty and achievement, and their ejection that plunged the city into a prolonged nightmare of violence and repression:

There is not in the whole Roman history so happy a period as this under their kings. The whole line were excellent characters, and fathers of their people, notwithstanding the continual cabals of the nobles against them. The nation was formed, their morality, their religion, the maxims of their government, were all established under these kings. The nation was defended against innumerable and warlike nations of enemies; in short, Rome was never so well governed or so happy. As soon as the monarchy was abolished, and an ambitious republic of haughty, aspiring aristocrats was erected, they were seized with the ambition of conquest, and became a torment to themselves and the world. Our author confesses, that "being freed from the kingly yoke, and having secured all power within the hands of themselves and their posterity, they fell into the same absurdities that had been before committed by their kings, so that this new yoke became more intolerable than the former." It would be more conformable to the truth of history to say, that they

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had better be made hereditary at once, than that the people should be universally debauched and bribed, go to loggerheads, and fly to arms regularly every year. Thank Heaven! Americans understand calling conventions").

<sup>399</sup> See John Adams to Guy Claude Sarsfield (Sept. 16, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0753> ("Mixed in one assembly with the commons, will not the nobles be lost? Out numbered and out voted on all occasions?").

<sup>400</sup> See, e.g., John Adams to John Quincy Adams (Jan. 2, 1793), in *Adams Family Correspondence* (Margaret A. Hogan et al eds., 2009), 9: 368 ("in France a free Government can never be introduced and endure without both an hereditary Executive and Senate").

<sup>401</sup> Niccolò Machiavelli, *Discourses on Livy* [ca. 1517] (Harvey C. Mansfield and Nathan Tarcov eds., 1996), I.3, I.17. On early modern English interpretations of the same event, including that of Marchamont Nedham, see Lisanna Cavli, "'The Name of King will light upon a Tarquin': republicanism, exclusion, and the name of the king in Nathaniel Lee's *Lucius Junius Brutus*," *From Republic to Restoration* (Janet Clare ed., 2018), 309-25.

continued to behave exactly as they had done; but having no kings to murder, they had only people to destroy.<sup>402</sup> Their expulsion proved to be a turning point for the west more generally, ushering in a barbarous new ideology that defined republicanism in exclusive terms, as the absence of kingship. Through the force of their personalities and their skilled manipulation of religious rites, the aristocratic phalanx succeeded in attaching an insuperable taboo to kingship. It also elaborated a broad justification for the assassination of anyone suspected of aspiring to the throne—"judgment, sentence, and execution, without trial"—that could be freely applied to any figure of influence thought to be taking the side of the plebeians, the people's champions liquidated in the name of the people's liberty.<sup>403</sup> Roman *libertas* was not, as Machiavelli, Milton, and Nedham had supposed, the original genetic material of free government. It was a fraud—"a most iniquitous and infamous aristocratical artifice"—meant to ensure permanent government by the city's nobility, authored by men who would not scruple to sacrifice their own sons in order to cement their class in power.<sup>404</sup>

If Adams was an "honest Monarchical republican," as he mischievously signed one letter to James Lovell, it was in part because he believed that an energetic executive magistrate was the "natural friend of the people," and their only reliable shield against the "avarice and ambition of the rich."<sup>405</sup> But if Adams did not hesitate, in the safety of private conversations with friends, to

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<sup>402</sup> Adams, *Defence*, 3: 305-6. One sees immediately in this passage how little Adams valued the imperial grandeur that consumed Machiavelli.

<sup>403</sup> *Ibid.*, 3: 253. Cf. *ibid.*, 3: 330 (Spurius Maelius and Manlius Capitolinus "were murdered for daring to be friends to popular liberty; for daring to think of limiting the power of the grantees, by introducing...a mixed constitution").

<sup>404</sup> *Ibid.*, 3: 460.

<sup>405</sup> John Adams to James Lovell (July 16, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0676>; Adams, *Defence*, 1: 378. Cf. John Adams to Thomas Brand Hollis (April 5, 1788), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0381> ("Kings, therefore, are the natural allies of the common people"); John Adams to Benjamin Lincoln (May 8, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0549> ("Monarchy has been resorted to, as the only assylum against the...Avarice Lust Cruelty...of uncontrouled Aristocracies").

describe himself as a kind of monarchist, it was not from sympathy for democracy, but from a desire to preserve individual rights and republican forms from the degeneration and regime cycling long thought to be the inevitable accompaniment of political freedom. This is best captured in Adams's chapter "Dr. Franklin," where the executive's purpose is explained, puckishly, in terms of the doctor's most celebrated contribution to science: Franklin "might have recollected, that a pointed rod...would be sufficient at any time, silently and innocently, to disarm those assemblies of all their terrors, by restoring between them the balance of the powerful fluid, and thus prevent the danger and destruction to properties and lives" that follows from their disequilibrium.

On completing the first volume of the *Defence*, Adams set about distributing it to his expansive social network. Among the first editions he posted from London were several addressed to the extended circle of Turgot. "Having ventured to differ a little in Sentiment from your late excellent Friend," he wrote delicately to La Rochefoucauld, "let me beg your acceptance of a Volume in which his opinion is discussed." A letter of equal politeness and stiff formality was dispatched to Condorcet, the only surviving evidence of communication between the two men. He was more expansive in conveying a copy to Franklin, his longtime friend and rival, now settled in Philadelphia and enjoying the laurels of his twilight years, which included the ceremonial presidency of the Pennsylvania legislature. "It contains my Confession of political Faith," he advised the doctor defensively, "and if it is Heresy, I shall I Suppose be cast out of Communion. But it is the only Sense, in which I am or ever was a Republican." If Franklin was offended by the twenty-fifth chapter of the book, an extended attack on unicameralism titled "Dr. Franklin," there is no indication in his kind reply.<sup>406</sup>

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<sup>406</sup> John Adams to Louis Alexandre, Duc de La Rochefoucauld (Feb. 19, 1787), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-0055>; John Adams to Condorcet (Feb. 19, 1787),

Adams would spend much of his retirement nursing psychological wounds related to the *Defence*, and what he took to be its misapprehension by republicans in America and France.<sup>407</sup> Scholars have often followed the tracks laid by his self-pity, portraying him as a thinker tragically out of joint with his times.<sup>408</sup> Yet the initial reaction to the *Defence*, which Abigail wrote in November 1786 was intended "only for himself and Friends,"<sup>409</sup> was euphoric. His first reader, his friend and former secretary John Brown Cutting, mock-apologized for having "read it but three times, because I wish to forget it a little before I read it a fourth," and begged Adams to speed the production of the next two volumes. His cousin, the physician Cotton Tufts, was equally demonstrative, calling Adams's "Description of the Miseries of an unballanced Democracy...a Beacon to warn the People."<sup>410</sup>

The encomiums were equally inflated among American readers, and extended beyond Adams's narrow circle of disciples and confidantes. David Ramsay told Adams that his work was "universally admired in Carolina," and "devoutly wish[ed] that the sentiments of it were engraven on the heart of every legislator in the United States." He added that Adams's letter to Mably on the craft of history, included in the same volume, offered "many useful hints" on

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*Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0053>; John Adams to Benjamin Franklin (Jan. 27, 1787), in *Papers of Benjamin Franklin*, 44: u516 (643502). For Franklin's reply, which carefully avoids commenting on the merit of the work, see Benjamin Franklin to John Adams (May 18, 1787), in *Papers of Benjamin Franklin*, 45: u021 (643635).

<sup>407</sup> See, e.g., John Adams to Samuel Perley (Apr. 18, 1809), *Founders Online* ("If the Nation will not read them or will not understand them, or are determined to misinterpret or misrepresent them, that is not my fault."); John Adams to Matthew Carey (June 21, 1815), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-6481> ("You have paid a handsome compliment to a Work, which is forgotten in America...never were Scriptures written with more Sincerity, than the defence...and never were Scriptures interpreted, with less."). Cf. John Adams to Thomas Jefferson (Mar. 1, 1787), in *Papers of Thomas Jefferson*, 11: 189 ("It...will be an unpopular Work in America for a long time.").

<sup>408</sup> See Thompson, *Spirit of Liberty*, 251-2, for an important corrective to this view.

<sup>409</sup> Abigail Adams to JQA (Nov. 22, 1786), in *Adams Family Correspondence*, 7: 395.

<sup>410</sup> John Brown Cutting to John Adams (Dec. 13, 1786), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-01-02-0824>; Cotton Tufts to John Adams (May 15, 1787), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-0124>.

method as he finalized his own *History of the American Revolution*. From Pennsylvania Thomas McKean, the long-serving Chief Justice of the Supreme Court, told Adams that he devoured the volume in three days, and was sure that it would "contribute greatly" to the ongoing effort to reform the state constitution, whose unicameral legislature had precipitated exactly the social instability and class warfare that Adams provisioned in his book.<sup>411</sup> And in Adams's home state, his nephew William Cranch delivered an oration at Harvard's 1787 commencement "shewing the Utility, & necessity of three Branches in the Legislature," while Boston's *American Herald*, glancing nervously at the armed rebellion still raging in the Massachusetts backcountry, thought the volume "worthy of the attention of every American at this important crisis of our public affairs."<sup>412</sup> There was, it seemed, no threshold of hyperbole his enthusiasts were ashamed to cross. A penman calling himself "Sidney" opined, half-seriously, that "every man who is elected to serve in our assemblies" should certify "that he not only believes in the old and new testaments...but that he has read 'Adams's Defence.'" In a similar spirit, a correspondent for the *Pennsylvania Gazette* proposed that Adams's elegy to the "three branches" be painted "in letters of gold over the doors of every State House in the United States." And Adams's longtime friend Benjamin Rush promised that the volumes on government would be "the Alcoran" of his young sons, used to instruct them on the pillars of "political happiness" and republican liberty.<sup>413</sup>

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<sup>411</sup> David Ramsay to John Adams (Sept. 20, 1787), in *David Ramsay, 1749-1815: Selections from His Writings* (Robert L. Brunhouse ed., 1965), 107; Thomas McKean to John Adams (Apr. 30, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0107>.

<sup>412</sup> Elizabeth Smith Shaw to John Adams (July 22, 1787), in *Adams Family Correspondence*, 8: 135; *American Herald* [Boston], Apr. 23, 1787.

<sup>413</sup> Sidney, "For the *Chronicle of Freedom*," *Independent Gazetteer*, June 6, 1787, 3; "Philadelphia, February 25," *Pennsylvania Gazette*, Feb. 25, 1789, 3; Benjamin Rush to John Adams (July 2, 1788), in *Letters of Benjamin Rush* (L.H. Butterfield ed., 1951), 1: 468. Cf. John Jay to John Adams (July 25, 1787), in *Correspondence and Public Papers* (Henry P. Johnston ed., New York, 1890), 3: 249 ("It conveys much information on a subject with which we cannot be too intimately acquainted, especially...when the defects of our national government are under consideration"); John Brown Cutting to John Adams (January 1787), *Founders Online*,

Reactions from abroad were no less laudatory. From France, the marquis de Lafayette added his voice to the chorus, labeling Adams's "Admirable Book" a complete syllabus for statesmen, and pledging to uphold its philosophy of "a division in three Branches" at the upcoming Assembly of Notables, where he expected to clash with "Some of our friends, who Agree with mr Turgot's democratic principles."<sup>414</sup> English reviewers, gratified to hear their constitution praised by one of the most celebrated American insurgents, complimented Adams for his "acuteness of reflection, and...masculine spirit, which few ambassadors in any court of Europe possess, but which all of them would be proud to display."<sup>415</sup> And the Dutch journalist Cerisier declared the book "a breviary of true republican principles," reproaching Adams only "for not having said more about my own country, which offers you such a vast field for the confirmation and development of your principles."<sup>416</sup>

But the most painfully sincere tribute came from Richard Price, who on reading the *Defence* instantly disavowed Turgot's supposed unicameralism, offering a full recantation three months later in a letter to the Philadelphia industrialist William Bingham:

I am sorry the Constitution of your government in Pennsylvania is so imperfect as it is. Mr. Adams has just published here a book...to show, that the powers of legislation ought to be lodged in more than one

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<http://founders.archives.gov/documents/Adams/99-02-02-0035> ("the blaze of light with which an illustrious Lawgiver illuminates the great principles of a right...government").

<sup>414</sup> Lafayette to John Adams (Apr. 9, 1787), in *The Letters of Lafayette to Washington, 1777-1799* (Louis Gottschalk and Shirley A. Bill eds., 1976), 338.

<sup>415</sup> "Art. I. A Defence of the Constitutions of Government," *English Review*, 10: 327. Cf. Theophilus Lindsey to John Adams (Feb. 23, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0063> ("a work which is the result of deep thought and of the largest experience and observation...and full of such easy practical lessons...that it is to be hoped they will in time be followed not only by American englishmen, but by all nations"); Thomas Brand Hollis to John Adams (Oct. 15, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0240> ("I have read more than once your defence...and am instructed, entertained, and convinced...nothing now remains but that your country may benefit from your labors by putting your principles in execution").

<sup>416</sup> Antoine-Marie Cerisier to John Adams (May 29, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0141>.

assembly; and he has convinced me so entirely of this, that I wish I had inserted a note on that passage in Mons. Turgot's letter to me, which has occasioned Mr. Adams's book, to express my disapprobation of it.<sup>417</sup> This abject *mea culpa* was reprinted in the *Pennsylvania Gazette*, with an introduction reprimanding Price for having been mesmerized "by the airy phantom of a pure Democracy," and reminding the citizens of Pennsylvania that the politics of Turgot had "laid the foundation of some of the weakest and most inefficient governments in the American States."<sup>418</sup> Price was only the most famous author claiming to have been converted from the faulty ideal of "a simple Constitution of Governmt" by the force of Adams's logic, and the depth of his erudition.<sup>419</sup>

The work drew praise, too, from many who would later spurn it; Jefferson apprised Du Pont de Nemours in serviceable French that the "livre de M. Adams" was perhaps "trop profond pour le Commun du Peuple," but that "Leurs Chefs en profiteront." He initiated plans to have the work printed in Paris by Jacques Froullé, a Paris bookseller already under contract to publish Mazzei and Condorcet's *Recherches*.<sup>420</sup> La Rochefoucauld wrote to Adams that he enjoyed the book, adding diplomatically that "Turgot could not have been combated by a more worthy adversary." Benjamin Vaughan, the editor of Franklin and the translator of Turgot and Condorcet, congratulated Adams on his achievement, and stated that he was looking forward to a "second

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<sup>417</sup> Richard Price to William Bingham (May/June 1787), in *Correspondence of Richard Price*, 3: 135. Cf. Richard Price to John Adams (Feb. 8, 1787), in *ibid.*, 123 ("you have convinced me of the main point").

<sup>418</sup> "Philadelphia, June 20," *Pennsylvania Gazette*, June 20, 1787, 3.

<sup>419</sup> Christopher Gadsen to John Adams (July 24, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0178> (apologizing to Adams for his role in dissolving the governor's veto during his service in the 1778 constitutional convention of South Carolina).

<sup>420</sup> Thomas Jefferson to Pierre Samuel Dupont (Nov. 6, 1787), in *Papers of Thomas Jefferson*, 12: 328. For an autopsy of this project, which was abandoned abruptly by Jefferson in the autumn of 1787 as he came to appreciate the profound philosophical gulf separating him from Adams, see Joyce Appleby, "The Jefferson-Adams Rupture and the First French Translation of John Adams' Defence," *American Historical Review*, vol. 73, no. 4 (Apr. 1968), 1084-91. || Froullé would be executed in 1794 for publishing the *Liste comparative des cinq appels nominaux sur le procès et jugement de Louis XVI*, a document naming the deputies who voted for the regicide.



perusal," as soon as he could recover his copy from a friend.<sup>421</sup> In 1798 the poet and diplomat Joel Barlow would issue a scabrous satire of "Adams on the Balance" from his residence in Paris, depicting the president as an aspiring tyrant and a tool of William Pitt; in the summer of 1787 he sent Adams a flattering note from Hartford reporting that "[n]o book...was ever received with more gratitude, or read with greater avidity," and entreating him to write a sequel on confederation for the benefit of "the present convention at Philadelphia."<sup>422</sup> Brissot, with equal brazenness, printed a letter in his *Patriote François* of 1792 condemning the legal scholar Jacques-Vincent Delacroix for having had "the audacity to translate John Adams, the tiresome panegyrist of bicameralism"; he did not mention that he had proposed exactly this in a March 1787 meeting of the *Société Gallo-Américaine*.<sup>423</sup> For his own part Adams retained a sense of proportion about these accolades, remarking drily to his Dutch translator François Adriaan van der Kemp that although he was "flattered in Letters from Europe...that the Science of

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<sup>421</sup> La Rochefoucauld to John Adams (Mar. 4, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0073>; Benjamin Vaughan to John Adams (Jan. 29, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0032>.

<sup>422</sup> Joel Barlow, *The Second Warning, or strictures on the speech delivered by John Adams* (Paris, 1798), 20 ("And putting in a *lineal* crown/Can make the lightest side come down/This magic make-weight never fails/To counterpoise unequal scales" and 8 ("who therefore have had the stubborn patience...to wade through the heavy mine of his steril works...charitably suppose it possible that he might have been seduced by Pitt"); Joel Barlow to John Adams (June 14, 1787), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-0155>. Barlow repeated these sentiments nearly verbatim in a speech the same month; see Joel Barlow, *An oration, delivered at North Church in Hartford, at the meeting of the Connecticut Society of the Cincinnati* (Hartford, 1787), 13-14 ("Adams, to his immortal honour and the timely assistance of his country, has set the great example. His treatise in defence of the constitutions...is calculated to do infinite service...Should that venerable philosopher and statesman be induced to continue his enquiries, by tracing the history of Confederacies...with his usual energy and perspicuity...he would crown a life of patriotic labours.").

<sup>423</sup> "A l'auteur du Patriote François," *Le Patriote François*, June 13, 1792, 660; "Séance du 27 Mars [1787] — M. de Crévocœur, Modérateur," in *J.-P. Brissot Correspondance et Papiers* (Cl[au]de Perroud ed., 1912), 132-3 ("J'ai reçu un exemplaire de l'ouvrage de M. Adams intitulé *Défense des constitutions Américaines*....pour le faire connaître, il faut et en donner des extraits dans les journaux et le traduire.").

Government has not been so much improved Since the Writings of Montesquieu," he did not expect his volumes would in fact "be much read."<sup>424</sup>

Although the warm initial reception of the *Defence* had indeed cooled considerably by 1790, particularly in France, Adams's three volumes nevertheless appeared at the crucial juncture between the summoning of the constitutional convention to Philadelphia in 1786 and the ratification of the final document in 1788. Numerous observers and participants credited Adams and the *Defence* with having inspired the final settlement, which featured both the triple legislative balance he had long advocated, and a chief executive clothed with the most substantial prerogatives of the English crown. During the deliberations in Philadelphia it was not uncommon to hear, as Benjamin Rush cheerily informed Richard Price, that "Mr. Adams's book has diffused such excellent principles among us, that there is little doubt" of the delegates adopting a tricameral constitution.<sup>425</sup> Similarly, after the final draft was unveiled to the public and released to the thirteen state conventions, Adams's tome was credited with helping to rally popular opinion—in the words of a Belgian newspaper, "[I]es principes de M. Adams paroissent avoir dirigé les législateurs de l'*Amérique-Unie*."<sup>426</sup> Others, like Adams's friend Étienne Luzac,

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<sup>424</sup> John Adams to François Adriaan van der Kemp (Feb. 27, 1790), *Founders Online*.

<sup>425</sup> Benjamin Rush to Richard Price (June 2, 1787), in *Records of the Federal Convention* (Max Farrand ed., 1911), 3: 33. Cf. Thomas Pinckney (July 10, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0168> ("Your Excellency's defence of the Constitutions arrived in time to be of Utility"); John Jay to John Adams (July 25, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0179> ("Your Book circulates and does good...especially at this Period, when the Defects of our national Governmt. are under Consideration"); "A Preface," *Massachusetts Gazette*, April 20, 1787, reprinted in *DHRC* 13: 86 ("well worthy of the attention of every American at this important crisis in our publick affairs"). || For later views along these lines, see Thomas Rodney to John Adams (Nov. 20, 1791), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1287> ("The Federal Government seems to have been formed much after the...sentiments you express in your first Volume").

<sup>426</sup> "Extraits des Gazettes Américaines jusqu'au 19 decembre 1787," *Journal politique de Bruxelles* (February 1788), 41. Cf. Ezra Stiles to John Adams (Feb. 28, 1788), in *DHRC* 4: 255 ("It is with Pleasure that I observe your leading Ideas have given Complexion...to the new improved Polity of the foederal Constitution, already adopted by six States"); "Philadelphia, January 7," *New-Jersey Journal*, Jan. 14, 1789 ("...his 'defence of the American constitutions;' from which book it is highly probable that many useful hints were taken by the convention in forming the foederal constitution"); François Adriaan van der Kemp to John Adams (Jan. 7, 1790), *Founders Online*,

identified Adams as the indirect author of the new federal compact by virtue of his previous authorship of the highly similar Massachusetts constitution.<sup>427</sup> Adams, despite his private apprehensions about the soundness of the instrument, was pleased enough with the final result to boast of his parentage.<sup>428</sup> And Antifederalists, particularly populists purporting to speak on behalf of the "*low-born*," attacked the Convention for having plucked its holy trinity of "king, lords, and commons, or, in the American language, President, Senate and Representatives," from the baleful writings of "John Adams, Esq."<sup>429</sup>

The melding of Adams's *Defence* with the Philadelphia constitution was foregrounded in the French political imagination, such that numerous criticisms that would eventually be launched by French revolutionaries against the *Defence* were first presented as animadversions against the 1787 compact. Many European commentators fixated on the Senate, seen as at best a vestigial appendage held over from English feudalism, and a serpent's nest for aristocratic conspiracy. Philip Mazzei, residing in Paris and collaborating with Condorcet on the four-volume analysis of America he hoped would rescue him from bankruptcy, informed Madison that the Convention's handiwork was "infected with the malady...of balance and counterpoise in government matters."

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<http://founders.archives.gov/documents/Adams/99-02-02-0809> ("...in my opinion was Mr. Adams the Soul of the Philadelphia convention...Mr. Adams framed, if it not arranged, all the essential materials of this Report, inspired the one and other with these sentiments").

<sup>427</sup> "Extrait d'une Lettre de New-York du 20. Septembre," *Gazette de Leyde*, Nov. 9, 1787, 5 ("le Gouvernement commun des *Treize-États* a été assimilé à-peu-près à la Constitution particulière de la plûpart des États, notamment de celui de *massachusetts*'s.").

<sup>428</sup> See, e.g., John Adams to Richard Price (May 20, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0571> ("our new Constitution is formed in part upon its principles and the enlightened part of our Communities, are generally convinced of the necessity of adopting it"); John Adams to Thomas Jefferson (July 29, 1791), in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1982), 20: 308 ("my unpolished Writings...have been read by a sufficient Number of Persons to have assisted in crushing the Insurrection of Massachusetts...and in procuring the Assent of all the States to the new national Constitution").

<sup>429</sup> John Humble, *Independent Gazetteer* [Philadelphia], Oct. 29, 1787, 2. || Not everyone concurred in this genealogy—Mirabeau asserted that the *Defence*, "although full of interesting research," had more in common with the English than the American constitution. Happily, he judged, since "un équilibre parfait, produiroit l'inaction, & une Constitution *inerte*." See "Extrait d'une Lettre particulière de New York, du 28 Décembre 1787," *Analyse des papiers anglois* (Feb. 1, 1788), 496.

And he portended a labyrinth of aristocratic intrigues for Washington to navigate.<sup>430</sup> Louis-Guillaume Le Veillard, Franklin's neighbor and close friend in Passy, claimed to speak for many in Franklin's Paris circle when he expressed disappointment with "the first federal constitution," skeptical of any necessity for "the separation of the legislature into two bodies." The philosopher replied that he agreed, respecting the legislature, "that one alone would be better," but shrugged his shoulders: "nothing in human Affairs and Schemes is perfect."<sup>431</sup>

The presidency created by Article II unleashed immense disquiet in Paris; even Lafayette, hardly a champion of democracy, thought the Convention had veered too far in the direction of royalism.<sup>432</sup> Condorcet designated the concentration of all executive power in a single individual, free of any attachment to a council, a phenomenon "unheard of" in republics, and called for vigilance against the prerogative assigned the president to command the armed forces in person, judging it tantamount to Cæsarism. He doubted, too, election as a mode of appointment, both because it would tend to elevate ranting demagogues over "meritorious" public servants, and because balloting would provide an opening for "European courts" to meddle in American affairs, "as for a long time has been the case in Poland," fighting proxy wars at the American hustings, and elevating their own pliant tools to the head of government.<sup>433</sup> La Rochefoucauld raised similar fears in a letter to Franklin, stating that while he had full faith in Washington's devotion to republicanism, he was made uneasy by the lack of term limits prescribed by the

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<sup>430</sup> Philip Mazzei to James Madison (Feb. 4, 1788), in *Mazzei: writings and correspondence*, 2: 9.

<sup>431</sup> Louis-Guillaume Le Veillard to Benjamin Franklin (Apr. 1, 1788), in *Papers of Benjamin Franklin*, 45: u455 (644069); Franklin to Le Veillard (Oct. 24, 1788), in *Papers of Benjamin Franklin*, 46: u115 (644304).

<sup>432</sup> Lafayette to Thomas Jefferson (Dec. 25?, 1787), in *Papers of Thomas Jefferson*, 12: 460.

<sup>433</sup> Condorcet, "Supplement to Filippo Mazzei's *Researches*" [1788], in *Condorcet: Writings on America* (Guillaume Ansart trans. and ed., 2012), 55 and 60. Cf. John Paul Jones to Lafayette (June 15-26, 1788), in *Papers of Thomas Jefferson*, 13: 583 ("I hope...they will divest the President of all Military Rank and command...in some other Hands it could not fail to Overset the libertys of America").

Constitution, which made possible, perhaps even likely, a "stabilité indéfinie dans cette place."<sup>434</sup> These authors would not have been reassured had they engaged more closely with the justifications swirling around the new office, which frequently explained the desirability of a sole executive magistrate by invoking kingship. Thus William Short, Jefferson's secretary in Paris, applauded the framers for acceding to the truth that "no government can exist without a Monarch; though he shall for a time be called a President." And the playwright Paul-Philippe Gudin de La Brenellerie, who authored several works of political theory in the early stages of the revolution, explained that every free republic had eventually sought to protect itself by erecting a proxy for royal power, from the Roman consuls and dictator, to the Spartan kings, to the Venetian doge, to the Dutch Stadtholder. And "no sooner had the United States of America assured its liberty," he remarked, "than, to strengthen it, they elected a supreme magistrate."<sup>435</sup>

Other writers, those committed explicitly to the notion that kingship was the element that gave republics form and dignity, intimated that the framers at Philadelphia had not gone far enough. Louis-Sébastien Mercier, famous as the author of the futurist satire *L'An 2440, rêve s'il en fut jamais*, outlined his case for American kingship in his 1787 treatise *Notions claires sur les gouvernements*. Mercier eulogized Paine's *Common Sense* for its "simple and natural elegance," and its "marked and glorious influence on politics," but he also implied that its signature idea, the illegitimacy of kingship, was erroneous: "Americans have been afraid of the word king...they are terrified, because words govern men." But a king was nothing like a despot, and despotism was a

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<sup>434</sup> Louis-Alexandre, duc de La Rochefoucauld to Benjamin Franklin (July 12, 1788), in *Papers of Benjamin Franklin*, 46: u12 (644201).

<sup>435</sup> William Short to William Grayson (Jan. 31, 1788), in *Papers of William Short* (John Cleves Short ed., 1900), 3: 259; Paul-Philippe Gudin de La Brunellerie, *Supplément au Contrat social* (Paris, 1791), 72. Cf. Richard Henry Lee to Francis Lightfoot Lee (July 14, 1787), in *Letters of Richard Henry Lee* (James Curtis Ballagh ed., 1914), 2: 424 ("I found the Convention at Phila very busy & very secret, it would seem however, from variety of circumstances that we shall hear of a Government not unlike the B. Constitution --- That is, an Execu[tive] with 2 branches composing a federal Legislature, and possessing adequate Tone. This departure from Simple Democracy [sic] seems indispensably necessary...").

relic of more primitive ages, impossible to realize in a nation as "enlightened" as the United States. Several facts about the American polity "militated in favor of a monarchical head." One was the enormous extent of its territory, its consequent diversity of interests, and the dispersion of its authority into thirteen distinct republics; its federal structure necessitated a "single point, a single force that can bind together the different constitutions of a federal republic," and enforce its decrees uniformly in every quadrant of the nation. "The grandeur and inequality of the thirteen united provinces," Mercier declared, "require a monarch at the center of the states, animating its extremes through prompt decisions." An "acephalous" government, like the national Congress of the Articles of Confederation, would have neither the force, nor the unity, nor the perpetual vigilance necessary "to see everything, to know everything, and to make its orders respected." The second factor was America's decision to become a commercial republic, which would both intensify the competition between the different states through jealousy of trade, and give rise to concentrations of wealth that would jeopardize republican government. "Who," the dramatist queried, "will oppose the audacity of powerful and ambitious individuals who, with the aid of extreme inequalities of fortune, would dare to seize this or that province?" Only a king could bind and intimidate these "dangerous usurpers," the "Mariuses, Sullas, Cæsars, and Augustuses" lurking in the shadows of every republic.<sup>436</sup>

Mercier called for kingship, but thought the name given to the office essentially meaningless: "whether one calls it a Conserver, a Governor, or a Protector, a country this vast must have a head."<sup>437</sup> Adams, though he supported the ratification of the new Constitution, found its executive magistrate inadequate, and judged that the failure to correctly name it was part of the problem. "A Royal, or at least a Princely Title," he lectured his former law clerk William Tudor,

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<sup>436</sup> Louis-Sébastien Mercier, *Notions claires sur le gouvernement* (Amsterdam, 1787), 1: 291-8.

<sup>437</sup> *Ibid.*, 294.

was indispensable "to maintain...the Reputation, Authority, and Dignity of the President," in both foreign courts and in the minds of American citizens.<sup>438</sup> Adams's proclivity for title and rank was dismissed by many of his contemporaries as an infatuation with the baubles and trinkets of kingship and ceremony, a shallow aesthetic preference cultivated during his time in London. But Adams adduced a host of reasons for the practice in 1789, as he fought in Congress to recognize a more elevated mode of address for the chief magistrate. Some were eminently pragmatic, as in his recognition, honed through a decade of treaty negotiations in Europe, that a leader without a measure of pomp and stature would not elicit the necessary respect from other heads of state to win concessions on the world stage. "[W]ant of titles," he harangued the shipping magnate Jabez Bowen, "may cost the country fifty thousand lives and twenty millions of money within twenty years." Royal grandeur was necessitated, too, by the federal structure of the United States, which required a mechanism for harmonizing its discordant parts into a coherent whole. This might be accomplished, he advised William Tudor, through a repressive state apparatus to "detect illicit Trade," to "quel insurrections," and to enforce the writs of federal courts "against the State Judicials." But this would be expensive, perilous for free government, and, if it triggered a backlash, possibly even counterproductive. "Titles," a kind of national-ideological fiction, "would cost much less, and be less dangerous to Liberty." But Adams's belief in royalty could not be reduced to mere pragmatism; his defense of decorum encoded a desire for hierarchy, which he hoped might dampen the levelling spirit he saw rising across the continent. "Can Subordination," he challenged Tudor, "be preserved in the smallest Society, without distinctions? Examine it in a Family...Let Tom the Coachman sit at the Head of the Table...and Polly the

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<sup>438</sup> John Adams to William Tudor, Sr. (May 3, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0543>.

Milkmaid sit at the right hand of the Mistress...[and] you would soon see the liberty, order, Virtue and Happiness" resulting from "such an admirable republican Economy."<sup>439</sup>

Adams's text arrived in France at a moment of great consequence, bookended by the first meeting of the Assembly of Notables in February 1787 and the summoning of the Estates General in August 1788. André Morellet, an *économiste* famous for his incandescent wit, and recently the translator of Jefferson's *Notes on Virginia*, expressed amazement in a June 1787 letter to his friend Lord Shelburne that France was now on the verge of realizing "a system of representation more popular and democratic...than could ever have been imagined." And when Alexander Hamilton stated, approvingly, at the New York ratifying convention in the summer of 1788 that the "Voice of the People" increasingly "governs the Representatives" of all nations, even those not yet formally republican, he gave the example of France.<sup>440</sup> These developing expectations stimulated a new interest in the study of the American federal and state constitutions, and in the political literature surrounding them. "The affairs of this Country," Lafayette boasted to Adams, "considered in a Constitutional light, are mending fast." On receiving the second volume of the *Defence* two weeks later, the marquis, already renowned as the *héros des deux mondes*, announced confidently that the book's "usefulness will not Be Confined to the western Hemisphere."<sup>441</sup> Every indication is that it traveled far beyond the

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<sup>439</sup> John Adams to Jabez Bowen (June 26, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0637>; John Adams to William Tudor, Sr. (May 28, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0587>. Cf. John Adams to Benjamin Rush (July 5, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0659> ("Your Servant comes in, and instead of saying my 'Master!'...cries 'Ben!'...What think you of this simple manly republican Style?"). For background, see Kathleen Bartoloni-Tuazon, *For Fear of an Elective King* (2014), esp. 26-7; Gordon S. Wood, *The Radicalism of the American Revolution* (1991), 271-87.

<sup>440</sup> Abbé Morellet to Lord Shelburne (Mar. 15, 1787) (Letter No. L), in *Lettres de l'abbé Morellet a Lord Shelburne, 1772-1803*, 242; Alexander Hamilton, Speech in the New York Convention Debates (June 21, 1788), in *DHRC* 22: 1774.

<sup>441</sup> Lafayette to John Adams (Oct. 12, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0238>; Lafayette to John Adams (Oct. 30, 1787), *Founders Online*,



circumference of Adams's limited coterie. When a French correspondent for the *Gazette of the United States* summarized the mania for American constitutionalism in 1790, he gave Adams's formidable tome pride of place:

It is inconceivable with what avidity the story of the American revolution has been read in France—translations of American publications have been circulated in all parts of that kingdom; and turning the current of study, and speculation into an investigation of the general, legal, and social rights of man, has enabled her men of genius to astonish the world by the result of their researches—the patriots of France, for several years past, have been indefatigable in disseminating political knowledge among the people—every well written treatise has been obtained from England, and America—and no expence spared to have them translated and circulated. —Among other valuable books, the ‘DEFENCE OF THE AMERICAN CONSTITUTIONS’ was very early introduced into that kingdom, and contributed not a little to that blaze of freedom, and patriotism, which bids fair to consume the whole system of tyranny—*root and branch*.<sup>442</sup>

A letter from a supposed "Gentleman in Versailles," published in the *Pennsylvania Mercury* the same year, agreed unequivocally that "the English language and American Liberty are come in fashion, [and] the libraries of our literati are crowded with books on politics, constitutions, &c.," though he assigned pride of place to "Publius" rather than to Adams.<sup>443</sup> Brissot, meanwhile, radicalized by the upheaval of 1789 and increasingly vocal in his opprobrium for the British constitution, listed only *Common Sense* and the *Federalist Papers* among the "few" noteworthy works of political theory written in America.<sup>444</sup> Adams himself, noting with disappointment that

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<http://founders.archives.gov/documents/Adams/99-02-02-0262>. See also John Adams to Lafayette (Oct. 27, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0257> ("Mr. Paine informed me that you desired to have a dozen copies of my [book], accordingly when I saw my bookseller I ordered him to send them to the address of Mr Jefferson").

<sup>442</sup> *Gazette of the United States* [Philadelphia], Oct. 28, 1790, 227. Cf. Paul Joseph Guérard de Nançrède to John Adams (Jan. 4, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0453> ("It is known that the Europeans read with avidity every thing that comes from America."). Nançrède, a tutor in French at Harvard, was soliciting Adams's collaboration on a newspaper that would target a European readership.

<sup>443</sup> "Extract of a Letter from a Gentleman in Versailles," *Pennsylvania Mercury*, Mar. 20, 1790, 3.

<sup>444</sup> Brissot, *Plan de Conduite pour les Députés du Peuple, aux États-Généraux de 1789* (n.p., April 1789), viii ff. 1. Cf. *ibid.*, x ("L'Angleterre est jugée; ou elle réformera sa Constitution, ou elle perdra sa puissance."). || Although the *Defence* would be repudiated by the Girondins in 1789 as an "aristocratic" text, the *Federalist Papers* would largely avoid this fate; see "Le Fédéraliste, ou collection de quelques écrits en faveur de la constitution...", *Le Patriote François*, Oct. 4, 1792, 384 ("C'est donc un livre qui doit être sans cesse entre les mains des membres de la convention; ce devroit être leur manuel.").

"neither the whole nor any Part" of the *Defence* had been "translated into French," questioned whether his writings were having any impact at all on France in its "Critical Moment."<sup>445</sup>

Nevertheless, as the revolution accelerated in the summer of 1789, and the debate over the formation of a new constitution gathered new intensity with the merging of the Estates into the National Constituent Assembly, the centrality of Adams's *chef d'œuvre* in France became impossible to gainsay. "Vice President Adams has fully demonstrated, in his excellent work" crowed an anonymous correspondent for the *Moniteur*, "that a pure democracy is absurd and inadmissible." He had shown, further, that the popular "aversion to monarchy," on the grounds that it was inconsistent with republican liberty, was utterly unfounded, and that an energetic, hereditary chief executive had a vital role to play in checking the most radical impulses of the people and the aristocracy. The author added that he would not be at all surprised "if in the first years of the coming century the Americans themselves settled on a sovereign."<sup>446</sup> Indeed, close scrutiny of the debate between unicameralists and bicameralists in 1789 reveals a number of arguments borrowed from the *Defence*. The first was his distinctive sociology, the supposition that all men are possessed of a will to subjugate others, regardless of their class position or national history. The monarchist reformer Gérard Lally-Tollendal keyed in on this immediately in an August 1789 speech in the *Assemblée nationale constituante*. "It is a general and incontestable truth," he insisted, "that in the heart of all men is an invincible penchant for domination, and that every power can give rise to an abuse of power." Grasping for an institutional example, Lally-Tollendal, like Adams, alighted on the English Parliament of 1640. "As long as parliament observed the constitution and acted in concert with the king, it was able to redress its grievances, and carry salutary laws." But at the moment that it seized legislative

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<sup>445</sup> John Adams to François Adriaan van der Kemp (Mar. 27, 1790), *Founders Online*.

<sup>446</sup> "États-Unis d'Amérique," *Moniteur*, Jan. 1, 1790, in RAM 3:2.

authority and eliminated the king, it overturned the state and the church, and inflicted on the people "an oppression worse than what it had pretended to deliver them from." Passive or post-hoc limits are useless for checking these passions: "one must oppose an active force to an active force." And since the collision of two powers could only result in "each having crushed the other," this implied the necessity of a triangular balance, in which every power that is menaced with can form an alliance to repel its oppressor, ensuring "la paix entre tous."<sup>447</sup> Reading a reconstruction of this speech in Wollstonecraft's history of the revolution, Adams was moved to place a note in the margins: "Ah! Tolendal! Thy filial Piety is immortal!" But he added that pleading for bicameralism in that bedlam was a fool's errand.<sup>448</sup>

A second highly distinctive argument from the *Defence* that resurfaced in the French constitutional summer of 1789 came from the pen of Ernst Brandes, a Hannoverian writer and conservative who was well-connected in French royalist circles, and authored a retrospective of these debates in 1791. Revisiting the fateful decision to unify the three Estates into a single National Assembly, Brandes observed that the purpose of an upper chamber was not to grant special privileges to the rich or titled, but rather to create a safety valve for their ambitions. These are men, Brandes advised, "whose birth and education have deeply impressed upon them an idea of their prerogatives." Wise legislators, he argued, will "create a space where they can be made content with the constitution...which will prevent them from exciting troubles and plotting conspiracies." *Une Chambre haute* was, in other words, a gilded cage, where the ambition of

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<sup>447</sup> M. [Gérard] le comte de Lally-Tollendal, *Rapport sur le pouvoir législatif* (Aug. 31, 1789), reprinted in *Archives Parlementaires*, 8: 514-15. Cf. Gérard Lally-Tollendal, *Quintius capitolinus aux Romains* (Paris, 1790), 44 (describing a unicameral assembly, "ce monstre a un seul corps et a mille têtes, que rien n'arrete..."); Ernst Brandes, *Considérations politiques sur la Révolution de France* (Paris, 1791), 119 ("...cette Assemblée unique & souveraine, c'est en vain qu'elle se prescrit le mode de ses délibérations; rien ne l'empêche de violer dans un temps les règles...").

<sup>448</sup> Adams, Annotations to Wollstonecraft, *An Historical and Moral View*, 303 (revealing, too, that they were friends during Adams's time in Paris: "I have [illegible] and drank in thine Apartments. I am proud to say thou wert my disciple and convert to the Doctrine of Branches.").

nobles like Mirabeau might have been safely contained, and where "democratic" aristocrats like Condorcet might have been inhibited from building a popular following.<sup>449</sup> Brandes, who made a diligent study of the historical record from 1788 and 1789, might have first encountered this maneuver in a 1788 speech by Jean-Paul Rabaut Saint-Étienne, who recreated Adams's brief for elite "ostracism" from the *Defence* nearly point-for-point:

We cannot overemphasize the necessity of this division [of the legislature]. If the States-General are united in a single assembly, it is easy to predict that they will soon form an aristocracy...The most powerful members will form between them a formidable league, all deliberations will be conducted at the discretion of the personages most noted for their dignity, their credit, and their wealth...Members of the Third Estates...will offer only weak resistance to such a powerful league, and, driven by the preponderance of the first two orders, will be forced to submit to their opinions, either tacitly or openly...every effort will then be made to undermine the royal authority and to enchain the people.<sup>450</sup>

The increasingly embattled conservative faction did not hesitate to turn Pennsylvania's 1790 revision of its unicameral constitution into a propaganda coup. Franklin's state, blared the *Mercure de France*, had at last given up on the "democratic illusions" of 1776, dividing its legislature into two chambers, "and giving the negative voice to its executive power, now concentrated in an elected governor." The journal added mordantly that in response to the revisions no American had yet suggested that the upper house was "a Venetian Senate," or menaced members of the constitutional convention with "la lanterne."<sup>451</sup>

The counter to this ideal of constitutional balance came from predictable corners; by the time of his 1790 *Discourses on Davila* Adams could single out "the Duke de la Rochefoucault and the Marquis of Condorcet," two longtime associates of Franklin and Turgot, as leaders in the

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<sup>449</sup> Brandes, *Considérations*, 127.

<sup>450</sup> Jean-Paul Rabaut de Saint-Étienne, *À la Nation Française* (Paris, November 1788), 65.

<sup>451</sup> *Mercure de France*, May 10, 1790, no. 156 (having read too quickly, or having read the new Pennsylvania constitution in the light of Adam's *Defence*, the *Mercure de France* wrongly reported that Pennsylvania would now appoint its governors "for life").

movement to "collect[ ] the whole sovereignty in single national assemblies."<sup>452</sup> Adams had eyed Condorcet warily since 1788, when the philosopher published the *Lettres d'un Bourgeois de New-Heaven* in the first volume of Mazzei's *Recherches*; Adams wrote on the flyleaf of his copy that the four essays were "plainly written as an answer to my Defence," a reasonable surmise despite the fact that Adams is never mentioned in the text.<sup>453</sup> Condorcet's republican plan for America is an extension of Turgot's proposed administrative reforms for France—a dense, tiered filiation of municipal assemblies, in which property-owning citizens would govern themselves in matters of local regulation, while elected representatives would take decisions at higher levels of government.<sup>454</sup> Three factors distinguish it from the blueprint given in Turgot's 1775 memorandum. The first is the absence of kingship: Condorcet's national government would be centered in a single representative assembly, a *corps législatif*, responsible in the first instance for promulgating all legislative rules. The second is that Turgot envisioned power flowing only

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<sup>452</sup> Adams, *Discourses on Davila*, 53. || For Rochefoucauld's quite moderate spin on the unicameral argument, see *Opinion de M. le Duc de la Rochefoucauld, 7 Septembre 1789, sur les trois questions suivantes* (Paris, 1789), 12 ("Je conclurai...que l'Assemblée Nationale doit être une, mais que vous devez établir un Conseil qui, seulement consultatif, examine les projets de loix, & avertisse des inconveniens qu'il y découvrira...& je ne serai point effrayé, dans ma conclusion, par l'exemple que l'on vous a cité de deux États Américains dont l'un (*la Georgie*) a déjà changé sa législature unique...& dont l'autre (*la Pensylvanie*) va bientôt, dit-on, adopter cette complication").

<sup>453</sup> Adams, Annotations to Condorcet, "Lettres d'un Bourgeois de New-Heaven à un Citoyen de Virginie," in *Recherches historiques et politiques sur les États-Unis* (Colle [Paris], 1788) [copy held at Boston Public Library], 1: 266. Adams's book was released before Mazzei and Condorcet's volumes; see Mazzei, *Recherches*, 4: 213-14 ("On vient d'imprimer à Londres un ouvrage de M. Jean Adams, intitulé *Apologie des constitutions des États-Unis d'Amérique*..."). In the text Condorcet speaks derisively of Jean Delolme, a frequent reference point for Adams, and mocks his "admiration pour la constitution anglaise"; see Condorcet, "Lettres d'un Bourgeois de New-Haven à un citoyen de Virginie" [completed in 1787, published in 1788] in *Œuvres*, 9: 15. || For further criticism of Delolme, which was common in Condorcet's intellectual circles at this time, see Nicolas de Bonneville, *Lettre...à M. de Condorcet* (Paris, 1787), 34. || On the composition of Condorcet's *Lettres*, see Simeon E. Baldwin, *The Authorship of the Quatre Lettres d'un Bourgeois de New-Heaven* (1900). It has never been determined with finality whether the transposition of "New Haven" into "New-Heaven" was a knowing *jeu de mots* on Condorcet's part or a felicitous mistranscription, though as Baldwin notes many American place-names in the *Recherches* are given odd, phonetic transcriptions.

<sup>454</sup> See Condorcet, "Lettres," 9: 51 ("Un district ne devra...pouvoir renfermer que trois mille votants"), 9: 10 ("partagé en districts à peu près égaux en population et en territoire"), 9: 12 ("le droit exclusif des propriétaires"), 9: 32 ("je voudrais...que des tribunaux différents fussent chargés de jugements criminels, civils, et de police, et placés dans chaque district"), 9: 50 ("il y aurait dans chaque district un corps élu par l'assemblée commune, et chargé de toute l'administration du district").

in one direction, upwards from the district assemblies to the king and his council at Versailles. Certain police matters might be left in the hands of local councils on grounds of subsidiarity, but power and sovereignty were organized as a strict hierarchy, with the national government standing above its localized constituent parts, and where necessary correcting and overriding them. This is not at all true of Condorcet's plan, which imagines power flowing down as well as up, and traveling in horizontal as well as vertical circuits. Thus crucial decisions made by the *corps législatif*—Condorcet gives the examples of war declarations, treaties, and constitutional amendments—cannot enter into force without subsequent ratification by the primary assemblies.<sup>455</sup> Similarly, the district assemblies are empowered to second-guess legislation they judge contravenes constitutional principles, and to force the consideration of constitutional amendments enumerating additional rights, in both cases circumventing the central legislature altogether.<sup>456</sup> At the same time Condorcet envisions a horizontal division of powers, which would honeycomb the *corps législatif* into a plethora of working groups and executive councils. For each act of legislation Condorcet imagined one committee to draft the statute, a second to consider its constitutionality and compatibility with existing laws, and a third to ensure that, after the final vote on the floor by all members, there were no "contradictions" in the will expressed by the committee of the whole. Only a law that passed each of these hurdles in succession could

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<sup>455</sup> Ibid., 9: 45 (following every declaration of war every deputy is to immediately stand for reëlection in his district), 9: 41 (all votes on treaties are *yes* or *no*, with no discussion of details), 9: 39 (specifying that constitutional amendments passed by the legislature are to be ratified only after a pause of two years, allowing time for reasoned consideration).

<sup>456</sup> Ibid., 9: 29-31 ("Le vœu des districts serait porté ainsi pour les lois de la première espèce: Tel article de telle loi, faite et promulguée par le corps législatif, est contraire aux droits et doit être abrogé"). Condorcet argued in the same passage that a minority of primary assemblies (indeed, a minority of primary assemblies, controlled by a minority of their voters) should be sufficient to add new rights to the constitution, but that something closer to unanimity should be required to strike enumerated rights, since "si ce sacrifice est nécessaire, tout le monde doit le sentir."

then be sent to the districts for final confirmation.<sup>457</sup> For warfare and other critical matters typically entrusted to a sole individual, the legislative *corps* would appoint special committees of outsiders, to be renewed annually, capable of acting with secrecy and dispatch.<sup>458</sup> Condorcet had no interest in a single assembly dictating terms to the nation, which he associated not with the Long Parliament of 1640, but with "the tyrannical laws made by the English parliament" in the century since 1688.<sup>459</sup> Third, and finally, while Turgot was deeply cosmopolitan in his orientation towards both the rights of mankind and his vision of frictionless world commerce, Condorcet, writing in the fictional persona of a French philosopher granted honorary citizenship in America, raised this impulse to the level of a constitutional principle. Not only did he propose to banish, through constitutional law, both "treaties of alliance in peacetime" and exclusive "commercial treaties" as inconsistent with justice between nations,<sup>460</sup> but he argued further that the district assembly was a modular building-block that could be used to construct a new international order. There was no reason that multiple states could not, on the same principles that governed the formation of the nation-state, unite into what he called "a federal republic between independent states," with a Congress given supervision over foreign affairs, national defense, and a handful of core constitutional principles, the rest of the tasks of government remaining divided between states, provinces, and districts. Adams was incredulous: "He thinks a Republick federative may be as large as France or England or all Europe."<sup>461</sup>

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<sup>457</sup> Ibid., 9: 64-5.

<sup>458</sup> Ibid., 9: 49. Cf. Adams, Annotations to Condorcet, *Lettres d'un Bourgeois*, 1: 321 (scoffing that "the Members of this Council of War [will] be the Relations" or tools "of the Leading Members of the Legislature!").

<sup>459</sup> He delighted in twisting the knife: "malgré l'espèce d'inactivité à laquelle il est condamné par l'équilibre, tant vanté, des trois pouvoirs." See Condorcet., "Lettres," 9: 57-8.

<sup>460</sup> Condorcet, "Lettres," 9: 54, 9: 41-2.

<sup>461</sup> Ibid., 9: 53-4; Adams, Annotations to Condorcet, *Lettres d'un Bourgeois*, 1: 323.

But if Adams, long into his retirement, continued to rail against La Rochefoucauld and Condorcet as so "superficial in their reading in the science of Government" that he would sooner "trust the most ignorant of our honest town meeting orators to make a Constitution,"<sup>462</sup> this was because the two *philosophes* had dedicated themselves so fully on the eve of the French revolution to overturning the liturgy of constitutional balance, and did not scruple to place Adams himself in their crosshairs. Condorcet began in the *New-Heaven* letters by recapitulating the stereotyped arguments that had been elaborated for thirty years by Quesnay, Mercier, and their myriad disciples. One perennial was that, while England certainly did enjoy more liberty than any other monarchy, this was a function of other laws and institutions—trial by jury, *habeas corpus*, freedom of the press, and the right to form private associations. And yet instead of calling for the careful replication of these legal and cultural norms, Condorcet marveled, French and American anglophiles had been hypnotized by the holy mysteries of "balance," asking in the manner of religious fanatics "not whether this constitution is good, but by what principles it can be proven to be the best of them all."<sup>463</sup> Also a standard part of the repertoire was Condorcet's suggestion that a second chamber, even if initially elective, might calcify over time into a patriciate, composed of "wealthier, more respected men," with places handed down from father to son.<sup>464</sup> And the marquis contended, like Paine, that a division between two chambers would fan the flames of party spirit, degrading civic virtue and finally precipitating civil war.

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<sup>462</sup> John Adams to Samuel Perley (June 19, 1809), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-5381>. Cf. John Adams to Benjamin Rush (July 19, 1812), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-5836> ("What Idiots and Lunatics are Diderot and Condorcet?"); John Adams to Thomas Jefferson (Feb. 2, 1813), in *Papers of Thomas Jefferson (Retirement Series)* (J. Jefferson Looney ed., 2008), 5: 595 ("Tom Moretons New Canaan; which is infinitely more entertaining and instructive to me, than our Friend Condorcets "New Heaven" was almost 30 years ago").

<sup>463</sup> Condorcet, "Lettres," 9: 76, 9: 74 ("on a parlé de forces opposées, de contre-poids, d'équilibre, et ces mots ont eu sur certaines gens une influence d'autant plus forte, qu'ils les entendent moins...Chaque état a sa charlatanerie propre, et celle des politiques est de donner leur science comme une espèce de doctrine occulte dont les adeptes seuls ont la clef.").

<sup>464</sup> *Ibid.*, 9: 81. Cf. *ibid.*, 9: 78 ("une semence d'aristocratie").



"Experience has shown more than once," he expounded, "that these struggles for power, thought so important for...maintaining liberty and justice through mistrust and rivalry, have terminated in bloody oppression." The weights and counterweights that give the machine its splendid motion might, in the end, be the forces that break it apart.<sup>465</sup>

More interesting are those moments in the text where Condorcet departs from the standard script in order to shadowbox with Adams's *Defence*. "Some have concluded," he informs his readers, "that the ancient republics did not survive because they did not know how to establish an equilibrium between the three powers." But the flaw in the ancient republics was not their *constitutional ordering*, but rather their vicious, class-bound social structure, their constitutive division between "certain great citizens, long accustomed to wielding power, and a people weary of this power." If Adams's position was that hierarchy was an ineradicable part of human society, Condorcet's retort was that its dissolution had never been properly attempted. Balancing orders would treat the symptom, not the disease, which could only be redressed by liquidating class distinctions, and placing all citizens on a formally equal footing. "Those who ardently support the division of the legislature into three parts," the philosopher insisted, had not demonstrated that a lack of balance is the root of republican instability:

One sees, in reading them, that they pile up examples, authorities, and comparisons to justify something that already exists [i.e. the British constitution], but none has yet tried to discover what *could be*, what one *ought to do*. They have proven, by the authority of ancient and modern moralists, that men are ambitious, that they love power, and that are moved by passions, but they have not considered whether the danger born of these vices...is not rather the result of bad laws than of nature, and in particular of...complicated constitutions that divide men instead of uniting them.<sup>466</sup>

The political dispute between Condorcet and Adams reduces to a nearly theological controversy: whether men enter the world already consumed by pride and oriented towards hierarchy, or

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<sup>465</sup> Ibid., 9: 88-9.

<sup>466</sup> Ibid., 9: 84-6. Cf. Appleby, *An American Pamphlet in Paris*, 162 ("all arguments about the need for government to balance the varying interests within the community were for Condorcet a species of circular reasoning since the imperfection of the laws had created the different interests in the first place").

whether they are plastic and perfectible, stamped with the vices of bad institutions, but capable of being remolded into ideal citizens by good ones. The debate would continue after Condorcet's death; in an English edition of his posthumous *Esquisse d'un tableau de l'esprit humain*, Adams underlined the phrase "perfectibility of man is absolutely indefinite," and attached a sarcastic query: "No bounds agreed then? Will Man ever be free from Disease and Death?"<sup>467</sup>

Condorcet's most original contribution to the critique of the *Defence* and the mixed constitution was the application of his innovative theoretical work on mathematics and social choice to the question of bicameralism.<sup>468</sup> In his *Essai sur l'application de l'analyse à la probabilité des décisions*, brought out in 1785, the philosopher had demonstrated that the chances of making a "correct" decision could be augmented by increasing the number of decision-makers. It might be thought from this proposition, reasoned the "anonymous" author of the *Lettres* ("One may consult on this question," he wrote drily, "the work of the marquis de Condorcet"), that one should multiply the number of legislative bodies, in order to maximize the odds of obtaining a "true" or "correct" result. But this is a misinterpretation—the index of a proposition's accuracy is the number of thinking and willing agents who believe it, not the number of chambers they are arbitrarily clustered into. Indeed, the true obstacle to reasoned decision-making is *vote cycling*, a situation where no true "majority" preference exists because opinion is divided across multiple sets of preferences ( $a > b$ ,  $b > c$ ,  $c > a$ ). The only path out of this paradox, Condorcet argues, is to "reduce to the extent possible the complexity of the

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<sup>467</sup> John Adams, Annotations [1798/1815] to Condorcet, *Outlines of an historical view of the progress of the human mind* (London, 1795), 4. Cf. John Adams to Louis Alexandre, Duc de La Rochefoucauld, *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0449> ("Human Passions are all unlimited and insatiable. This renders Association and Government necessary. without it, We are in continual Danger").

<sup>468</sup> Mazzei singled this out as the most compelling element of Condorcet's monograph; see Philip Mazzei to James Madison (Aug. 14, 1786), in *Papers of James Madison (Congressional Series)* (Robert A. Rutland and William M.E. Rachal eds., 1975), 9: 102 ("...4. lettere ben ragionate del M. di Condorcet, che mi à indirizzate ove sostiene *mattematicamente* l'unita della Legislazione"). We see here how much of the *Lettres* was already drafted by the time Adams began his *Defence*, although this does not at all rule out the possibility of later revisions.

propositions about which we deliberate," presenting the assembly with rigorous legislative language and clear propositions that can be answered in the affirmative or negative, while also in certain cases requiring supermajorities. Specialized committees can aid in this work, by converting complex social questions into binary propositions, and by ensuring that the questions being posed to the collective are coherent and free of internal contradiction. The needless complications of a second chamber would make this kind of plebiscitary clarity, a prerequisite for the formation of a true majority will, almost impossible.<sup>469</sup>

Adams had no doubt that he was the intended target of Condorcet's missive; he underlined the sections that he thought addressed his work directly, and wrote to La Rochefoucauld in 1788 that "the whole Scope of these Letters, is manifestly to answer a particular Writer, to whose Work they have clearly enough alluded without naming it."<sup>470</sup> There would be no uncertainty in a work Condorcet helped to prepare the following year, the heavily-annotated French translation of John Stevens's 1789 pamphlet *Observations on Government*, mistakenly but universally credited to the former New Jersey governor William Livingston. The unsigned preface, written by Condorcet with his co-editors Mazzei, Du Pont de Nemours, and Jean-Antoine Gauvin-Gallois, addresses Adams and the *Defence* directly, while echoing Condorcet's language in the *New-Heaven* letters:

M. Adams, so commendable for the great services he has rendered to the United States, has let himself be seduced, either by the colorful pictures of M. Delolme, or by the advantage that established things seem always to have over simple speculations, or from childhood prejudices, which stubborn personalities have trouble detaching themselves from.<sup>471</sup>

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<sup>469</sup> Condorcet, "Lettres," 9: 76-7. Cf. Condorcet, *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix* (Paris, 1785), ii-xv.

<sup>470</sup> John Adams to Louis Alexandre, Duc de La Rochefoucauld (ca. 1788), *Founders Online*.

<sup>471</sup> [Marquis de Condorcet, Philip Mazzei, Pierre Samuel du Pont de Nemours, Jean-Antoine Gauvin-Gallois], *Examen du gouvernement d'Angleterre, comparé aux constitutions des États-Unis, par un Cultivateur de New-Jersey* (London [Paris], 1789), v. Cf. Du Pont de Nemours, Note II, in *ibid.*, 68 ("La considération distinguée qu'il s'est acquise dans les États-Unis nécessitoit la réfutation que le Cultivateur...nous a donnée de ses erreurs"). For attributions of authorship for the notes to this text, see Appleby, *An American Pamphlet in Paris*, 184 ff. 19.

The notes prepared by Condorcet for this text further his criticisms of Adams and the mixed constitution. Notes III and IV take aim at the royal prerogative to declare war and sign treaties of alliance, on the grounds that the king cannot embody the *volonté générale*, and so cannot possess the sovereign right to decide on "the enemies and friends of the state." Note XV denies the proposition, originally forwarded in Delolme and repeated tirelessly by Adams, that the major purpose of kingship is to constrain the aristocracy. This, Condorcet rejoined, was historically false, and theoretically dubious: "What danger would English liberties be exposed to from the House of Lords, if the royal prerogative was destroyed," particularly since the evaporation of these prerogatives would put an end to the corrupt electoral practices that made representation in the Commons a farce. In Note XVII he lamented the "absurdity" of checks and balances, and called for future republican constitutions to proceed rationally, creating only those powers that are "necessary to social happiness," and assigning each institution a definite task rather than duplicating their functions and forcing them to contend for supremacy. Disappointingly, even Livingston, the American author of the original pamphlet, had finally endorsed constitutional checks, evidence how tenaciously the idea gripped the American political imagination. As an alternative, the editors recommended that the reader "carefully consult the plan of a constitution in a single legislature, proposed by the Citizen of New-Haven."<sup>472</sup>

Ernst Brandes, reviewing the political debates of 1789, judged the *Examen* an intellectual failure but a political triumph. At the level of argumentation it was "a great mediocrity": "Livingston and his annotators combat the constitution of England, but with little reasoning or force." The text was rife with contradiction: the American Livingston spoke in favor of checks and balances and bicameralism, while his French editors confidently labeled both institutions

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<sup>472</sup> Condorcet, Note III, in *ibid.*, 122; Condorcet, Note XV, 152-3; [Marquis de Condorcet, Philip Mazzei, Pierre Samuel du Pont de Nemours, Jean-Antoine Gauvin-Gallois], *Examen du gouvernement d'Angleterre*, 58 ff. 1.

irrational and aristocratic. The editors repeatedly insinuated "that a king of England can make himself absolute whenever he chooses," while conceding that the English enjoyed "a more extensive civil liberty than" subjects of almost any other constitution. But for all its debility the *Examen* was a great victory for public relations. "I would not have mentioned this work," Brandes wrote, "if it had not found quite so many partisans in France." The *Examen* succeeded in presenting John Adams's *Defence* as an outlier, alien to the republican traditions of America, and so helped to shift the balance of public opinion towards unicameralism, and away from executive prerogative.<sup>473</sup> This in turn created the space for a rival American paradigm to flourish, one that valorized unicameralism, and treated displays of executive prerogative with profound hostility. Comte Moustier, Louis XIV's ambassador to America from 1787 to 1789, was one of several observers to register the curious inversion by which a populist constitutional philosophy, thought by 1790 to have failed catastrophically in republican America, was rehabilitated and enthusiastically adopted in monarchial France:

The first American constitutions, erected in a time of political turmoil and ignorance, finally served only as scaffolding for the construction of another building more suited to the purposes of good government...These pieces that had been discarded by the Americans were then picked up by the French...and used to build the constitution of a government which, if it was not suited for America, is even less suited for France, which has no more in common with America than it does China. See, then, where imposture and inconsideration lead.<sup>474</sup>

## **Conclusion**

The Prussian noble Jean-Baptiste du Val-de-Grâce, baron de Cloots, boldly rechristened himself "Anacharsis" on relocating to Paris in 1790, an expression of his exhilaration to be living through events worthy of classical times, and an acknowledgment of his status as a foreigner and barbarian now living in the center of a great republic. In 1792 he issued his pamphlet *La*

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<sup>473</sup> Brandes, *Considérations politiques*, 67-8.

<sup>474</sup> Eléonor-François-Elie, Comte de Moustier, *De l'intérêt de la France à une Constitution Monarchique* (Berlin, 1791), 100.

*république universelle*, a call for France to remake itself as the center point of a world republic, whose multilingual representatives would congregate in a single assembly at Paris to legislate for the globe. This assembly would be a "perfect representation," though the baron noted that some—such as "M. Adams" in America—would be displeased with "notre chambre unique." But Cloots was defiant, insisting that Adams and his French imitators were simply royalists clinging to outmoded forms. "I will therefore oppose Paris to the anarchists, the bicamerists, the anglomanes, and refute them completely." The constitution would be "even more striking," he added, if France were bold enough to "abolish the odious title of king."<sup>475</sup> Both constitutional modernism and constitutional cosmopolitanism, Cloots made clear, demanded that France turn its back on America, which had no more lessons to teach. Much of this proved prophetic; within four months of Cloots's speech the king had been deposed, and his executive power dispersed to several powerful committees organized inside the National Convention. This second revolution brought to power men, like Robespierre, with little but contempt for American constitutional modes and examples.<sup>476</sup> What rang false in Cloots's *discours* was its utopian cosmopolitanism, which fell from favor with the Jacobin ascent. He was excluded from the Convention in 1793, in the same order that expelled Thomas Paine, and guillotined in March 1794.

Adams looked on the dark turn in French politics with a morbid satisfaction. He saw, perspicaciously, that Paine's position in the revolution would not be tenable, and that the same republican politics that marked him for death in England as a firebrand and iconoclast would doom him in France as a moderate and collaborator. "I expect e'er long to hear that Paine is Split and pliced for an Aristocrat," he laughed bleakly to Abigail. "He is too lean to make a good Pye,

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<sup>475</sup> Anacharsis Cloots, *La République Universelle, ou Adresse aux tyrannicides* (Paris, 1792), 48, 63. Cloots believed, however, that France might preserve most of the powers of the king, including his suspensive veto, in a republican magistracy that would very much resemble the American presidency. See, e.g., *ibid.*, 98.

<sup>476</sup> See, e.g., David P. Jordan, *Revolutionary Career of Maximilien Robespierre* (1985), 117.

but he is now in company with a Number...disposed to feed upon each other." In the same letter he washed his hands of the revolution, now under the direction of Danton, Robespierre, and the wailing "Furies" of the Jacobin club. He looked without pity on those who had fallen under the blade, *philosophes* like La Rochefoucauld and Condorcet who had sealed their fate by working in "their Writings to counteract the Effect of my Books in France," while deprecating the balanced constitution that might have saved them as royalism in republican costume. "Dragons Teeth have been sown in France," he concluded coldly, "and come up Monsters."<sup>477</sup>

Jean Antoine Joseph Fauchet, the Jacobin ambassador to America, was hardly more enamored with American constitutional forms, or with the Federalist party that now inhabited them. There was no need to dilate, he wrote in an official dispatch to the Ministry of Foreign Affairs, on the "vicious form of its new government," which looked nothing like the properly republican constitution elaborated in France the year previously, though it bore a great deal of resemblance to that of England, and to France's exploded royalist constitution of 1791. America had adopted, too, the traditional habits and vices of monarchy: high culture, "frenzied luxury," and a monomaniacal focus on wealth and commerce. Ordinary American citizens "are enthusiastically in favor of our revolution," and the House of Representatives bristled with "French republicans." But policy was set by other men in secretive institutions—"the Executive council and the Senate"—with an affinity and admiration for "English despotism." Fauchet singled out two statesmen in particular as emblematic of America's reorientation from Paris to London. One was "Mr. Hamilton, Secretary of the Treasury," amiable in conversation but who "confesses to me that he believes our constitution impractical." The other was "the Vice President, Mr. John Adams, known...for his great work in three enormous volumes in praise of

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<sup>477</sup> John Adams to Abigail Adams (Jan. 14, 1793), in *Adams Family Correspondence*, 9: 378; John Adams to François Adriaan van der Kemp (Feb. 18, 1794), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1513>.

the English constitution." Absorbed in his romance of the three legislatures, Adams could not appreciate what Fauchet called, in a pointed allusion, the egalitarian "common sense of the constitution France has just given itself." But if Fauchet had mainly encountered condescension from his American equivalents, and gleeful predictions that the *république* would be short-lived, he noted a shift in tone, timed to recent reports of France's astonishing military victories against the First Coalition. "It is easy now to shut their mouths," he sighed, "but not to convert them."<sup>478</sup>

This chapter has followed the intellectual career of John Adams during the first wave of democratic revolution in Europe. It has demonstrated the startling degree to which constitutional ideas elaborated in a handful of American states, and expanded on in the political literature of Adams and Paine, became the primary materials from which the French revolution was fashioned. The trajectory of Adams's thought is fraught with ironies and unexpected reversals. He condemned Mably as a leveller, despite the Abbé's qualified defense of private property and inequality, and his frank admiration of Adams's ordered Massachusetts constitution. And he accused Turgot, a stalwart royalist and the intellectual architect of primary assemblies, of wishing to "collect all authority into one centre." But he also perceived, from a very early moment, how Pennsylvania unicameralism, Greek egalitarianism, and Turgotian experiments in direct democracy, might be combined into a new republican synthesis, one that, in spite of the Enlightenment pretensions of its exponents, would prove vengeful, unstable, and violent.

Adams and his closest allies would mistrust French republicanism long after the Jacobin moment had passed. In 1797, his son John Quincy wrote from Berlin to inform him that Bertrand Barère had given up on the unicameral republic, publishing a "eulogium upon Montesquieu" and "thunder[ing] with all his eloquence at the extreme importance of the division of powers."

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<sup>478</sup> Commissioners [dir. Fauchet] to the Minister of Foreign Affairs (Politique No. 1) (May 5, 1794), in *Correspondence of the French Ministers to the United States, 1791-1797* (Frederick Jackson Turner ed., 1903), 331-2.



Adams *fits* expressed a certain satisfaction that "Turgot's dogma of rallying all authority to one center has been washed out of vogue in the blood of millions." But he did not trust the sincerity of the Montagnard's conversion to the anglo-manne creed. "He like so many others can flatter no madness but that which is armed with power; can bow to none but reigning errors, and pledge his faith to none but accredited lies."<sup>479</sup> The disorientations and constitutional realignments of Thermidor are the subject of the next chapter.

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<sup>479</sup> John Quincy Adams to John Adams (Sept. 11, 1797), in *Writings*, 2: 203.

## **2. American political thought and the Constitution de l'an III**

### **Introduction**

John Adams, so often prone to melancholy in his musings on politics, allowed himself a brief moment of optimism about the course of the French revolution. The date was March 2, 1793; Louis XVI was interred in a plain grave at La Madeleine, and the Mountain cast a lengthening shadow over the National Convention. It was a curious moment for Adams, who had long predicted the descent of the revolution into mob rule and tyranny,<sup>480</sup> to exalt its future. But his spirits had been lifted by a conversation with his son-in-law, William Stephens Smith, who informed the patriarch of the rising prestige of his ideas in newly republican France. “Smith,” Adams beamed to his wife, “says that my Books are upon the Table of every Member of the Committee for framing a Constitution of Government for France except Thomas Paine, and—” he could not resist adding, with a malicious twinkle, “he is so conceited as to disdain to have any Thing to do with Books.”<sup>481</sup> The long-delayed translation<sup>482</sup> of his *Defence of the Constitutions*

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<sup>480</sup> See, e.g., John Adams to Thomas Jefferson (Dec. 10, 1787), in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1955), 18: 13 (“All Europe resounds with Projects for reviving, States and Assemblies, I think; and France is taking the lead...to think of reinstating Republicks...would be to revive Confusion and Carnage, which must again end in despotism.”); John Adams to Richard Price (Apr. 19, 1790), in *Works of John Adams* (Charles Francis Adams ed., Boston, 1854), 9: 563 (“The revolution in France could not therefore be indifferent to me; but I have learned by awful experience to rejoice with trembling.”); Samuel Allyne Otis to John Adams (Sept. 29, 1792) (“surely every man not devoid of good policy & humanity will join you in deprecating a mad unbalanced democracy”); John Adams to Thomas Boylston Adams (Jan. 24, 1801), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-0869> (“For myself I have been, from 1786 to this moment a uniform detester of the French Revolution”); John Adams to Thomas Jefferson (Jul. 13, 1813), in *Papers of Thomas Jefferson (Retirement Series)* (J. Jefferson Looney et al., eds., 2009), 6: 286 (“you was well persuaded in your own mind that the nation would Succeed in establishing a free Republican Government: I was as well persuaded in mine, that a project of Such a Government...was as unnatural irrational and impracticable; as it would be over the Elephants Lions Tigers Panthers Wolves and Bears in the Royal Menagerie, at Versailles.”). Adams rarely swerved from this pessimism, predicting a short life for the pending Girondin constitution in early 1793: “We Shall See, in a few months, the new French Constitution, which may last Twelve months, but probably not more than Six. Robertspierre and Marat with their Jacobin Supporters I suspect will overthrow the Fabric which Condorcet Paine and Brissot will erect. Then We shall see what they in their turn will produce.” This proved nearly exact; in fact, Condorcet’s instrument never entered into force at all. John Adams to Abigail Adams (Jan. 31, 1793), in *Papers of John Adams* (Gregg L. Lint ed., 1996), 9: 378.

<sup>481</sup> John Adams to Abigail Adams (Mar. 2, 1793), in *Papers of John Adams*, 9: 451. Recall that the *Defence* was organized as a series of letters to Smith, then (like Adams) a member of the American legation to London.

of *America* in the spring of 1792 had vaulted his theory of elite leadership and constitutional equipoise into the center of French revolutionary debates, at precisely the moment when the drafting of a republican constitution had become an urgent national priority.

But far from being received as a sound guide for constitutional government, the *Défense des constitutions américaines* was roundly savaged, above all by the Girondin circle appointed to draft the new constitution. Condorcet's newspaper, the *Chronique de Paris*, associated the *Défense* with the exploded royalism of the *Feuillants*, and directed readers to refutations of Adams in works by Livingston and Mazzei.<sup>483</sup> Louis-Marie Prudhomme's *Révolutions de Paris* depicted Adams as a dictator in embryo, plotting "the enslavement of America" after Washington's departure.<sup>484</sup> In 1788 Brissot had praised the *Defence* as "a profound work" and a conclusive answer to "the vague ideas of M. Turgot on democracy";<sup>485</sup> now his *Patriote François* branded the Vice President "a tiresome panegyrist of bicameralism."<sup>486</sup> The kindest thing many revolutionaries could find to say about Adams's weighty tome was that it was simply

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<sup>482</sup> For the background to this translation, see Joyce Appleby, "The Jefferson-Adams Rupture and the First French Translation of John Adams' *Defence*," *American History Review* (Apr. 1968), 1084; Antonino De Francesco, "Federalist Obsession and Jacobin Conspiracy," in *Rethinking the Atlantic World* (Manuela Albertone and De Francesco eds., 2009), 239-56, 240. Cf. Pierre-Bernard Lamare, Notice pour le Cen Taleyrand (18 Vendémiaire l'an 9), in "Lamarre," *Personnel Volumes Reliés*, Archives du Ministère des Affaires Etrangères, 42: 231 ("Lamarre connoît...La Constitution et les affaires des Américains; il a fait connoître en frame plusieurs de leurs écrits et nommement La défense des Constitutions Américaines, par John Adams, ouvrage dont il entrepris la traduction, à l'invitation de MM. Short et Lafayette.").

<sup>483</sup> *Chronique de Paris*, Mar. 10, 1792, 279-80 ("Nous avons prouvé, il n'y a pas longtems, qu'il est impossible que ce système prevaille en France, malgré le vœu secret de la cour & les intrigues de la coalition"). The critiques of Adams in these works were, of course, written in substantial part by Condorcet himself.

<sup>484</sup> *Révolutions de Paris*, Sept. 15-22, 1792, 527.

<sup>485</sup> J.-P. Brissot, février 2, 1788, in *Titres d'ouvrages sur l'Amérique Seprtionale, avec appreciations et notes*, Fonds Brissot, 446 AP 5/2/94. Cf. J.-P. Brissot and Étienne Clavière, *De la France et des États-Unis* [1787] (Marcel Dorigny ed., 1996), 308 ("Il faut lire encore sur ce sujet l'ouvrage récemment publié par le savant M. J. Adams...L'auteur y prouve la sagesse des constitutions Américaines").

<sup>486</sup> *Le Patriote François*, Jun. 13, 1792, 660. || For further Girondin skepticism of Adams, see José Marchena, *Premier Discours sur la Convention Nationale, prononcé à la Société des Amis* (Bayonne, 1792), 3-4 (recommending that France reform its constitution along American lines, but nevertheless lamenting "des erreurs de Delolme, d'Adams...à ce sujet" of royal power and constitutional balance).

irrelevant to a centralized and dynamic continental power like France, however apposite it might be for the weakly-bonded archipelago of American states.<sup>487</sup> Adams was not safe from criticism even in the margins of his own text; Buisson, the nervous publisher of the *Défense*, commissioned the legal scholar Jacques-Vincent Delacroix to produce a set of annotations contesting Adams's most avant-garde claims. Delacroix found much to commend in the *Défense* but recoiled at its underlying radicalism, calling it a covert apology for executive despotism and Venetian oligarchy.<sup>488</sup> When the *Patriote Français* nevertheless tarred Delacroix for his association with the *Defence*, the jurist protested indignantly: "I am in no sense the translator of Mr. Adams's work; I only added a few observations about its principles which are antithetical to our own constitution."<sup>489</sup>

The actual translator of the *Defence*—an obscure *littéraire* and civil servant named Pierre-Bernard Lamare<sup>490</sup>—signed the work with only his initials.<sup>491</sup> In his preface Lamare did not

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<sup>487</sup> See, e.g., Anacharsis Cloots, *La République Universelle* (Paris, 1792), 47-50 ("Un chef-lieu immensément peuplé, immensément éclairé, est tellement nécessaire au maintien de notre constitution, que les Américains, avec leurs treize chétives capitales, n'ont pas osé chez eux établir la chambre unique...M. Adams a senti que la perfection représentative seroit une chimère funeste dans les Etats de l'Amérique fédérative. Et j'avoue que notre chambre unique, transportée à Bourges, se transformeroit en une toile de Pénélope, en une boîte de Pandore").

<sup>488</sup> Jacques-Vincent Delacroix, Notes et Observations, in John Adams, *Défense des Constitutions Américaines* ([Pierre-Bernard Lamare, trans. and ed.], Paris, 1792), 2: 459 and 2: 470. || On Buisson's recruitment of Delacroix, see Friedrich Melchior Baron von Grimm, *Défense des Constitutions américaines*, in *Correspondance Littéraire, Philosophique, et Critique* (June 1792), reprinted in *Correspondance littéraire, philosophique et critique par Grimm et Diderot, Raynal, Meister, etc.* (Maurice Tourneux ed., Paris, 1882), 16: 150 ("C'est par complaisance pour son libraire que M. de La Croix...paraît s'être chargé d'ajouter au livre de M. Adams quelques notes tendant à prévenir les impressions défavorables que son système pourrait inspirer contre la sublime infaillibilité de notre nouvelle Constitution.").

<sup>489</sup> [Jacques-Vincent] Delacroix, "Aux Auteurs de la Gazette Universelle," *Gazette Universelle*, June 16, 1792, 671. Cf. *Journal de Paris*, Mar. 27, 1792 ("Chacun de ces deux volumes est accompagné de quelques observations de M. de la Croix que tâche d'y mitiger ce que peuvent avoir d'alarmant les conséquences des principes de M. Adams"). || Adams appears to have been unaware of the fraught circumstances surrounding the French edition, since he reported a year later that "the Translation is said to be well done—I once saw it for a few Hours only," and attributed the work to Delacroix. See John Adams to François Adriaan van der Kemp (Feb. 18, 1794), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-6414>.

<sup>490</sup> Lamare was a minor literary figure prior to 1789, and a minor functionary in the French diplomatic corps and civil service thereafter. He began his revolutionary career as the editor of the *Cocarde nationale*, whose 1789 Prospectus singled out for praise "le brave & fidèle La Fayette." Lamare subsequently served as a commissioner in

flinch at Adams's most extreme statements, endorsing his project for an upper chamber to accommodate and tame the natural aristocracy, and suggesting that France consider, "in the coming time set aside for the revision of its constitution, the establishment of a bicameral system patterned after the American legislature."<sup>492</sup> But he prudently declined to align himself publicly with Adams's *chef d'œuvre*. He was equally reticent in a private dispatch to his superiors the following year, setting out what he took to be his own impeccable qualifications for an ambassadorship. Lamare trumpeted his facility with foreign languages and proffered a lengthy list of his translations from English, German, and Italian, including "a part of the refutation of Burke by Priestley, [and] a part of the *Federalist Papers*...and other political works intended to make despotism hated, and to strengthen republican liberty with the example of our American allies." But he did not mention Adams. The absence of the *Défense* from this *res gestae* underlines his doubtful reputation in France on the eve of the Terror.<sup>493</sup>

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French Polynesia, headed the Office of Public Instruction, and (under Napoleon) was credentialed to Constantinople and Bucharest. For biographical details, see Pierre-Bernard Lamare, Notice pour le Cen Taleyrand, in "Lamarre" [Archives du Ministère des Affaires Étrangères], 42: 231; Veuve Lamare to le Duc de Cadozre, Ministre des relations Extérieures (Aug. 28, 1809), in *ibid.*, 42: 245.

<sup>491</sup> For the signature, see Lamare, Préface, xxiv ("L.M."). For details, see Antonino De Francesco, "Traduzioni e Rivoluzione, La Storia Meravigliosa Della Prima Versione In Francese del *Federalist*," *Rivista Storica Italiana* (2011), 61-110, 86 ("pagine che per la delicatezza del tema trattato egli preferì solo siglare").

<sup>492</sup> [Pierre-Bernard Lamare], Préface du Traducteur, in Adams, *Défense*, xxiii. Cf. *ibid.*, xx ("Ce sénat sera donc une chambre *aristocratique*, mais non pas une *chambre patricienne*").

<sup>493</sup> Pierre-Bernard Lamare to Citoyens (4 Frimaire l'an II), in "Lamare" [AMEA], 22: 28. || Lamare's boast is complicated by a 1795 petition by the Abbé Morellet to the Convention, to recover the property of the brothers Charles-Louis Trudaine de Montigny and Charles-Michel Trudaine de la Sablière, liberal intellectuals and *bon vivants* who were guillotined in 1794. Morellet states that de la Sablière, the younger brother, "avoit traduit de l'anglais un ouvrage estimable et trop peu lu parmi nous, qui eut pu nous être bien utile. *Le Fédéraliste*, écrit depuis la révolution de l'Amérique, et dont le but étoit...de démontrer à toutes la nécessité d'un gouvernement unique et centrale." It is possible that the translation was a collaborative effort between the the younger Trudaine and Lamare. See [Abbé Morellet], *Mémoire pour les citoyennes Trudaine veuve Micault...et le citoyen vivant Micault-Courbeton fils* (Paris, 1795), 74-5. For background on Trudaine *cadet*, see Thomas Crow, "A male republic: bonds between men in the art and life of Jacques-Louis David," in *Femininity and Masculinity in Eighteenth-Century Art and Culture* (Gill Perry and Michael Rossington eds., 1994), 204-18, 210-11.

By the spring of 1795, however, a shift had taken place;<sup>494</sup> in an ingratiating letter to the Committee of Public Safety Lamare now eagerly publicized his role in translating “l’ouvrage de John Adams.” A month later he began to circulate a manuscript on the separation of powers titled *L’Équipondérateur*, which flaunted its intellectual debt to the American Vice President. “The above,” he wrote in a footnote to one highly characteristic passage, “has been a summary of the doctrine of John Adams in the *Defence*. You will no doubt forgive me for drawing some ideas from a work that I was the first to popularize in France, and of which I am the translator.”<sup>495</sup> *L’Équipondérateur* was disseminated privately in April to the Commission des Onze, the committee charged with rewriting the 1793 constitution,<sup>496</sup> which quickly ordered its printing and distribution.<sup>497</sup> In late June the Commission would publicly unveil its draft constitution, alongside a *discours* by its chair, François Antoine de Boissy d’Anglas, outlining its

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<sup>494</sup> Cf. Antonio [sic] de Francesco, “Traduire pour stabiliser. L’exemple des ouvrages américains parus en français à la veille de la République, printemps-été 1792,” *La Révolution française* (Dec. 2017), par. 12 (“Le moment paraissait d’ailleurs favorable à un retour en force du système politique américain.”).

<sup>495</sup> Pierre-Bernard Lamare to la Section diplomatique du Comité de Salut Public (10 Floréal l’an 3), in *ibid.*, 22: 38; Pierre-Bernard Lamare, *L’Équipondérateur, ou une seule manière d’organiser un gouvernement libre* (Paris, April/May 1795), 6. A manuscript version (with minor variations of wording and structure) is in the archives of the Commission des Onze, AN C227/183//3//2 No. 31.

<sup>496</sup> In the days after the 12 Germinal (April 1) riot, a commission of seven was appointed by the Convention to consider how a new constitution might be prepared. It reported back to the Convention on April 12, recommending a commission of eleven, which would solicit opinions and drafts from across the nation, and incorporate them into a new frame of government. On April 23 the Convention empaneled eleven members—six of the original seven (Cambacérès, Merlin de Douai, Sieyès, Thibaudeau, Lesage, Creuzé-Latouche) and five additional members (La Révellière-Lépaux, Boissy d’Anglas, Louvet, Berlier, and Daunou). In early May the Convention determined that no one could sit in both the Commission des Onze and the Committee of Public Safety; this led to the resignation of Sieyès, Merlin, and Cambacérès, and their replacement by Lanjuinais, Durand-Maillane, and Baudin des Ardennes. For details see Michel Troper, *Terminer la Révolution: la Constitution de 1795* (2006), 23-4.

<sup>497</sup> Pierre-Bernard Lamare to the Comité de Salut-Public (28 Messidor l’an 3), in “Lamare” [AMEA], 22: 33. Cf. Patrice Gueniffey, *La révolution ambiguë de l’an III: la Convention, l’élection directe et le problème des candidatures*, in *1795: pour une république sans révolution* (Roger Dupuy and Marcel Morabito eds., 2015), 49, 53 (“Lamare...fut alors l’un des rares auteurs de projets constitutionnels, peut-être le seul avec Roederer, à qui la commission des Onze ait fait l’honneur d’une audition”). Gueniffey’s list is incomplete; see Commission des Onze to Citoyen Røederer (July 21, 1795), in *Œuvres du comte P.L. Roederer* (A.M. Røederer ed., 1857), 6: 103 (“Citoyen, la commission des Onze vous invite à vous rendre ce soir, à sept heures, précises, au lieu de ses séances. Elle adresse la même invitation aux citoyens Dupont de Nemours, Vaublanc et Sieyès.”).

core philosophy of separated powers and moderated democracy. In a speech that ran to eighty printed pages, d'Anglas cited only one authority:

One of the greatest modern publicists, Samuel Adams, has written “that there can be no good government, no stable constitution, no secure protection for law, liberty, or the property of the people, without a balance between the three powers.” It is this principle that we now propose to put in force.<sup>498</sup>

The conspicuously botched citation underscores both the talismanic aura of the *Defence* in the post-Robespierriest republic, and the limits of its influence on the drafters of the official text. Adams, having celebrated his French resurgence prematurely in 1793, was rather more circumspect about his Thermidorean vogue: “As the *Defence* is translated into French and is becoming at least a less \un/fashionable Book than it has been both in France and England, I begin to hope that in a Course of Ages it may do some good.” His son Thomas Boylston, observing from the Hague, was more doubtful, both of the new constitutional instrument and its Massachusetts pedigree. “If it contains less of Nedhamism, Turgotism, or Franklinism, than the former essays,” he ventured, “I believe that it also abounds very little with Adamsism.”<sup>499</sup>

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<sup>498</sup> Boissy d'Anglas, *Projet de Constitution pour la République Française et discours préliminaire*, 5 Messidor (Leiden, 1795), 46. || We can infer d'Anglas's lack of familiarity with the actual text not only by his attribution of it to Adams's celebrated cousin, but also by the language he quotes, which does not appear in Lamare's translation, and seems to have been lifted from a 1789 report by Lally-Tollendal. See Rapport de M. Le Comte de Lally-Tollendal, in *Rapports du Comité de Constitution...31 Août 1789* (Versailles, 1789), 1, 23. || D'Anglas was one of several French writers to confuse John and Samuel Adams; the same error is made in Adrien Lezay-Marnésia, *Qu'est-ce que la Constitution de 93?* (Paris, 1795), 6 (“la belle constitution de Massachusett, celui qui y a eu le plus de part, le célèbre Samuel Adams”). For Adams's characteristically wounded reaction, see John Adams to Thomas Boylston Adams (Sept. 19, 1795) [redacted] (“Samuel was intentionally used instead of John I doubt not. I have experienced in France a thousand Similar Affronts under the old Monarchy. They delight to insult some People in this manner.”). || For the jubilant reaction in America's Federalist press to Boissy's speech, see [New York.] *Herald*, Nov. 7, 1795, 3 (“Boissy d'Anglas, a leading member of the Convention of France, in his celebrated report preliminary to the New Constitution, has called JOHN ADAMS, Vice President of the United States, *one of the greatest modern writers on government*. This eulogium on our countryman, for his celebrated defence of the Constitutions of the United States, which our democrats have condemned, is of the more weight, as it comes from a body of men, who formerly reprobated a division of the legislature”); [Boston] *Columbian Centinel*, Sept. 30, 1795, at 3 (“the elegant speech of BOISSY D'ANGLAS...is the gospel of politicks”).

<sup>499</sup> John Adams to Thomas Boylston Adams (Sept. 19, 1795), [redacted]; Thomas Boylston Adams to John Adams (Jul. 13, 1795), *Founders Online*, <http://founders.archives.gov/documents/Adams/04-11-02-0004>. Cf. John Quincy Adams to John Adams (July 27, 1795), in *The Writings of John Quincy Adams* (Worthington Chauncey Ford ed., 1913), 1: 383 (“You will perceive that he quotes your authority in support of a divided legislature, but his very quotation shows that he knew as little of you as of your book.”). || The seventeenth-century republican journalist Machamont Nedham and the eighteenth-century physiocrat and statesman Anne-Robert Jacques Turgot were, along with Franklin, Adams's primary targets in the *Defence*.

Nevertheless, French intellectual life brimmed with his acolytes and admirers. The economist Pierre-Louis Rœderer lauded him as “the enlightened friend of liberty, the wise defender of the American constitutions.”<sup>500</sup> The young aristocrat Adrien Lezay-Marnésia published a dialogue on constitutional equipoise to wide acclaim; its hero was Adams, “the man best-suited to expound on the principles of the great Massachusetts constitution,” and its appendix was a full French translation of the 1780 charter.<sup>501</sup> And the lawyer François d’Ivernois<sup>502</sup>—editor of the definitive “Geneva” edition of Rousseau’s works—spoke reverently of “the *Defence of the constitutions* by the celebrated Mr. *Adams*” as a work perfectly “calculated...for the current meridian in France,” in which both monarchy and democracy stood fatally discredited. “I am uncertain,” he added, “whether this work has been translated, but it would be doing the French a great service to place it within their reach.”<sup>503</sup> Inevitably, Adams was also reproached by those who saw him as a necromancer conjuring the malign spirits of the *ancien régime*. Louis-Guillaume Otto, the former French chargé d'affaires in America, called him “the friend of aristocracy and hereditary nobility”; the gazetteer Georges Palmerand dismissed the author of the *Defence* as a pretentious “apostate-pedant” from republicanism. Thomas Paine, no longer a

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<sup>500</sup> Pierre-Louis Rœderer, “Œuvres Politiques de J. Harrington,” *Journal de Paris*, Sept. 1, 1795, republished in *Œuvres* (A.M. Rœderer ed., Paris, 1852), 4: 525.

<sup>501</sup> Lezay, *Constitution de 93*, 6. || The French translation was reprinted (without credit) from Jean-Nicolas Démeunier, MASSACHUSETT, *Encyclopédie Méthodique* (Paris, 1788), 3: 270. || Lezay’s pamphlet is often dated, to late 1794, but there is no record of its existence prior to the spring of 1795, and in the Avant-Propos (p. ix) the author refers to the insurrection of 12 Germinal l’an III.

<sup>502</sup> On d’Ivernois’s early life and thought, see Richard Whatmore, *Against War and Empire* (2012), 157-9.

<sup>503</sup> François d’Ivernois, *Des Révolutions de France et de Genève* (London, October 1795), 360. This text is an expanded edition of his earlier *Réflexions sur la Guerre*; where a passage occurs in both texts, citations to both will be provided. Cf. François d’Ivernois, *Réflexions sur la Guerre* (London, May 1795), 100.



*conventionnel* but still a formidable presence in French intellectual life, quipped in 1796 that Adams's "head was as full of kings, queens and knaves, as a pack of cards."<sup>504</sup>

The charged polemic over the *Defence* foregrounds an inescapable fact about French political thought after Thermidor: it was a period in which American constitutional ideas, scorned and suppressed since 1789, experienced a dramatic reflorescence. A diverse set of political writers,<sup>505</sup> ranging from the *saloniste* Madame de Staël to the economist Jean Charles Léonard Sismondi to the statesman Jean-Denis Lanjuinais, converged on a single point: the only bulwark against a renewed Terror would be the importation and adaptation of American constitutional forms. In a torrent of public and private writings, these authors pressed for what they called "l'équilibre des trois pouvoirs," "de vrais contre-poids," or more succinctly "la balance du Gouvernement américain"<sup>506</sup>—that is, the program of bicameralism and monarchical prerogative they found in America's 1787 compact. The *Defence*, which seemed to promise a reconciliation of royalism and republicanism, democracy and rank, liberty and stability, would be the lodestar of this intellectual revival.

This chapter proceeds in four parts. Part I concerns the euthanasia of the 1793 constitution, carried out by an alliance of moderate republicans and reformed royalists. Its focal point was a vehement attack on the idea of popular sovereignty and rule by Convention, twin legacies from the wilder shores of American democracy. Part II traces the debate on constitutional reform that

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<sup>504</sup> Louis-Guillaume Otto, *Considérations sur la Conduite du Gouvernement Américain envers la France* [1797] (Gilbert Chinard ed., 1945) ("le prôneur partisan des formes du Gouvernement anglois"); Georges Palmerand, *Legères annotations sur le projet des Onze* (Paris, 1795), 19; Thomas Paine, Letter to George Washington [July 1796], in *Complete Writings* (Philip S. Foner ed., 1945), 2: 915.

<sup>505</sup> For evidence that these writers were understood at the time to represent a new tendency in constitutional thought, see François[-Xavier] Pagès [de Vixouse], *Histoire secrète de la révolution française* (Paris, 1797), 2: 312 ("La politique a fait aussi un grand pas; les derniers écrits de Rœderer, d'Adrien Lejay, de Réal, de Vaublanc, ne permettent pas d'en douter.").

<sup>506</sup> F.P.B., *De l'équilibre des trois pouvoirs politiques* (Paris, May/June 1795), 170; Germaine de Staël, *Des Circonstances Actuelles qui peuvent terminer la révolution* [1798] (John Viénot ed., 1906), 52; Pierre-Bernard Lamare to Abbé Sieyès (Mar. 26, 1795), in Fonds Sieyès, 284AP/9 [Lamare].

consumed France in the interregnum between the death of Robespierre and the inauguration of the *projet constitutionnel* in June 1795, the period dubbed by Madame de Staël “the true epoch of anarchy in France.”<sup>507</sup> It advances two interlocking theses. First, Thermidor was a period in which France’s most influential *philosophes* urged the deliberate and detailed imitation of America’s constitutional forms—its federalism, separation of powers, and unitary executive—as the only plausible median between the unchecked ferocity of Jacobin populism and the repressive sclerosis of royal despotism. Second, these authors subscribed to a highly particular gloss on the American constitution, one that emphasized presidential prerogative over legislative deliberation and popular sovereignty, and carried the intellectual signature of John Adams and Alexander Hamilton. Part III tracks this swirling conversation on republican values and constitutional forms as it reorganized itself around the draft constitution unveiled in June and ratified in August 1795. It is well understood that authors of the new charter frequently invoked the American republic in their public pronouncements. But it would be a mistake to take these statements at face value. In reality, the framers of Year III disclaimed the most controversial features of the American constitutional tradition, above all its energetic chief executive and its robust upper chamber. And so the new frame of government, advertised as having realized “an equilibrium of powers such as history has never witnessed,”<sup>508</sup> was rejected most unequivocally by those most committed to the precepts of constitutional balance. And this helps us understand why those most indebted to the political thought of John Adams, courted so assiduously by the new regime, instead became its leading critics. It also helps to explain—the theme of Part IV—why the new constitution counted among its supporters many of the leading lights of the radical

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<sup>507</sup> Germaine de Staël, *Considerations on the Principal Events of the French Revolution* [1818] (Aurelian Craiutu trans. and ed., 2008), 375.

<sup>508</sup> [Jean] Mailhe, Suite de la discussion sur l’acte constitutionnel, *Moniteur*, Jul. 30, 1795, RAM 25: 336.

tradition emanating from Franklin's Philadelphia.<sup>509</sup> Adams would draw a straight line from the democratic ideals of Franklin and Paine to the monstrous "democracy" of the Year I; the reality was far more complicated. In tracing the trajectories of four thinkers who traveled in Franklin's orbit—Benjamin Vaughan, Thomas Paine, and the Abbé Sieyès—as they confronted the *Constitution de l'an III*, we see how heterogeneous the radical tradition was, and the extraordinary diversity of programs it could support.

The Thermidorean phase of the revolution has long been obscured by the Jacobin frenzy that preceded it and the Napoleonic despotism that ended it.<sup>510</sup> This is equally true of its constitutional history, which is explored in only a handful of monographs and articles. And this oversight has left a void in the history of the revolutionary Atlantic, since it was in the constitutional summer of 1795 that French republicans proved most receptive to American political ideas.<sup>511</sup> The aim of this essay is to write the history of that reception,<sup>512</sup> to bring to life

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<sup>509</sup> For this reason, Røederer's June 1795 prediction that the next constitutional clash would be between adherents of the "système de deux Chambres [sur] l'exemple des principaux États unis d'Amérique, l'autorité de Mably...[et] John Adams" as against the model of "une Chambre unique et commune [sur] l'exemple de la Pensylvanie, l'autorité de Turgot...et l'autorité de Franklin," must be slightly qualified. Those linked to the radical tradition tended to make their peace with a restricted form of bicameralism, while criticizing the constitutional settlement on other grounds; those who sided with Adams tended to view the bicameralism and balance of the *Constitution de l'an III* as a sham, albeit an improvement on the fiasco of the Jacobin constitution. See P.-L. Røederer, "Encore quelques lignes sur le partage du pouvoir législatif," *Journal de Paris*, June 3, 1795, reprinted in *Œuvres*, 6: 93-4.

<sup>510</sup> But see Bronislaw Baczko, *Comment sortir de la Terreur, Thermidor et la Révolution* (1989); Pierre Serna, *La république des girouettes* (2005), 364-413.

<sup>511</sup> The intellectual eclipse around Thermidor is so complete that it has even persuaded one superlative scholar of Atlantic intellectual exchange that "the triumph of the Terror" in 1793 "brought an end to any interest in the American model." The author concedes that "in 1795...the American constitutional model was acknowledged, but this was really no more than a formal recognition." As we will see, the use of these examples was in fact ubiquitous, evinced a deep grasp of the American constitutional order, and lay at the center of the most prominent arguments for and against the new constitution. See De Francesco, "Federalist Obsession," 240.

<sup>512</sup> There are, to be sure, important precursors to the argument laid out in this chapter. Both Andrew Jainchill and Marcel Gauchet have noticed fleeting references to Adams in texts by Boissy d'Anglas and Pierre-Bernard Lamare, and have made preliminary efforts to expand on their meaning. But they have overlooked a plethora of further references to American constitutional ideas across a dozen contemporary works. And, misled by Gordon Wood's influential reading, they have presented Adams as an anachronistic "classical republican," out of step with his contemporaries, rather than the avatar of a vital and modernizing royalism, read with great interest by those who would become the founders of French liberalism. A second set of authors has taken these Atlantic connections more

a circle of intellectuals consigned to oblivion by the history of political thought, and to underscore the curious and perhaps troubling continuities between American Federalism and French constitutional monarchy.

### **I. The golden casket**

In the packed *Grande Galerie* of the Louvre in November 1794, Bertrand Barère rose to deliver an oration on the growing momentum for constitutional revision. It would be, inevitably, a speech in opposition; Barère was a founding member of the Comité de Salut Publique, where he earned the terrifying sobriquet “the Anacreon of the guillotine.”<sup>513</sup> True to form, he urged the Convention to fully implement the 1793 charter “without altering a single line,” calling it “the palladium of our liberties and the guarantor of the rights of man.” Barère trained particular contempt on “those politicians who boast of the preëminence of the English constitution and the benefits of the American constitution,” ambitious men seeking to erect a “Senate or a House of Representatives” in place of the unicameral assembly prescribed by the Jacobin visionaries of 1793. Such a constitution would be a whip in the hands of a new class of sneering autocrats—

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seriously, but has foundered on flat or unsubtle conceptions of the American republic and its avatars. Yannick Bosc has constructed a number of books and articles around Paine’s critique of the 1795 instrument, noting that he was often called a “Jacobin” by his enemies, and positing that this unlocks a secret correspondence between the moderate *Rights of Man* and the radical reign of terror. The commitment to rethinking revolutionary constitutionalism in a transatlantic context is laudable. But this work falters on its inaccurate treatment of Paine’s radicalism, and fails to set his writings in their proper context, which must include his bitter, decades-long rivalry with John Adams. Marc Lahmer has written a magisterial chapter on the mobilization of American sources in *l’an III*, with a formidable base of sources. Its defect is its tendency to treat “American” thought as a jumbled, undifferentiated mass, rather than as a spectrum of political arguments that could be made use of at different points in time by different parties in France. Seeing the American constitutional tradition as French republicans saw it in 1795—divided between cautious royalists like Hamilton and Adams and Girondin fellow-travelers like Paine and Franklin—opens a new vista on the landscape of Atlantic intellectual exchange. See Andrew Jainchill, *Reimagining politics after the Terror* (2008), 26-61, 30; Marcel Gauchet, *La révolution des pouvoirs* (1995), 144-180; Yannick Bosc, *La terreur des droits de l’homme* (2016), 55-80; Marc Lahmer, *La Constitution Américaine dans le Débat Français* (2001), 121-68.

<sup>513</sup> Anacreon: Étienne Dumont, *Souvenirs sur Mirabeau et sur les Deux Premières Assemblées Législatives* (M.J.L. Duval ed., Paris, 1832), 247. || Barère was also a member of the Committee of Nine that produced the Girondin draft, though in his memoirs he emphasizes that “[n]ous abandonnâmes donc au génie philanthropique de Condorcet le despotisme de la rédaction.” See Morceaux choisis du compte rendu adressé par Barère a ses commettans [1795], in *Mémoires de B. Barère* (Hippolyte Carnot and David d’Angers eds., Brussels, 1842), 2: 265.

“tyrants, lords, and senators.” He struggled to be heard over the applause that followed; cries of *jamais!* shook the viewing gallery, testifying to the continuing grip of Jacobin militancy.<sup>514</sup> Seven months later Barère was in chains, awaiting transportation to French Guiana for his role in the Terror. And the new *projet de constitution*, with its independent executive committee and its upper house of distinguished citizens, was now on the brink of ratification. Vincent-Marie Viénot, comte de Vaublanc, resurfacing in Paris after two years underground, marveled at the changing fortunes of Jacobin constitutionalism: “six months ago it was a crime to attack the constitution of 93; today it hardly even qualifies as a virtue.”<sup>515</sup>

The 1793 constitution entered the world in a state of suspended animation; Wilfried Nippel, borrowing an evocative image from Fénelon, writes that it was born in a “golden casket.”<sup>516</sup> It was drafted hastily in the spring, ratified ecstatically in the summer, and deferred indefinitely in the fall on grounds of war and emergency. Jacobin intellectuals tied themselves in knots attempting to reconcile their fulsome praise for the document with its official dissolution.<sup>517</sup> As a

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<sup>514</sup> [Bertrand] Barère, Séance du 24 Brumaire, *Moniteur*, Nov. 16, 1794, in RAM 22: 502-4.

<sup>515</sup> [Comte de Vaublanc], *Réflexions sur les bases d'une constitution, présentés par* [Jean-Baptiste Marie-François] Bresson (Paris, [May] 1795), 3. The pamphlet was published by the *imprimerie nationale*, by order of the Convention. || For evidence that it was closely studied by the Commission des Onze, see the handwritten summary of its tenets at AN C230-2, 183-9 Bis 2 No. 684, 1 (“L’auteur prouve avec force et clarté la nécessité de divisions de pouvoir.”). For evidence that the Onze attempted to consult with Vaublanc as it drafted the new instrument, see *Mémoires de M. le Comte de Vaublanc* (M.Fs. Barrière ed., Paris, 1857), 302 (“Je répondis que je ne pouvais accepter une invitation si honorable, parce que j’étais convaincu que le comité n’oserait point proposer des choses qui me paraissaient indispensables”). || Vaublanc’s authorship was an open secret; this pamphlet (and its sequel) catapulted him to great fame in the moderate press. See, e.g., *Nouvelles Politiques Nationales et Étrangères*, June 16, 1795, 1071 (“un des meilleurs plans de constitution”); June 21, 1795, 1091 (“Parmi les différents projets de constitution qui paroissent, on distingue entr’autres celui qui a été présenté par le député Bresson, & qui est du citoyen Vaublanc”); July 22, 1795, 1214 (“L’auteur des réflexions très profondes sur ce plan de constitution”); *Messager du soir*, June 20, 1795, reprinted in *Paris pendant la réaction thermidorienne et sous le directoire* (François Victor Alphonse Aulard ed., Paris, 1899), 2: 25 (“Avez-vous lu Vaublanc? telle est la question à l’ordre du jour; dans les cafés et cabinets littéraires, les sections et les spectacles...on ne parle qu’avec un saint enthousiasme de l’excellent projet de Constitution qu’on attribue à cet estimable citoyen.”).

<sup>516</sup> Wilfried Nippel, *Ancient and Modern Democracy* (2016), 171.

<sup>517</sup> Written hastily: L.A. Champagneux, “Notices de l’éditeur sur quelques circonstances de sa détention dans les années 1793 et 1794,” in *Œuvres de J.M.Ph. Roland* (L.A. Champagneux ed., Paris, 1799), 2: 394 (“La Constitution

symbol of its sacred character, the constitution was placed in a large wooden box and suspended from the roof of the Convention hall. This was not a coffin but an ark—*l'arche sainte de la constitution*—to be thrown open on the day of the republic's deliverance.<sup>518</sup>

After 9 Thermidor the charter proved to be a potent rallying point for radicals, a means of wrapping Jacobinism in the velvet mantle of democracy and civil liberty.<sup>519</sup> In a climate of flux and instability the hopeful vision of Jacobinism without Terror was capable of attracting support across the ideological spectrum.<sup>520</sup> It might have been expected that a populist orator from the Rue de Lombards would materialize in the Convention to urge death for “anyone who dares

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de 1793 que la Convention venoit de créer presque en aussi peu de temps que Dieu créa le monde, mais non pas assurément avec la même sagesse”). It was sped to the press by its primary reporters, Hérault de Séchelles and Saint-Just, to preempt Condorcet's “Girondin” draft, from which it borrowed substantially. || Ratified ecstatically: [Maximilien] Robespierre, Suite de la Séance du Lundi 10 Juin, *Moniteur*, June 11, 1793, RAM 16: 609 (“La simple lecture du projet de constitution va ranimer les amis de la patrie et épouvanter ses ennemis. L'Europe entière sera forcée d'admirer ce beau monument élevé à la raison humaine...”). || Postponed indefinitely: Robespierre, Suite à la Séance du 17 du Premier Mois, *Moniteur*, Oct. 11, 1793, RAM 18: 85 (“Citoyens, attendons le calme pour exécuter dans son ensemble une constitution qui fera l'admiration de la postérité”); Pierre-Toussaint Durand de Maillane, *Histoire de la Convention Nationale* (Paris, 1825), 152 (“Après avoir été bien fêtés, bien caressés par les Parisiens et les meneurs de la Convention, ils retournèrent chez eux, en laissant la constitution, qu'ils venaient d'accepter si solennellement, dans l'arche de la patrie d'où elle n'est plus sortie.”). || Tied in knots: Billaud-Varennes, “Observations relatives au décret sur le gouvernement provisoire et révolutionnaire,” *Moniteur*, Dec. 10, 1793, RAM 18: 620 (“Plus cette constitution approche de la perfection, plus elle est favorable aux droits de tous les individus indistinctement, plus il serait imprudent de l'exécuter dans un moment orageux, où les traîtres fourmillent.”).

<sup>518</sup> *Mercure universel*, Aug. 12, 1793, reprinted in Annexe no. 4, Séance de la Convention Nationale du Dimanche 11 Aout 1793, *Archives parlementaires* (M.L. Lataste et al., eds., 1907), 72: 43 (“*L'orateur*. Citoyens législateurs, vous voyez devant vous l'arche où est déposée notre sainte Constitution...[Jacques-Louis] David demande qu'il soit élevé au-dessus de la barre un carré où sera un piédestal, sur lequel on déposera l'arche de la Constitution.”). In a more mordant vein, see Jean François de La Harpe, *Oui ou Non* (Paris, August 1795), 2 (“...ceux qui l'avoient faite en quinze jours, et qui l'avoient présentée comme le chef-d'œuvre de la démocratie, comme l'arche sainte à laquelle il n'était pas permis de toucher, la mirent aussitôt dans un carton où elle est encore”).

<sup>519</sup> See, e.g., Bertrand Barère, Séance du 10 Thermidor, à neuf heures du matin, *Moniteur*, Jul. 30, 1794, RAM 21: 347 (“tout usurpateur des droits du peuple n'est pas un homme, mais un coupable qui doit disparaître”); Laurent Lecointre, *L'abolition du gouvernement révolutionnaire* (Paris, 1795), 5 (“Quel est donc le voile qui dérobe à nos regards, qui couvre les droits de l'homme et la constitution démocratique? Un monstre, l'affreux gouvernement révolutionnaire...”); Levasseur (de la Sarthe), Séance du 12 Pluviose, *Moniteur*, Feb. 2, 1795, RAM 23: 351 (“Le peuple jouira des avantages de la constitution de 93. Nous ne changerons pas la terreur de place, nous l'anéantirons. Robespierre n'a été dangereux pour la liberté que parce qu'il n'a pas été arrêté dès le commencement.”); [Gracchus Babeuf], *Journal de la Liberté de la Presse*, no. 1 (Paris, 1794), 5 (“notre déclaration des droits, si elle n'est point parfaite, est encore sublime, quoique ce soit de Robespierre...nous distinguerons dans Robespierre deux hommes, Robespierre apôtre de la liberté, et Robespierre le plus infâme des tyrans”).

<sup>520</sup> See Gauchet, *Révolution des pouvoirs*, 122 (“l'immobilisme perplexe où s'arrête durant des longs mois l'assemblée”); Jonathan Israel, *Revolutionary Ideas* (2014), 603 (“By February 1795, the Thermidorians had lost their grip, but it remained unclear what had replaced it.”).

undermine the sacred ark of the democratic constitution.”<sup>521</sup> But the quintessential moderate P.-L. Rœderer also petitioned for the “constitution of 1793 [to be] organized and made operational,” and dismissed its opponents as extremists seeking to reset the calendar to the ancien régime or the reign of terror.<sup>522</sup> Well into the spring of 1795, deplored one critic, the constitution was discussed with the hushed reverence reserved by the Hebrews for the Ark of the Covenant.<sup>523</sup> This delicate consensus was broken<sup>524</sup> by the *journées* of Germinal and Prairial, in which armed battalions of sans-culotte rushed the halls of the Convention chanting the slogan “pain et la Constitution de 93,”<sup>525</sup> killing several soldiers and deputies. *Conventionnels* who had formerly vacillated on the status of the constitution now concluded that it was an imminent and ongoing threat to stability. Increasingly, these deputies and their supporters spoke of the Jacobin

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<sup>521</sup> Séance du 22 Nivose, *Moniteur*, Jan. 13, 1795, RAM 23: 190.

<sup>522</sup> Pierre-Louis Rœderer, “Sieyès,” *Journal de Paris*, Feb. 12, 1795, reprinted in *Œuvres*, 4: 205.

<sup>523</sup> F.P.B., *De l'équilibre*, 2 (“la constitution de 1793...cette arche sainte, à laquelle, sous peine de mort, il n'est pas plus permis de toucher, qu'il ne l'étoit à celle des Hebreux”). Cf. Lezay, *Constitution de 93*, v (“Comme il n'est pas permis de parler de la Constitution de 93, autrement qu'en bien...”); Lamare to Sieyès (Mar. 26, 1795), Fonds Sieyès, 284 AP/9 (“Lamare”) (“je n'attaque point la Constitution de 1793, que je respecte infiniment...”).

<sup>524</sup> A number of prominent Thermidoreans articulated their unease with the 1793 constitution openly for the first time in January/February 1795, with Louis-Marie Stanislas Fréron, publisher of *L'Orateur du Peuple*, taking the lead. One event that helped to galvanize opposition was the January arrest, prosecution, and ultimate acquittal of Jacques-Vincent Delacroix on charges of “royalism” for proposing a national referendum on whether to adopt the 1793 or 1791 constitution. But it was not until March 19, two days after the storming of the Convention by a working-class mob, that proponents of constitutional revision began to state their case forthrightly, not until April 18 that they won a convention majority, and not until May 20 that the Convention ruled out any return to the montagnard constitution. As late as March 24, we find Sieyès insisting that “the constitution of 1793...is deserving of respect, and cannot be attacked.” And as late as April 14, we find the American ambassador James Monroe reporting that the “opinion is likewise entertained by many, that the constitution in question is very defective, and ought to be amended...But whether an attempt of this kind should it be formally made, will succeed...is yet uncertain.” See Police Report No. CCI, Feb. 13, 1795, in *Paris pendant la réaction thermidorienne*, 1: 480 (“On croit y apercevoir que Fréron donne la préférence à la Constitution de 1789 sur celle de 1793”); Bourdon de l'Oise, Séance du 5 Pluviose, *Moniteur*, Jan. 26, 1795, RAM 25: 295 (“un écrit dans lequel on essayait...de ressusciter le royalisme chez un peuple libre et républicain”); Sieyès, Suite de la Séance du 4 Germinal, *Moniteur*, Mar. 28, 1795, RAM 24: 58-59; James Monroe to Edmund Randolph (Apr. 14, 1795), *Writings of James Monroe* (Stanislaus Murray Hamilton, ed., 1903), 2: 253-4.

<sup>525</sup> Germinal: N.B., *Moniteur*, Apr. 2, 1795, RAM 24: 104; Suite de la Séance du 11 Germinal, *Moniteur*, Apr. 3, 1795, 24: 106-9; Yannick Bosc, “Boissy d'Anglas et le Réjet de la Déclaration de 1793,” in *L'an I et l'apprentissage de la démocratie* (Roger Bourderon ed., 1995), 391-2 || Prairial: Séance du 8 Prairial, *Moniteur*, May 31, 1795, RAM 24: 557-64.

constitution not as a promise betrayed, but as the last will and testament of a criminal regime.<sup>526</sup> The physiocrat Dupont de Nemours described the wooden strongbox as “the bloody ark, supposedly holy, consecrated to the worship of stupidity.”<sup>527</sup> Jean-Jacques Lenoir-Laroche, incoming editor of the *Moniteur*, called it a “Pandora’s box” of democratic iniquities.<sup>528</sup> The barrister Georges-Victor Vasselin drew an equally suggestive metaphor from the ancients, likening the boxed constitution to the Trojan horse, a “poisonous and false gift” that would smuggle Robespierist radicalism into the republic under cover of night.<sup>529</sup>

Adrien Lezay, in his watershed *Qu’est-ce que la Constitution de 93?*, trained his guns on the strongest point of the Jacobin’s *sainte arche*—that it was innocent of any connection with the Terror by virtue of its prior suspension. The resort to political violence, he rejoined, did not pivot on depraved personalities or vicious ideologies—it was wholly determined by constitutional structure.<sup>530</sup> And here there was no meaningful distinction between the democratic constitution of Séchelles and the lawless reign of Robespierre; it was “the same work under two different titles.” Each was characterized by “the same confusion of powers, the same universality of

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<sup>526</sup> Chateaubierry, *Observations sur le projet de constitution à la convention nationale*, 26 Messidor l’an 3 (“Une prétendue constitution, dictée par le crime, arrachée a votre assentiment, acceptée par la terreur, était l’espoir des intrigans et des conspirateurs.”); Du Paris, le 1er, Floréal, *Nouvelles Politiques*, Apr. 21, 1795, 847 (“Il est aujourd’hui positivement prouvé que la tyrannie de Robespierre et celle de Collot avoient présidé à la confection de cette constitution...en se servant de la formule à l’usage des tyrants: *notre volonté ou la mort.*”).

<sup>527</sup> Samuel Dupont de Nemours, *Observations sur la Constitution Proposée* (Paris, 1795), 4.

<sup>528</sup> Jean-Jacques Lenoir-Laroche, *De l’esprit de la constitution qui convient à la France, et examen de celle de 1793* (Paris, 1795), 14. This pamphlet was excerpted in the *Mercurie Française* beginning on April 24, 1795, and reviewed favorably in [Jean-Baptiste Say], *De l’esprit de la constitution*, par J.J. Lenoir-La-Roche, in *La Décade philosophique, littéraire et politique* (June 28, 1795), 6: 90-95.

<sup>529</sup> [Georges-Victor] Vasselins, *Adresse d’un Citoyen Français a ses Représentans sur la Constitution de 1793* (Paris, 1795), 14-15.

<sup>530</sup> Lezay, *Constitution de 93*, 31 ff. (a) (“lorsque trois fois les hommes ont été changés sans que les choses changent, n’a-t-on pas le droit d’en conclure que le vice est dans les choses encore plus que les homes qu’il faut changer?”). || There is no hint here of the complex position Lezay would stake out on the Terror two years later, holding that it was both partly justified by the international crisis of 1793-4, and also the inevitable accompaniment of the revolutionary enthusiasm of 1789; see his *Des causes de la révolution, et ses résultats* (Paris, 1797), 28-36, which first appeared in Røederer’s *Journal d’Économie Publique* (April 1797).



force,” and thus the same tropism for fanaticism, surveillance, and violence.<sup>531</sup> For the ensemble of constitutional theorists who now set the compass of French affairs, it was critical that the stillborn constitution now be returned to its casket and, in the words of Boissy d'Anglas, “buried in the same tomb that swallowed” its authors.<sup>532</sup>

These publicists put forward a number of overlapping arguments for the fundamental illegitimacy of the *constitution de 93*. The crux was a sweeping attack on the Jacobin theory of popular sovereignty as both incoherent and dangerous. It was incoherent because it presupposed an individual right to exercise and enforce the collective will, as enumerated in Article 27 of the Declaration of the Rights of Man and the Citizen, an invitation to all citizens to put to death any magistrate “who would usurp sovereignty,” and Article 35, proclaiming resistance to tyranny “the most sacred of rights and the most indispensable of duties.” For Lenoir-Laroche, the conversion of sovereignty into an individual right would foster anarchy, as every “criminal with a handful of brigands in his pay” asserted a right to violate laws or kill magistrates on behalf of the nation.<sup>533</sup> Every citizen would become a roving Committee of Public Safety, deciding independently which laws were in force and which were now to be abrogated in the name of the *salus populi*. But the spell of democratic sovereignty was dangerous even when chanted by collectives; for the reformers of 1795 it was axiomatic that the Rousseauian notion of popular sovereignty had supplied the intellectual scaffolding for the Terror. A writer using the initials F.P.B. zeroed in on the nearly mystical metaphysics of limitlessness found in Book III of the *Social Contract*: “the nature of such a body politic is essentially revolutionary, because the

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<sup>531</sup> Ibid., 19 (“Bien pitoyable assurément est la constitution qui ne peut se passer de la vertu des hommes qui gouvernent!”).

<sup>532</sup> D'Anglas, *Projet de Constitution*, 22.

<sup>533</sup> Ibid., 15-16. Cf. F.P.B., *De l'équilibre*, 102.

immediate power of the people, as Lezay says quite well, is unlimited...it can ceaselessly change, modify, transform, regenerate, and revolutionize, without being stopped by any obstacle."<sup>534</sup> In advocating a republic whose government could be annulled or remade by intermittent assemblies of the people, Rousseau ensured that the polity would be lashed by a storm of permanent revolution. And in jettisoning the traditional restraints—natural law, the mixed constitution—formerly thought to bind the people, Rousseau and his epigones made possible unprecedented forms of cruelty and inhumanity:

Under the theory of national sovereignty, all atrocities are made legal. Since all laws are the expression of the general will, it is thus in the name of the people that new bastilles are filled with the people, that scaffolds are erected in every city of the republic to sacrifice the people, that new obstacles are invented for agriculture, industry, and manufactures, to exterminate the people. And the executioner, elevated to the heights of the executive power, now governs the people...Was it to produce these lovely effects that we pronounced the general will?<sup>535</sup>

Premodern sources of authority—hereditary descent, divine law, historical precedent—had enabled oppression, but were also accompanied by a range of intrinsic limitations. Popular sovereignty, on the other hand, recognized no barriers, merely an obligation to follow the zigzagging *volonté générale* wherever it led. The countermajoritarian counterweights of the mixed constitution, extolled by a line of thinkers stretching from François Hotman to Baron Montesquieu, were the dim vestiges of feudalism, and had no purchase or legitimacy in a democratic republic. The result was the systematic liquidation of any power that might serve as a check on legislative extremism, and the immolation of the people in the people's name.

Emmanuel Sieyès, the revolution's "preëminent constitutional theorist,"<sup>536</sup> whistled the same tune in a different key. It was certainly true that the concept of popular sovereignty—"a supreme

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<sup>534</sup> F.P.B., *De l'équilibre e*, 120-1.

<sup>535</sup> *Ibid.*, 30-1. Cf. Lezay, *Constitution de 93*, 18 ff. (a) ("c'est bien légalement que Robespierre a immolé cent mille pères de famille...car ce n'est point au nom de Robespierre, c'est en vertu et au nom de la loi, c'est-à-dire du peuple Français").

<sup>536</sup> Jainchill, *Reimagining politics*, 40. On Sieyès's political thought, see Oliver W. Lembcke and Florian Weber, "Introduction to Sieyès's Political Theory," in *Emmanuel Joseph Sieyès: Essential Political Writings* (2014), 1-42.

power which dominates and embraces everything"—had inflicted immense damage on French society, and had licensed the worst felonies of the Jacobins. The Montagnard view of sovereignty as something beyond all laws and limits, constrained only by majority vote, and extending into the remotest corners of national life, described not a *république* but what he named a *ré-totale*, a regimented, collective despotism in which "the will, action, goods, and capacities" of all its citizens are held "in common," and individuals are conscripted to serve the ends and projects of the state. In such a communal regime—Sieyès gave the example of Sparta, as well as the Jesuit Reductions of Paraguay—the boundary between state and society would collapse, the individual would dissolve into the mass, and "the majority would devour the minority."<sup>537</sup> This pathological form of "sovereignty" as perfect, metaphysical unity was ruled out under a correct understanding of the social contract, which was founded on respect for social pluralism and civic multiplicity. Thus majoritarian democracy was constrained *ab initio* by natural rights, and was acceptable only when inscribed in a countermajoritarian constitutional framework, with extensive "brakes" on collective decisionmaking.<sup>538</sup> Thusfar, the former Vicar General of Chartres resembled a number of Thermidorean thinkers tentatively tracing the beginnings of what would become French liberalism.<sup>539</sup> But Sieyès parted ways with this class of theorists in two important respects. First, he had little patience for the checks and balances that Lezay,

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<sup>537</sup> Emmanuel Joseph Sieyès, *Limites de la souveraineté* [ca. 1795], in Pasquale Pasquino, *Sieyès et l'invention de la constitution en France* (1998), 177-9; Sieyès, *Contre la ré-totale* [ca. 1792], *ibid.*, 175-6.

<sup>538</sup> Sieyès, *Limites*, 178 ("Obéir à la constitution fait partie de l'engagement primordial de chaque associé individuellement...Après quoi, vient l'action de la simple majorité, non pas indépendante de tout frein, non pas despotique, non pas désorganisée mais soumise à des règles fondamentales"). Cf. [Emmanuel] Syèyes, *Séance du 2 Thermidor*, *Moniteur*, July 25, 1795, in RAM 25: 292 ("Lorsqu'une association politique se forme, on ne met point en commun tous les droits que chaque individu apporte dans la société, toute la puissance de la masse entière des individus.").

<sup>539</sup> Syèyes, *Séance du 2 Thermidor*, 25: 296 ("Tout est combiné pour le plus grand bien du peuple et pour le *maximum* de la liberté individuelle."). Cf. Jainchill, *Reimagining politics*, 200-1; Lucien Jaume, "The unity, diversity and paradoxes of French liberalism," in *French liberalism from Montesquieu to the present day* (Raf Geenens and Helena Rosenblatt eds., 2012), 36-56, 40.

F.P.B., and their fellow *américainistes* considered the only republican alternative to mass democracy, peremptorily dismissing the "équilibre chimérique" of Anglo-American constitutionalism.<sup>540</sup> And second, while he did not hesitate to blame Rousseau for positing an "unlimited" social contract,<sup>541</sup> he clarified that the delusion of popular sovereignty was above all a noxious hangover from the *ancien régime*:

The only reason the word [popular sovereignty] evokes such grandiose ideas is that the French, still captivated by the superstitions of kingship, have invested this concept with the whole tradition of pomposity and absolute powers that once served to glorify usurped sovereignty. Public opinion, in its enormous generosity, has even considered adding still greater powers. Some kind of patriotic pride seemed to demand that however powerful and terrible the sovereignty of the great kings had been, the sovereignty of a great people should still surpass it.<sup>542</sup>

Royal absolutism, in other words, had transitioned seamlessly into democratic absolutism, and the sacred body of the king had become the invincible *corps législatif*. Until it jettisoned these myths of imperium, and retrated from the lunatic reverie of a "total" society, the republic would lurch from disaster to disaster.

The new gospel of sovereign democracy became lethally intertwined with a second innovation: the standing convention, a constituent assembly appointed for the dual purpose of governing the nation in a time of crisis and framing an enduring republican constitution. The practice of special conventions was adapted from American improvisations during the revolutionary war; the Swiss economist François d'Ivernois attributed "the victory of the American system of *Conventions*" to "the Abbé Sieyès," whose ubiquitous writings of 1788

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<sup>540</sup> Syèyes, Séance du 2 Thermidor, 25: 293. For further discussion, see Part IV, below.

<sup>541</sup> See Christine Fauré, "Sieyès, Rousseau, et la théorie du contrat," in *Figures de Sieyès: actes du colloque des 5 et 6 mars 2004* (Pierre-Yves Quiviger et al eds., 2008), 213-226, 222-5.

<sup>542</sup> *Ibid.*, 156. || I set to one side the much more difficult question of whether Sieyès was criticizing popular sovereignty only, or sovereignty *tout court*. For the latter view, see Lucia Rubinelli, "How to think beyond sovereignty: On Sieyès and constituent power," *European Journal of Political Theory* (2016).

made the concept a cornerstone of the new revolutionary order.<sup>543</sup> The Savoyard aristocrat Joseph de Maistre identified a different culprit—Paine’s *Rights of Man*—and added that the desire to "make" a republic was self-defeating: “It is precisely because in France an all-powerful Convention wills a republic that there will be no republic.” A free government (Maistre, like d’Ivernois, pointed to England) is formed gradually, out of the substrate of a nation’s historical and spiritual life, through a process of erosion and accretion spanning centuries. This organic growth cannot be replicated by a convention, which approaches the creation of a constitution as an act of mechanical fabrication, to be accomplished in a single season by a circle of soi-disant experts. Inevitably the convention, frustrated by the irreality and impotence of its plans, will abandon the pretence of constitutionmaking to rule the nation directly.<sup>544</sup> Both d’Ivernois and Maistre circled the same thought: by splitting the republic into two elements, sovereign and government, the *metteurs en scène* of the Jacobin constitution set the stage for dictatorship and civil war. The Comte de Vaublanc made this the keynote of his brief to “no longer have either a constituent assembly, or a convention”:

Every convention will aspire to unite all power in its hands; it will always be tyrannical, because wherever power is concentrated in one or several hands, whatever the name and whatever the pretext, there is tyranny...It is absurd to assemble men invested with constituent power, to remake the fundamental pillars of the state on a given schedule—for three months, as the Constitution of 93 proposes, or after twenty years, as Condorcet’s constitution proposes. It is still more dangerous to introduce...the possibility of forcing an existing legislative body to compete with a convention meeting at the same time...Since these conventions are convened only in times of tumult, how many pretexts will the *conventionnels* have to seize all power, and continue themselves in perpetuity. Who will stop them? The legislature? But its title alone places it far below the convention.<sup>545</sup>

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<sup>543</sup> D’Ivernois, *Réflexions/guerre*, 140. Compare d’Ivernois, *Des révolutions*, 404 (referring only to “le système des Conventions,” omitting the crucial modifier “Américain”).

<sup>544</sup> Joseph de Maistre, *De la souveraineté du peuple* [1794-96] (Jean-Louis Darcel, ed., Paris, 1992), 141; 144; 145. Maistre found a surprising echo in the writings of the English radical Jeremy Bentham; see Art. 16 of his Nonsense Upon Stilts [1795], in *Rights, Representation, and Reform* (Philip Schofield et al. eds., 2002), 374 (“if, instead of saying you can’t have a constitution unless you make it, it would be much nearer the truth...that you can’t have a constitution, if you attempt to make one”). Bentham, like Maistre, greatly preferred the English constitution, and lambasted “Citizen Payne” for the false doctrine that a constitution might be “declared” into existence.

<sup>545</sup> Vaublanc, *Réflexions/bases*, 43. This was a revival of a critique voiced as early as 1789; see Jean Joseph Mounier, *Exposé de ma conduite dans l’assemblée nationale* (Paris, 1789), 37 (“Ils entendoient, par *convention*

In the United States, the revolutionary conventions had not displaced ordinary government; they completed their appointed task and disbanded.<sup>546</sup> But in the French republic the frontier between *constituant* and *constitué* proved highly unstable, and between 1792 and 1795 the National Convention directed the war, managed the economy, meted out summary justice, and suspended its own constitution to rule without constraint. Vaublanc elevated this dispiriting history to a precautionary principle: all such assemblies, however restricted in mission and scope, end in usurpation. The notion that they might somehow be cabined—through, for example, a narrow mandate—was hopelessly naïve, since as the sovereign personified the convention would be the sole judge of its own parameters. Every sitting would thus become a moment of existential peril, “a kind of interregnum when the established laws fall silent in the expectation of new laws to come.”<sup>547</sup> The answer, thought Vaublanc, was to do away with special conventions, and to entrust the primordial power of constitutional revision to the ordinary legislature, subject to the reliable checks of election and recall. “We must never again,” he averred, “see men clothed in the terrible authority that attaches...to the titles *constituant* and *conventionnel*.”<sup>548</sup> For support he

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*nationale*, des assemblées dans lesquelles on auroit transporté tous les droits de la nation...qui auroient pu disposer arbitrairement de tous les genres d'autorité, bouleverser à leur gré la constitution, rétablir le despotisme ou l'anarchie...la dictature suprême, & exposer le royaume à un retour périodique de factions & de tumulte.”).

<sup>546</sup> See, e.g., Jacques Necker, *Du pouvoir exécutif dans les grands états* (n.p., 1792), 2: 48-9 (“Les Législateurs de la fédération Américaine n’avoient d’autorité, que pour préparer, d’un commun accord, une bonne Constitution; ils ne se sont donc occupés d’aucun autre objet”).

<sup>547</sup> Vaublanc, *Réflexions/bases*, 45 (“En effet, il seroit ridicule de regarder comme un frein suffisant cette ligne de la constitution de 93: *La convention ne s’occupe, relativement à la constitution, que des objets qui ont motivé sa convocation*...Est-il possible de ne pas sourire de pitié, en voyant présenter gravement de tels moyens, un mot, une ligne, pour arrêter...l’ambition, l’orgueil, la fureur de dominer?”) and 46 (comparing periodic conventions to the notoriously stormy “élection des rois” in Poland).

<sup>548</sup> Vaublanc, *Réflexions/bases*, 47.

leaned on the work of the Abbé de Mably, who a decade earlier had criticized the 1776 Pennsylvania constitution for its rigid separation of constitutional and routine lawmaking.<sup>549</sup>

Vaublanc envisioned an elaborate maze of procedures for constitutional amendment, facilitating “slowness of discussion, and solemnity of deliberation.” It would be centered in the two legislative chambers, but would culminate with a vote in the primary assemblies, “where it would be accepted or rejected by a vote of yes or no.”<sup>550</sup> But even this halfhearted solicitude for the primary assemblies was exceptional. Among the vanguard of post-Thermidor thinkers it was far more common to hear that the fetish of constitutional democracy was hollow at its core. This cynicism grew from empirical observation; it was an article of faith in these circles that the “ratification” of the Jacobin constitution had been extorted from an unwilling populace by bribery and bayonets. “The French people accepted it out loud,” wrote one sardonic commentator, “and cursed it in a whisper.”<sup>551</sup> Boissy d’Anglas, in his official report for the Commission des Onze, spoke of “this travesty of acceptance, easily obtained through corruption, force, and terror.”<sup>552</sup> The liberal journalist Lenoir-Laroche offered the most thoroughgoing repudiation of the constitution’s democratic credentials:

Have you forgotten that [the constitution] was the work, not of the *entire* Convention but of a minority which had just overturned the national representation; that it was...printed and adopted in less than fifteen days, without either review or discussion; that when it was sent to the primary assemblies the oppressive and terroristic ruling regime excluded a mass of good citizens who had every right to give their opinion on

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<sup>549</sup> [Comte de Vaublanc], *Réflexions sur le plan de constitution présenté par la Commission des Onze* (Paris, 1795), 35-6. For the original, see Gabriel Bonnot de Mably, *Observations sur le Gouvernement et les Loix* (Dublin, 1785), 28 (“Je doute que vous approuviez la constitution de Pensilvanie, quand, au lieu de rendre la puissance législative aussi respectable...elle lui refuse la faculté de rien ajouter, ni de rien changer à sa première constitution.”).

<sup>550</sup> Vaublanc, *Réflexions/bases*, 50.

<sup>551</sup> *Vice Radical du Projet de Constitution présenté par la Commission des Onze* (Paris, 1795), 5.

<sup>552</sup> D’Anglas, *Projet de Constitution*, 14. Cf. Dominique-Joseph Garat, *Mémoires* [1795] (Paris, 1862), 266 (reporting that Danton confessed to having won ratification through massive graft).

this most important imaginable act; and that it was adopted, or rather, its acceptance was commanded, *en masse*, without any opportunity to discuss the slightest part of it.<sup>553</sup> These authors might have been content to show that the seemingly universal acclamation that greeted the Jacobin constitution in July 1793—“the transports of joy and the loud applause” that rang out in the pages of the *Moniteur*<sup>554</sup>—had been falsified.<sup>555</sup> In fact they went much further, arguing that the very idea of popular ratification was a solecism. Jacques Necker, formerly the finance minister of Louis XVI and now a pamphleteer raging against the republic from his native Geneva, considered “it is almost a kind of comedy” that “a constitutional act composed of so many articles” would be submitted to a gathering of the dazed masses, and put to a vote after a single public reading. Legislation that survived this bizarre gauntlet was said, outrageously, to carry the seal and signature of the people. But then “all countries, all ages, have their oracle of Delphi, and men initiated in the mysteries of the temple.” In Paris this temple was the Panthéon, its holy mystery was the monist ideal of popular sovereignty, and its oracle was the malefic specter of Rousseau.<sup>556</sup> Dupont de Nemours agreed that the idea of popular sovereignty growing out of primary assemblies was a clumsy fiction: a sovereign “wills and commands, knowing why he does so.” He does not mutely acquiesce to a document framed elsewhere. “The pretended acceptance of a voluminous constitution, which one has not been at liberty to discuss or amend,” wrote the great économiste, “is nothing but an illusion, a shameful snare laid for citizens of good

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<sup>553</sup> Lenoir-Laroche, *De l'esprit*, 8-9. Cf. Jean-Denis Lanjuinais, “Dernier Crime de Lanjuinais” (July 1793) in *Œuvres de J.D. Lanjuinais* (Victor Lanjuinais, ed., Paris, 1832), 1: 212 (“La majorité des représentans du peuple était écartée par la force, ou s’absentait des séances, ou enfin s’abstenait de voter, pour ne pas légitimer l’œuvre de la tyrannie.”); F.P.B., *De l’équilibre e*, 25 (“L’excès des précautions avertit de la fraude.”); *La Lanterne de Diogene* (1794), 13 (“cette pancarte n’a été imprimée que pour servir de point de ralliement aux massacreurs du 31 mai et à la commune conspiratrice, elle a été jurée par une très-petite portion du peuple [sic]”).

<sup>554</sup> Commune de Paris. Conseil-général. Du 4 juillet, *Moniteur*, Jul. 7, 1793, RAM 17: 59.

<sup>555</sup> On the questionable accuracy of these charges, see Isser Woloch, “A Revolution in Political Culture”, in *A Companion to the French Revolution* (Peter McPhee ed., 2015), 446 (“The plebiscite of July 1793 did not simply impose a ritualistic expression of political unity on a passive citizenry.”).

<sup>556</sup> Jacques Necker, *De la révolution française* (2d. ed., Paris, June 1797), 3: 307-8. Cf. Aurelian Craiutu, *A Virtue for Courageous Minds* (2012), 146-50.



faith.” A person whose participation in the state is limited to selecting representatives he barely knows, and ratifying their handiwork in a chaotic public meeting, is not a sovereign, “merely a *subject* who obeys.”<sup>557</sup> Vaublanc agreed entirely. “For the past five years,” he complained, “an odious charlatanism has talked ceaselessly of the will and sovereignty of the people,” asserting that France is a “democratic republic” because all constitutional matters must pass through the primary assemblies. But this was arrant nonsense—true sovereignty consists “not just in taking up or rejecting a proposed constitution, but also in having the ability to choose some other form of government altogether.” The solution was not to dispense with sporadic popular participation, which Vaublanc thought valuable, but to admit that it had little to do with “democracy” or “popular sovereignty,” abstractions that had recently done so much damage to the social fabric. As he reminded his reader, the ratifying assembly could be found, too, in the oligarchical republic of Sparta.<sup>558</sup>

For Vaublanc, the primary assembly was a welcome “half-liberty,” granting the people a limited but real role in constitutional authorship. For much of his cohort, however, it represented something much more sinister—not simply a noisy burlesque of the classical democracies, but a harbinger of political terror and internal stasis. The *assemblées*, as sketched in the Constitution of 1793, would play an enormous and ongoing role in the life of the republic. They would meet not only to elect deputies, but also to evaluate legislation crafted in Paris, and could sit under “extraordinary” circumstances on the request of one-fifth of eligible citizens to propose

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<sup>557</sup> Nemours, *Observations*, 23.

<sup>558</sup> Vaublanc, *Réflexions/bases*, 50-1. Cf. Robert W. Wallace, “Councils in Greek Oligarchies and Democracies”, in *A Companion to Ancient Greek Government* (Hans Beck ed., 2013), 193 (“after the Rhetra was emended, it seems likely that the assembly could only ratify or reject proposals put to it by the *gerousia* and...ordinary Spartiates normally did not speak”).

constitutional amendments or summon a new convention.<sup>559</sup> This vision of a direct democracy inhabited by active citizens was anathema to the new class of Thermidorean intellectuals, who launched a battery of arguments against it. First, it would fail as a check on the Paris government, because ordinary citizens lacked both the expert knowledge and mental acuity to grasp complex policy matters, and the leisure and appetite for endless palaver. As Lenoir-Laroche put it, “the people have neither the time, nor the means, nor the requisite knowledge, to voice even a *yes* or *no* on the immense quantity of civil, criminal, administrative, financial...moral and political questions that must be resolved in France.”<sup>560</sup> The *république* was not a small city-state like Athens, with an “extremely circumscribed territory...and few laws,” which might be managed by a class of slaveholders with a “taste for...political discussion.” Its male citizens—mechanics, tradesmen, professionals—preoccupied with providing for their families, could hardly renounce their careers to devote themselves to the “almost continual exercise of their political rights,” as the Jacobin constitution appeared to contemplate.<sup>561</sup> Comte d’Anglas eyed the same defect in his landmark speech of 5 Messidor, in which he cautioned against making “the French into a deliberating people” too busy with “vapid declamations and superficial discussion” to keep the wheels of commerce in motion.<sup>562</sup>

But if the assemblies were ill-suited to the needs of a modern commercial republic, they also posed a virulent threat to the body politic. For one, they would become a natural power base for the poor masses. The generous franchise requirements of the 1793 constitution, F.P.B.

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<sup>559</sup> Melvin Edelstein, *The French Revolution and the Birth of Electoral Democracy* (2014), 294.

<sup>560</sup> Lenoir-Laroche, *De l’esprit*, 39.

<sup>561</sup> *Ibid.*, 34-5. Cf. *ibid.*, 107-8 (“les citoyens ne pourraient y suffire, et que les travaux de l’agriculture, des arts, du commerce et de l’industrie seraient dans un état de suspension qui dégoûterait les citoyens de leurs droits, et anéantirait toutes les richesses individuelles et sociales”).

<sup>562</sup> D’Anglas, *Projet de Constitution*, 25.

complained, threw the assemblies open to a clamorous rabble: “workers, domestics, bankrupts, fellow travelers, artisans, artists, scholars...all kinds of intriguers, and finally a frightening mass of proletarians.” These “needy men,” once admitted to the assemblies, would elect levellers and demagogues animated by the “bitter passions...of long privation,” who would in turn champion ruinous projects of retribution and redistribution. As a consequence France would be riven by the class warfare that marked the late Roman republic, and its accompanying barbarities: “the disappearance of agriculture, famine...public places converted into scaffolds, civil war ignited...[and] cities destroyed or burned.”<sup>563</sup>

Boissy d’Anglas was no more cheerful in his forecast, although he mapped a different pathway from the false paradise of primary assemblies to the blazing inferno of war and revolution. First, the geographical dispersion of the primary assemblies would fracture the unified republic, as *assemblées* with different cultural and political mores found themselves irreconcilably opposed. Representative institutions made it possible to defuse these tensions, through discursive reasoning and because deputies could be expected to share a common educational and class background. Direct democracies, propelled by the caprice of the mob, would enter into conflict with one another, as well as the metropole. The result would be “north armed against south, preparing, by means of civil war, for the breakup” of the nation. In a republic bearing the visible scars of the Vendée, this was a weighty charge. Second, the deputy noted that per the 1793 constitution any statute passed by the Paris government could be suspended by a vote of one-tenth of the primary assemblies, pending a full referendum. This provision, he predicted, would act as a *liberum veto*, bringing political life in the republic to a standstill. “The legislative body, exhausted by its impotence to make good laws by this

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<sup>563</sup> F.P.B., *De l’équilibre*, 27-8 (“deux partis alternativement dominateurs, faisant tour-à-tour des lois favorables, l’un aux prolétaires avides des possessions d’autrui, l’autre aux propriétaires tremblans d’être dépossédés”).

continuous opposition” of a fractious minority, would gravitate to extreme measures. D’Anglas spun out the narrative of republican decline in ornate detail:

Thus arbitrary rule will be established by the constitution itself; thus provisional laws, no less dangerous than arbitrary laws, will be the watchword of our legislation. Nothing stable or solid, nothing demonstrating reflection, can come from a legislature of this kind; it will emit, without care and without order, precipitous and tyrannical decrees. And factions...will soon tear apart the national representation and the whole of France, condemned never to enjoy tranquility or calm.<sup>564</sup>

The choice was not between centripetal absolutism and centrifugal strife; in the Jacobin constitution the two dangers were mutually reinforcing. In making sovereignty the *summum bonum* of the new republic and then locating it at two distinct sites, the framers of 1793 had trapped France in a vicious circle of convention terror and provincial rebellion.

Although the darts of Thermidorean critique were aimed primarily at the Rousseauvean metaphysics of popular sovereignty, they also targeted the faulty structure and composition of Jacobin government, which concentrated all legislative and executive power in a single omnicompetent assembly. The Versailles deputy Laurent Lecointre, a former montagnard who would shortly make an abrupt conversion to Babeuvism, eloquently stated the classical case against unicameral government: “Where all powers are united, there is despotism. A body combining legislative, executive, and judicial powers is a political monster.”<sup>565</sup> For d’Anglas it was particularly imperative that the weak “phantom of executive power” haunting the 1793 constitution be exorcised. “This executive council, without dignity, strength, or stability, is comprised of so many members that it can never enjoy secrecy or promptness of action.”<sup>566</sup> As

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<sup>564</sup> D’Anglas, *Projet de Constitution*, 26.

<sup>565</sup> Lecointre, *L’abolition*, 22. Cf. *Le Balancier Politique* (Paris, 1795), 9 (“La constitution de 1793 a-t-elle cependant pris quelques précautions pour prévenir cette épouvantable réunion de tous les pouvoirs, qui est la source de tant de maux? Aucunes.”); F.P.B., *De l’équilibre*, 35 (“un grand corps délibérant avec la rapidité de l’éclair, immense par l’étendue et le poids de ses pouvoirs...[avec une] volonté impérieuse, mobile, contradictoire et incohérente”); [Félix Faulcon], *Gazette française*, Apr. 29, 1795, 3654 (“il faut une garantie plus solide que celle d’un corps législatif unique”).

<sup>566</sup> D’Anglas, *Projet de Constitution*, 26. Cf. J.M. Hékel, *Nécessité des Loix Organiques, ou la Constitution de 1793 convaincue de Jacobinisme* (Paris, 1795), 10 (“Voyez la constitution, articles LXII et LXIII. Voilà déjà un titre de

conceived by Hérault de Séchelles and Saint-Just, it would have been fully subordinate to the national assembly, and its officers would have been subject to arrest and trial at the discretion of the legislature. Thus the vaunted “constitution de 93,” had it ever been activated, would have reproduced all the worst features of Robespierre’s dictatorship. For evidence of its pathological character, d’Anglas pointed to the turbulence of Pennsylvania under its unicameral constitution of 1776.

If examples are needed I invoke that of America, our elder in the career of liberty, where nearly all of the constitutions have divided the legislative body, and as a consequence have enjoyed public peace. Pennsylvania alone cleaved to a single assembly, and despite the pure manners of its inhabitants, the simplicity of their customs, and the gentleness of their private virtues, it was riven by internal dissensions, and finally forced to emulate the example of its neighbors.<sup>567</sup>

The parallelism of single-branch government in Robespierre’s France and Franklin’s Pennsylvania was seconded by F.P.B., a close reader of the *Defence*: “O Franklin...why did your genius not perceive the revolutionary volcano bubbling under the crater of equal rights?” If the printer had not himself supplied the template for revolutionary misrule, his system of unicameral legislative supremacy provided a reasonable digest of its core principles. Similarly, in Lezay’s dialogue *Qu’est-ce que la constitution de 93?* the 1776 Pennsylvania constitution was execrated as “the model from which [the Jacobin frame] has been so crudely tailored,” and Franklin was made the spokesman of its dangerously egalitarian values.<sup>568</sup> The identical thought would occur to Adams himself. In a letter to his friend Tristram Dalton, Adams derided unicameralism as

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dépendance bien marqué, mais qui n’est rien en comparaison de ce qui suit. *Les membres du conseil exécutif, en cas de prévarication, sont accusés par le corps législatif.* Art. LXXI. *Le conseil est responsable de l’inexécution des lois et des abus qu’il ne dénonce pas.* Art. LXXII. *Il est tenu de dénoncer lui-même ses agens, s’il y a lieu, devant les autorités judiciaires.* Art. LXXIV.”), 12 (“Voilà donc le pouvoir exécutif à la merci du pouvoir législatif.”)

<sup>567</sup> Ibid., 45.

<sup>568</sup> F.P.B., *De l’équilibre*, 107; Lezay, *Constitution de 93*, v.

“Franklin’s dream,” and associated it with “the vilest Anarchy and dirtiest Sansculottery” of France in the Year II.<sup>569</sup>

An alternative to the discredited Jacobin frame suggested itself immediately: the Girondin *projet de constitution*, drafted and defended by Condorcet, and outlawed by the Jacobins in the summer of 1793.<sup>570</sup> The post-Thermidor junto made a concerted effort to repair the reputation of the marquis, battered by eighteen months of radical calumny;<sup>571</sup> the centerpiece of this campaign was the release to great fanfare of his posthumous *Tableau historique des progrès de l’esprit humain* with the official imprimatur of the Republic.<sup>572</sup> This new spirit of generosity extended to his constitutional instrument, which at the trial of Brissot had been branded as “Feuillantine” and crypto-royalist.<sup>573</sup> Benjamin Constant, a leading ideologist of the new regime, declared it “absurd to regard the assassins Collot-d’Herbois and Robespierre,” rather than Condorcet, “as the founders of the republic”; the Jacobins had only plagiarized and coarsened the marquis’s best

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<sup>569</sup> John Adams to Tristram Dalton (Jan. 19, 1797), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-1824> [early access].

<sup>570</sup> André Dumont confessed to having ordered Condorcet’s arrest precisely to stifle his dissent on constitutional matters. See Suite de la Séance du 15 Frimaire, *Moniteur*, Dec. 8, 1794, RAM 22: 681 (“Il avait envoyé dans son département un exemplaire de notre constitution, et un autre de celle présentée alors par Condorcet, avec ce mot en tête: *Choisissez*. Je crus voir dans cette expression une instruction perfide, et je provoquai en conséquence un décret d’arrestation.”).

<sup>571</sup> See, e.g., Legendre, Séance du Dimanche 30 Juin, *Moniteur*, Jul. 1, 1793, RAM 17: 8 (“...qu’un Condorcet emploie ses talents à corrompre, à tromper les citoyens. C’est un Condorcet qui, avec ses discours philosophiques, a voulu allumer la guerre civile!”); Note de Camille Desmoulins, Lettre d’Arthur Dillon, à Camille Desmoulins, Jul. 8, 1793, *Archives Parlementaires* (Lataste et al. ed., 1905), 68: 577 (“tout le venin du plan de Condorcet”); Félix Lepeletier, *Réflexions sur le moment présent* (Paris, 1795), 13-14 (“Condorcet, il est vrai, et ceux qui penseront comme lui, pourront être traités de fous, comme nous l’avons vu récemment, Mably, Rousseau, Helvétius, Diderot par des plumes vénales.”).

<sup>572</sup> Suite de la Séance du 13 Germinal, *Moniteur*, Apr. 6, 1795, RAM 24: 133; Séance du 23 Germinal, *Moniteur*, Apr. 15, 1795, RAM 24: 207 (“ces trois mille exemplaires soient distribués, savoir: un exemplaire à chacun des représentants du peuple, et les autres dans toute l’étendue de la république, de la manière la plus utile à l’instruction.”). Cf. the generous review by Pierre-Louis Røederer: *Annonces. Esquisse d’un tableau historique*, *Moniteur* (Supplément), Aug. 14, 1795, RAM 25: 457-58.

<sup>573</sup> Fin de l’acte d’accusation contre plusieurs membres de la Convention nationale, *Moniteur*, Oct. 28, 1793, RAM 18: 252 (see too Brissot’s retort: “Cette constitution était la plus démocratique qui ait jamais existé, et je pourrais citer celle des Etats-Unis, qui l’est bien moins qu’elle.”).

ideas.<sup>574</sup> The canonization of Condorcet and his constitution was fiercely resisted by the remnants of the Mountain, who continued to disparage the *philosophe* as an aristocrat, a royalist, and a federalist.<sup>575</sup> But it was also viewed suspiciously by moderates who saw the Brissotin and Jacobin programs as indistinguishable, and Condorcet's social philosophy as the conduit of a corrosive radicalism. The point was put sharply in the widely-read treatise *De l'équilibre des trois pouvoirs politiques*, which called attention to the overlap between Maratian "radicals" and Condorcetian "moderates" on the vital question of human perfectibility:

You are perhaps surprised...to hear me place Marat alongside Turgot and Condorcet; what is there in common between them? My answer is that they all had the same system, that they strove for the same end, and there is no difference between them other than in the choice of means...it suffices to recall Marat's book, entitled *Chains of Slavery*, to recall the constitution of 1793, and Condorcet's posthumous book, to be convinced that all these works are based essentially on the theory of equal rights, guaranteed by the infinite perfectibility of the human species and the insurrection of the people. If we wish to pretend that Condorcet's constitution does not share these bases, one would have to admit the improbable and degrading hypothesis that he hoped to make honorable amends to Robespierre [by writing the *Sketch*] at a moment when he had one foot in the grave.<sup>576</sup>

Whatever the superficial distinctions between the Jacobin and Girondin programs, in other words, Condorcet's *Sketch* confirmed their shared philosophical outlook. Like Marat, Condorcet was committed to a vision of universal equality, the improvement of man through state intervention, and (implicitly)<sup>577</sup> the right to violent retribution against "unjust" governments.

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<sup>574</sup> Benjamin Constant, *Des effets de la Terreur* (n.p., 1796), 42-3. Cf. Marie-Joseph Chénier, Séance du 18 Ventôse, *Moniteur*, Mar. 10, 1795, RAM 23: 638 ("pour conserver à la patrie les méditations de Condorcet et l'éloquence de Vergniaud").

<sup>575</sup> See, e.g., Séance du 3 Vendémiaire, *Moniteur*, Oct. 1, 1794, RAM 22: 102 ("Un membre fait lecture d'un discours sur les circonstances présentes. L'aristocratie relève la tête, dit-il, et déjà elle fait revivre Condorcet, et le proclame auteur d'une constitution qui vous réconciliera avec les rois.").

<sup>576</sup> F.P.B., *De l'équilibre*, 15. || On the reach of this text, see *Opinion de J.-C.-G. Delahaye, représentant du peuple, député de la Seine-Inférieure, sur la nouvelle Constitution* (Paris, 1795), 8 ("Il faut la voir développée, sur-tout dans un ouvrage nouveau, ayant pour titre: *De l'équilibre des pouvoirs*, en forme de lettres adressées au représentant du peuple Lanjuinais, qui m'en a parlé avec enthousiasme.").

<sup>577</sup> One of the key divisions between the Girondin and Jacobin instruments was the emphasis given by the latter to the right to revolution; see Jeremy Jennings, *Revolution and the Republic* (Oxford, 2011), 39; Marcel Dorigny, "Du projet Girondin de Février 1793 au texte constitutionnel du 24 Juin 1793," in *L'An I et l'apprentissage*, 115. F.P.B's point seems to be that the Girondins implicitly recognized such a right by accepting the legitimacy of violent mass mobilizations against the crown in 1789, 1791, and 1792, whether or not it was formally enshrined in their constitution.

Taken together this would necessarily issue in terror, whatever the philosopher's protestations, since its teleology furnished an alibi for unlimited state violence, and its theory of equality militated against the countermajoritarian checks that might constrain excesses.<sup>578</sup> Likewise, the prolific provincial journalist François-Xavier Pagès imagined a dialogue between Condorcet and Solon, in which the Athenian lawmaker scolded his French counterpart for indulging in "all the illusions of pure democracy" in his constitutional draft. "The code you proposed," lectured the lawgiver, "was scarcely less anarchic and subversive of social order than that put in place in 93."<sup>579</sup> Lamare went further, implying that the Girondin draft was *inferior* to its successor; he insisted in a letter to Sieyès that he had not opposed "the Constitution of 1793, which I respect infinitely, but only that of the constitutional committee known by the name of Condorcet."<sup>580</sup> Vaublanc, who served with Condorcet on the Committee of Public Instruction,<sup>581</sup> was only marginally more forgiving. He agreed that the Condorcetian *projet* "so closely resembles the constitution of 93 that it appears to have been its prototype," and was beholden to the same "absurd maxims, subversive of true liberty" as the Jacobin instrument. He allowed only that the marquis was humane and intelligent enough to learn from his mistakes: "were Condorcet still living, he would be astonished at himself, and would blot out in righteous fury what he wrote

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<sup>578</sup> F.P.B., *De l'équilibre*, 12 ("...exactement ce que Condorcet appelle l'équilibre des pouvoirs fondé sur l'identité des intérêts; que selon lui cette opinion hypocrite et fausse est opposée à la théorie de l'égalité des droits"). Cf. Dupont de Nemours, *Observations*, 43 ("la constitution de Condorcet, d'où serait sortie une République terriblement orageuse.").

<sup>579</sup> François[-Xavier] Pagès [de Vixouse], "Dialogue VI. Solon, Condorcet," in *Nouveaux dialogues des morts entre les plus fameux personnages de la Révolution Française* (Paris, 1800), 42.

<sup>580</sup> Lamare to Sieyès, 6 Germinal l'an III, Fonds Sieyès, 284AP/9.

<sup>581</sup> Olivier Ihl, "Emulation Through Decoration: A Science of Government?," in Sudhir Hazareesingh and Vincent Wright, eds., *The Jacobin Legacy in Modern France* (2002), 158-82, 172.



two years before.”<sup>582</sup> Maistre summed up the new consensus with characteristic asperity: “Condorcet’s constitution was never tested and was never worth trying.”<sup>583</sup> The Girondin route ran parallel to the road paved by Robespierre, and like its double it terminated abruptly at the scaffold.

This unsparing verdict was echoed in the private writings of John Adams, who had long inveighed against Condorcet’s “crude and shallow” constitutional ideas,<sup>584</sup> and now carped that they were more popular than ever as a result of his martyrdom.<sup>585</sup> Like the Thermidor intelligentsia, Adams maintained that the idea of popular sovereignty underpinning Condorcet’s constitutional project<sup>586</sup> was utterly delusive—the “people” had no existence apart from their representatives. “How,” he taunted, “will you discover the Will of the Majority of the twenty five Millions of Frenchmen,” meeting separately in a thousand different locations, unable to debate or confer?<sup>587</sup> Adams, no less than his French admirers, held Condorcet directly responsible for the Terror—not only because he proved as ruthless in the pursuit of revolutionary ends as

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<sup>582</sup> Vaublanc, *Réflexions/bases*, 7. Cf. Lamare, *L’Équipondérateur*, 33 (“J’aime à me persuader que s’il eût vécu jusqu’à nos jours, il [Condorcet] auroit rétracté lui-même son opinion”).

<sup>583</sup> Joseph de Maistre, *Considerations on France* [1796/97] (Richard Lebrun, ed. and trans., 1994), 56. Cf. Marquis de Lafayette, *Souvenirs en sortant de prison* [1797], *Mémoires, correspondance, et manuscrits du général Lafayette, publiés par sa famille* (Brussels, 1839), 8: 17 (“un projet de constitution le sien qui ne valait pas mieux”).

<sup>584</sup> See, e.g., John Adams to Charles Adams (June 5, 1793), in *Adams Family Correspondence* (Margaret A. Hogan, ed., 2008), 9: 434 (“If Dumourier had known Condorcet as well as I do, he would not have been surprized at his Constitution...a crude and shallow Idea of his three Idols Turgot Franklin and the Duke de la Rochefaucault, and now he will never get rid of it, till he is murdered like the last of them.”).

<sup>585</sup> John Adams to François d’Ivernois (Apr. 26, 1795), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1665> (“The deplorable Martyrdom of Rochefaucault and Condorcet to Turgot and Franklins Absurdity, and the thousands of other Victims to it, only Seem to have Attached The French more and more to it”).

<sup>586</sup> See, e.g., Condorcet, *Outlines of an historical view of the progress of the human mind* (London, 1795), 269 (“we were the first to dare, in a great nation necessarily dispersed...to maintain in the people their rights of sovereignty, the right of obeying no law but those which...shall have received their last sanction from the nation itself, laws which, if they be found injurious...the nation is always organized to reform by a regular act of its sovereign will”).

<sup>587</sup> John Adams, Annotations (1798/1811) to Condorcet, *Outlines*, 232 [copy held at the Boston Public Library].

Robespierre and Saint-Just,<sup>588</sup> but also because his reflexive denigration of bicameralism and constitutional balance laid the intellectual groundwork for their dictatorship. His “government in one democratical representative assembly...which he learned from Franklin, Turgot, and Rochefoucauld,” had given birth to parade of horrors—“Jacobins and sansculots, gorgons, hydras and chimeras dire.”<sup>589</sup> When Adams read the *Sketch* in the midst of his presidency he registered his disapproval in an angry marginal scrawl. He was incensed to see Condorcet portray America’s frame of government as an honorable but botched attempt at free government, disfigured by its allegiance to the English “system of a *balance of powers*” and its neglect of “equality of rights.”<sup>590</sup> His scribbled answer dripped with contempt: “Is it possible that a philosopher, who...knew anything of government...should have written this? Is an equality of rights anywhere more explicitly asserted than in the American Constitution?”<sup>591</sup> It was too late for Condorcet to offer a riposte, but this did not dissuade Adams and his French allies from dragging his corpse through the mud. “Had the Convention from the beginning balanced the ardor of a popular assembly with the wisdom of an esteemed Senate, and the energy of an executive magistrate,” Lamare frostily sermonized, “this worthy and respectable citizen would

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<sup>588</sup> Adams, Annotations to Condorcet, i (“Was the Faction of Brissot Condorcet and Co. less sanguinary than that of Robespierre?”). Cf. d’Ivernois, *Des révolutions*, 417-18 (“Danton...s’écriait avec tant de vérité, en présence du Brissotin Riouffe: *Ce sont des frères Caïn...Brissot m’aurait fait guillotiner comme Robespierre.*”).

<sup>589</sup> Adams, Annotations to Condorcet, 265. Cf. John Adams, Annotations (1796/1812) to Mary Wollstonecraft, *An Historical and Moral View of the Origin and Progress of the French Revolution* [1794], quoted in Zoltan Haraszti, *John Adams and the Prophets of Progress* (1952), 203; Adams, Annotations to Condorcet, 217.

<sup>590</sup> Condorcet, *Outlines*, 263. Cf. *ibid.*, 268 (“It would be easy to show how much more pure, accurate, and profound, are the principles upon which the constitution and laws of France have been formed”).

<sup>591</sup> Adams, Annotations to Condorcet, 263.

not have been reduced to drinking hemlock, and dying on the cold earth” in a cell in Bourg-la-Reine. The marquis was given a pauper’s burial in an unmarked grave.<sup>592</sup>

## **II. The American constitution in Paris**

The Genevan publicist François d’Ivernois, writing from London exile,<sup>593</sup> captured the uncertainty that confronted the French Republic in the spring of 1795 as it mulled its constitutional future. “Will it be a Republic, one, indivisible, and democratic, that consolidates itself in France? Or will this great political body now dismember itself into a confederation, like that of the Swiss? Will it adopt an elected president, as in the United States of America? Will the French turn back to their 1791 constitution,” with its uneasy alliance of monarchial and popular powers, “or will it take the tempered hereditary monarchy of England for its model?” To d’Ivernois each of these incongruous destinies appeared possible; he added, hopefully, that perhaps “the curtain is ready to descend on the republican drama” at last.<sup>594</sup> Ivernois was hardly alone in accentuating the plasticity of the new constitutional moment; in the months after 9 Thermidor rumors of a coming constitutional settlement reverberated across the revolutionary and counter-revolutionary Atlantic. In the streets of Paris disgruntled sans-culottes demonstrated raucously on behalf of the democratic Jacobin frame of government. In New York Robert Troup reported to his former King’s College roommate Alexander Hamilton “that Royalty begins to be openly advocated in France—and the people are squinting strongly at the Constitution of 1791.”

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<sup>592</sup> Lamare, *L’Équippedérateur*, 33. Regarding the circumstances of Condorcet’s death, see David Williams, *Condorcet and Modernity* (2004), 43.

<sup>593</sup> D’Ivernois fled Geneva in 1782, following its occupation by the army of Louis XVI. He returned in 1790 following a rising that restored his allies to power, and was elected to the *conseil des deux cents*, but gradually fell from favor once more as the revolution radicalized, and took flight for London in 1793 as a pro-French party came to power. See François d’Ivernois to Thomas Jefferson (Oct. 2, 1794), in *Papers of Thomas Jefferson* (John Catanzariti, ed., 2000), 28: 170 (“Le Tribunal révolutionnaire y a prononcé de nouveaux emprisonnements ou banissements contre 4. à 500 Citoyens, et...je suis loin d’être étonné de voir mon nom à la tête de ces derniers.”).

<sup>594</sup> D’Ivernois, *Réflexions/guerre*, 90; d’Ivernois, *Des révolutions*, 350.

And in London Gouverneur Morris, only recently retired as America's envoy to Paris, recorded in his diary that the French "now think of adopting the American Constitution and talk of Pichegru and the Abbé Syes as Presidt."<sup>595</sup>

Increasingly it was the last of these possibilities that attracted the most attention, particularly among the intelligentsia that now set the tempo of public debate. Buisson chose this moment to reissue its French translation of the *Federalist Papers*; it received a glowing review in the *Annales Patriotiques et Littéraires*, which opined that "the American government ought to furnish a great number of ideas to the legislators and philosophers engaged today in deciding on the mode of government best-suited to France." The author was especially intrigued by the American executive—though it was nominally a republican magistracy, it was now rumored that Washington had been made "*président perpétuel*" due to his extraordinary popularity.<sup>596</sup> The *Nouvelles Politiques*, edited by the *académicien* J.-B.-A. Suard, agreed that the "legislators called upon to give France a new constitution [should] carefully study the path followed by America, the principles which have guided them, and the effects that have resulted from their system."<sup>597</sup> Suard's close friend and confidante Germaine de Staël was of the same mind in her

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<sup>595</sup> 1793: Séance du 11 Germinal l'an 3, *Moniteur*, Apr. 3, 1795, RAM 24: 111. Cf. *Débats du procès...contre Drouet, Babeuf et autres*, ed. Badouin (Paris, 1797), 3: 313 [list of Babeuvist posters and slogans, including *Constitution de 93*]; Vasselin, *Adresse*, 11 ("Quel fut en effet le pastron des Jacobins du 9 Thermidor? La Constitution de 1793. Quel fut le cri de ralliement de la minorité rebelle de notre Sénat régénéré? La Constitution de 93. Quel fut l'étendard des révoltés du 12 Germinal? La Constitution de 93."). || 1791: Robert Troup to Alexander Hamilton (May 11, 1795), *Papers of Alexander Hamilton* (Harold C. Syrett, ed., 1973), 18: 343; Charles-François Dumouriez, *Coup d'oeil politique sur l'avenir de la France* (Hambourg, March 1795), 76 ("Ce n'est plus un crime de parler de royauté."). Of course this was easier said in exile. || American: Gouverneur Morris, Entry for May 13, 1795, *Diaries: European Travels, 1794-1798*, (Melanie Randolph Miller ed., 2011), 85.

<sup>596</sup> "Le Fédéraliste, ou collection de quelques écrits en faveur de la constitution proposée aux États-Unis," *Annales Patriotiques et Littéraires*, Apr. 8, 1795, 525. The review may have been prepared by Louis-Sébastien Mercier, editor of the *Annales* and author of the majority of its writings. The source of the information about Washington recited here is not known, although the *Annales* made it the basis of several articles.

<sup>597</sup> De l'art de la Législation (Deuxième lettre), *Nouvelles Politiques*, Jun. 28, 1795, 26. Cf. Vaublanc, *Réflexions/bases*, 7 ("Pour avoir dédaigné la liberté de Sparte, de Rome, de Philadelphie, nous avons été de misérables esclaves.").

essay *Réflexions sur la paix*, in which she considered whether France ought to revert to the principles of “limited monarchy” enunciated in its 1791 constitution. She preferred an alternative scenario. “If, on the other hand, the moderate party triumphs, if we discover in the constitution of America a workable form of republic, then the principles of universal justice and the austere virtues of a republic will be established in France.”<sup>598</sup> Meanwhile the Spanish republican José Marchena, one of the rare Brissotins to have eluded the axe, now spoke glowingly of “the United States of America,” whose citizens must be accounted “those who know liberty best, and have founded it most securely.” He applauded in particular its disavowal of “*revolutionary* institutions,” like the Committee of Public Safety, which legitimated their free amalgamation of executive and legislative powers with loud and spurious appeals to necessity. Rather, America had followed the classical dictates of the mixed constitution, with multiple overlapping legislative and executive institutions held in an exquisite equipoise. And its 1787 compact had not been framed in a time of war and upheaval, but with calm reason in a time of general tranquility.<sup>599</sup> If the purpose of the Convention was now, as was often said, to enthrone the rule of law and bring the revolution to a close,<sup>600</sup> America offered an exemplary model for its transition to a constitutional republic. The irresistible pull of the United States was acknowledged widely, and not always enthusiastically. When Jean-Lambert Tallien conceded in

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<sup>598</sup> Madame de Staël, *Réflexions sur la paix*, adressés à Mr. Pitt et aux françois [1794], in *Œuvres Complètes* (Lucia Omacini, ed., 2009), 3: 1: 102. || The book was read throughout Europe and America, as well as in France. By December 1795 its reputation had grown to the point that Abigail Adams asked her husband, working in Philadelphia, whether he might send her a copy of “the reflections upon Peace by Madam De Stael.” See Abigail Adams to John Adams (Dec. 20, 1795), in *Adams Family Correspondence* (Margaret A. Hogan et al. eds., 2013), 11: 98. Wilhelm von Humboldt, who took his guidance on French politics from his friend the Abbé Sieyès, was unimpressed with her constitutional ideas, and the Anglo-Americanism undergirding them: “On n’observe nulle part des idées importantes sur la Constitution. Celles d’Angleterre et d’Amérique sont exagérément louées...” See Humboldt, Entry 303, *Journal Parisien, 1797-1799* (Elisabeth Beyer trans., Raymond Trousson ed., 2013), 267.

<sup>599</sup> José Marchena, *Point de gouvernement révolutionnaire* (Paris, May 1795), 5.

<sup>600</sup> See, e.g., Suite de la Séance du 2 Prairial, *Moniteur*, May 26, 1795, RAM 24: 520 (“La section des Thermes vient exprimer son indignation contre les révoltés...Elle l’invite [la Convention] à terminer une révolution qui a déjà coûté trop de sang.”).

a floor speech that there were now prominent factions in France who “say that American government would suit us,” a wave of anxiety rippled across the Convention’s left wing.<sup>601</sup>

At the heart of the French return to U.S. constitutionalism was a fascination with the American presidency. In the journals and salons where the new politics was forged, it became commonplace to state that a republican constitution in France could only endure if it was reinforced by a dynamic and creative executive in the American mold. The *conventionnel* R.-P.-F. Lebreton, incarcerated during the Terror for his proximity to the Girondins, anticipated the shock of his republican interlocutors on hearing this new dispensation, which would have been heretical six months earlier:

*What, you will exclaim, you propose a president? Yes. I think that, without harming the equality of rights...we can substitute for the executive council a president, chosen from the Conseil des Anciens by the entire legislature, elected for two years and reeligible for a further two years...and at all times responsible. The Americans have a similar magistrate, and the Americans are free.*<sup>602</sup>

Francisco Miranda, the peripatetic South American revolutionary and French military officer, boasted in a 1795 pamphlet of his personal intimacy with General Washington, and encouraged France to grant a similar commission to “[o]ne or two good men at the head of the executive power” who might follow his example of dignified leadership.<sup>603</sup> Étienne Burnel, newly returned to the metropole after a sojourn of several months in America, wrote to the Commission des Onze to deplore the weakness and “paralysis” of France’s existing government. He suggested in its place “a Directory composed of a single president, and four ministers under his immediate control.”<sup>604</sup> The former noble Joseph Laborde-Noguez ridiculed his countrymen who associated

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<sup>601</sup> Tallien, Séance du 1 Germinal, *Moniteur*, Mar. 24, 1795, RAM 24: 31 (“Murmures à gauche”).

<sup>602</sup> Roch Pierre François Lebreton, *Idées Constitutionnelles* (Paris, 1795), 14.

<sup>603</sup> Francisco Miranda, *Opinion sur la situation actuelle de la France* (Paris, 1795), 11.

<sup>604</sup> [Etienne-Laurent-Pierre] Burnel, cy-devant avocat à l’Isle de France, *Lettre à Citoyen Boissy D’Anglas* (12 Messidor l’an 3), AN C232/183-11/1. On Burnel’s short stay in America after his boat was taken as prize by the British fleet, see “Etienne-Laurent-Pierre Burnel,” *Répertoire général de biographie bretonne* (René Kerviler ed.,

presidentialism with a renaissance of royal government for “jumping at ghosts” and hallucinating the fleur-de-lis. American prosperity evinced the superiority of its political forms, while its geographical expanse made it a close analogue for a French republic with imperial ambitions. Moreover, America had avoided the havoc and crime that now marred the revolutionary promise of 1789; there had been no purge of suspected Tories, no Vendée in the western territories, and no guillotine erected outside Congress Hall. The American republic was a beacon of comparative stability. “Why, then, should [the French] not also appoint a President, who would accomplish a great deal of good without being able to do any evil?”<sup>605</sup> Unsurprisingly, it was the ardent *américainiste* Vaublanc who best articulated the new conventional wisdom, and brought the virtues of the American presidency most transparently into focus:

In effect, a man of character, placed at the head of government, gives the entire machine a rapid and confident motion. The legislative power receives the first fruits, since laws cannot be executed in a noble and great manner without inspiring a high regard for those who *make* the laws...It is here that we must turn to the wise Americans—see if they feared to delegate sufficient powers! At the head of their general confederation...they have installed a man temporarily, with sufficient powers to govern. And as a result they reap liberty and tranquility.<sup>606</sup>

From his first appearance on the revolutionary stage, Vaublanc was notorious as a “man who always preached faith in the executive power.”<sup>607</sup> The Jacobins proscribed him as a royalist and a traitor to the *res publica*. But if the count returned to Paris convinced of the republic’s permanence, he had also come to appreciate that kingly power might survive the extinction of the crown. Indeed, a regal executive might prove *more* secure when severed from its medieval and theological roots, and reimagined as an officer of the constitution.

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Rennes, 1894), 7: 165. Cf. *Établissement d’un Magistrat unique électif et temporaire*, AN C232/183-14/906 (“En confiant la Direction du pouvoir exécutif à un seul magistrat secondés de ministres choisis par lui même...”).

<sup>605</sup> Joseph Laborde-Noguez, *Apperçus sur la Constitution Républicaine à donner au Peuple français* (Paris, May/June 1795), 4.

<sup>606</sup> Vaublanc, *Réflexions/bases*, 30.

<sup>607</sup> Séance de samedi soir, *Le Courier des LXXXIII Départemens*, Apr. 17, 1792, 256. Cf. Séance du 20 février, *Chronique de Paris*, Feb. 21, 1792, [xxxx] (“Il a paru attribuer une partie des désordres qui agitent la France, au peu d’appui que le pouvoir législatif accorderoit à la hierarchie des pouvoirs exécutifs”).

The presidentialism of Year III was not without precedent; in the long intermission between the declaration of a republic in August 1792 and the Jacobin seizure of power in May 1793, a number of schemes for a republican executive were dreamed into existence. The boldest came from the pen of Pierre-Bernard Lamare, translator of the *Federalist Papers* and the *Defence*. In a stinging assessment of the Girondin draft constitution of 1793, he pressed for an executive branch led by a “*mayor-general, or a first magistrate, or a president of the republic*”; while agreeing with Condorcet that “it would be difficult to find any use for the institution of a *monarch,*” he thought it quite possible to conceive of a “chief executive who would be nothing like” a king.<sup>608</sup> Such a magistrate would have two primary advantages. First, he would ensure orderly government in France, banishing the convulsions and massacres that had shadowed the revolution since the fall of the Bastille by drawing clear lines of responsibility, and by wielding the sword of the law against sans-culottes and clubbistes.<sup>609</sup> And second, he would be the only figure capable of negotiating an end to the wars engulfing Europe and menacing the French republic with annihilation.<sup>610</sup> The First Coalition, Lamare contended, had carried war into France not from territorial ambition, or from a hatred of liberty, or to avenge Louis XVI,<sup>611</sup> but only from a defensive fear that France “might prove it possible to be governed and to prosper” without a vigorous executive at the helm. But this hydra of crowned heads would be satisfied by

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<sup>608</sup> Pierre-Bernard Lamare, ci-devant commissaire national civil aux Isles du Vent, *Moyens préparatoires de pacification entre la République de France et les puissances étrangères* (Paris, 1793), 12, 10.

<sup>609</sup> *Ibid.*, 13-14.

<sup>610</sup> Lamare took for granted that France could not end these wars purely through force of arms; see *ibid.*, 4 (“il est évident que le succès même de nos armes est insuffisant pour amener définitivement entr’eux et nous une paix réelle...il faut aviser aux moyens de subsister républicains quoiqu’environnés de monarchies, ce qui ne peut s’effectuer que par un rapprochement d’idées et de principes qui...concilie cependant l’existence de ces gouvernements avec la nôtre.”).

<sup>611</sup> See, e.g., *ibid.*, 3 (“C’est également ne erreur de penser que les princes ou rois...soient par essence ennemis de la liberté des peuples...Qui de nous n’a pas vu Louis XVI et toute sa cour en honorer la séduisante image dans la personne de Francklin?”).



“a simulacrum of that power,” a republican magistracy costumed in the tinsel and dignity of monarchy. “I would grant them this simulacrum,” he avowed, “while rejecting the hideous forms and appurtenances of royalty.”<sup>612</sup> Lamare’s executive would be selected on the basis of his virtues, and would be elected to a term of three or four years. While he would possess an underspecified right to representation in the legislature, his prerogatives would be otherwise “so circumscribed that they could only be threatening to the enemies of all order and all government.” The ambitious colonial clerk made clear that in planning this magistracy his objective was not merely to promote continental peace, but also to realize in France “the prosperous liberty of the Americans.” This is made manifest in the remarkable close of the feuilleton, which imagines a circular distributed to the kingdoms of Europe informing them of France’s new-modeled republican constitution:

The French nation, long agitated by tumults...and equally jealous to maintain the liberty for which she swore to die and to escape from the disorders of anarchy...has resolved to take as its model the government of its faithful allies the Americans of the United States, whose many years of peace and prosperity...testify to its excellence. It is a government you yourselves have recognized and assented to. From this point forward everything will be free in France. All persecution has ceased, and all property will be guaranteed. The French republic, which has chosen me as its president, guarantees any treaty that you will conclude with me, and asks to send you an ambassador.<sup>613</sup>

War, in other words, had been provoked by the incompetence and radicalism of the regicide republic, and would be ended only by the restoration of predictability to national affairs.<sup>614</sup> This meant, above all, a unit executive capable of bridling the Paris ochlocracy, silencing the irredentists, and navigating the rocky shoals of international politics. In his preoccupation with the American presidency as an instrument of diplomacy and a conduit for international

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<sup>612</sup> Ibid., 11-12 (adding, in an aside to his French readers: “Optez donc: ou un chef exécutif, ou une guerre éternelle avec tous les monarques de l’Europe.”).

<sup>613</sup> Ibid., 13-14. Cf. 12 (“Je voudrais la liberté si prospère des Américains.”). Lamare does not specify whether his executive would be elected by popular vote, legislative vote, or specially-convened college.

<sup>614</sup> Cf. Staël, *Réflexions sur la paix*, 3: 1: 102 (“...les gouvernements resteront en paix auprès d’un voisin qui n’aura plus ni royauté, ni féodalité, mais qui sera délivré de ce système anarchique, seul fatal à la véritable tranquillité de l’Europe”).

recognition, Lamare proved a sensitive reader of Hamilton. In Federalist 75, the New Yorker remarked that a mere “ministerial servant of the Senate could not be expected to enjoy the confidence and respect of foreign powers in the same degree” as an elected president, “and, of course, would not be able to act with an equal degree of weight or efficacy.”<sup>615</sup> Lamare went a step further: given the precarious strategic position of the republic in the winter of 1793, only an executive endowed with far-reaching prerogatives had the requisite clout and credibility to negotiate a peaceful end to the conflict and lift the military siege strangling France. In 1795 it would become a cliché to describe a supreme executive magistracy as a machine configured for republican warfighting;<sup>616</sup> it is notable, however, that when the idea was first broached in the French republic, it was as the anvil on which a *pax europæum* might be forged.

It was natural that Lamare, who launched his career in journalism with a sparkling paean to Lafayette,<sup>617</sup> would be drawn to the American paradigm of charismatic executive leadership. The attachment of Jean-Louis Seconds—a montagnard deputy from L’Aveyron who voted the death of Louis XVI—to the same ideal is rather more curious.<sup>618</sup> His essay *De l’art social*, typeset in the spring of 1793 by the *imprimerie nationale*,<sup>619</sup> outlines the responsibilities of a magistrate he

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<sup>615</sup> [Alexander Hamilton], Federalist No. 75 [1788], *The Federalist Papers* (Terence Ball, ed., 2003), 268. For Lamare’s French translation, see *Le Fédéraliste; ou Collection de quelques écrits en faveur de la Constitution* (Paris, 1792), 2: 380 (“...le délégué du Sénat pourroit-il espérer des souverains étrangers la confiance qu’ils donnent au Représentant contitutionnel de la Nation entière, & par conséquent agir avec autant de force & d’efficacité?”). Cf. Daniel Golove and Daniel Hulsebosch, A Civilized Nation: the Early American Contitution, the Law of Nations, and the Pursuit of International Recognition, *NYU Law Review* (2010), 1033-38.

<sup>616</sup> See, e.g., d’Ivernois, *Des révolutions*, 362 (“Qui sait si la Hollande eût été conquise, ou même attaquée [in 1787], si elle avait eu pour la défendre un Chef investi d’une pareille autorité?”). Cf. d’Ivernois, *Réflexions/guerre*, 102.

<sup>617</sup> See Francesco, “Federalist Obsession,” 240.

<sup>618</sup> For a brief intellectual biography, see Pierre F. Daled, *Le matérialisme occulté et la genèse du “sensualisme”* (2005), 124-27. On his vote to convict Louis Capet, see *Opinion politique et constitutionnelle du Citoyen Seconds, sur le jugement de Louis XVI, et contre l’appel au peuple* (Paris, Jan. 15, 1793).

<sup>619</sup> All citations taken from Jean-Louis Seconds, citoyen Français du Département de l’Aveiron, et Député à la Convention nationale, *De l’art social, ou des vrais principes de la société politique (Quatrième Cahier)* (Paris, 1793). The complete work (comprising four cahiers) also appears in the *Archives Parlementaires* (M.L. Lataste et. al., ed., Paris, 1902), at 56: 577-85 (Jan. 7, 1793) and 62:513-48 (Apr. 17, 1793).

names the *président de la souveraineté*, a figure of nearly mythic force and vitality. His portfolio would be unbounded: he would be the “agent, the necessary and unique organ of the law.”<sup>620</sup> Every element of the executive branch, from the bureaucrat’s blotter to the soldier’s rifle, would vibrate at his command.<sup>621</sup> He would rigorously police the national assembly for signs of faction, tumult, or obstruction, ejecting any deputy who indulged in demagoguery or voted en bloc.<sup>622</sup> And in extraordinary circumstances he would have the right to convene a joint session of the executive and legislative councils, meeting under his direct supervision.<sup>623</sup> He would not be omnipotent—the *président* would be subject to reappointment by the legislature every three months, and answerable at the bar for any transgressions committed while in office.<sup>624</sup> But he would act as the central intelligence of the state, priming its unwieldy appendages for graceful maneuvers. “The sovereign president,” he wrote, “must be the *joint head of all powers*, the common center of all parts of the legislature and the government. He must direct them as the head directs the arms, the legs, and the body.”<sup>625</sup> Nevertheless, Seconds hastened to add, a presidential republic would have nothing in common with the despised *ancien régime*, which only three months before he indicted for “*lèse-nation, lèse-liberté, and lèse humanité*,” while

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<sup>620</sup> Ibid., 67.

<sup>621</sup> Ibid., 35 (“il faut donc qu’il commande le pouvoir exécutif; sans quoi celui-ci, beaucoup trop fort, seroit bientôt indépendant de lui...Il faut donc encore qu’il ait le droit de commander à la force armée pour la faire mouvoir et agir.”).

<sup>622</sup> See *ibid.*, 32 (“la loi doit donc réprimer sévèrement le trouble, le désordre, le bruit, et le président doit être tout puissant avec elle, pour l’empêcher et pour maintenir dans l’assemblée, l’ordre et la tranquillité absolument nécessaires pour délibérer”).

<sup>623</sup> Ibid., 24 (“Les deux commissions exécutive et législative doivent se réunir sous la présidence commune du président de l’assemblée, dans les affaires d’un intérêt général qui peuvent tenir à la législation et à l’administration en même-temps.”).

<sup>624</sup> See *ibid.*, 48 (“Tous les membres de l’assemblée, tous les comités, tous leurs membres et tous leurs chefs...sur-tout le président, doivent être responsables et *justiciables* de la souveraineté ou de l’assemblée...pour leurs délits ou attentats politiques”).

<sup>625</sup> Ibid., 20.

pitilessly consigning its figurehead to death.<sup>626</sup> In assuring his readers of both the safety and the necessity of a *chef suprême* equipped with expansive prerogatives, Seconds relied on a familiar rhetorical gambit:

Assuredly I have no desire...to make a king of the president of the assembly, still less to make him into a dictator or despot, and yet I dare say that if he is not given a certain measure of power, *there is no constitution at all*. And I predict, further, that if this power is withheld from him now, it will return sooner or later, just as the Americans were forced to return to it. Although there is a great difference between the United States and a *republic one and indivisible*, a difference I have no desire to bridge...it is precisely because our republic is unified, and all of its component parts are riveted tightly together, that it is still more necessary here than in the United States that there be a power somewhere that is truly one and indivisible.<sup>627</sup>

The experience of North America, per Seconds, had proven presidentialism not merely *compatible with* republican government, but *integral to* its survival. Thus the backlash against executive prerogative that struck the nascent republic between 1776 and 1780<sup>628</sup> had proved as ephemeral as a wave spraying the shore. The reason was inherent in the nature of collective life: democratic self-government is not spontaneous. The demos remains a mere “*plurality of men*” without a leader capable of organizing it into a corps, imparting to it a coherent collective identity, and constructing a safe environment for the peaceful arts of deliberation and majority rule. The horizon of all political order is a single, effective, responsible leader—there is no city without a mayor, no army without a general, and no assembly without a president. Hence Seconds, an outspoken proponent of the regicide, could announce approvingly that “all government is, *in a sense*, monarchical by nature; every state is a pyramid that necessarily terminates at a point, with a single head.”<sup>629</sup> This was loudly iconoclastic, and would be

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<sup>626</sup> Seconds, *Jugement de Louis XVI*, 3. Cf. *ibid.*, 12 (“Il n’y a donc que la mort & une mort certaine qui puisse faire trouver aux ambitieux & aux rois leur intérêt, à être justes”).

<sup>627</sup> *Ibid.*, 39.

<sup>628</sup> See Eric Nelson, *The Royalist Revolution* (2014), ch. 4.

<sup>629</sup> Seconds, *De l’art social*, 61. || The same geometry can be found in James Wilson, Speech delivered in the Convention of Pennsylvania (Dec. 31, 1789), in *Works* (Bird Wilson ed., Philadelphia, 1804), 3: 323 (“The pyramid of government—and a republican government may well receive that beautiful and solid form...”); The Explanatory Note of M. Sieyès, in Answer to the Letter of Mr. Paine [1791], in *Essential Writings*, 140 (“Those who aim at

amplified by the reactionaries writing after Thermidor; in an address to the Convention two years later, Vaublanc would eulogize “un de vos collègues, le citoyen Seconds” for “having written a work full of useful ideas, and predictions that have come to pass.”<sup>630</sup> There was, nevertheless, one aspect of radical orthodoxy that Seconds refused to compromise: its utter antipathy for the British theory of checked and separated powers. “There must be both unity in the sovereignty and in the political body,” he enjoined, “unity of existence or of constitution, unity of thought or conception, whether legislative or executive, and finally unity of execution or government.” If the catchphrase of Adams’s *Défense* and other classics of *Anglomane* constitutionalism was *la triple division du pouvoir*,<sup>631</sup> Seconds now spoke of a “triple unité,” knotted together by “a common leader in whom all lines intersect.”<sup>632</sup> It was a striking insight, albeit one that would remain inert until the *coup d’état* of Napoleon and Sieyès: the corollary of a discretionary executive was not a Montesquieuean regime of checked separation, but the monist centralism favored by the most fervent Jacobins.<sup>633</sup>

Nevertheless, it was only after the shipwreck of sans-culotte radicalism that plans for an American executive fitted to French circumstances could circulate freely. The *homme des lettres* Jean-Marie Hékel envisaged an executive council headed by an officer he designated the *Grand*

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investing an image with abstract notions, may figure a monarchical Government as ending in a point, and a republican Government in a platform.”). ||This passage depends for its force on a silent allusion to Cicero’s *De Inventione* (I.2), in which an orator of great eloquence leads men out of the state of nature and into civil society, in which they use speech to deliberate and vote.

<sup>630</sup> Vaublanc, *Réflexions/plan*, 24-25 (“L’évènement n’a que trop prouvé la justesse de ses principes.”).

<sup>631</sup> Adams, *Défense*, 1: i. Cf. Calonne, *Lettre Adressée au Roi* (London, 1789), 33-4 (“triple pouvoir législatif”). Critics of the British constitution gleefully reworked the metaphor; see G. Bontemps, *Discours sur les crimes du gouvernement anglais* (Paris, 1794), 2 (“cerbères à triple gueule inventés pour dévorer plus avidement une nation entière”); Théophile Mandar, Avertissement, in Marchamont Needham, *De la souveraineté du peuple* (Mandar trans. and ed., Paris, 1790), xiv (“courbé sous le triple joug de son gouvernement”).

<sup>632</sup> Seconds, *De l’art social*, 20.

<sup>633</sup> See Jainchill, *Reimagining politics*, 202, 235.

*représentant de la république française*, who would wield a myriad of startling prerogatives. He would conduct foreign policy, receive ambassadors, and authorize all treaties and conventions. He would be the sole trustee of the nation's *arcana imperii*. And he would stand at the apex of a sprawling executive branch whose officers would serve at his pleasure.<sup>634</sup> More controversially, Hékel proposed to consolidate a number of classically legislative powers in the hands of his august first magistrate. Only the *Grand représentant* would initiate declarations of war; in ordinary times this would require the assent of the two chambers, but in times of "imminent hostilities" the *représentant* would possess sweeping authority to defend the nation, and would be obliged only to "keep the legislature informed" of his maneuvers.<sup>635</sup> While Hékel did not assign this figure the royal privilege of dissolving parliament, he gave him a veto over legislation vincible only by a two-thirds majority in each chamber.

Most significantly, Hékel's model executive would radiate symbolic authority. One clue was his title, which Hékel glossed in a long footnote. "The executive power is the born representative of the nation; like the legislature, it must be an immediate emanation of the national sovereignty, and to derogate from this sacred principle is to be guilty of the greatest crime one can commit against a free people."<sup>636</sup> To ensure the equal status of the executive branch, he insisted that the *Grand représentant* be not only elected by the lower house of the legislature, but also confirmed by a separate vote of the district assemblies, giving him an aura of plebiscitary legitimacy. For the same reason Hékel carefully circumscribed the power of impeachment, too easily converted to an instrument brandished by the legislature to "endlessly harass a power of which it is

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<sup>634</sup> [Jean-Marie] Hékel, *Bases d'une constitution pour la nation Française* (Paris, 1795), 11-12.

<sup>635</sup> Hékel, *Bases d'une constitution*, 13.

<sup>636</sup> *Ibid.*, 11. This was, plainly, a rejoinder to Robespierre and his followers, who held that a constitutional monarch, though perhaps legitimate, could not "represent" the people. See Robespierre, Séance du Mardi 18 Mai, Moniteur, May 18, 1790, RAM 4: 397 ("Il est inexact de dire *représentant de la nation*...on ne représente la nation que quand on est spécialement chargé par elle d'exprimer sa volonté.").

jealous.”<sup>637</sup> The *représentant* would be removable only for treason against the state or the constitution, and even in this extreme case would be protected by several layers of due process; to preserve his dignity he would not be obligated to appear in person at his trial. The author’s fixation on the grandeur and sublimity of his creation climaxes in a stunning paragraph:

The *grand représentant* will have the *primacy of honor* throughout the republic. Only he will entertain ambassadors and the ministers of foreign powers. In the national palace that he is to occupy, no one will sit or remain covered in his presence. Every citizen who crosses his path will stop and discover himself. He is to wear a unique costume, determined in advance. He will have a guard of five hundred infantry and five hundred cavalry, and independent of this he will be provided with a guard of honor for his place of residence by the citizens. The republic will pay his expenses.<sup>638</sup>

All this, Hékel conceded, would inevitably appear to most of his contemporaries as an elaborate apologia for royal government, a vain effort to restore the fortunes of the frayed 1791 constitution. But he insisted that in reinventing constitutional monarchy for a republican era, he had drawn his crucial inspiration from the free and flourishing republic across the Atlantic. “They will not hesitate to cry that I am an aristocrat, a royalist; they will say that, being deprived of a hereditary king, I have created a temporary one...They will say that I have given [the *Grand représentant*] the *veto*, and the right to *dissolve* the legislature...[But] the right of *opposition* I have given him is an attribute of the president of the United States.”<sup>639</sup> Hékel’s esteem for the American doctrines of presidentialism and constitutional balance was matched by his disdain for its rival school of populist constitutionalism, which to his chagrin had also found a foothold in Thermidorean Paris. “What Frenchman worthy of the name,” he sputtered, “did not quake with indignation on hearing...Thomas Paine at the rostrum spouting all the old sophisms of anarchy and disorganization!”<sup>640</sup>

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<sup>637</sup> Hékel, *Bases d’une constitution*, 14.

<sup>638</sup> *Ibid.*, 12.

<sup>639</sup> *Ibid.*, 20. Cf. *ibid.*, 2 (“qu’il ne l’est au président des Etats-Unis d’Amérique de s’assurer, dans tous les tems, des deux tiers des membres du sénat”).

<sup>640</sup> *Ibid.*, 3.

A glance at the political literature of 1795 reveals the dazzling range of possibilities that were entertained, and their obvious and often explicit debt to the American presidency. Pierre-François, comte Réal, a distinguished attorney and journalist jailed during the Terror for his ties to Danton, now proposed a "president who is both elective and *removable*," restricted to a brief term but armed with a daunting arsenal of prerogatives. He would be, in Réal's idealizing portrait,

a vigorous man, bursting with measures, fully responsible [for his actions]. He will consult, but he will not deliberate; he will decide, he will act. He will conceive or adopt farsighted measures; he will burn with a desire to inscribe his name on the great institutions, and to enjoy brilliant successes. He will be interested in rendering the constitution operational, he will be the man of the revolution, he will be in precisely the situation where we should wish to see the head of the executive power after a great revolution, poised between success and the scaffold.

The "vulgar," Réal conceded, might "confuse this office with royalty," but any resemblance was merely superficial. And it was in fact the automatic association of *éclat* in the executive with crowned absolutism that had made possible the legislative tyranny of the National Convention.<sup>641</sup>

Likewise, François Pagès insisted that it was precisely because he "idolized liberty [and] the republic" that he sought to preserve both by means of an "executive power that was more vigorous, more imposing, more engaged," what he called "a president, removable at the end of...five years, and eligible for reëlection" following some suitable interval.<sup>642</sup> Lenoir-Laroche suggested a *gouverneur*, elected for four years by a special college of departmental representatives, and invested with the American veto. He warned that elective kingship would deteriorate into either a disguised monarchy like the Dutch Stadtholderate, or else a marionette

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<sup>641</sup> Pierre-François, comte Réal, *Journal de l'opposition* (1795), reprinted in *Porte-feuille politique d'un ex-employé au ministère de la police générale* (Lebrun [de Grenoble] ed., Paris, 1800), 285, 289-90, 287. || For Réal's biography, see [Mathieu-Guillaume-Thérèse] Villenave, "Réal (Pierre-François)," in *Biographie universelle, ancienne et moderne* (L.-G. Michaud ed., Paris, 1846), 78: 374-93, esp. 386 ("il fut nommé *historiographe de la République*" in 1796) and 387 (Réal's important role in the events of 18 Brumaire). || Cf. Lebreton, *Idées*, 14-16.

<sup>642</sup> Pagès, *Histoire secrète*, 2: 286; 1: 7 ff. 1. He supported this stance with a long quote from Réal.



like the Polish crown, dancing to the song of foreign puppeteers.<sup>643</sup> Lamare recommended a slate of *consuls*—“un, deux, trois chefs exécutifs,” each with his own distinct sphere of activity—in order to safeguard “energy in the executive...which is necessary for the execution of laws, the protection of property, the repression of factions...and the general defense of the state.” These consuls, more formidable than their Roman predecessors, would serve staggered two-year terms, and would not be installed at the caprice of the legislature but elected (directly or indirectly) by the people themselves.<sup>644</sup> A memo titled *Constitution Républicaine*, forwarded without attribution to Boissy d’Anglas’s constitutional commission, envisioned a *Président de la République*, selected by lot from seven candidates nominated by the legislature. He would serve without interruption until the age of seventy, would “make war and peace and all external treaties,” and would possess “an absolute and unlimited veto on all laws proposed or interpreted by the legislature.” He would also be permitted to prorogue the assembly and order new elections, a privilege unequivocally denied to both the American president of 1787 and the reformed Bourbon monarch of 1791.<sup>645</sup> Even the staunch royalist Vaublanc thought this extreme, or at least unsuited to the moment; he endorsed a council of state headed by an annual president, ineligible for reëlection, and surrounded with sufficient pomp and dignity to quell all “rivalries, jealousies, and animosities” among his peers.<sup>646</sup>

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<sup>643</sup> Lenoir-Laroche, *De l'esprit*, 164-5.

<sup>644</sup> Lamare, *L'Équipondérateur*, 47, 48 (“Consul de l’intérieur, consul de l’extérieur, cette distribution est la plus naturelle”), 49 (“ce pouvoir a été trop foible dans la République romaine, trop dépendant du Sénat”), 50 (“il est indispensablement nécessaire de relever chez nous la dignité de la magistrature exécutive. Nous l’avons justement avilie dans la personne d’un despote; il faut, pour l’intérêt de la liberté, la réhabiliter dans celle des hommes de notre choix”).

<sup>645</sup> *Constitution Républicaine*, AN C-229(1), 183/6/1, No. 302, 3. Cf. *Plan de Constitution*, AN C-227, 183/3/16 (suggesting “un agent unique responsable de l’exécution de la loi, absolument independant du corps législatif...Il serait chargé [avec] les relations et correspondances avec les puissances étrangères, et de préparer toutes les traités d’alliance, commerce et de paix”).

<sup>646</sup> Vaublanc, *Réflexions/bases*, 34-5.

A republic, Vaublanc explained, could not long subsist without a kinetic and independent executive officer; he warned his countrymen to “ignore the counsels of weakness and demagogy, which quake in fright or explode in anger at the least measure capable of giving a vigorous action to the execution of the laws.” Though folk wisdom held that ambition was the cradle of despotism, in fact “tyranny never arrives except where it is preceded by anarchy,” and the conspirators against French liberty were those most eager to emasculate the executive branch, in hopes of rising to power on the resulting tide of disorder and discontent. “It is those who refuse to govern that must be feared, and not those who stamp on public affairs the mark of their genius.”<sup>647</sup> Some of his most observant readers thought he had failed to take his own advice; Hékel griped that under his proposed constitution, the legislature could accuse the *conseil exécutif* of a conspiracy against liberty, arrest its members, and appoint its replacements. It would do so, he suggested, at the slightest provocation in order to make itself absolute; Vaublanc’s loophole would become a noose, and republicans would be scattered to the coasts of Tunis and Algiers by the resulting reign of Terror.<sup>648</sup>

A related argument, familiar from the debates over the framing and ratification of the American constitution, was that a plural executive would diffuse and confuse lines of responsibility, while a centralized executive with a single head was uniquely susceptible to surveillance and control by the people and their representatives. Lebreton, contrasting his projected *président* with the collegial executive that oversaw the Terror, trilled this note incessantly.

A single man, placed at the center of the executive, finds all others arrayed against him...His responsibility is complete, and weighs on him alone. Nothing can remove the sword suspended above his head...On the other hand, ephors, decemvirs, committees, and executive councils are much less vulnerable to attack...and

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<sup>647</sup> Ibid., 29-30

<sup>648</sup> Hékel, *Bases d'une constitution*, 18 ("Ô Tunis, ô Alger, devenez nos asyles!"). For the passage he critiques, see Vaublanc, *Réflexions/bases*, 64.

so every ambitious citizen finds that it is in his interest to favor an increase and extension of their powers, from which they hope to profit in their turn. Responsibility, divided among several persons, ceases to exist in any of them. We see the proof of this everywhere: a majority of the members of Robespierre's government are still at liberty...and nothing at all has been done to hold any of them responsible for the fact common to all of them, their tyranny. If one compares this indulgence to the rigors visited on those suspected of aspiring to absolute authority, he will be convinced that power is much less dangerous in the hands of one man than in the hands of many.<sup>649</sup>

The memorandum *Établissement d'un Magistrat unique électif et temporaire*, part of the working papers of the Commission des Onze, took a similar line: "The more concentrated it is, the easier it is to limit executive power...in entrusting the direction of the executive power to a sole magistrate, supported by ministers he himself has chosen, it becomes possible to unite the inviolability or supreme respect with which such a power must be invested...with the active and urgent responsibility which alone assures execution."<sup>650</sup> It is not accidental that this memorial plagiarizes Jean Delolme's acclaimed monograph *Constitution de l'Angleterre*;<sup>651</sup> the intuition that a forceful, concentrated executive might prove easier to monitor than a council or board was a mainstay of eighteenth century British and American political thought.<sup>652</sup> It was natural that it would reappear in the writings of those French publicists most familiar with the political universe across the Channel and beyond the Atlantic. Thus Jacques-Vincent Delacroix, author of the official exegesis of Adams's *Defence*, as well as a multivolume study of Atlantic

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<sup>649</sup> Lebreton, *Idées*, 16-17.

<sup>650</sup> *Établissement*, 1.

<sup>651</sup> Compare *Établissement*, 1 ("Il en plus facile de limiter le pouvoir exécutif lorsqu'il est plus concentré. L'effet de la division du pouvoir exécutif est ou l'établissement plus ou moins prompt du droit du plus fort ou une guerre continuelle..."); Jean Delolme, *Constitution de l'Angleterre* (Amsterdam, 1771), 164 ("En un mot, l'effet de la division du Pouvoir exécutif est l'établissement du droit du plus fort ou une guerre continuelle...").

<sup>652</sup> For American echoes of Delolme, see: Jonathan Jackson, *Thoughts on the Political Situation* (Worcester, 1788), 182 ("I believe also, in the absolute necessity of one man, not only to represent the dignity of the Commonwealth, but to be alone responsible *in the dernier resort* for the execution of its laws, and for the preservation of its balance"); [Alexander Hamilton], Federalist No. 70 [1788], *The Federalist Papers* (Terence Ball ed.), 345 ("But one of the weightiest objections to a plurality in the executive...is that it tends to conceal faults, and destroy responsibility."). || John Adams was not fully committed to the ideal of executive responsibility, particularly when it shaded into legal culpability. His annotations to Mary Wollstonecraft make this quite plain: "The supreme head of the executive of a great nation must be inviolable or the laws will never be executed. If such heads are liable to civil actions and criminal prosecutions and impeachments, the government will easily be ruined." See Haraszti, *Adams*, 222.

constitutionmaking,<sup>653</sup> urged that because a monocratic executive would be “responsible for the errors and faults of his agents, he would put all his care into choosing citizens worthy of this august mission.”<sup>654</sup> A unitary executive was incentivized, in other words, to surround himself with superior staff. The adventurer Francisco Miranda commandeered not only Hamilton’s ideas, but also his biography, to make the same point:

Only the executive power is in need of agents in order to exercise the functions entrusted to him; consequently he must control their nomination...The Americans charged the executive with this function, and [the result was] Hamilton, appointed by the president of the United States, who has proved himself to be an upright minister and an able administrator. His talent and his maneuvers have so far reestablished the public credit that American paper money that at the time of its peace treaty [with England, in 1783] was worth only ten percent of its face value has, under the current constitution, appreciated to one hundred twenty-seven percent.<sup>655</sup>

Miranda contrasted Hamilton’s financial wizardry with the parlous state of French public credit, disastrously mismanaged during the Terror and now on the verge of insolvency.<sup>656</sup> He left the reader to draw the obvious conclusion—that the future of the *république* hinged on a Hamiltonian political economy of debt repayment and industrial policy, allied to a Hamiltonian executive branch that would insulate talented experts from legislative meddling.

The fulcrum of the Hamiltonian executive was the negative voice—originally intended to be absolute by the leading exponents of executive prerogative, who were forced at Philadelphia to

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<sup>653</sup> Jacques-Vincent Delacroix, *Constitutions des Principaux États de l’Europe, et des États-Unis de l’Amérique* (Paris, 5 vols., 1791-93). See esp. Delacroix, XXVIe Discours: Des États-Unis de l’Amérique and XXVIIe Discours: De la Constitution des États-Unis, *Constitutions*, 2: 321-84.

<sup>654</sup> Jacques-Vincent Delacroix, *Des moyens de régénérer la France* (Paris, 1797), 8.

<sup>655</sup> Miranda, *Opinion*, 8.

<sup>656</sup> *Ibid.*, 19-23. Cf. Francisco Miranda to Alexander Hamilton (Apr. 5, 1791), in *Papers of Alexander Hamilton* (Harold C. Syrett, ed., 1965), 8: 245 (“je peut vous assurer que vos *Plans* des finances; de Banc-nationale...non seulement ont merité l’admiration des gens de la plus grande consideration ici; mais ils ont donné aussi la plus haute idée du Nouveaux Gouvernement”). On the conservative admiration for Hamilton’s quasi-presidential leadership, see C.-F.-A. Lezay-Marnésia, *Plan de lecture pour une jeune dame* (2d. ed., Lausanne, 1800), 210 (“M. Hamilton...homme de beaucoup d’esprit et d’une grande sagesse, seroit capable de bientôt élever l’Amérique septentrionale au plus haut degré des prospérité politique, s’il étoit secondé par l’esprit national”).

accept a qualified veto defeasible by legislative supermajority.<sup>657</sup> Many French moderates viewed this compromise as worthy of imitation. No one took this further than Lenoir-Laroche, who held forth on the proper ambit of executive power, and the prerogatives that sustained it, in his 1795 *Examen*:

If one considers executive power in its nature and its purpose, it would seem to be limited by the term itself, which restricts it to the *execution* of the laws. The function of *executing* the law seems distinct from that of *making* it; and since we acknowledge the danger of combining different powers together, shouldn't the rigor of this principle circumscribe the executive power within the limits of its true sphere? What power would this institution, already armed with all the force of government, possess if we added to it the ability to arrest the exercise of legislative power? We answer that if it were to happen that the two branches of the legislature, carried by the same spirit to a common error, agreed to invade other powers, violate the constitution, and menace the liberty [of the nation], it would be well for society to locate a third watchman to guarantee its own security. The negative right accorded to this watchman would be limited...and would give way at the insistence of the legislature when supported by two-thirds or three-fourths of its members. In a word, there would be little to fear from an official who would be elected by the people, and who would be restricted to a limited term of office.<sup>658</sup>

The aim of a second assembly was to build a rampart against the lawless reign of a temporary legislative majority; the purpose of an executive veto was to rescue the state from a concerted attack by the two assemblies. Rather than carry this to the point of infinite regress, Lenoir-Laroche suggested a flexible negative that could be overcome by determined majorities, but that would freeze actions motivated only by mass panic or popular frenzy. One critic, in the midst of a favorable notice, supplied an additional, epistemic rationale for the veto: “the depository of the executive power, whose knowledge is fortified by the experience and practice of governing a vast state...will often discover defects in legislation that have eluded” its original authors.<sup>659</sup>

Even if the executive is not more intelligent than the lawmakers he oversees, Lamare added,

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<sup>657</sup> See, e.g., Records of Rufus King, June 4, in *The Records of the Federal Convention* (Max Ferrand, ed., 1911), 1: 107 (“[James] Wilson moves & Hamilton seconds him that the Executive shd. have a complete and full negative — the former is in favor because the natural operation of the Legislature will be to swallow up the Executive...Butler agt. it — it will terminate in a King.”). For Hamilton’s game defense of the qualified negative, see Federalist No. 73 [1788], *The Federalist Papers*, 360 (“A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved”).

<sup>658</sup> Lenoir-Laroche, *De l'esprit*, 136-7. Cf. *ibid.*, 167.

<sup>659</sup> *Mercure Français*, Jun. 18, 1795, 224.

there is no harm in returning a bill to its originators for further deliberation. Nor was there any risk that this modest privilege would become the platform for a throne. “If, in the system of equilibrium, the negative remains exclusively in the hands of the chief executive, as in England, the government is monarchical; if...[it] returns the law to the two national councils, the government is republican.”<sup>660</sup> Lenoir did not cite any sources, but reviewers readily identified his partial veto as an appropriation of “the American constitutions.”<sup>661</sup>

Lamare, thoroughly versed in American constitutional thought, understood that in defending the qualified negative he was at odds with John Adams, who counted it among the most serious mistakes of the U.S. constitution.<sup>662</sup> Meanwhile F.P.B., enjoying the freedom conferred by anonymity, was willing to make the case for an absolute veto in language that seemed ripped from the pages of Adams’s *Defence*. “Without this necessary right,” he opined, “the balance of power would be broken, and there would follow storms, commotions, and tremors” to rival anything in nature. On the other hand an executive armed with this “terrible weapon” would rarely find the need to unsheath it, since its very existence would discipline legislators into adhering to their allotted constitutional boundaries.<sup>663</sup>

In Thermidor, the admiration for presidentialism was often the complement of a strenuous and barely disguised royalism. And this held, most of all, for those francophone writers best acquainted with the political theory of John Adams. We have seen how *modérés* touted the United States as proof that presidential leadership could be made safe for republics. But those

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<sup>660</sup> Lamare, *L'Équipondérateur*, 58.

<sup>661</sup> *Mercurie Française*, Jun. 18, 1795, 224.

<sup>662</sup> See [Lamare], Préface, xii (“Les Américains ont voulu donner...à leur premier fonctionnaire public un *veto* SUSPENSIF.”); Adams, *Défense*, 1: 398 (“si chacun de ces pouvoirs n’a pas...un *veto* absolu sur chaque loi qui sera proposée, la constitution ne peut jamais être durable”).

<sup>663</sup> F.P.B., *De l'équilibre*, 224.

further to their right stood this logic on its head, proclaiming that America was, in fact, a species of limited monarchy, whose success ought to license similar arrangements in France. It was a syllogism built, in part, on faulty premises, as in Mercier's report that Congress had abolished elections and appointed Washington "president-for-life," or Delacroix's assurance that Washington was pulling the strings of the Adams presidency from Mount Vernon.<sup>664</sup> But these misconceptions existed alongside the more penetrating observation that the nominally republican American executive was in practice far more powerful than the British king. This was sometimes packaged as a warning, as in Røederer's injunction, spoken in the voice of his intellectual idol Thomas Hobbes: "if you establish...a central authority that is highly predominant and highly coercive, take care that you have not recreated royalty under the title of a stadtholderate, a presidency, or protectorate (the presidency of Congress in America is in truth a monarchy)."<sup>665</sup> But just as often, it was presented as a realist insight about the uselessness of conventional taxonomies of government. This was the gravamen, for example, of F.P.B.'s *De l'équilibre des trois pouvoirs politiques*.

With regard to mixed monarchies, what difference is there between the King of England and the President of the United States of America, besides the worthless title "king" and the right to wear the crown? Does not Washington, by means of his role in public deliberation, wield more real power than George of Brunswick can by bribing members of Parliament? What difference was there between the King of England and his guest, the fugitive Stadtholder of Holland? England is not a monarchy but rather a poorly-organized republic, whose chief (like that of the Spartans) carries the title "king."<sup>666</sup>

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<sup>664</sup> *Annales Patriotiques et Littéraires*, Apr. 7, 1795, 519 (wrongly stating, in addition, that presidential elections in America occur "tous les cinq ans"); Delacroix, *Des moyens*, 304-5 ("il domine encore sous le nom de son successeur").

<sup>665</sup> [Pierre-Louis Røederer], "Entretien de plusieurs philosophes célèbres, sur les gouvernemens Républicain et Monarchique," *Journal d'Économie Politique* (1797), 4: 79.

<sup>666</sup> Charles Sécondat, Baron de Montesquieu, *Esprit des Loix* 5.19 [1748], in *Œuvres* (Paris, 1823), 41 ("la république se cache sous la forme de la monarchie"); F.P.B., *De l'équilibre*, 114-15. Cf. *ibid.*, 208 ("Le mot de *président*, donné à *Washington*, a deux syllabes plus que celui de *roi*; les Hollandais avoient préféré celui de *stathouder*. Ne seroit-ce qu'une dispute de quelques lettres plus ou moins?"); [Lamare], *Préface*, ii ff. 2 ("Washington est aujourd'hui président [roi temporaire] des États-Unis").

If England was, in the celebrated idiom of Montesquieu, “a republic disguised under the form of monarchy,” French thinkers under the sway of Adams now replied that America was itself a kind of “veiled monarchy,” with the outward forms of a republic.<sup>667</sup> The American presidency was thus the paragon for those hoping to reestablish the liberal monarchy of 1789 on the ruins of Robespierre’s *république des échafauds*.

Ironically, among reformers it was those closest to John Adams who were most wary of this sudden surge of enthusiasm for the American presidency. Attentive readers of the *Defence* were adamant that the U.S. presidency had yet to be crowned with perfection, or rather, perfected by a crown. Among the most consequential of these writers was Jean-Joseph Mounier, recognized by John Adams as the most able defender of his ideas in the first phase of the revolution,<sup>668</sup> who chastised his countrymen in a 1789 speech for “wanting to give fewer prerogatives to the French king than are held by the President of the American Congress.”<sup>669</sup> His 1795 dialogue *Adolphe* returned to this theme, juxtaposing the “extravagantly democratic” Jacobin constitution against the serene Montesquieuan equipoise of the American states, where populist fervor was emphatically kept at bay. Mounier remained enamored of the presidency, not only for its formal properties, but also because he sensed that it was gradually evolving in the direction of limited kingship. “It is natural to hope,” he wrote, “that as the population and wealth of America increases, the President of Congress will acquire more strength, and as it becomes necessary to

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<sup>667</sup> D’Ivernois, *Des révolutions*, 363; d’Ivernois, *Réflexions/guerre*, 104.

<sup>668</sup> John Adams to JQA (Nov. 12, 1807), Founders Online, <http://founders.archives.gov/documents/Adams/99-03-02-1620> (“You remember Mounier in the assembly of the States General, and in the National Assembly. He advocated the System of a mixed Government of King Senate and Commons, and a Separation of the Legislative Executive and Judiciary Powers. For these Sentiments he was obliged to fly and emigrate.”). Cf. R.R. Palmer, *The Age of the Democratic Revolution* (1959), 489 (“Mounier was a kind of French John Adams, with much of Jefferson in him also.”).

<sup>669</sup> Jean-Joseph Mounier, *Motifs présentés dans la Séance de l’Assemblée Nationale du 4 Septembre 1789* (Paris, 1789), 38.



give more energy to the executive branch, it will come ever closer to monarchy.”<sup>670</sup> Mounier left unspoken the final deduction: if the renowned American republic was speeding towards neo-royalism, it would be foolish for France to refuse a renaissance of liberal monarchy because it was wedded to the empty catchword *republic*.<sup>671</sup>

François d’Ivernois stated more plainly that the American presidency was not a fit subject for French mimicry—and, in framing his argument, drew persuasively on the writings of John Adams. The Genevan had corresponded extensively with Adams since reading the first edition of the *Defence* in January 1787,<sup>672</sup> and demonstrated an impressive grasp on the lineaments of his thought. He readily perceived that Adams’s chief executive would be “armed with all the prerogatives of the First Magistrate of Great Britain,” including the rights of war and peace, legislation, and administration.<sup>673</sup> And like Mounier, he saw that Adams and his ideological allies looked expectantly towards “the day when Americans will convert” their supreme

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<sup>670</sup> Jean-Joseph Mounier, *Adolphe, ou principes élémentaires de politique* (London, 1795), 121. Although the text is a fictional dialogue, this quotation is spoken by a tutor named Ulrich who functions as Mounier’s *porte-parole*. Cf. Jean-Joseph Mounier, *Recherches sur les causes qui ont empêché les François de devenir libres* (Geneva, 1792), 2: 198 (“...qu’à mesure que la population & le commerce s’augmenteront dans les Etats-Unis, ils s’avanceront vers un *stathoudérat* électif, ensuite héréditaire, c’est-à-dire, vers la monarchie.”).

<sup>671</sup> See, e.g., Mounier, *Adolphe*, 163 (“jamais ils ne parviendront à consolider ce qu’on ne vit jamais sur la terre, une république de vingt-quatre millions d’hommes. Quel que soient leurs efforts, le Roi légitime sera rétabli.”).

<sup>672</sup> François d’Ivernois to John Adams (Jan. 30, 1787), *Papers of John Adams* (Gregg L. Lint et. al, eds., 2016), 18: 570 (“Lord Landsown ayant satisfait mon impatience en me confiant votre *defence of the American Constitutions*; j’ai commencé cet ouvrage avec un plaisir et une attention, qui...me feraient desirer d’avoir avec l’auteur un entretien sur la suisse...”). Adams returned the compliment; see John Adams to François d’Ivernois (Dec. 11, 1795), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1700> (“I have read nothing for a long time with so much pleasure as the *Reflexions sur la Guerre*. It seemed to me like the returning dawn of Reason among Mankind.”).

<sup>673</sup> D’Ivernois, *Des révolutions*, 361-2; d’Ivernois, *Réflexions/guerre*, 102 (“...telles que celles de déclarer la guerre, de faire la paix, de nommer les Ambassadeurs, les Généraux, les Juges; d’appliquer son *veto* aux nouvelles loix, & de les faire exécuter après les avoir sanctionnées? C’est uniquement d’un Chef décoré de toutes ces attributions royales, que parle Mr. Adams. Que ce Chef porte le titre modeste de *Président* ou de *Stadthouder*; qu’il soit décoré de celui de *Roi*, ou même de *Protecteur*... ce qui importe bien plus, c’est qu’il soit revêtu de toutes les prérogatives du premier Magistrat de la Grande-Bretagne.”).

magistracy into a hereditary office.<sup>674</sup> But d'Ivernois struck a note of caution: this gradual metamorphosis could not be emulated in France, which possessed neither the social equality, nor the civic virtue, nor the political enlightenment to experiment with presidential government.<sup>675</sup> Its linchpin in America was the genius and phronesis of Washington, a "Roi républicain" appointed by something close to popular acclamation. And "men like Washington are a phenomenon in republics that will not be seen again," not in America and certainly not in France, a nation "that will furnish many more intellects like Voltaire, before it witnesses the birth" of a comparable figure. Neither could a figure of Washington's gravitas and dignity prosper in the *république*, ruled from its inception by a jealous and mercurial mob. The same crowds had lustily cheered the successive killings of Louis XVI, Danton, and Robespierre. "And this is the people," he reproved, "to whom you propose the free and periodic election of a head of government! [...] By what inconceivable contradiction do you think the French capable of repeating this ritual in tranquility every four years, thereby realizing the American constitution?" D'Ivernois's prescription, following John Adams, was neither the unstable alloy of the American constitution, nor the muddled "royal democracy" of 1791; it was the discarded *Anglomane* constitution of 1789 imagined by reform liberals like Mounier, Lally, and Necker: "a supreme and hereditary executive, balanced by a legislature divided into two chambers."<sup>676</sup>

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<sup>674</sup> D'Ivernois, *Des révolutions*, 365. Cf. d'Ivernois, *Réflexions/guerre*, 105. Cf. John Adams, *A Defence of the constitutions of government of the United States of America* (London, 3 vols., 1788), 3: 373 ("An hereditary first magistrate at once would, perhaps, be preferable to elections by legislative representatives: it is impossible to say, until it is fairly tried, whether it would not be better than annual elections by the people; or whether elections for more years, or for life, would not be better still."); John Adams to François Adriaan van der Kemp (Feb. 27, 1790), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0854> ("Elections of Presidents...cannot be long conducted in a populous, opulent and commercial Nation, without Corruption, Sedition and Civil War.").

<sup>675</sup> D'Ivernois, *Des révolutions*, 352; d'Ivernois, *Réflexions/guerre*, 93 ("il lui faut ou le phlegme Hollandais, ou la lenteur Helvétique, ou la sagacité Génoise, ou la prudence Vénitienne, ou les lumières que l'Américain qvait puisées à l'école de la Liberté Anglaise.").

<sup>676</sup> D'Ivernois, *Des révolutions*, 364-365, 367, 369, 371, 384; d'Ivernois, *Réflexions/guerre*, 105-6, 108, 109, 120. || Cf. John Adams to John Quincy Adams (Jan. 2, 1793), in *Adams Family Correspondence*, 9: 368 ("My Opinion has

Sophisticated readers of Adams's *Defence* could decipher its encrypted monarchism, but the text's unyielding commitment to bicameralism and constitutional balance sat on its surface. And it would become the major theme of Adrien Lezay's *Qu'est-ce que la Constitution de 93?*, which made a sensation on its publication in early 1795,<sup>677</sup> was read with great excitement by Rœderer and Madame de Staël,<sup>678</sup> and stimulated a flurry of similar work.<sup>679</sup> Commentators were captivated above all by its novel form: a Socratic dialogue between John Adams and Benjamin Franklin on the separation of powers, with Lezay firmly on the side of Massachusetts and the double legislature. For twenty pages, "Samuel" Adams delivers a disquisition on the ideas animating the Massachusetts constitution—representative government, the rule of law, the division of legislative power to prevent its capture by demagogues, and the restriction of the franchise to an educated elite.<sup>680</sup> When Lezay's Franklin calls this program "an aristocratic fiction and an organized faction," Adams replies briskly. The Pennsylvania constitution, he allows, "would be the best in the world...if every citizen were a Franklin," but in fact such men

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always been that in France a free Government can never be introduced without both an hereditary Executive and Senate." || On the fickleness of the Paris crowds, see also Auguste Danican, *Notice sur le 13 Vendémiaire, ou les Parisiens vengés* (Paris, 1796), 94 ("on nous a entendu vociférer tour-à-tour comme des bandes insensés: *Vive la nation...vive Necker...vive la constitution de 91...vive la république...vive la terreur...vive la constitution de 93...à bas les jacobins, vive l'humanité et la justice, vive la constitution de 95...et vive tant d'autres qui ont tant fait mourir!!!*").

<sup>677</sup> See, e.g., *Considérations sur les états de Massachusett & de Pennsylvanie, L'esprit des journaux, français et étrangers* (Mar./Apr. 1795), 56-62, 61 ("son ouvrage est celui d'un grand politique, d'un philosophe profond, & qu'il annonce une plume exercée"); Paris, le 23 germinal, *Annales Patriotiques et Littéraires*, Apr. 13, 1795; *Nouvelles Politiques Nationales et Étrangères*, Jul. 29, 1795, 1242.

<sup>678</sup> Note de M. Rœderer, *Journal de Paris*, May 19, 1795, reprinted in *Œuvres*, 6: 85; Lucien Jaume, Introduction to Madame de Staël, *Réflexions sur la paix intérieure*, in *Œuvres*, 3: 1: 127 ff. 26 ("Staël, liée à Lezay, a pu lire de lui *Qu'est-ce que la Constitution de 93?*...C'est probablement à lui que pensait Mme de Staël quand elle évoque une république à l'américaine dans les *Réflexions*").

<sup>679</sup> See, e.g., F.P.B., *De l'équilibre*, 106 ("Vous ne doutez pas si j'en ai fait lecture avec empressement. Ah! je l'ai dévoré. Puisse-t-il être entendu de tous les Français!").

<sup>680</sup> Lezay, *Constitution de 93*, 8 ("*Le peuple est souverain; mais il ne peut rien faire par lui-même...il lui faut des ministres, et l'exercice de sa souveraineté se bornera à les élire*"); 16 ("*le gouvernement des lix et non celui des hommes*"); 14 ("il ne seroit Roi que dans *sa chambre*, et que pour l'être dans l'état, il faudroit encore que celle-ci eût subjugué l'autre"); 21-2 ("*Verrons-nous l'égoût du globe...à côté du respectable laboureur, voter dans les élections...et donner aujourd'hui des loix au pays qu'ils trahiront, ou qu'ils désertent demain?*").

would require no government at all. Relying on moral or civic virtue to sustain a republic, particularly in an age suffused with the values and pressures of a commercial society, is a dead end.<sup>681</sup> To Franklin's charge that the Massachusetts Senate was the citadel of a new aristocracy, Adams retorted that it was the sole means of domesticating the elite and achieving social peace. In the absence of enforced equality through leveling, society will be invariably divided into distinct social strata. Thrown into a single chamber, these two classes will grapple for supremacy like scorpions in a bottle—or, as Lezay would have it, gladiators locked in an arena. But, sorted into two distinct chambers, neither class will be capable of dominating the other, and the goal of hegemony will recede in favor of collaboration and mutual coexistence. "Our senate," Lezay's Adams concludes triumphantly, "is the anchor of our constitution, as unity of representation is the stumbling block of yours." But before he can embark on a fuller exposition of "Georgia and Pennsylvania, the only two states where there is but one house of the legislature," he is interrupted by a genial Franklin, who implicitly surrenders, and asks his colleague to "leave the glory of critique to those who have not had the glory of creation."<sup>682</sup> Criticism was a task, in other words, better left to the republicans across the Atlantic, whose constitutional project was still incomplete.

This gauntlet would be taken up by a cluster of likeminded writers, who both recapitulated arguments for the dual legislature made famous in Adams's *Defence*, and framed their opposition to Jacobin republicanism with reference to Franklin's abortive constitution for Pennsylvania. One of the most lucid voices belonged to Lamare, who thought it essential to "trac[e] the

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<sup>681</sup> See Lezay, *Constitution de 93*, 27-9 ("dans un siècle où la richesse est la dispense de la vertu, le bien, le prétexte du crime, et le moindre frein le devoir"). Cf. John Adams to Samuel Adams (Oct. 18, 1790), in *Four Letters: being an interesting correspondence between those eminently distinguished characters, John Adams and Samuel Adams* (Boston, 1802), 11-12 ("Hume...seems well founded, that all projects of government, founded in the supposition or expectation of extraordinary degrees of virtue, are evidently chimerical.").

<sup>682</sup> Lezay, *Constitution de 93*, 30-3.

institutions of the free Americans...who have counterposed...the useful prudence of a Senate against the useful ardor of a council of representatives.” He had agitated for bicameral government since 1790, but his political science, inflected by his encounter with America’s founding texts, had been dismissed as a sentimental attachment to hereditary nobility. “Finally,” with the aristocracy in flight and the Montagne in disgrace, “I can be heard.”<sup>683</sup> His message, tirelessly reiterated in *L'Équipondérateur*, was that monocameral government was necessarily tyrannical:

The dominant majority in one of the two national councils is not for that reason sovereign; all of its power can be annihilated with a simple “no” from the other council, so that the *summum imperium* finds itself split. But in the system of unity of action, a majority, once formed, is the absolute master, not only of the minority but the entire state. It unites in itself the totality of the power of representation; the minority retains nothing.

Without countervailing institutions, the first party to seize a temporary majority will remold the state and civil society in its image, cementing itself in power, and stigmatizing its ideological enemies as a caste apart:

It will spare no expense to make the its rival, the minority, despised. Soon epigrams and pamphlets will multiply, targeting the minority with ridicule and contempt...[The majority] will have the public treasury at its disposal...In places of assembly, schools, and theaters, elegies to the conqueror of the day will ring out, and the vanquished party will be demeaned. State and administrative bodies, even courts, will not be exempt from this influence. In public meetings one will see on one side nothing but swagger, haughtiness, and disdain, and on the other, discouragement and disgust. The majority will talk ceaselessly; the minority will complain in private that public deliberation is not truly free.<sup>684</sup>

This was, of course, a capsule history of the republic from September 1792 to July 1794. It was a time in which, in the judgment of Lamare, moral order was subverted, property rights were overturned, and cries of dissent were silenced with the guillotine. And the carnage of Year II was set in motion by the unicameral constitution of Year I, a lesson drilled into the translator through his repeated readings of the *Defence*. Indeed, Lamare’s jaundiced survey of unicameralism and

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<sup>683</sup> Lamare, *L'Équipondérateur*, 22.

<sup>684</sup> Ibid., 23-4. Cf. *ibid.*, 15 (“Toute assemblée législative non-balancé sera souveraine. Vainement on croiroit la lier par les lois: au premier instant de crise, elle les franchira toutes, et se fera maîtresse absolue.”).

minority rights, though presented as a firsthand account of the Jacobin dictatorship, was a light paraphrase of Adams's original text:

The whole judicial authority, as well as the executive, will be...prostituted to the purposes of electioneering. No justice will be attainable...in the judicial courts; but for the friends of the prevailing leaders...public money will be expended in the same way. No favours will be attainable but by those who will court the ruling demagogues in the house, by voting for their friends and instruments...Even the theatres...must become politicians, and convert the public pleasure into engines of popularity for the governing members of the house...The presses, with much secrecy and concealment, will be made the vehicles of calumny against the minority, and of panegyric and empirical applauses of the leaders of the majority.<sup>685</sup>

These words, when Adams composed them in 1788, were directed at the Pennsylvania constitution, his longtime *bête noire*, which he associated with Paine and Franklin, and predicted would devolve into a maelstrom of demagogy and riot if not amended. Several years later he would argue that Franklin's constitution had served as the template for Condorcet's *projet* and its Jacobin double, and grieved that the "Idolatry" of government in a single assembly had turned France into a killing field.<sup>686</sup>

It was only natural that Adams's French votaries would pick up on this loose genealogy, twisting the ignominious demise of Pennsylvania unicameralism into proof of the balanced constitution's latent superiority. Thus Vaublanc, like Adams, could gloat that "in 1790 Pennsylvania, enlightened by experience," appended a Senate to its "simple" plan of government, surely a preview of France's own future. F.P.B. imagined the predicament of an assembly of European philosophers in the state of nature, consulting "the *Social Contract*, or the posthumous work of Condorcet, or the political plans of Franklin, and attempting to form a pure republic." He showed that these radicals, beginning from a premise of universal and equal rights, would nevertheless be led step by step to dismantle the democratic government they favored, and to recreate the "trinité des pouvoirs" they abhorred, in order to enjoy even a modicum of public

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<sup>685</sup> Adams, *Defence*, 3:284-5. See also Lamare's translation at Adams, *Défense*, 2: 220.

<sup>686</sup> Adams, *Defence*, 1: 105-21; John Adams, *Discourses on Davila* (Philadelphia, 1805) [copy held at the Boston Public Library], 83; John Adams to Thomas Boylston Adams (Apr. 7, 1796), *Adams Family Correspondence*, 11: 243; John Adams to the *Boston Patriot* (Feb. 9, 1812), JA EA.

order. François Pagès, too, linked his plea for constitutional reform in France, by which he meant chiefly the advent of presidential government, to the decades-long rivalry between Massachusetts and Pennsylvania, now fully resolved:

Enlightened by the wisdom of Adams and Franklin, as well as by reason and experience, the Pennsylvania convention, charged with revising its constitution, reformed it according to the indelible principles of all free governments. It rejected the democratic illusion by dividing its legislature into two chambers, and by giving a negative to its executive branch, concentrated in a government elected for a life term. M. Adams, refuted so poorly by the immature minds of Europe, was not a man to let himself be seduced by the phrases of rhetoricians, or by metaphysical paralogisms. Pennsylvania, guided by Adams, went further, making its judges nonremovable. For our part, we don't propose an executive with a life term, merely one that is unique and removable at the end of five years.<sup>687</sup>

And an author who signed his name D.M.X., and titled his intervention *Observations d'un Villageois*, saluted the wisdom of the Americans for preserving “cette triple division de la Législature & ce droit négatif” under which they had “prospered for 150 years.” An attached footnote lauded “le savant Jonh [sic] Adams,” who in his writings “concurred powerfully” with the system of constitutional checks now under consideration in France. The note recounted, too, the sad tale of Pennsylvania, forced “by its intestinal divisions” to abandon its unworkable single assembly, and to “adopt the system of the three powers. What a lesson!”<sup>688</sup> The great virtue of America, Lamare contended, was in having shut its ears to the siren song of the radical constitution. Here he reprised, with uncanny accuracy, Adams's own narrative of constitutional combat with Condorcet and the malignant forces of the radical Enlightenment:

At the time of the American revolution, some French friends of M. Turgot, contemptuous of all tradition, advanced the doctrine of gathering all authority in one center; they even sought to spread it among the Americans. I know that Citizen Condorcet himself, in a polemical text, battled with the opinions of John Adams, and sought, by supporting the system we live under today, to refute the idea that the French know nothing of the science of government. But I know, too, that the Americans read these writings and

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<sup>687</sup> Pagès, *Histoire secrète*, 2: 338-9. The incorrect suggestion that Pennsylvania (or, indeed, any of the American states) appointed its governor for life indicates a closer reading of Adams's *Defence* than the texts of the state constitutions. Cf. *ibid.*, 1: 76 (“Ajoutez à ces écrits [Montesquieu, Mably, and Rousseau] l'excellent ouvrage de M. Delolme, les *Recherches sur les Etats-Unis d'Amérique...et la Défense de la constitution américaine*, par John Adams.”).

<sup>688</sup> Vaublanc, *Réflexions/bases*, 13; F.P.B., *De l'équilibre*, 111-7; D.M.X., *Observations adressés à la Commission des Onze, sur son plan de constitution, par un Villageois* (Paris, 1795), 15.

nonetheless persisted in the opinion that there can be no free government except through the separation and balance of powers.<sup>689</sup>

Beginning with his *Lettres d'un Citoyen de New-Heaven*, a French text commenting on American constitutional affairs, Condorcet had waged a war on two fronts. He was routed in America, which instead adopted the ideas of Adams and his imitators, leaving the marquis to complain furiously of an incipient oligarchy in the west. He triumphed at home and died, despondent, in a wreck of his own creation.

Publicists, waking from the Jacobin nightmare, now spoke familiarly of the separation of powers, though it quickly became apparent that they hoped to realize this ideal with only cosmetic alterations to the fabric of government. One commentator suggested that “separation” could be achieved simply by multiplying the number of executive committees in the Convention; Lamare satirized this with the image of a host serving a blend of two liquors in six separate glasses.<sup>690</sup> He was emphatic that the only effective blueprint was that outlined in the *Defence*, which he summarized as “the perpetual play of three powers who track one another, surveil one another, and serve as reciprocal counterweights.”<sup>691</sup> Across fifteen pages Lamare traced the lineaments of a constitutional order that might fit this description. Its bicameral legislature would comprise a Council of Ephors, five hundred members elected at two-year intervals by the people, as well as a Senate of eighty-five members, appointed by local councils to serve staggered six-year terms. Two consuls, elected by departmental governments, would preside over the administrative state and the national defense. Lamare was not bashful about the Anglo-American provenance of his draft constitution:

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<sup>689</sup> Lamare, *L'Équipondérateur*, 11.

<sup>690</sup> *Ibid.*, 31.

<sup>691</sup> *Ibid.*, 6. Cf. F.P.B., *De l'équilibre*, 21 (“La seule et unique théorie de gouvernement est celle de l'équilibre des trois pouvoirs, fondée essentiellement sur la nature universelle.”).



Suppose we adopted this plan of government. The next day we could say to the free Americans: It is your government, friends, that we have chosen. And to the English: We have adopted your government—with something very like royalty, and something very like a nobility...And to monarchical governments: Come...negotiate with us, we also have *kings* after a fashion, you may communicate with our consuls...I would even venture to say that, domestically, this form of government is built to satisfy all tastes...and will enjoy the unfailing confidence of the people.<sup>692</sup>

Lamare revived his idiosyncratic contention from 1793 that the European war was provoked in part by the irreducible *strangeness* of French political institutions. But these assurances were not meant only for foreign audiences; he believed sincerely that only a forceful government, with a monarchical head, would possess the formal prerogatives and ceremonial dignities to conclude peace negotiations with the great powers. On the other hand, dissident Jacobins now issued a new kind of prognostication. The Americanization of the French constitution so desired by reformers would not—indeed, could not—proceed without sacrificing the most prized aspect of the Jacobin constitution: its ironclad commitment to centralization and indivisibility. The radical journalist Pierre-Antoine Antonelle articulated this inchoate fear of partition with admirable clarity: France, under the sway of a rising class of Americanophiles, will find itself carved into “three great aristocratic republics...each having its general congress and its single president...each being formed out of the aggregation of several smaller states, confederated together as in the United States of America.” Unicameralism meant not just equality but unity; without a common legislative center to organize the republic, France faced a bleak future of feudal stratification and atomized jurisdiction.<sup>693</sup>

There was no more charged accusation during the period of Jacobin ascendance than that of federalism. “The word *federalist*,” Brissot recorded with cold clarity, “has become the sign of a

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<sup>692</sup> Ibid., 67.

<sup>693</sup> Pierre-Antoine Antonelle, *Motion d'ordre à l'occasion de la Brochure de Louvet* (Paris, 1795), 6. Cf. the handwritten critique of Vaublanc sent to the Commission des Onze by Jérôme Pétion, father of the recently-executed Girondin leader, at AN C 183-5/1 No. 210 and No. 270 (“Si le Sénat est utile aux états unis de l'amérique, cela nous conduiront très loin...[la république] des états unis est fédérative, et la nôtre ne l'est pas, ce qui convient à l'une peut ne pas convenir à l'autre.”).

hypocritical horror, and a watchword of the executioner.”<sup>694</sup> As civil war raged in the Vendée every concession to divided sovereignty, however intellectual or abstract, came to seem like a mortal attack on the revolution itself. Saint-Just announced on the floor of the Convention that the confederal nature of the United States meant that it was “nothing like a true republic,” and predicted that it would eventually dissolve in a tide of blood and chaos. “One day, and this epoch may perhaps be rather distant, the states will arm themselves against one another, the representatives will take sides, and America will end like the confederation of ancient Greece.”<sup>695</sup> Anacharsis Cloots spoke for a number of his contemporaries in positing a global axis linking American federalists and French Girondins in a plot to break apart the two republics in order to rule them more easily.<sup>696</sup> The obsession imposed itself even on unrelated discussions; when a deputy suggested that Marat be expelled from the Convention pending a two-thirds supermajority vote, “according to the usages established by the American constitution,” the montagnard Claude Bazire shot back a venomous nonsequitur: “they speak to us of the American constitution to lead us towards a federative government.”<sup>697</sup> The atmosphere was so thick with paranoia and bad faith, Brissot added, that he had been censured for complimenting the *Federalist Papers*, which was assumed from its title and national origin to be a manifesto for

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<sup>694</sup> Jacques-Pierre Brissot, "Dernier mot, sur Clootz", *Le Patriote Français*, Nov. 24, 1792, 599. Cf. François Buzot, *Mémoires sur la Révolution française* [1793] (Paris, 1828), 50-3 (“Le reproche de fédéralisme qu’on a fait aux proscrits, serait peut-être un nouveau titre à la reconnaissance publique, s’ils l’eussent mérité; mais il n’est pas mieux fondé que tous les autres.”).

<sup>695</sup> Louis Antoine de Saint-Just, Discussion sur la division politique de la république française, Suite de la séance du mercredi 15 mai, *Moniteur*, May 17, 1793, RAM 16: 396.

<sup>696</sup> Anacharsis Cloots, Bases constitutionnelles de la république du genre humain, *Moniteur*, Apr. 30, 1793, RAM 16: 252 (“Les fédérés français communiqueront aux fédéralistes américains le vrai système social, par la fusion des masses, par la confédération des individus.”).

<sup>697</sup> Séance du Mardi 26 Février, *Moniteur*, Feb. 28, 1793, RAM 15: 571. Article I, sec. 5, clause 2 of the U.S. constitution permits each house to “punish its Members for disorderly Behaviour, and, with the concurrence of two thirds, expel a Member.”

decentralization.<sup>698</sup> By the time of the orator's trial in the autumn of 1793, the hazy charge of Girondin federalism had hardened into legal fact,<sup>699</sup> and ritual denunciations of *fédérés* crowded the pages of the *Moniteur*.<sup>700</sup> It is hardly surprising that the politicians working to assemble a post-Thermidor political order would have distanced themselves from any association with American federalism. In the words of one of their earliest pronouncements, "neither in our speeches, nor in our writings, nor in our conduct, have we given the slightest indication of any thought to divide France into a united states."<sup>701</sup>

It is jarring, then, to see that in the constitutional moment of 1795 even this basic presupposition was called into question, with publicists now hinting that a federalism inspired by America might inoculate France against a relapse into Terror. That Lebreton, undaunted when advocating a single executive, buried this proposal in a footnote, and encased it in the protective halo of Rousseau, gives some sense of how controversial it remained. "The only remedy that Rousseau discovered for the vices resulting from the great magnitude of a state...is a federative constitution. This is what has been adopted in Anglo-America, and it is a solution I would like to borrow for our own country. It would be easy, merely by looking at a map, to divide France into

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<sup>698</sup> Jacques-Pierre Brissot, *A Tous les Républicains de France*, (Paris, Oct. 24, 1792), 62-3 ("Robespierre continua de répandre que je vouloir la république fédérative...parce que j'ai fait l'éloge du Fédéraliste. Ignorans! ils ne savent pas que le Fédéraliste est précisément un ouvrage fait contre le fédéralisme").

<sup>699</sup> Société des Jacobins, Séance du Dimanche 15 Septembre, *Moniteur*, Sept. 20, 1793, RAM 17: 686 ("A-t-il existé une conspiration fédéraliste, tendant à ramener à ramener en France les anciennes divisions de provinces...? Brissot, Pétion, etc., ont-ils trempé dans cette conspiration?").

<sup>700</sup> See, e.g., Thuriot, Séance du Dimanche 21 Juillet, *Moniteur*, Jul. 23, 1793, RAM 17: 192 ("la chaine de fédéralisme, qui s'étend du Jura, en passant par Lyon et Marseille, jusqu'à Bourdeaux"); Mailhe, Séance du 26 du Premier Mois, *Moniteur*, Oct. 19, 1793, RAM 18: 151 ("L'arrête qu'on vient de vous lire est un acte de fédéralisme; je dirai plus, c'est un crime de lèse-nation"); Barère, au nom du comité de salut public, Suite a la Séance du 21 Ventose, *Moniteur*, Mar. 13, 1794, RAM 19: 682 ("Le fédéralisme est là pour la déturer à chaque époque, pour la tourmenter à chaque instant, et le fédéralisme est une maladie compliquée de prédilections locales...d'égoïsme dans les âmes, d'orgueil provincial...contre la plus belle cité du monde."); Rapport fait à la société des Amis de la liberté et de l'égalité, sur les nombreuses accusations à porter contre l'ex-ministre Roland, par Collot-d'Herbois (Mar. 3, 1793), in *Archives Parlementaires*, 62: 666 ("...un plan de fédéralisme élaboré en commun, avec Brissot et ses adhérents, pour nous donner une Constitution à la manière américaine").

<sup>701</sup> Jean Dussaulx et al., *Les douze représentans du peuple, détenus a Porte-Libre* (Nov. 16, 1794), 13.

a certain number of independent and federated republics.” Paris, too large and wealthy to be a department among equals, might be converted into a federal city on the model of the District of Columbia.<sup>702</sup> D.M.X. offered a softer version of the same idea in an open letter to the Commission des Onze, arguing that the nation ought to return a maximum of “purely administrative” power to its *départements*, facilitating subsidiarity without compromising its indivisible sovereignty.<sup>703</sup>

But the most forceful plea to remake France as a federal state was delivered by Jacques Necker, whose social stature and residence in Geneva insulated him from the most serious consequences of his constitutional heterodoxy.<sup>704</sup> At the outset of a chapter titled *République Fédérative. Exemple des Américains*, the baron of Coppet identified a fatal tension between the republic’s dual ideals of “perfect equality and indivisibility of government.” Put simply, the former precluded kingship, aristocracy, and an established church; the latter required it. Only a mystified and sacralized politics—as expressed above all in the ethereal splendor of royal ceremony—is capable of generating sufficient *auctoritas* to bind a constellation of disparate, self-interested individuals to a common center. Political equality promises that all differences in status will be liquidated, or else justified through reasoned appeal to the common good—which is to say, it disenchants the hierarchies that render a large state governable. Where the finery of baroque monarchy no longer fires the imagination, there is only one path to political order:

America presents a model of this last order of things. The states of which it is composed each have their particular government, but by virtue of the links of federal government, they are all joined to the same nation. And it is to this federal government, under the name of Congress, that they have entrusted the supreme direction of their common interests: commerce, coinage, roads, alliances, war and peace, and support for the governments of individual states. Thus, by a double movement, the federal authority

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<sup>702</sup> Lebreton, *Idées*, 4 ff. 1.

<sup>703</sup> D.M.X., *Observations...par un Villageois*, 18.

<sup>704</sup> On the dangers he courted in publishing, see Staël, *Considerations*, 389; Henri Grange, *Les idées de Necker* (1974), 109-150.

prevents internal divisions from weakening the national power, while ensuring that individual state governments are not carried away by levelling radicals. And so by virtue of its federal institutions, America preserves the purity of its domestic manners...without sacrificing either the *éclat* in external affairs characteristic of large states, or the domestic virtue characteristic of small ones.<sup>705</sup>

He capped this passage with an exclamation: “Admirable système! et le seul convenable, je le crois, à une vaste République démocratique.” Necker glanced with nostalgia at the *ancien régime*, but recognized that a new age of equality loomed in France in which “religious ties are broken, paternal authority is abolished, regulatory principles are in discredit...and mores are in disarray.”<sup>706</sup>

Durable political arrangements for this fallen world would follow the blueprint of American federalism. First, because it presented a barricade against political extremism: under the U.S. constitution, Necker wrote, a principal role of the central government was to repress zealotry and fanaticism in the states. Strikingly, he analogized this tutelary role, enshrined in the Constitution’s Guarantee Clause, to the great power practice of “guaranteeing” the liberty of small and insecure states like his native Geneva.<sup>707</sup> This image of a placid center policing extremism along its periphery was inverted in France, whose moderate provinces were ruled from a turbulent capital where sans-culotte mobs and political clubs sparred for influence. The inflexible commitment to *indivisibilité* made Paris a perpetual battlefield, and gave ominous leverage to the city’s proletariat, who could intimidate the Convention into compliance through

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<sup>705</sup> Necker, *De la révolution*, 4: 2-3. Cf. *ibid.*, 4: 28 (“les idées d’Egalité et l’Unité, l’indivisibilité du Gouvernement sont inconciliables; que, dans un vaste pays, il faut opter entre le système des Républiques Fédératives et le système d’une Monarchie tempérée.”). || For further commentary, see Henri Grange, Introduction, Benjamin Constant, *Fragments d’un ouvrage abandonné* (Henri Grange ed., 1991), 68; Jacob T. Levy, Beyond Publius: Montesquieu, Liberal Republicanism and the Small-Republic Thesis, 27 *History of Political Thought*, 72-4 (2006).

<sup>706</sup> Necker, *De la révolution*, 4: 12. For similar thoughts, see Necker, *Du pouvoir exécutif*, 2: 30 (“...où la Religion même est en discrédit, où toutes les idées de respect sont usées, où l’obéissance est devenue philosophique, où tout est vieux, tout est en défaillance”).

<sup>707</sup> *Ibid.*, 4: 8-9 (“Congrès, sous le nom de Fédérative, ne gouverne point les Etats particuliers, mais qu’elle sert de tutèle à leur organisation politique; qu’elle remplit l’office des garanties étrangères, recherchées par les petits Etats de l’Europe pour la stabilité de leur Gouvernement domestique.”). On the fraught geopolitics of small republics and great powers in the eighteenth century, see Whatmore, *Against War and Empire*, 202-25. See, in particular, 206 and 254, on Necker, Geneva, and the imperial overtones of this geopolitical “guarantee.”

choreographed displays of street violence. It was for this reason that Robespierre, Danton, and Saint-Just “were led to collect all power in Paris, and to make it the unique center of the national movement...a republic composed of various states would have presented too many obstacles to [their] success.”<sup>708</sup> Second, federalism was a bar against the despotism of an extended republic. If the critical fact of modernity was the disenchantment of hierarchy, this left two possibilities for social organization: the solidarity of local attachments or the adamantine coercion of the state. It was the difference, Necker suggested, between being governed in a collaborative fashion by “legislators, patrons, and guides,” and being “under the inspection of agents and commissioners” reporting to a distant power. Since 1792 the Convention had opted for the latter, dealing with its provinces like recalcitrant children, and sending a fleet of wheeled guillotines to the provinces to enforce its *arrêtés*. The ironic and predictable result had been to open a breach between Paris and the *départements*, which widened into ruinous civil war.<sup>709</sup>

Not content with diagnosis and critique, Necker sketched a grandiose plan for the reconstruction of France as a federal republic. The 83 departments would be consolidated into approximately twenty-five “states” of equal population, each granted significant autonomy. The peerage, with its heraldic crests and patents of nobility, would be eliminated, although an informal aristocracy, grounded in respect for property and station, would provide social ballast and foster habits of deference. And if France arrived at a proper definition of national and municipal powers, the vexed question of the executive branch could recede into the background,

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<sup>708</sup> Necker, *De la révolution*, 4: 16-17 (“Paris exerce, sur la France entière, la plus violente domination, la plus forte aristocratie...les Sections de Paris qui parlent aux Députés de la Nation, qui traitent avec eux corps à corps, auront habituellement une grande influence sur les délibérations législatives.”); Jacques Necker, *Dernières vues de politique et de finance* (n.p., 1802), 260.

<sup>709</sup> *Ibid.*, 4: 27. Cf. *ibid.*, 4: 20 (“Le Gouvernement de la République Française, en même tems qu’indivisible, a toujours été complètement despotique..sans l’impression profonde de terreur que des tyrans farouches avoient répandue, on ne fût jamais parvenu à des levées de soldats”); 4: 15 (“un Gouvernement indivisible, quand il a besoin de violence pour se soutenir, est une occasion plus sûre, une source plus constante de haines et de séparations, qu’un Gouvernement Fédéral”).

“since this could, without any danger, take on a multiplicity of forms.” The former finance minister made no effort to conceal the source of these reflections: “one finds in the federal constitution of America a perfect model for a government of this kind, and in an excellent work, published as *The Federalist*, the explicit grounds for every article.”<sup>710</sup> Necker’s resuscitation of American federalism in France was echoed by his daughter, Germaine de Staël, who lamented the “national pride” that prevented the French from studying and profiting from the example of “federative liberty of America.”<sup>711</sup> Rœderer favorably reviewed Necker’s book, and offered additional arguments in favor of “this admirable system” of confederation, “which ought to have been followed by the Convention.”<sup>712</sup> But outside the friendly confines of the *groupe Coppet*, French federalism remained a nonstarter. Pierre-Florent Louvet, a lawyer and deputy from the Somme, chafed at the idea that there was any resemblance between “the social compact...of the United States” and the French republic, and foresaw that even the most modest steps towards local control, such as staffing the administration in each department with local worthies, would produce a “departmental chauvinism...deadly to the entire social body.”<sup>713</sup> Lafayette, reviewing Necker, spoke for many of his fellow moderates in finding the federal project utterly quixotic. He explained, with no small amount of condescension, that Necker, carried away by his “very recent” enthusiasm for the the American constitutions, had failed to appreciate that American

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<sup>710</sup> Ibid., 4: 22-23; 4: 25-26; 4: 21.

<sup>711</sup> Staël, *Circonstances*, 131. Cf. 182 (“Cependant l’immensité de la France rend nécessaire de porter un peu d’esprit fédératif dans l’administration de ses départements.”).

<sup>712</sup> Pierre-Louis Rœderer, “Dernier Extrait de l’ouvrage de M. Necker...et Réflexions sur cet Ouvrage,” *Journal d’économie publique de morale et de politique* (Apr. 9, 1797), 3: 194. Crucially, Rœderer cast doubt on the commonplace notion that a federated state cannot succeed in modern warfighting: “On reproche au gouvernement fédératif d’être moins propre à la guerre que les gouvernements indivisibles. Jusqu’à présent ce n’est pas par l’indivisibilité que la république française a réussi dans la guerre, c’est par la tyrannie et la terreur.”

<sup>713</sup> Louvet (de la Somme), Suite de la séance du 5 Thermidor, *Moniteur*, July 29, 1795, RAM 25: 326. Cf. [René] Cornilleau, *ibid.*, 25: 327 (“Je demanderais que les commissaires du pouvoir exécutif ne pussent jamais exercer leurs fonctions dans la commune où ils auraient des propriétés, car ils favoriseraient toujours le lieu de leur résidence...”).

federalism was not freely chosen at the Philadelphia convention, but rather imposed by history and circumstance. From their founding in the seventeenth century, the colonies had been through a conscious strategy of *divide et impera*, so that, at the time of the revolution, there were thirteen polities with distinct mores, legal precedents, and political institutions. The keynote of American constitutionalism since 1776 had been the gradual integration of these disparate parts into a common, indivisible whole. Necker's proposal to fracture the French republic along a set of arbitrary departmental boundaries contravened both the central principle of the American constitution, and the teleological wave of history that was rapidly rushing towards vast, territorial nation-states.<sup>714</sup> The issue of federalism would fade, but the question introduced by Lafayette—interpretation of and fidelity to American constitutional sources—would linger.

### **III. The Constitution de l'an III and its discontents**

In the week of the summer solstice, as speculation about France's coming constitutional renovation electrified Paris, the American ambassador James Monroe finalized a memorandum on French politics for his friend Thomas Jefferson, observing distantly but with great interest from Monticello. For six weeks a committee of eleven members had been meeting *in camera* under the nominal leadership of Boissy d'Anglas<sup>715</sup> to moot changes to the *constitution de 93*. The Federalist press had slandered Monroe from the time of his appointment as a democrat with

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<sup>714</sup> Marquis de Lafayette, *De la révolution française* par M. Necker [ca. 1820], in *Mémoires, correspondance et manuscrits du Général Lafayette, par sa famille* (Brussels, 1839), 2: 26 ("En effet, les fédéralistes français ont été regardés comme des gens qui voulaient séparer une république unique en plusieurs républiques indépendantes; les fédéralistes américains...étaient ceux qui voulaient que les républiques indépendantes se réunissent").

<sup>715</sup> Boissy's leadership is said to have been largely ceremonial, in recognition of his heroic role in the *journées* of Germinal and Prairial. See Louis Marie de la Révellière-Lépeaux, *Mémoires* (Paris, 1873), 1: 235 ("Boissy d'Anglas n'eut a peu près point de part au projet de constitution rédigé par la commission, quoique nous l'eussions chargé de le présenter à la Convention, ce qui peut étonner...le vrai et seul rapporteur fut Daunou. Il montra, à la tribune et dans le sein de la commission, des connaissances d'une profondeur et d'une étendue qui nous surprirent."). || On Daunou as the "véritable maître d'œuvre" of the 1795 constitution, based on an analysis of his private papers, see Bosc, *La terreur*, 177-92. || For the argument that Boissy was a substantive contributor to the Commission des Onze, based on a comparison of the 1795 text and a draft constitution that he executed in April 1793, see Christine Le Bozec, "An III: Créer, Inventer, Réinventer le Pouvoir Exécutif," *Annales historiques de la Révolution française* (April/June 2003), 71-9, 77.



marked radical sympathies. But in fact his missive to Jefferson extolled the Commission des Onze for relinquishing the wild utopias of *l'an II*, and turning its gaze to the mild and sensible republic across the Atlantic. “It is believed that this committee will propose some important changes in that constitution...such as a division of the legislature into two branches &c. after the model of the American constitutions...which is certainly of greater importance to the preservation of their liberty than any other that has been spoken of.”<sup>716</sup> Monroe was in a strong position to know, since he had drawn up a model constitution several weeks earlier at the behest of the Convention, featuring a binary legislature and a single executive magistrate.<sup>717</sup>

Monroe was joined by a chorus of commentators who saw etched into the new frame of government the colophon of the American republic. In Paris, the renegade priest and ex-Girondin Frédéric-François-Venceslas Jacquemont seethed that “America is now everywhere offered to us as the school where...Europe will learn what institutions are destined to make men free and happy.” From his chateau at Witmold-Holstein, the Marquis de Lafayette wrote his former comrade-in-arms Alexander Hamilton that the *Constitution de l'an III* had achieved at last the “democratic Representative Republicanism” he had sought since 1789. He was hopeful that the new order would proceed “on American principles [rather] than after the British fashion,” and expressed relief that the “Hereditary presidencies” espoused by his friend had been definitively

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<sup>716</sup> James Monroe, Sketch of the State of Affairs in France (June 23, 1795), in *Writings of James Monroe*, 2: 297-98; [Phil.] *Gazette of the United States*, Nov. 5, 1794, 2. Cf. James Monroe to James Madison (June 13, 1795), in *Papers of James Madison* (William T. Hutchinson, et al., eds., 1989), 16: 18 (“promising some change in the constitution of 1793 upon our principle, a division of the legislature into two branches”).

<sup>717</sup> James Monroe, Notes on a Constitution 2: For the Committee of Public Safety (June 1795), in *James Monroe: Selected Correspondence and Papers* (Daniel Preston, ed., 2009), 3: 343. Monroe’s executive would have been significantly more constrained than the American president—“elected annually by the legislative body...capable of serving three years, & incapable of being elected for the next succeeding three.” Given his expansive views of executive power in America—he preferred a president elected by indirect popular vote, and invested with an absolute veto—we can be confident that he thought this was the most that could be achieved in a nation still vigilant for signs of relapse into royalism. See James Monroe, *Some Observations on the Constitution, &c.* (1788), in DHRC 9: 863-6. || On Monroe's friendship and correspondence with the leading politicians of Thermidor, see Philipp Ziesche, *Cosmopolitan Patriots* (2014), 95.

debarred. In the United Provinces, Jean Luzac, a close friend of John Adams, crowed in his *Gazette de Leyde* that “the new constitution scarcely differs from that of America, which the most enlightened men have always regarded as a perfect model of human wisdom in legislation.” At Westminster, the MP William Wilberforce cited the constitution of 1795 as evidence that the republic had moderated its ambitions, and would now be receptive to overtures for peace. Having supplanted the “haste and precipitance” of monocameralism with the separation of powers, legislative deliberation, and political pluralism, the *république* now qualified as a reliable partner for diplomacy. He likened the new regime to another erstwhile enemy that had recently negotiated a durable and comprehensive settlement with Britain. “I said, on a former occasion, that I conceived a government something like that of America, would be the most suitable for France...The event has so far confirmed my opinion.” In the United States themselves, the Federalist press greeted the new constitution with a burst of self-satisfaction, typified by a smug editorial in the Boston *Centinel*: “We have frequently anticipated...that the Constitution of the United States...would be the star to guide to the wise men of France to a real Republican Constitution.” The bicameral legislature was sagely adapted from the American constitution; the “Executive differs essentially,” and would suffer from its “want of responsibility,” but a future amendment would undoubtedly remedy this defect in its otherwise immaculate constitutional machinery.<sup>718</sup>

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<sup>718</sup> Frédéric-François-Venceslas Jacquemont, *Lettres critiques sur le projet de constitution présenté à la Convention nationale de France par sa commission des onze* (Paris, 1795), 24 || Marquis de Lafayette to Alexander Hamilton (Aug. 12, 1798), in *Papers of Alexander Hamilton* (Harold C. Syrett, ed., 1975), 22: 75. || *Supplément aux Nouvelles Extraordinaires des Divers Endroits*, Jun. 30, 1795. Several months later, Luzac would delight in a private letter to John Adams that “la France en est enfin venuë à ce Système des deux Chambres, si décrié par ceux, aux yeux desquels tout ordre, toute subordination, toute balance dans le Gouvernement est Aristocratie.” See Jean Luzac to John Adams (Dec. 11, 1795). In addition to being the editor of Europe’s best-selling newspaper, Luzac was a rector and professor of classics at Leiden University; on resigning his rectorship in 1795 under pressure from the French occupation government, he gave an oration on “Socrates as Citizen,” published in Latin the next year. Its dedication reads: “Viro illustri, Ioanni Adams, foederatae, quae in America est ad septentrionem, reipublicae praesidis vices gerenti et universi senatus epistatae.” See Jean Luzac, *Oratio de Socrate Cive, publice habita, die 21 Februarii*

It is easy to understand why the parts of that machine would have seemed imported from Philadelphia. In place of the single legislative chamber of 600 members envisioned by the architects of 1793, the Constitution of Year III provided for a Conseil des Cinq-Cents responsible for the formation of laws, and a Conseil des Anciens of half that size authorized to approve or reject them. Antoine-Claire Thibaudeau, a former montagnard and a member of the Commission des Onze, explained the substantial debt owed by the drafters of the new legislative system to the American constitution:

The Constituent Assembly [of 1789], in rejecting the establishment of two chambers, attempted an innovation contrary to the doctrines of the greatest publicists, consecrated by the example of England, and still more recently by that of the United States of America. This was unfortunate...The Commission [des Onze] did not pretend to be wiser than the founders of the American republic; the Convention was enlightened by its own experiences, and the system of two chambers was adopted almost unanimously...The two chambers were named the *senate* and the *house of representatives*. The word *senate* having an aristocratic ring, the Convention renamed them the Conseil des Cinq-Cents and the Conseil des Anciens.<sup>719</sup>

In defending the choice of an upper house, Boissy d'Anglas played the Federalist chords of 1787-88 at a deafening volume. He spoke of a second chamber as the redoubt of a rising class of natural aristocrats, those citizens who were "best instructed," secure in their property, and most attached to the conservation of domestic order. "We must be governed by the best," he exclaimed, a sentence that John Adams underlined in his personal copy of the *Projet* and glossed with the Greek word ἀριστοκρατία.<sup>720</sup> And second, he did not hesitate to accuse dissenters of harboring paranoid fantasies. "The anxious, ardent, and suspicious minds, the jealous lovers of liberty, always believe that they see in this salutary institution the rebirth of annihilated titles, the resurrection of the nobility, and the creation of a peerage." But these "puerile fears" and

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*MDCCXCV* (Leiden, 1796), i. || William Wilberforce, Debate in the Commons on the King's Message respecting a Negotiation for Peace with France (Dec. 9, 1795), *Cobbett's Parliamentary history of England* (T.C. Hansard, ed., London, 1818), 32: 576-77. || *N.C. Journal*, Sept. 7, 1795, reprinted from the [Boston] *Centinel*.

<sup>719</sup> Antoine-Claire Thibaudeau, *Mémoires sur la convention* (Paris, 1824), 1: 182.

<sup>720</sup> Boissy d'Anglas, *Discours préliminaire au projet de Constitution pour la République Française* (Leiden, 1795) [copy held at the Boston Public Library], 31. This is Adams's sole marginal note in the pamphlet.

“panicked terrors” had no basis in reality; the elective Conseil des Anciens, intended as a brake on legislative haste and an honorific for France’s most eminent citizens, had nothing in common with the antiquated and feudal House of Lords.<sup>721</sup>

The new constitution also included an independent executive, whose members would be nominated by the Cinq-Cents and chosen by the Anciens. In a self-conscious departure from the American model it would be collegial, and subordinate to the two houses of the legislature. Jean Mailhe, a Toulouse deputy who had been friendly with the Girondins, explained that a fear of Cæsarism had weighed heavily on the drafting committee: if the executive “has an august character...if it is elected with the support of the entire republic, while legislators are named only by their particular department, what will become of the balance of powers?”<sup>722</sup> Thibaudeau thought it perfectly rational to fear the executive more than any other branch, and to hedge against its expansionist tendencies. It was “almost always by its usurpations that liberty perishes.”<sup>723</sup> Nevertheless, the “Directory” was celebrated by panegyrists of the new constitution—in a lexicon borrowed from the political discourse of America’s ratification period—for its unity, dispatch, and secrecy.<sup>724</sup> And neo-Jacobins complained bitterly that “Nous n’avions qu’un roi, et maintenant nous en avons cinq!”<sup>725</sup>

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<sup>721</sup> Compare D’Anglas, *Projet de Constitution*, 45-7; [James Madison], Federalist No. 63 [1788], *The Federalist Papers* (Terence Ball ed.), 310-11 (“But if anything could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected...is an hereditary assembly of opulent nobles...Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States.”).

<sup>722</sup> Mailhe, Séance du 6 Thermidor, *Moniteur*, Jul. 30, 1795, RAM 25: 336.

<sup>723</sup> Thibaudeau, Suite de la séance du 5 Thermidor, RAM 25: 325.

<sup>724</sup> See, e.g., [Benjamin Vaughan], *De l’état politique et économique de la France sous sa constitution de l’an III* ([J.-A. Blachon trans.], Strasbourg, February/March 1796), 24-5 (“Le prétexte des divisions qui peuvent avoir lieu dans un directoire composé, ne peut être regardé comme solide; car, quoique les opinions puissent être partagées, les résolutions adoptées par la majorité peuvent produire autant d’unité de conduite, qu’il y en aurait dans le directoire d’un seul...Il n’est pas difficile de comprendre que le secret peut être mieux gardé par un directoire composé, que par un directoire d’un seul”). Compare [Alexander Hamilton], Federalist No. 70 [1788], *The Federalist Papers* (Terence

Finally, like the American federal constitution the Constitution of Year III removed the question of sovereignty from everyday politics, abjuring the popular assemblies that formed the spine of the Jacobin and Girondin projects. John Quincy Adams chirped in a letter to his father that French democrats “no longer prate about uniting the whole delegated sovereignty into a single assembly,” and had jettisoned the frivolous project, beloved by Condorcet, of “frittering up Sovereignty into municipalities.”<sup>726</sup> In the words of Boissy d’Anglas, “a scheduled return of the Convention would give hope to all intriguers, all those who desire some revolution in the state, a hope that ought now to be extinguished.” The general will, the touchstone of the Condorcetian and Robespierist constitutions, would diminish in importance, and legislation would enter into force without the awkward mediation of the primary assemblies. Any future constitutional revision would occur only on the initiative of the Conseil des Anciens, whose Olympian reserve sheltered it from the tides of mass enthusiasm. But d’Anglas expressed confidence that the Thermidorean constitution, once set in motion, would have little need of amendment, and could be expected to last indefinitely.<sup>727</sup>

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Ball ed.), 341 (“Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number”).

<sup>725</sup> Thibaudeau, *Mémoires*, 2: 340. Cf. [Gracchus Babeuf], 29e pièce, *Copie des pièces saisies dans le local que Baboeuf occupait lors de son arrestation* (Paris, 1796), 122 (“Nous détestons bien cordialement la royauté, soit qu’elle soit l’héritage d’un seul, soit qu’elle se partage électivement entre cinq”). || This accusation would find unexpected support in a 1796 address by Adrien Lezay. See Adrien Lezay, “De l’Organisation Constitutionnelle & de l’Organisation Actuelle du Pouvoir Exécutif de la République” (1796), in *Paris, pendant l’année 1796* (M. Peltier ed., 1796), 10: 506-7 (“Lors de l’installation de la constitution, le peuple disait en riant, qu’au lieu d’un roi il en avait cinq, & ce mot de plaisanterie renfermait plus de sens que le peuple n’y en mettait. Cinq royaumes se sont formés...Nous avons un roi de la guerre, un roi de la police, un roi de la justice, un roi des affaires étrangères.”).

<sup>726</sup> John Quincy Adams to John Adams (Sept. 19, 1797), in *Writings of John Quincy Adams* (Worthington Chauncey Ford, ed., 1913), 2: 208.

<sup>727</sup> D’Anglas, *Projet de Constitution*, 77 (“Nous avons mis ainsi d’une manière plus particulière, sous la sauve-garde la raison & de la maturité de l’âge, une Constitution à laquelle il sera toujours extrêmement dangereux de toucher.”). D’Anglas went on to insist that, in contradistinction to the regime of 1792-93, an *assemblée de révision* (on the rare occasions that it is brought to life) would have no authority to legislate or govern, and would be strictly limited to its task of constitutionmaking. Cf. Goupilleau de Fontenay, Suite de la discussion sur l’acte constitutionnel, *Moniteur*,

This glittering optimism was reflected in the dispatches exchanged by American diplomats.

Monroe effused at great length about the new order in a November 1795 letter to Jefferson:

You have I presume seen the new constitution and will I doubt not concur with me that altho defective when tested by those principles which the light of our hemisphere has furnished, yet it is infinitely superior to any thing ever seen before on this side of the Atlantick. The division of the legislature into two branches...will secure always in both due attention to the interest of the mass of the people, with adequate wisdom in each for all the subjects that may occur...whilst on the other hand the Executive by its numbers and permanence, one of 5. yeilding his place to a successor annually only, seems in regard to this theatre, where the danger is always great...well calculated to unite energy and system in its measures with the publick confidence...About 10. days past the constitution was completely installed in all its branches and since each has been in the exercise of its respective functions. The effect which the change has produc'd is great indeed. The Council of Antients occupies the hall lately held by the Convention, and the contrast which a tranquil body, in whose presence no person is allowed to wear his hat, or speak loud...is so great when compared to the scene often exhibited by its predecessor, that the Spectators look on with amazement and pleasure...calm deliberation has succeeded a system which was neither calm nor deliberative...the people go to rest of a night in tranquility consoling themselves with the grateful reflection, that now a strong impediment is opposed to the rage for legislation. They rejoice to find that their legislators have supplied the place of action by reflection. Under this government too the spirit of faction seems to be curbed...tranquility seems to be established and confidence daily increasing.<sup>728</sup>

This was far more enthusiasm than Monroe had been able to muster for America's own constitution,<sup>729</sup> a fact that was not lost on his critics. But he did not back away from this initial assessment. Monroe advised Jefferson in July 1796 that "since the adoption of the New constitution liberty has as it were been rescued from the dust, where she was trampled under foot by the mob of Paris." Its fruit, he intimated, was the unbroken string of military victories in Italy and Germany that France had enjoyed since its ratification.<sup>730</sup> But admiration for the Directory constitution was not restricted to the sympathetic American ambassador. President Washington, who transmitted terse congratulations to Louis XVI for the 1791 constitution, and did not comment at all on its Jacobin successor, sent the foreign minister Pierre Adet an exuberant note

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Jul. 31, 1795, RAM 25: 342 ("Le projet de la commission me semble meilleur en ce qu'il ne fatigue pas le peuple par des assemblées continuelles").

<sup>728</sup> James Monroe to Thomas Jefferson (Nov. 18, 1795), in *Papers of Thomas Jefferson*, 28: 529.

<sup>729</sup> See, e.g., James Monroe to James Madison (Oct. 13, 1787), in *DHRC* 8: 55 ("There are in my opinion some strong objections agnst. the project...[but] they are overbalanc'd by the arguments in its favor."); Monroe, *Some Observations*, 9: 875 ("although I am for a change, and a radical one...yet I have some strong and invincible objections to that proposed to be substituted").

<sup>730</sup> James Monroe to Thomas Jefferson (Jul. 30, 1796), in *Papers of Thomas Jefferson* (Barbara B. Oberg, ed., 2002), 29: 161.

regarding the new instrument. He made plain both his high estimation of the *Constitution de l'an III*, and his conviction that although it was born in Paris, its lineage could ultimately be traced to Philadelphia. "I rejoice," he stated, that liberty...now finds an asylum in the bosom of a regularly ordered Government; a Government, which...corresponds to the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States by its resemblance to our own."<sup>731</sup> John Quincy Adams, monitoring events closely from his post in the Hague, instructed the Secretary of State that France had "abandoned without ceremony the constitution of 1793," and had "substituted in its stead" one that would be "familiar to Americans." In a letter to his father three months later, Adams praised the new charter for puncturing the inflated pieties of Jacobin democracy, and for at last imbuing the executive branch "with pomp and splendor and power." Even "the heresy of checks and balances," he registered approvingly, "is very near becoming an article of orthodox creed." JQA questioned, however, whether the new plan of commonwealth would stabilize in a nation still wracked by pervasive social misery and still captive to despotic habits of mind. His pessimism led him to a disconcertingly grim prediction: "The Constitution is indeed not so absurd as the two former, but it will meet with the same fate."<sup>732</sup>

If the Americans pronounced themselves satisfied with the new regime, and flattered by its homage, the French *américainistes* who had lobbied most intently for a reformed constitution found themselves gravely disappointed. Showy footnotes to John Adams and lustrous tributes to

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<sup>731</sup> The Answer of the President of the United States to the Address of the Minister Plenipotentiary of the French Republic, on his presenting the Colors of France to the United States (Jan. 1, 1796), in *Benton's Abridgment of the Debates of Congress* (Thomas Hart Benton, ed., New York, 1857), 1: 617. Compare George Washington to Louis XVI (Mar. 14, 1792), in *Papers of George Washington (Presidential Series)* (Robert F. Haggard and Mark A. Mastromarino, eds., 2002), 10: 108 ("On an event so important to your Kingdom, and so honorable to yourself, accept the offering of my sincere congratulations...").

<sup>732</sup> JQA to the Secretary of State [Edmund Randolph], No. 44 (Jun. 30, 1795), in *The Writings of John Quincy Adams*, 1: 368-69; JQA to John Adams (Sept. 12, 1795), in *ibid.*, 1: 413-14. Cf. Thomas Boylston Adams to Abigail Adams (Dec. 1, 1795), *Founders Online*, <http://founders.archives.gov/documents/Adams/04-11-02-0033> ("[t]he whole doctrine of check's & balances, \so far as it is recognized in the Constitution/ has already been brought to operate").

“the diversity of functions and the division of powers,”<sup>733</sup> they contended, masked a compromised document that failed to break with the most grievous errors of Jacobin constitutionalism.<sup>734</sup> “Commission des onze,” intoned J.M. Hékel after reviewing the draft constitution, “you have conserved all the same elements of disorder and anarchy, and you will achieve the same results.”<sup>735</sup> Maximin Isnard, a violent Brissotin in 1793 and a stalwart of the right wing after his return from exile, confided to Sieyès in a private letter that the “imperfections” in the new constitution “frighten me. I see in the two legislative chambers little more than two national clubs” dueling for supremacy, “in the Executive Directory a body of very weak complexion, and in the charter of rights merely a bundle of laws without any guarantee.”<sup>736</sup> Adrien Lezay, who spearheaded the assault on the Constitution of 93, dissected the new draft with cruel precision. “[I]t is merely a compilation of assorted parts of the American and Helvetic constitutions,” he judged, “lacking essentially any ensemble or genius.” The “eleven fathers” of the Commission had labored with great zeal but little competence—the 95 draft, he quipped, was the work of “many more hands than heads.”<sup>737</sup> Jacques Necker went furthest in this critique, placing the constitutions of 1787 and 1795 in split screen to highlight the latter’s misprisions and blunders:

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<sup>733</sup> D’Anglas, *Projet de Constitution*, 55, 61.

<sup>734</sup> This is not to say that critics could not sometimes appreciate its *relative* merits in comparison to the failed constitutions of 1791 and 1793, although this generous outlook was in fact not common. For an example, see Trophime-Gérard de Lally-Tollendal, *Défense des Émigrés Français* (Paris, 1797), 17-18 (“Aujourd’hui quiconque veut être juste doit l’apprécier *relativement*...Qu’était, en comparaison...celle de 1791, cette production monstrueuse...Qu’était, en comparaison...celle de 1793, ce code impossible à qualifier avec les langues humaines”).

<sup>735</sup> Hékel, *Bases d’une constitution*, 3.

<sup>736</sup> Maximin Isnard to Abbé Sieyès (Sept. 21, 1795), Fonds Sieyès, 284 AP 9, 3.

<sup>737</sup> Adrien Lezay-Marnésia, *Qu’est-ce que la constitution de 95?* (Paris, 1795), 18. Regarding this text, see Police Report No. CCCLXVI, July 27, 1795, in *Paris pendant la réaction thermidorienne*, 2: 117 (“Jusqu’à présent, nous n’avons vu rien de plus fort et de plus satirique contre les législateurs.”).



There can be no doubt that the authors of this constitution have struck on a well-known model; but in trying to imitate the Supreme Government of America, this well-concerted government, they have altered its principal traits. From it they have taken the idea of two chambers, but the passive state and monosyllabic language of one of them is their invention alone. They have separated the executive from the legislative power, but they have rejected the prudent connections that the Americans had established between these two powers...However the capital difference...between the two constitutions is that the French, after having exaggerated the principle of equality enshrined by the Americans, after having extended it to the point of indifference as to whether one is a propertyholder...have opted for unity and indivisibility in government, a condition incompatible in a great state with the principle of equality.<sup>738</sup>

Necker conceded that it would be “unjust” to compare “the result of the Commission des Onze to the masterpiece of the English constitution, or the wise institutions of the Americans,”<sup>739</sup> at a time when limited monarchy and federal devolution were still sacrosanct taboos in France. But even within the narrow horizon of the possible, the Commission had delivered a profoundly flawed plan of government, whose most glaring fault was its failure to draw on the intellectual resources of the American constitution.

This was true above all of the new constitution’s most eccentric feature, its five-person Executive Directory. Necker upbraided its creators for having crafted it with “so little precision, so little care”;<sup>740</sup> in fact, it had been the subject of tremendous polemic on the drafting committee, which split along three axes. A “monarchical party” comprising Denis Toussaint Lesage, Boissy d’Anglas, P.-T. Durand de Maillane, and Comte Lanjuinais, pushed for a single officer it termed a *président annuel*, and toyed with the idea of rendering him immune from legal process. Pierre Claude François Daunou, a disciple of Condorcet and the most formidable intellect on the Commission, preferred two consuls who would alternate in power. The balance of the membership carried the day with its plan for “a council of at least *three* members,” subject to the ordinary strictures of impeachment. When d’Anglas, reading the Commission’s report on the floor of the Convention, spoke aloud its finding that “a single executive would have been too

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<sup>738</sup> Necker, *De la révolution*, 4: 6-7.

<sup>739</sup> *ibid.*, 3: 121.

<sup>740</sup> *ibid.*, 3: 128.

dangerous” to liberty to countenance, deputies broke into applause. One month later, Daunou nailed shut the coffin of the mixed constitution in France: “today there can be no question of having a king, nor a president, nor a chief executive, nor a sole governor, whatever name one gives him.”<sup>741</sup>

The succeeding debate over the election or appointment of this plural “Directory” epitomized the ideological shocks and inversions of the Thermidorean moment. As in America in 1787, it was former royalists who demanded the executive be elected by, and responsible to, the people; it was soi-disant “republicans” who insisted on the unfitness of the masses for self-government.<sup>742</sup> “The majority,” Thibaudeau recalled in his memoirs, “based its decision on the fear that the executive would become too powerful if it originated in popular election.” Jean-Baptiste Louvet, editor of the *Sentinelle*, then sitting on the Committee of Public Safety, fretted that if the demos was given a role in its selection, even an indirect one, “the primary assemblies or their delegates for the election would one day nominate a Bourbon.”<sup>743</sup> In the whirling vision of Thermidorean constitutionalism, democracy, demagoguery, and despotism all blurred into indistinction.

The chimerical Directory—nominally independent and endowed with substantial administrative authority, but stripped of any semblance of prerogative or legislative voice—was a clumsy effort to finesse a longstanding dispute over the nature of a republican executive. John Quincy Adams jested that the Directory consisted of five members “who are to possess every

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<sup>741</sup> Thibaudeau, *Mémoires*, 1: 179 and 1: 183-4; Boissy d’Anglas, Paris le 6 Messidor, *Moniteur*, Jun. 25, 1795, RAM 25: 50; Daunou, Suite de la discussion sur l’acte constitutionnel, *Moniteur*, Jul. 29, 1795, RAM 25: 324.

<sup>742</sup> Nelson, *Royalist Revolution*, 214-17.

<sup>743</sup> Thibaudeau, *Mémoires*, 1: 183-4.

thing but the essential attributes of an Executive power.”<sup>744</sup> Paul Barras recollected that the framers of 1795 were apprehensive even to speak the words *pouvoir exécutif*, which seemed to them redolent of the incense and perfume of monarchy.<sup>745</sup> Its design was harshly criticized by a phalanx of political theorists linked to the Coppet circle of Jacques Necker and Germaine de Staël,<sup>746</sup> who blasted the institution with arguments and ideas taken from the arsenal of American Federalism, and in particular the *Defence*.<sup>747</sup> First, and most damningly, the Directory lacked energy or resolution, which would leave the nation defenseless in times of war and exigency. Lezay phrased this as an axiom: “execution cannot be too prompt, as deliberation cannot be too slow.”<sup>748</sup> And an executive that must hold first a seminar and then a ballot before taking a decision will prove too fissionary to govern effectively, especially in times of emergency.<sup>749</sup> If, at a moment of crisis, three directors could not be located to form a quorum, or if the panel wasted critical hours on acrimonious infighting or sententious oratory, the state would be

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<sup>744</sup> John Quincy Adams to Thomas Welsh (Jul. 31, 1795), JA EA. Cf. *Opinion de J.-C.-G. Delahaye*, 6 (“On donne beaucoup de pouvoir, mais peu de force au directoire exécutif.”).

<sup>745</sup> *Mémoires de [Paul François Jean Nicolas, vicomte de] Barras, membre du Directoire* (George Duruy ed., Paris, 1893), 1: 239 (“on repoussa jusqu’à la dénomination de *pouvoir exécutif*, de *gouvernement républicain* parce qu’on craignait de se référer en quelque chose à la monarchie: la dénomination de *Directoire exécutif*, nom qui avait été commun aux autorités antérieures, fut préférée.”).

<sup>746</sup> See, e.g., Basile Munteano, *Les idées politiques de Madame de Staël et la Constitution de l’an III* (1931), 58 (“Le chevalier de Pange écrit dans son Journal, au début du fructidor: ‘Rœderer m’a parlé du projet de constitution et m’en a paru on ne peut plus mécontent. Il m’a dit que le pouvoir exécutif serait sans force.’”). See also the retrospective judgment in Staël, *Considerations*, 379 (“it was destitute of several indispensable prerogatives, the want of which...brought on destructive convulsions”).

<sup>747</sup> Necker scorned his enemies as “quakers politiques, [qui] attendent patiemment...l’égalité parfaite”; Quakerism in France was closely associated with Pennsylvania and Franklin. See Necker, *De la révolution*, 4: 133; Gordon S. Wood, *The Americanization of Benjamin Franklin* (2003), 133.

<sup>748</sup> Adrien Lezay-Marnésia, *Les Ruines, ou Voyage en France* (4<sup>th</sup> ed., Paris, 1796), 61. Cf. Lezay, *Constitution de 93*, 12 ff. (c).

<sup>749</sup> This was a particular disadvantage because France was surrounded by kingdoms whose own “pouvoirs exécutifs” were “si serrés, si nerveux, si forts de despotisme.” See Réal, quoted in *Porte-feuille politique*, 284.

effectively incapacitated.<sup>750</sup> “What slowness of action,” Necker fulminated, would trail an executive forced to discover its own will anew at every moment, through an endlessly iterated cycle of deliberation and majority vote? Being unable to decide anything with finality, it would be unable to act with authority.<sup>751</sup> The same point was raised by Comte Réal in the summer of 1795, in his *Journal de l'opposition*:

How slow this [Directory] will be, when what is needed is the rapid motion of electrical fluid! It will deliberate when what is necessary is action; it will discuss, it will dispute. The particular views of five factions, which will have ramifications or roots in the two [legislative] chambers, will suffocate the general interest...law will be deliberated in the Cinq-Cents, among the Anciens, in the Directory, in the administrations of the departments...and absolutely nowhere will anyone act.<sup>752</sup>

Adrien Lezay compared the situation to a carriage yoked to five horses and steered by five drivers. The result would be, first disorder and immobility, then a violent fracas as the drivers, “inflamed with anger...dropped their reins in order to turn their whips on one another.”<sup>753</sup> The carriage, forgotten in the affray, would careen off a cliff. Røederer, as was his wont, illustrated this point with an allusion to philosophy’s patron saint of political order: “one must agree with Hobbes that the institution of an executive council is not so favorable to prompt execution as that

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<sup>750</sup> See François-Martin Poulthier d’Elmotte, *Du pouvoir exécutif* (Paris, 1795), 3 (“Cinq individus réunis en directoire...sont-ils propres à remplir ce but? Non...Lorsque dix mains d’une force égale tiennent ensemble le gouvernail d’un vaisseau...ou le vaisseau reste stationnaire, ou il se brise contre les rochers, ou il revient sur ses pas sans avoir rien fait...les meilleurs lois...ne seront exécutées que par un pouvoir plus agissant que délibérant, par un pouvoir confié à peu de mains...et parmi lesquelles il doit s’en trouver une déterminante.”). See also the critique lodged the following year in Lezay, *De l’Organisation Constitutionnelle*, 10: 507-8 (“tous les inconvénients que l’on avait à craindre de leur rivalité, de l’inégalité de leurs moyens, de leur jalousie de puissance & de leur ambition de prépondérance, toutes ces choses sont, si non réalisées, du moins dans la possibilité d’éclater chaque jour.”).

<sup>751</sup> Necker, *De la révolution*, 3: 131. Cf. Lezay, *Constitution de 95*, 49 (“Une seconde condition de la responsabilité du Pouvoir exécutif, est qu’il soit un.”); Emmanuel Sieyès, First Thermidorian Intervention [July 20, 1795], in *Essential Writings*, 164-5 (“The minority who are outvoted take no responsibility for legislation, while the victorious majority complain about modifications to their original proposal.”).

<sup>752</sup> Réal, quoted in *Porte-feuille politique*, 288-9.

<sup>753</sup> Lezay, *Constitution de 95*, 44. Cf. Adams to d’Ivernois (Dec. 11, 1795), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1700> (“The French device of five Directors...will soon produce division, Division Contention, Contention Hatred, Hatred Rage and Rage Civil War.”). || Lezay is playing with a well-known image of Franklin’s; indeed, he is standing it on his head. See the discussion of Sieyès in Part IV.

of a single chief...who can dispense with listening to useless speeches, and can order whatever circumstances seem to require.”<sup>754</sup>

A second, related complaint was that the congenital infirmity of the Directory—its want of independence, permanence, and legislative voice—doomed it to be (in the derisive idiom of François d’Ivernois) “a plaything in the hands of the *Corps Législatif*.”<sup>755</sup> For François-Jérôme Riffard Saint-Martin, a legislator in the revolutionary regime since 1789, it was sadly self-evident that “the Commission’s plan of executive power has only the pageantry of *éclat*,” since “it is named by the legislature...and therefore must bend the knee” in any disagreement, or else be replaced by more pliable auxiliaries. “What vigor, what activity can you hope for,” he queried, “from a power thus constituted?” Joseph Eschassériaux, one of the leading lights of the Thermidorean reaction, ascribed “the disorders and evils” of Jacobin rule, which still ramified into the present, to the “enslavement” of the executive power in 1793 by a predatory assembly. He instructed his fellow deputies that if the executive was not given an independent nexus with the voting public, such that it could confront the elective chambers on terms of rough equality, this grisly history would be repeated. “I regard the appointment of the executive council by the people as the counterweight necessary to maintain the balance and harmony of the other powers...[and] the foundation of its independence and freedom.” Indeed, as Jean Mailhe protested in the assembly, the legislature could not only remove the directors from office, but arrange for their arrest and trial. A collegial executive, appointed and removable by the legislature, might pantomime the role of an equal partner in government in ordinary times. But in

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<sup>754</sup> Pierre-Louis Røederer, *Du Gouvernement*, *Journal de Paris*, July 8, 1795, 1199, republished in *Œuvres* (A.M. Røederer ed., 1858), 7: 29. Røederer knew the corpus of Hobbes intimately, having worked on a translation of *De Cive* while in hiding from the Terror. See Ruth Scurr, “Pierre-Louis Røederer and the Debate on Forms of Government in Revolutionary France,” *Political Studies*, vol. 52 (2004), 251-68, esp. 257, 262.

<sup>755</sup> D’Ivernois, *Des révolutions*, 448.

a showdown with the legislature it would have only blank cartridges and plaster swords.<sup>756</sup> One author who spotted this immediately was John Adams, who received regular updates on French constitutional debates during the summer of 1795 from his two sons. "The Executive," he commented, "must have an Independence of the Legislature and there must be a Ballance between them." But the Directory was nothing like the paradigmatic executive portrayed in the *Defence*; it would remain dependent on the two chambers for its appointment and continuation in office, and would "be blasted by a Single Vote of Censure" when it displeased them.<sup>757</sup> It was thus best thought of as a serjeant-at-arms dutifully enforcing the will of the legislature, rather than as an independent and autonomous center of power.

It was not surprising that Adrien Lezay, perhaps the most devout pupil of John Adams in post-Jacobin France, would insist on an executive who was not merely *singular* and *independent of the legislature*, but also ensconced in power for a significant—"I would even say, a permanent"—tenure. The purpose was threefold. First, a life term would destroy the hopes of intriguers, and would circumvent elections that serve only as opportunities for conspiracy, or smokescreens for foreign influence.<sup>758</sup> It would also remove any incentive for the *Pouvoir*

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<sup>756</sup> [F.-J. R.] Saint-Martin, Séance du 7 Thermidor, *Moniteur*, Jul. 31, 1795, RAM 25: 341; [Joseph] Eschassériaux, Séance du 6 Thermidor, *Moniteur*, Jul. 30, 1795, RAM 25: 335; [Jean] Mailhe, Séance du 8 Thermidor, *Moniteur*, July 31, 1795, RAM 25: 350. Eschassériaux was ambiguous on the question of how, precisely, the public ought to participate in the election of the executive. Saint-Martin thought it sufficient to revert to the mechanism outlined in the 1793 constitution, in which the primary assemblies would nominate, and the elected representatives would select. Indeed, he issued a cautionary note about direct elections: "si le pouvoir exécutif était nommé par l'universalité des citoyens," it would acquire "une trop grande puissance relativement au corps législatif, dont chaque membre n'est nommé que par une portion du peuple."

<sup>757</sup> John Adams to Thomas Boylston Adams (Sept. 19, 1795), JA EA. John Quincy mailed his father a complete copy of the constitution on September 12 (see John Quincy Adams, *Writings*, 1: 403), Adams's comments on September 19 would have been based on the long account of its principal features sent by JQA six weeks earlier (JQA, *Writings*, 1: 381).

<sup>758</sup> That the election of a presiding magistrate would be a festival of corruption and intrigue was one of the great platitudes of the age. See, e.g., Sir John Dalrymple, Appendix No. VII, Practicability of an Incorporated Union with Ireland, and of a Federal Union with America, in *Memoirs of Great Britain and Ireland* (London, 1790), 3: 343 ("the presiding executive officer will be elected, as every such officer has been, ever since the world began, by the intrigues and factions, and perhaps violence, of his own countrymen. To which will be added, all the intrigues of

*exécutif* to betray the state for private gain. Second, in contrast to the fast motion and spontaneity called for in extraordinary times, the primary role of the executive is the development of long-range “plans which demand uniformity and slowness,” above all in the realm of foreign policy and geopolitics. Suturing alliances, overseeing a transoceanic empire, and formulating grand strategy for a global theater of war was the labor of decades, not years, and only a chief executive with a life term could pursue these ends without interruption or discontinuity. The will of a nation might change like quicksilver; its interests are permanent, and should be represented by a figure of stature and endurance. Finally, Lezay explained, there is the question of the executive’s symbolic valence. Only a single leader with a *longue durée en place*<sup>759</sup> could elicit respect at home and abroad. “This is a consideration which has rarely been obtained in recent times,” Lezay noted, “and one that will never be obtained from the people who formerly saw him among the crowd, and know that he will have to return to it tomorrow.” The head of the executive branch embodies the nation, concentrates its hopes and aspirations in his person, and thus attains a kind of transcendental status. To neglect this affective dimension of leadership, to treat the *pouvoir exécutif* as an overgrown clerk in the service of the legislative department, is to diminish and debase the state itself.<sup>760</sup>

Amidst the mass of debilities afflicting the new *Directoire*, one stood out as particularly malignant: the total exclusion of any legislative voice or prerogative. The two chambers had free

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France...”); Adams, *Defence*, 3: 365 (“if it should be found that annual elections of governors and senators cannot be supported without introducing venality and convulsions, as is very possible, the people will consult the dignity of their nature better by appointing a standing executive and senate”).

<sup>759</sup> Cf. Poulitier, *Du pouvoir exécutif*, 3 (“Un président de courte durée n’osera rien commencer de grand et d’utile, parce qu’il n’aura pas le temps d’achever.”).

<sup>760</sup> Lezay, *Constitution de 95*, 51-52. Cf. *ibid.*, 42 (the ideal executive is “un Protecteur qui couvre tous de sa puissante main, et représente en sa personne la majesté nationale”). See also [Joseph] Lakanal, Séance du 6 thermidor, *Moniteur*, Jul. 30, 1795, RAM 25: 335 (“votre pouvoir exécutif n’est chargé que de l’exécution matérielle et littérale des lois...il ne jouit que d’une existence...précaire que lui ôte toute dignité, et cet avilissement se communique bientôt à ses fonctions”).

rein to write rules and set policy; the Directory was bound simply to see that these laws were faithfully executed.<sup>761</sup> Louis Marie de La Révellière-Lépeaux, a member of the Onze and the first president of the Directory, would state flatly in his *Mémoires* that “[t]he Constitution of Year III gave the Directory no legal defense against anti-constitutional attacks” from the legislature, and “this defect caused its ruin.” Benjamin Constant, looking backwards to the *annus mirabilis* in which he arrived in Paris, spoke in identical terms of “the absence of any veto in the executive power, which compelled it to discharge laws it disclaimed, or believed to be unenforceable.”<sup>762</sup> But this was not apparent only in retrospect; Minerva’s owl flew at dawn as well as dusk. Pierre Rœderer sounded the alarm just one month after the constitution’s debut, objecting that the new *Directoire exécutif* had “neither an absolute right of opposition, nor a right of suspension, nor the right to appeal to the people, nor the right to appeal to the legislature, nor a right of critique.”<sup>763</sup> In August, Jean-François Ehrmann, a deputy from Bas-Rhin, petitioned the Convention to correct this scandalous *faiblesse*. “If,” he advised, “this Directory is reduced to blindly executing the laws that emanate from the legislative corps...the law will be executed badly, or not at all.” The prophylactic he proposed was a qualified executive veto, reversible by a two-thirds majority

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<sup>761</sup> One question of constitutional meaning, raised in the Convention debates but never adequately resolved, was how much latitude the Directory would enjoy in *interpreting* the laws it was bound to enforce. With respect to the interpretation of statutes, Lakanal (Séance du 6 thermidor, 25: 334-5) thought the Convention was caught between the devil and the deep blue sea: if it denied this interpretive authority the executive would soon find itself paralyzed, “contraint de consulter à chaque instant le corps législatif.” On the other hand, accepting this authority meant conferring something very much like a legislative power on the Directory: “Il peut donc interpréter en quelque sorte la loi; et s'il en détordre le vrai sens, soit innocemment, soit par des vues criminelles...où sera la garantie sociale?” Meanwhile, Thibaudeau, one of the drafters of the 1795 constitution, declared Sieyès’s “constitutional jury” unnecessary, given that the Directory could already refuse to execute laws “dans la création desquelles on n'aurait pas suivi les formes constitutionnelles”—potentially a significant loophole (Suite de la séance du 2 thermidor, 25: 297).

<sup>762</sup> La Révellière-Lépeaux, *Mémoires*, 2: 60; Benjamin Constant, “Souvenirs Historiques (Deuxième Lettre),” *Revue de Paris*, vol. 16 (1830), 114.

<sup>763</sup> Rœderer, “Du Gouvernement,” 31.



in both chambers. His words struck the chamber with percussive force; deputies on the left wing cried out *c'est un veto, c'est un roi*. But the Strasbourg jurist was prepared for these cavils:

The means that I propose are simple, and they have the advantage of having received the seal of experience for some years among a people known to live in liberty. Several states in America found this so convenient in practice that the United States eagerly adopted it.<sup>764</sup>

When a disgusted André Dumont declared the proposition unworthy even of debate Jean-Denis Lanjuinais intervened spiritedly, claiming to speak on behalf of himself and his colleague Daunou. What Ehrmann had introduced, thought the comte, bore no resemblance to the detested suspensive veto of 1791—it was at most a *veto considératif*, “a right to warn” the legislature that it was acting recklessly, and to allow it one final opportunity to reconsider. This was hardly an inordinate or dangerous privilege for a multiple executive that already exhibited a worrying “lack of strength to govern a great people.” Lanjuinais, like Ehrmann, challenged his listeners to “follow the example of the people who are our masters and our elders in liberty,” who have made the qualified veto the nucleus of their constitution. Shortly thereafter, he was shouted down.<sup>765</sup> Behind Lanjuinais’s intervention was the hand of the Coppet circle; he had been won over to this position on the veto through the sedulous efforts of Madame de Staël, who sent him a long letter on the theme fifteen days earlier, and then received him in her salon on rue de Bac to ensure his conversion.<sup>766</sup> Five days after the failure of his motion, a sympathetic article in the *Journal de Paris*—by Staël’s protégé Lezay—regretted that this message had not been heeded.

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<sup>764</sup> [Jean-François] Ehrmann, Séance du 30 Thermidor, *Moniteur*, Aug. 22, 1795, RAM 25: 519-20.

<sup>765</sup> Dumont and Lanjuinais, *ibid.*, at RAM 25: 520. Lanjuinais’s allusion to America is missed in the transcript given in the *Moniteur* (which instead includes the unlikely line “Faut-il donc avoir quelque courage pour exposer une théorie qui est celle du premier peuple libre de l’Europe?”), but is caught in the alternative record in Séance du 30 Thermidor, *Nouvelles Politiques Nationales et Étrangères*, Aug. 18, 1795, 1324 (“Faudroit il donc du courage pour vous proposer de suivre l’exemple d’un peuple notre maître & notre aîné en liberté?”).

<sup>766</sup> Munteano, *Madame de Staël*, 55-6 (“La lettre flatteuse...de Mme de Staël à Lanjuinais est du 15 thermidor, et tout porte à croire que dans ces quinze jours l’ambassadrice avait fait la conquête de Lanjuinais, l’avait reçu...et avait débattu avec lui cette grande question du *veto*”).

“Given that 13 republics, founded on the same principles as our own, support this proposition,” he wrote ruefully, the Convention might have spared a few moments to consider it.<sup>767</sup>

Critics feared that the Commission would emasculate the executive branch, rendering it inoperative at a moment of heightened vulnerability.<sup>768</sup> But they believed, too, that this vacuum of authority would be filled by more malevolent forces, so that the effect would be to intensify rather than contain the growth of arbitrary power. Authors outlined two possible scenarios. They proposed, first, that in obsessing over the phantom danger of an executive *coup d'état*, the framers of 1795 had thrown open the gates to a legislative reign of terror. Lezay mapped the toxic dynamic by which the executive, deprived of the “impenetrable shield” of the veto, would gradually see its powers and capacities diminished, reassigned, and colonized by the *corps législatif*. Only a negative voice would enable the executive to “defeat the invasions of the legislature, and block its path to tyranny.”<sup>769</sup> Jacques-Charles-Gabriel Delahaye, a moderate *conventionnel*, explained how a seemingly abstract breakdown in constitutional equipoise would unleash a wave of criminal terror.

Without a veto [*sanction*] over the laws, the Executive Directory has no intrinsic power; it will be weak and fragile, and it will succumb under its burden. It takes an Atlas, not a Pygmy, to hold up the world. No: if the Executive Directory does not have a veto there is no balance of powers. The executive, afraid of being

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<sup>767</sup> Adrien Lezay, "Sur le veto américain," *Journal de Paris*, Aug. 22, 1795, 1357. Cf. d'Ivernois, *Des révolutions*, 412 (“Un seul Député a eu le courage de jeter en avant cette idée: son nom est *Ehrman*, & il mérite d'être nommé...”). || Adams, writing to d'Ivernois (Dec. 11, 1795), *Founders Online*, was on the same page: "The Executive Power, in the new Constitution is exactly like Daniel in the Den of Lions, or Shadrack & Co the Fiery Furnace, if they are not torn in Pieces or consumed in the Flames, they must be preserved from such destruction by a miraculous Interposition of divine Power. An hungry Wolf will not fly at an innocent Lamb, with more certainty than a Legislative Power at an Executive, provided the latter has not a Veto with which to defend itself."

<sup>768</sup> See, e.g., Lezay, *Constitution de 95*, 42 (“la manière dont la Commission l’a doté, c’est plutôt comme un ennemi que l’on charge de chaînes, que comme un Protecteur”); Munteano, *Madame de Staël*, 59 (“Il [Lezay] avait assisté aux séances où Lanjuinais affronta la colère de l’Assemblée, soit en lui proposant la division du Corps législatif, soit en plaidant pour le *veto*, et nous tenons de ce témoin autorisé que cette dernière proposition ‘fut couverte de huées’.”).

<sup>769</sup> *Ibid.*, 41. Cf. Røederer, "Du Gouvernement," 31-2 (“Le projet...réduit le Gouvernement à recevoir en silence, à publier, à proclamer...l’acte le plus destructif du Gouvernement même....Il est évident qu’elle prive le Gouvernement de tout moyen de résistance dans un moment de trouble, et qu’elle donne au Corps législatif le pouvoir de l’accabler.”).

indicted [by the legislature], will be timid in execution, will be afraid to make enemies, and will think more of personal safety than of duty. In a word, without an equilibrium of power there is nothing but storms and political tempests, nothing but death, anarchy, and the resurgence of revolutionary furies. The forests and caves will once again become our refuge from scaffolds and daggers.<sup>770</sup>

The *mandataire* from Seine-Inférieure, who spent 1794 hiding in the wilderness of Brittany, was not speaking figuratively. "Have you forgotten," fumed the jurist Réal to the drafting committee, "how easily the legislative assembly devoured" the modest executive provided for in the Constitution of the Year I, so that "unlimited powers" came to be exercised by "tigers?"<sup>771</sup> Hékel was equally incredulous that the drafting committee had learned so little from the hecatomb of Year II, and was enraged that it had constructed "a legislature as absolute, as unlimited...as that of the Constitution of 93!" He imputed this catastrophic choice to their ambition: the same men behind the new constitution expected to sit in the new legislature, and had taken decisive steps to ensure that they would.<sup>772</sup> They were in no mood to curtail powers they expected to enjoy.

Second, it was likely that, when the fettered executive of 1795 proved unavailing, an authoritarian executive would assume its place. The idea that liberal constitutionalism brought about the encroachments and depredations it feared most would become a trademark of the Coppet circle. Jacques Necker put forward two versions of it in his four books on the French revolution. On the one hand, the Directory might compensate for the evacuation of its formal powers by relying increasingly on the "magic forms of royalty"—ceremony, costumes, lavish entertainments—to manufacture legitimacy. A polity ruled by such means would sink into indolence and dissipate its energies on trivialities, soon finding that was "a republic only in appearance and name." On the other hand, a collegial executive might be tempted to expand its

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<sup>770</sup> *Opinion de J.-C.-G. Delahaye*, 9.

<sup>771</sup> Réal, quoted in *Porte-feuille politique*, 286.

<sup>772</sup> Hékel, *Bases d'une constitution*, 17. On the infamous "law of two-thirds," which mandated that two-thirds of the sitting Convention would be returned following ratification as members of the Council of 500, see Malcolm Crook, *Napoleon comes to power: democracy and dictatorship in revolutionary France, 1795-1804* (1998), 22.

jurisdiction by fomenting crisis, since this would activate powers and dignities available only in times of emergency. The directors, per Necker, “will come to prefer war, which gives them great and independent administrative powers, and liberates their authority,” to a peacetime constitution that condemns them to irrelevance.<sup>773</sup> Or else, as Staël conjectured, they might conclude that the constitution is so crippled by idealism that “one must govern illegally” in order to govern at all. Having become accustomed to extralegal action and rule by decree, the executive would then be loath to return to the straitjacket of regular order, and the liberal constitution would be dissolved at a stroke.<sup>774</sup> This was also the thesis of Staël’s collaborator and lover Benjamin Constant in a work drafted several years later, looking from the vantage of Napoleon’s Consulate on the calamitous failure of the 1795 charter.

Weakness does not place any obstacles in the way of usurpation, but rather invites it, because usurpation is the effect of the government using improper means, and the best guarantee against that is the availability of proper means. In unduly weakening one part of the government, you force it to invade the rights of other parts. Not being able to realize its necessary ends with the forces that properly belong to it, it will necessarily have recourse to powers that it usurps, and from this modest and necessary usurpation to usurpation that is spontaneous, to usurpation that is limitless, is merely a step. It is necessary, then, without any doubt, to give great force to the executive power.<sup>775</sup>

In the imagination of Coppel, every effort to decapitate the executive only redoubled its strength.

It could be kept within constitutional boundaries only if they encompassed the full range of

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<sup>773</sup> Necker, *De la révolution*, 3: 238; 3: 127.

<sup>774</sup> Staël, *Circonstances*, 3: 1: 388. Cf. her slightly different spin on this argument at Madame de Staël, *Réflexions sur la paix intérieure* [July 1795], in *Œuvres Complètes*, 3: 1: 155 (“Fortifiez le pouvoir executif, afin que l’anarchie ne ramène pas à la royauté.”). In *Circonstances* Staël was reflecting on the *coup* of 18 Fructidor, engineered by three of the directors against a purported royalist conspiracy. Numerous legislators were arrested, including Jean-Charles Pichegru, the president of the lower house, and there was a belief that the actions of the Directory had greatly exceeded its constitutional bounds. See Gerlof D. Homan, *Jean-François Reubell* (1971), 125-6.

<sup>775</sup> Benjamin Constant, *Fragments d’un ouvrage abandonné sur la possibilité d’une constitution républicaine dans un grand pays* [ca. 1802] (Henri Grange, ed., 1991), 152-3. Cf. *ibid.*, 248 (“Toutes les erreurs du Directoire sont venues, non de sa complexité, mais de ce que la constitution l’avait organisé faiblement, et l’absence des prérogatives les plus nécessaires a été la cause de ce qu’il a saisi des pouvoirs arbitraires et illimités.”). For an earlier statement, see Constant, *Des suites de la contre-révolution de 1660 en Angleterre* (Paris, November 1798),<sup>84</sup> (“Ces derniers s’arrogent cet arbitraire, d’abord avec des intentions pures; mais leurs intentions se dénaturent bientôt...et le gouvernement, que l’on nomme encore constitutionnel, devient une suite d’usurpations, une dictature”). || For an argument along similar lines, see [Alexander Hamilton], Federalist No. 20 [1787], *The Federalist Papers* (Terence Ball ed.), 92 (“Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than by the full exercise of the largest constitutional authorities.”).

powers requisite in a crisis of state. Lezay proved equally adept at these dialectical somersaults. If the Directory lacked a veto, he reminded his readers, the Council of Elders did not, and it would find itself frequently “obliged to consult the executive power” for advice about the relative merits of pending legislation. This advisory role, Lezay warned, will become a covert veto in the hands of the five directors, who will exploit their national celebrity, and their dominion over diplomatic and administrative intelligence, to bend the upper chamber to their will. And because it could operate this veto by remote control, it would exercise these powers without the faintest whisper of accountability.<sup>776</sup> The Coppet circle hoped to impale the *Directoire* on the horns of a dilemma: either effete and ineffectual, or sinister and usurping.<sup>777</sup>

Lezay ended his pamphlet with a barrage of invective he hoped would sound the death knell of the Directory—“the only activity of this impotent and corpulent executive, devoid of courage, useless in action, will be devouring itself.”<sup>778</sup> For Lezay, as for the leading thinkers of his milieu, the question was not how to salvage or reform the Directory, but how to reconstitute it from first principles. And the consistent answer was that it should be refashioned according to the forms and practices of the American constitution. This was a protean ideal. The ex-montagnard François Poulthier thought that the committee could save face by retaining the outward form of a Directory; it would simply appoint a *président* who would conduct all diplomacy, monopolize all official dignities, and send out decrees under his seal and signature. Rœderer urged that the Directory be given full command of the nation’s military forces, “a power that the American

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<sup>776</sup> Lezay, *Constitution de 95*, 43.

<sup>777</sup> The same thought is at work in the verdict of the *prêtre réfractaire* Jean-Baptiste Duvoisin, writing from exile in Brunswick: “Fidelle à la constitution, le Directoire est trop foible; infidelle, il peut se rendre tout-puissant.” See Duvoisin, *Défense de l’ordre social, contre les principes de la révolution française* [1798] (Paris, 1829), 321.

<sup>778</sup> *Ibid.*, 57.

Congress has not been afraid to bestow on the president.”<sup>779</sup> Vaublanc, aghast at what his writings had inspired, petitioned for a complete rewrite; he now recommended an executive council elected by the people, fortified with an American *droit d'opposition* over legislation.<sup>780</sup> In the words of Germaine de Staël, who agreed entirely, without “this right, with which the president is clad in America,” the executive power would not have “the force necessary to maintain the government, and thus the republic.”<sup>781</sup> But it was Lezay who most convincingly and comprehensively invoked American presidentialism as an exemplar for the French republic. “Follow the example of Rome in its dangers, and America in its wisdom,” he admonished, “and give the execution of your laws to a single leader, give him his *veto*, and make him removable every five years.”<sup>782</sup> Rather than a watery counterfeit of the American executive, Lezay exhorted his countrymen to embrace and enact the genuine article.

The same animadversions were heaped on the *Conseil des Anciens*, which the Onze initially named the *Sénat* before public outrage forced a volte-face. Daunou, the lead drafter of the 1795 document, proudly proclaimed that “we have refused the American denominations of *Senate* and *House of Representatives*, since each of the two chambers is equally representative.”<sup>783</sup> This was

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<sup>779</sup> Rœderer, *Du Gouvernement*, 36.

<sup>780</sup> See Vaublanc, *Réflexions/plan*, 28 (“Plus on a les idées républicaines, plus on attache d’importance et de grandeur au choix du peuple, et plus on doit sentir que les ministres doivent être nommés par lui.”); 32 (“tout en demandant le droit d’opposition pour le Conseil d’état, je suis persuadé qu’il n’en fera presque jamais usage...Mais je le demande pour augmenter la considération du Conseil, et pour qu’il ne soit pas réduit...à être le simple ministre des volontés du corps législatif.”). Cf. Hékel, *Bases d’une constitution*, 20 ff. 1.

<sup>781</sup> Staël, *Réflexions/intérieure*, 3: 1: 151. By 1798 she took a harder line, pressing for an enhanced version of the executive contemplated by the 1791 constitution, with a suspensive veto that would remain in place until the next legislative session, immunity from legal process, and the right to prorogue the assembly. See Staël, *Circonstances*, 3: 1: 385, 388, 392.

<sup>782</sup> Lezay, *Constitution de 95*, 59. Cf. D.M.X., *Observations...par un Villageois*, 17 (“En le composant d’un président & d’un vice-président, pour un tems plus ou moins long, & en faisant avec lui concourir le sénat dans les plus importantes nominations, & dans les traités avec les puissances étrangères.”).

<sup>783</sup> Daunou, Suite de la séance du 30 Messidor, *Moniteur*, Jul. 23, 1795, RAM 25: 278. Cf. Barras, *Mémoires*, 1: 239 (“on n’osait pas les appeler les *deux Chambres*, à cause de la comparaison qu’on craignait...avec les deux chambres

true in the sense that deputies to both chambers would be elected at the same moment, and through the same process of *suffrage censitaire à deux degrés*.<sup>784</sup> But they were not equally situated—it was the exclusive province of the Council of the Five Hundred to propose laws (Art. 76), the role of the *anciens* merely to ratify or reject them (Art. 86).<sup>785</sup> And thus, whatever the nomenclature and whatever their electoral credentials, they were not peers or equivalents. Left to its own devices, the lower house would liquidate its counterpart without pity.<sup>786</sup> To begin with, the negative outlined in Article 85—an absolute and unconditional veto, but with no opportunity to revise the text or to present an alternative—was too cumbersome a weapon to ever deploy. The young economist Jean-Baptiste Say delineated the unfavorable dynamics that would accompany any effort by the Conseil des Anciens to exercise its sole prerogative: in any quarrel, the more numerous and less affluent Conseil de Cinq-Cents will profess to be the authentic voice of the nation, and will paint the *anciens* as superannuated pseudo-aristocrats, out of touch with the needs and sentiments of the masses. The Council of Ancients, prohibited from issuing any statement to accompany its veto, will be mute and thus powerless. As relations between the two chambers deteriorate, the *anciens* will find themselves on increasingly unfavorable terrain. They

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de l'Angleterre"). Vaublanc, who consulted with the Commission des Onze as its deliberations were still ongoing, mocked it mercilessly for this linguistic puritanism; see his *Bases/constitution*, 13 ("...je me suis servi tout bonnement des mots, *chambre des représentants & sénat*, sans commencer par disserter gravement si les idées jacobites me permettoient d'employer de semblables expressions. J'avoue que j'ai cru qu'un mot consacré dans tout l'antiquité & en Amérique, ne pouvoit pas souiller la bouche d'un Français. Mais je laisse à ceux qui penseront différemment la liberté d'enrichir la langue d'une nouvelle dénomination, & la fatigue de la chercher dans le ridicule dictionnaire de la révolution.").

<sup>784</sup> That is to say, restricted suffrage and indirect election; under the 1795 constitution every primary assembly would appoint an electoral college, which would in turn elect all municipal and national deputies. See Malcolm Crook, *Elections in the French Revolution* (1996), 120-5.

<sup>785</sup> Boissy gave two rationales in the *Projet de Constitution*, 47. First, the division of tasks would temper the instinct for rivalry between the two chambers, which would be set to different tasks. And second, it would take advantage of the humors appropriate to each legislative demographic—the spirit and imagination of youth (proposing), balanced by the stern sobriety of age (judgment).

<sup>786</sup> Vaublanc, *Réflexions/plan*, 18 ("Votre constitution sera mauvaise et funeste à la France, si l'un des pouvoirs est beaucoup plus fort que les autres, et peut les intimider et les écraser; l'initiative confiée au seul conseil des cinq cents, lui donne cette force dangereuse.").

will be besieged with populist and redistributive measures from the five hundred, forcing a Hobson's choice between tame acquiescence to laws they abhor, and public censure for "betraying the interests of the people."<sup>787</sup> By design,<sup>788</sup> the second chamber will be unable to retaliate, and it will find no sanctuary in public opinion; as Necker emphasized in his own critical review of the constitution, "no measure favorable to commerce, agriculture, or the prosperity of the state...will carry the name of the *conseil des anciens*," which was strictly forbidden from proposing, discussing, or even advising on new legislation.<sup>789</sup> Neither will the *anciens* be backed by the vacillating and insecure Directory, which will studiously avoid committing itself, or else rally timorously to the side of Cinq-Cents.<sup>790</sup> It will be trivially easy, therefore, for the five hundred to vilify the Council as an obstructionist and reactionary patriciate, a vestigial organ to

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<sup>787</sup> [Jean-Baptiste Say], Quelques Idées sur le projet de Constitution de la Commission des Onze, in *La Décade philosophique, littéraire, et politique* (June 28, 1795), 6: 82 ("il est probable que dès le premier refus qu'exercera le corps des anciens, les passions de l'autre chambre se trouveront froissées; les principes du corps des *anciens* seront d'abord blâmés, ensuite ses intentions soupçonnées, bientôt on emploiera des qualifications outrageantes"). Cf. Vaublanc, *Réflexions/plan*, 14 ("Diront-ils oui? Certes, aucun honneur ne peut résulter pour eux d'une approbation froide donnée à une conception belle...Diront-ils non? Ils auront contr'eux la majorité de cinq cents, puisque ce sera cette majorité qui aura conçu la loi qu'ils viennent de rejeter."); *Vice radical*, 37 ("s'il le fait, il écite un mécontentement général, s'il ne cède pas, son droit, il laisse passer un grande nombre de mauvaises loix").

<sup>788</sup> See Duvoisin, *Défense de l'ordre social*, 320 ("il ne reste aux Anciens que le droit d'accepter sans amendement, ou de rejeter sans restriction, sans explication...il résulte en faveur des Cinq-cents une prépondérance énorme"); Necker, *De la révolution*, 3: 147 ("qu'il y ait dans un projet de loi plusieurs articles excellents et un détestable...le conseil des anciens, obligé de rejeter la loi, ne pourroit annoncer son motif"); Charles Long, *The New Era of the French Revolution* (London, 1795), 16-17 (the Conseil des Anciens "is only a Censor condemned to wage perpetual warfare" on the 500).

<sup>789</sup> Necker, *De la révolution*, 3: 219. Cf. d'Ivernois, *Des révolutions*, 451 ("tout le mérite des bonnes loix appartiendra au Conseil des Cinq Cents, qui seul aura pu les mettre en avant"). || For a dissent from this view, arguing instead that the upper house will be mercifully "free of the disfavor attracted by odious laws, such as those related to taxation, which it will have the honor of rejecting," see Pierre-Louis Røederer, *De la Révolution Française* par M. Necker, *Journal d'Économie publique*, Dec. 30, 1796, Jan. 9, 1797, Mar. 9, 1797, Apr. 9, 1797, consolidated and reprinted in *Œuvres*, 4: 589.

<sup>790</sup> Vaublanc, *Réflexions/plan*, 15 ("Si la lutte commence, auquel des deux conseils croyez-vous que se ralliera le pouvoir exécutif? au plus fort...au plus audacieux, au plus entreprenant. Mais c'est mettre, dira-t-on, les choses au pis.").



be excised in the name of democratic and republican values.<sup>791</sup> Lenoir-Laroche, writing when the new constitution was still only a glimmer, had already anticipated that if “the two branches of the legislature are not composed of equal elements”—that is, if one house becomes a mere *comité du travail* for the other—the ensuing jealousies and discords will “shake the body politic” to its core, and plunge France back into the “frightful epoch” of 1793.<sup>792</sup>

Lenoir was not prescient; he was merely alert. “It is impossible not to notice,” remarked the Comte de Vaublanc, that the new arrangement of legislative powers, “considered abstractly, is precisely that of the Constitution of 1791.” This was not a compliment. He continued:

This constitution, too, had delegated legislation to two powers, one deliberating and the other sanctioning. And the same theory will produce the same results, since the only difference today is that the sanction belongs to an assembly instead of an individual. It will inevitably be accompanied by rivalries...[which] will always be much too violent for public peace.<sup>793</sup>

The hallmark of the 1791 frame had been its asymmetrical distribution of legislative power—the king was barred from participating in legislative deliberation, or from drafting his own statutes for consideration. He could refuse his assent to laws passed by the unicameral assembly (Art. 2.3.3.4.), but any law forwarded in three consecutive legislative sessions would automatically enter into force (Art. 2.3.3.3.). Predictably, every effort to employ this prerogative provoked popular fury; Louis XVI was nicknamed *Monsieur Veto* in the radical press, and the National Assembly began to test legal justifications for disregarding the negative in times of emergency, as well as for prosecuting any royal minister who endorsed its use.<sup>794</sup> Finally the executive itself,

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<sup>791</sup> See *Vice radical*, 23 (“La dissolution du senat sera demandée de toutes parts, et c’est ce qu’il aura de moins a redouter; on criera a l’aristocratie quelconque; les noms de deémocratie, d’égalite se feront entendre; on fera une révolution, et tout l’édifice sera détruit.”).

<sup>792</sup> Lenoir-Laroche, *De l’esprit*, 134-5. Cf. [Pardoux] Bordas, Séance du 30 Messidor, *Moniteur*, July 22, 1795, in RAM 25: 271 (“Si les deux chambres s’opiniâtrent, elles ne tarderont pas à se accuser; chacune d’elles s’enfourera de ses partisans, de ses prosélytes, et l’Etat se divisera, puisqu’elles seront divisées.”).

<sup>793</sup> Vaublanc, *Réflexions/plan*, 13.

<sup>794</sup> See, e.g., Report of Camille Desmoulins, on behalf of the Directory of the Paris department, *Moniteur*, Dec. 12, 1791, RAM 10: 606-7. Cf. C.J. Mitchell, *The French Legislative Assembly of 1791* (1988), 212 (“some local

indelibly associated with the hated negative voice, was torn from its gilded plinth, and the legislature made unicameral and univocal. François d'Ivernois supposed that, knowing "what it cost the unhappy Louis XVI," the Conseil des Anciens would not dare to exercise its own veto,<sup>795</sup> which would fall into the same desuetude as the royal negative in England, surviving only as empty ceremony and form.<sup>796</sup> "Imagine," urged Vaublanc, that the Council of 500 comes to be "dominated by factious men, full of audacity and intrigue, breathing crime, as we once saw the Convention...[and] whether, to stop it, it would not be necessary to have a Senate of the highest solemnity and majesty, completely irreproachable, bolstered by public consideration."<sup>797</sup> Instead the Commission des Onze had devised a cipher, a "copyist" signing every paper that crosses its desk, living in perpetual fear of its master.<sup>798</sup>

It was thus imperative, in the words of Germaine de Staël, that something be done to augment "the duration, strength, and consideration of the Conseil des Anciens," which alone could assure the survival of the new constitution.<sup>799</sup> And this meant placing it on terms of parity with the Conseil des Cinq-Cents by giving it the right to initiate legislation. This would have the double effect of furnishing it with a means of self-defense, and greatly enhancing the quality of collective deliberation, since every law would now be debated and voted twice. Adrien Lezay argued that this was the secret to harmony between the two chambers: "having both contributed to the formation of a law, each will look upon it as its own work, free of the party spirit that leads

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governments began to implement vetoed decrees and to justify this with the *oui-voters'* arguments about *décrets de circonstance*").

<sup>795</sup> D'Ivernois, *Des révolutions*, 451.

<sup>796</sup> Ibid., 399-402; Vaublanc, *Réflexions/plan*, 17 ("Elle a été fatale à Charles premier, fatale à Louis XVI. Depuis un siècle, les rois d'Angleterre ne l'ont employée qu'une fois ou deux.").

<sup>797</sup> Vaublanc, *Réflexions/plan*, 14.

<sup>798</sup> Staël, *Circonstances*, 3: 1: 377.

<sup>799</sup> Staël, *Réflexions/intérieure*, 3: 1: 163.

to acceptance or rejection” from narrow motives of vanity or wrath.<sup>800</sup> Thermidorean publicists canvassed the republics of antiquity and the Renaissance for examples, but never strayed far from their true desideratum—what Vaublanc termed a *Sénat Français* that, following “the system of England and America,” would consist of illustrious propertyholders, and would be permitted to draft as well as to reject legislation.<sup>801</sup> Jean-Jacques-Régis de Cambacérès, a Montpellier deputy often ridiculed for trimming his sails to catch the prevailing political winds, spoke on the subject with uncharacteristic candor in a July *discours*:

The English and American Constitutions...have in certain cases given the two legislative chambers a reciprocal relationship, while in other cases giving one house the right of initiative and the other one the right of amendment. Why not take on board these proven provisions, and establish a perfect equality between the two councils?<sup>802</sup>

General Miranda, one of a small number of commentators with firsthand experience of the American republics, had much the same thought. “In America,” he noted, “the Senate enjoys the same rights as the House of Representatives.” The sole exception—the *droit exclusif* of the House to introduce revenue bills—was an error, an unthinking and infelicitous imitation of the British constitution. “[I]n a democratic republic like the United States,” where the Senate is elected, there is no reason to withhold from it the full complement of legislative power.<sup>803</sup> Vaublanc found ample support for the project of a French Senate in the pamphlet literature that now accumulated thickly in Paris, citing the “excellent work” of Lenoir-Laroche, and the “true principles” elucidated in *L'Équiponderateur* of “citizen Lamare.” He capped this list with a long quotation from an older work, Mably’s 1783 *Observations sur le gouvernement et les loix des États-Unis d’Amérique*—an encomium on the dignity and stability of Massachusetts’s mixed

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<sup>800</sup> Lezay, *Constitution de 95*, 35.

<sup>801</sup> Vaublanc, *Réflexions/plan*, 12.

<sup>802</sup> Cambacérès, Suite de la séance du 30 Messidor, 25: 277.

<sup>803</sup> Miranda, *Opinion*, 11. Miranda does not mention, but was likely aware, that the Senate was elected indirectly.

constitution.<sup>804</sup> Mably had been a favorite philosopher of the Jacobins for his utopian ruminations on equality of property; after Thermidor he continued to be celebrated, now as a theorist of human rights and republican order. In a June 1795 petition to transfer his remains to the Panthéon, Jean Dussaulx credited his writings on liberty with inspiring the Declaration of Independence, and designated him “the founder of American liberty.”<sup>805</sup> Vaublanc was yet more specific—Mably was not an exponent of the American liberty *tout court*, but rather of the enlightened, aristocratic variation espoused by John Adams.<sup>806</sup>

Ostensibly the Commission des Onze, genuflecting to “Samuel” Adams, had made Massachusetts constitutionalism the official ideology of the new republic. But, per Vaublanc, its etiolated upper chamber rendered its promise of constitutional equipoise a mirage. Despite its high-minded invocations of *la balance des pouvoirs*, he wrote in an apostrophe to the Commission, “you did not follow it in your plan.”<sup>807</sup> The anonymous D.M.X. could afford to be even more scathing on the Commission’s spurious tribute to Adams and America:

Instead of a mock executive power composed of clerks, instead of this fictitious senate, falsely called a council of elders, why not genuinely follow this Constitution you have so rightly praised in your report? You have paid homage to the writings of John Adams, and what this celebrated publicist demonstrated

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<sup>804</sup> Vaublanc, *Réflexions/plan*, 12. || For Mably’s original, quoted somewhat loosely by Vaublanc, see his *Observations sur le gouvernement et les loix des États-Unis d’Amérique* (Amsterdam, 1784), 64-5 (“La censure que les deux chambres de la cour générale exercent l’une sur l’autre, en pouvant rejeter mutuellement leurs bills, est...favorable à la stabilité du gouvernement. Elle arrête le goût des nouveautés; elle inspire aux citoyens un plus grand attachement &...respect pour les loix; & l’examen qu’on attribue au Gouverneur de Massachussets, n’est propre qu’à assurer tous ces avantages.”). || Cf. Lamare, *L’Équipondérateur*, 13 (“Mably, dans ses observations sur les constitutions américaines, blâme celle de Pensylvanie qui voulut essayer du système de l’unité d’action en n’instituant qu’une seule assemblée, & loue celle de Massachussets dont la législation est équilibrée.”).

<sup>805</sup> Dussaulx, Suite de la Séance du 21 Prairial, *Moniteur*, Jun. 12, 1795, RAM 25: 657. || On Mably’s popularity with “the republicans of Year II,” who were attracted both to his rigorous civic moralism and his musings on the community of property, see Jean-Pierre Gross, *Fair Shares for All* (1997), 3, 51. On the shifting valence of Mably’s posthumous reputation in France, see Michael Sonenscher, *Sans-culottes* (2008), 399.

<sup>806</sup> For evidence that this view extended to official evaluations of the Massachusetts constitution, see, e.g., Commissioners [dir. Fauchet] to Committee of Public Safety (Apr. 29, 1795), in *Correspondence of the French Ministers to the United States, 1791-1797* (Frederick Jackson Turner ed., 1904), 673 (“La Constitution actuelle [of Massachusetts] est un mélange de réglemens aristocratiques, et de maximes d’une haute philosophie.”).

<sup>807</sup> Vaublanc, *Réflexions/plan*, 18.

even more forcefully than the usefulness of a senate, was the minimum of anxiety it ought to inspire in even the most hypochondriac lover of liberty. If this tribute is, as I believe, sincere, why is it so sterile? Why, rather than a real senate, does it give us a homogeneous partition [of the legislature]? Why this unheard of division of the initiative and the negative across these two sections? Why inflict on the body politic, already so fatigued, this new and perilous trial? You would have had as the guarantor of your success the experience of two hemispheres if, like Europe and America, you had given your two chambers equal rights of initiative and negative.<sup>808</sup>

But D.M.X., who assumed the persona of a “Villageois” railing against the folly of the political metropolis, did not stop at demanding parity between the two chambers. Embedded in the concept of a senate was the thought that it would be *distinct* from the lower house, and in some sense *superior*—in its strict criteria for admission, its tone of gravity and *auctoritas*, and its armory of special powers and prerogatives. In England and America, he pointed out, each of the two chambers was clearly differentiated; in England through a hereditary peerage, and in America through indirect election. John Adams did not divide his legislature for mechanistic reasons, but because he expected each chamber to be the tribune of a distinct social order.<sup>809</sup> But in France the 500 and the 250 would be “elected by the same assemblies and according to the same methods, for the same term of office.” While in theory members of the Conseil des Anciens would be more mature and experienced—it was open only to men older than forty, married or widowed—in practice the majority of the Conseil des Cinq-Cents would share these traits. The “bicameralism” of the new constitution was thus a legal fiction; the Commission had engendered a single, continuous chamber of 750, artificially and arbitrarily split in two. The “Villager” cut to the heart of the matter: if the Anciens and the Cinq-Cents are identical in education, social position, and mode of appointment, what licenses the former “to call themselves a council of

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<sup>808</sup> D.M.X., *Observations...par un Villageois*, 17.

<sup>809</sup> Adams, *Defence*, 3: 294 (“The rich, therefore, ought to have an effectual barrier in the constitution against being robbed...as well as the poor; and this can never be without an independent senate.”). Cf. Duvoisin, *Défense de l'ordre social*, 318 (“Le conseil des Cinq-cents & le conseil des Anciens ne forment pas deux chambres réellement distinctes, comme en Angleterre...Les membres de ces deux conseils étant pris dans les mêmes conditions, sans autre différence que celle de l'âge, il n'y a pas entre eux cette diversité, cette opposition d'intérêts qui...balance & mûrit les résolutions, & qui, dans un gouvernement représentatif, peut seule assurer la liberté civile & le droit de propriété.”).

elders, and to pretend to an exclusive right to be the depositaries and organs of public reason?"<sup>810</sup> Why shouldn't we expect the Cinq-Cents to cast aside its dwarfish twin, and reign alone over the republic?

Quite naturally we find Necker and Staël at the forefront of those arguing for a *seconde chambre* that is palpably different, in both power and status, from the lower house. Necker scoffed at the "special tribunal" envisioned by the constitution to try crimes of state, and pressed instead for an American system of impeachment by the Cinq-Cents and trial by the Anciens. Once removed from office, magistrates and representatives could be punished through ordinary criminal process. The alternative contemplated by the constitution—capital trial for *lèse-république*, prosecuted by the lower house before a special jury of provincial deputies—would likely degenerate into a ghastly encore of "Robespierre's tribunals." Necker also commended the American practice of confirming executive appointments to "the principal administrative offices" in the Senate; this would guard against the nepotism and bribery that marred the English constitution, while cultivating ties of amity between the executive and the upper chamber.<sup>811</sup> But these were practical points about constitutional physics; when Necker and his cohort regretted the imbecility of the Conseil des Anciens, they were thinking mainly of its mediocrity of style and status. For Cambacérès this meant, at a minimum, lengthening the terms of Ancients to from three to "seven or eight years," to effectively monitor directors who will serve five years at a time.<sup>812</sup> But it was Madame de Staël, in her unpublished manuscript *Circonstances actuelles qui*

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<sup>810</sup> Ibid., 9.

<sup>811</sup> Necker, *De la révolution*, 3: 202, 210; D.M.X., *Observations...par un Villageois*, 17. Cf. Lamare, *L'Équipondérateur*, 46 ("Une attribution particulière à ce corps est, en Amérique comme en Angleterre, d'être conseil judiciaire pour les délits de lèse-nation...les jugemens nationaux en ont plus de solennité").

<sup>812</sup> Cambacérès, Suite de la séance du 30 Messidor, 25: 279.

*peuvent terminer la révolution*, who carried this thought to its logical conclusion, arguing for the complete reinvention of the upper house as a redoubt of property and enlightenment:

It is necessary that those who govern be propertyholders, and that great wealth be required to hold one of the 250 places in the Conseil des conservateurs...from which members of the Directory will be taken, and to which they will return after the fulfillment of their duties. Then the gradations necessary for public order will be in place...Today power is on one side, and wealth is on the other, so that property is constantly at war with the legislature...Mix power and wealth together...[and] join to it the virtues of wisdom...among 250 propertyholders, and I think it certain that love of order and tranquility will always be in the majority...Of course this conforms perfectly to the Constitution of 1795. The great principle and object of the revolution, non-heredity, would be conserved—choice rather than chance, election rather than privilege. The question is why election every three years is more mathematically correct than election every twenty years or, still better, for life. Is it nature that wills a new election every three years? Then why not every year, why not every day, why not whenever the people will it? [...] There is not, properly speaking, any “democracy” in France. There is only natural aristocracy, as contrasted with factitious aristocracy—that is to say, the government of the best.<sup>813</sup>

The reform favored by the Coppet circle, then, was to reconstruct the Conseil des Anciens along the lines suggested by the American Senate or the British House of Lords, supplementing its prerogatives and prolonging its term.<sup>814</sup> We should pause on the mantra of de Staël's revamped Conservative Council—“l'aristocratie naturelle”—a phrase that was unusual in both English and French. It occurs twice in Adam Smith's *Wealth of Nations*, and once in Rousseau's *Social Contract*, where it is dismissed as “suited only to primitive peoples.” It later became ubiquitous in America's national debate over constitutional ratification between 1787 and 1788, and would be incorporated into the political lexicon of Edmund Burke. But every indication is that its vector of transmission in the Atlantic world was the 1787 edition of John Adams's *Defence*, where it is a recurring motif. The conceit was not, however, his own invention; the Massachusetts

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<sup>813</sup> Staël, *Circonstances*, 3: 1: 379-80. Cf. Necker, *De la révolution*, 3: 133.

<sup>814</sup> Staël's arch-nemesis, Napoleon, was of the same opinion. In an 1802 interview with Jean-François Reubell, a former member of the Directory, the general indicated that the 1795 constitution might have been salvaged if the directors had taken the initiative after 18 Fructidor to “prolonger la durée du Corps législatif et du Directoire exécutif, enfin profiter du moment.” Reubell, in no position to disagree, weakly foisted the blame for this failure onto his former colleague Révellière-Lépeaux: “de trois que nous étions pour faire le 18 fructidor, l'un était amoureux de la Constitution de l'an III dont il avoit été l'un des créatures.” See “Conversation de Reubell avec le Premier Consul, le 3 Ventôse an X (22 février 1802),” reprinted in the *Nouvelle revue rétrospective* vol. 20 (June 1904), 385-6.

republican plucked it from a classic text of the English commonwealth tradition, then languishing in relative obscurity: James Harrington's *Oceana*.<sup>815</sup>

The same text inspired the anonymous *Vice radical du projet de Constitution*, which diverged sharply from Necker and Staël on the projected reform of the upper house. Rather than remaking the two chambers as equal sites of legislation, the *Vice radical* argued for reversing their polarity, allowing the Conseil des Anciens to compose laws, and the Conseil des Cinq-Cents to affirm or negate them. The proposal bore the unmistakable impress of Harrington. In *Oceana* the English political theorist defended bicameralism, not as an inheritance from the gothic past with which it would be dangerous to tamper, but as an ideal procedure for arriving at

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<sup>815</sup> The picaresque career of the phrase “natural aristocracy” in the eighteenth century has, remarkably, never been properly chronicled. There is not space here for a full examination, but it is possible to at least indicate its broad contours. The phrase appears to have originated with James Harrington; its only appearance in English prior to 1700 comes in *Oceana*, and in a small number of commentators quoting or attacking him. Prior to 1787 it surfaced at irregular intervals in French and English literature. George Turnbull, one of the founding figures of the Scottish Enlightenment, used the phrase twice in his 1738 translation of Heineccius's *A methodical system of universal law*, and once in his 1742 dialogue *Observations upon Liberal Education*. Rousseau uses the phrase once in his *Contrat Social*, deeming “natural” aristocracy “convient qu'à des peuples simples.” Adam Smith uses it twice to describe the “greater part of the leading men” with particular emphasis on England the American colonies. There are scattered references, too, in the parliamentary records of the 1770s. This is the sum of references to “natural aristocracy” prior to Adams's *Defence*, where it serves as one of the book's master-concepts—it is presented as both a resource to be drawn upon in republics, and a riddle to be solved. These passages are faithfully preserved in the 1792 French translation, where the “aristocratie naturelle” is called “un fait essentiel à considérer dans un gouvernement.” It's clear that Adams's monograph is responsible for the subsequent virality of the term in America; it appears dozens of times in Federalist and Antifederalist writings of 1787-88, and when it is invoked there is often an explicit citation to the *Defence*. Burke read Adams's *Defence*, and incorporated the phrase into his *Appeal from the New to the Old Whigs* (1791). Staël may have come to the expression through either Adams or Burke, being highly conversant in the writings of both. || For references, see: Jonathan Jackson, *Thoughts Upon the Political Situation* (Boston, 1788), 182 (“the receptacle of that natural aristocracy, which Dr. Adams...must suppose will ever arise”); John Smilie, Convention Debates [Pennsylvania], in DHRC 2: 511 (“Mr. Adams says there is in all societies a natural aristocracy.”); James Wilson, Remarks in the Pennsylvania Convention (Nov. 26, 1787), in *Collected Works* (Kermit L. Hall and Mark David Hall eds., 2007), 1: 230 (“I ask now what is meant by a natural aristocracy...an aristocracy means nothing more or less than a government of the best men in the community...Is there any danger in such representation?”); Timothy Pickering, Letters to the Republican (Nov. 8, 1787), in DHRC 19: 220; Melancton Smith, Convention Debates [New York], in DHRC 22: 1750-1 (“the representatives will generally be composed of the first class in the community, which I shall distinguish by the name of the natural aristocracy”); Nathaniel Hazard to John Adams (Apr. 16, 1792), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1337> (“I inclose an Extract from Burke's last Pamphlet [*An Appeal*], which struck me forcibly on Reading, as very...explanatory of the Feelings and Views of the Author of 'the Defence' when he dwelt...[on] mixed Monarchy”); John Adams to François Adriaan Van der Kemp (July 5, 1814), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-4922> (“When the first Volume of my Defence was printed in 1786, I gave an elegant Copy of it to Hartley...[who] lent them to Burke...They produced an entire Change in his Views and Sentiments”).



correct and just decisions in a republic. The argument had three components. First, every assemblage of men will have a fraction more creative, intelligent, and quick-witted than the rest; this is the “*natural aristocracy*,” whose task is to enlighten their compatriots through reasoned deliberation. But second—and crucially—these *aristoi* remain subject to ordinary human passions, and if given plenary authority will become corrupted and self-seeking; excessive power, in Harrington’s words, will “put out their light.” Thus—third—legislative power must be subject to a division of labor. As in Rome, an enlightened Senate should deliberate without deciding, distilling every controversy into a discrete set of propositions or policies, while the assembled masses (who can be relied upon to know their own interests) will decide without deliberating, through silent referendum.<sup>816</sup> This elegant solution proved highly congenial to the author of *Vice radical*, who had access to a forthcoming translation of Harrington’s collected works, and splashed *Oceana*’s pathbreaking defense of bicameralism across six full pages. “This publicist,” he declaimed, “is little-known among us, though certainly worthy of being known, and is essential to consult for anyone who wishes to form a republic.”<sup>817</sup> What the *Vice* gleaned from Harrington was the importance of deliberation when undertaken by men of learning and reason, and its hazards when practiced by the multitude. While the Cinq-Cents was not, admittedly, equivalent to the tumultuous mass assemblies of Athens and Sparta, it was hardly much better, overflowing with “young men who find themselves excluded from the Senate...full

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<sup>816</sup> James Harrington, *Oceana* [1656], in *The Commonwealth of Oceana and A System of Politics* (J.G.A. Pocock ed., 1992), 23-4. Cf. Eric Nelson, *The Greek Tradition in Republican Thought* (2004), 120-3.

<sup>817</sup> See *Vice radical*, 11-18. These quotes (with occasional and very slight emendation) are taken from James Harrington, *La République d’Oceana*, in *Œuvres politiques de Jacques Harrington, écuyer* ([Pierre-François Henry trans. and ed.,] Paris, 3 vols., 1795), 1: 85-9, 2: 21-3. The *Œuvres* marks the first complete translation of any work by Harrington into French; in addition to *Oceana* it includes *The Prerogative of Popular Government*, *The Art of Legislation*, *Valerius et Publicola*, and *Political Aphorisms*, as well as John Toland’s introduction and biographical sketch from the 1700 edition. || On the author’s early access to the translation, see 12 (“Les œuvres politiques d’Harrington vont paroître...Les trois volumes de cette traduction sont sous presse, et pourront être livrés dans quinze jours. Chez le C. Leclere, libraire, rue Martin.”). Leclere is also one of two publishers listed for *Vice radical*.

of the fire of youth,” who will channel their ambition into “captious speeches” to stir the hearts and minds of the populace. And ranged against them, only a thin, grey line of senators, distant from the people and reduced by the rules of the constitution to silence. Such an upper chamber would swiftly be encircled, routed, and overthrown. “And this,” thundered the *Vice*, “is what must follow from this upside-down distribution of powers, which gives the initiative to the younger and more numerous, and the negative voice or *veto* to the smaller and older: civil war, followed by the slavery and destruction of the body politic.”<sup>818</sup> The corrective was to be found in Harrington, and *Oceana*—and not in the U.S. constitution, which suffered from a similarly hypertrophic lower house. The author recalled a recent incident proving this point. In April 1794 the House passed a measure suspending all importations from Britain; the Senate, finding this irresponsibly belligerent, voted it down, and was rewarded with cries of “aristocracy,” and maledictions against “a veto affixed by a minority of men.” Such “fatal commotions,” sighed the penman, are unavoidable wherever the prudence of Harrington is ignored. But they were exacerbated in this case by a curious technicality—the Senate had been evenly divided on the proposal, so that the tiebreaking vote was cast by the “président de droit du sénat”—the Vice President, John Adams.<sup>819</sup>

The *Vice* was not alone in lamenting the omission of Harrington’s works from the reading list of the Commission des Onze. The French translator of Harrington’s *Œuvres politiques*, Pierre-

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<sup>818</sup> *Vice radical*, 18, 27. Cf. *ibid.*, 23 (“qu’à se débarrasser du contrôle du sénat, qu’il saura bien rendre odieux, et faire passer pour un censeur incommode et sévère, pour une aristocratie de gouvernants, pour l’ennemi du peuple...et nous savons assez combien les démagogues ont d’art pour l’en persuader”).

<sup>819</sup> *Ibid.*, 28 (“J’ai dit qu’une grande république avoit seule, jusqu’ici, suivi le système de l’initiative ou de la proposition des lois, dans une assemblée populaire...Cette république est celle des États-Unis de l’Amérique; et ce vice de sa législation pourra lui coûter cher un jour”), 35-6 (“Pense-t-on que cette majorité aura supporté tranquillement cette sorte d’injure? Qu’elle n’aura pas crié à l’aristocratie? Qu’elle n’aura pas accusé la moitié du sénat et son président?”). || For the incident in question, see Douglas A. Irwin, *Clashing Over Commerce* (2017), 97. || The author exaggerated the privilege of the House of Representatives (and the House of Commons) to initiate legislation, which applied only to revenue bills.

François Henry,<sup>820</sup> apologized that his work would appear in print “too late to illuminate the discussion of the new constitution.” This did not, however, prevent him from drawing up a Harringtonian indictment of the Commission’s draft:

“A senate deliberating and proposing; the people, or a popular assembly, deciding; and the magistrate executing.” This path is natural and simple, although it is not the one we have just taken. The National Convention has built its edifice according to a completely different plan. And this plan...is it not that of a theater? Harrington, on the contrary, built a temple. It is in the sanctuary of this temple that law is to be discussed...in the new constitution, this will occur on a stage. In Harrington’s model, deliberation is the fruit of wisdom and experience; ours will be incoherent and deadly. It will be the fruit of enthusiasm, passions, and delirium, to say nothing of intrigue and corruption.<sup>821</sup>

This resonated powerfully with Rœderer, who hailed the Henry edition of Harrington in a contemporaneous review, singling out the extract above for acclaim. “It is unfortunate,” he wrote, “that this translation of Harrington did not arrive three months earlier; we might have accepted truths from a deceased foreigner that are too painful to receive from a living citizen.”<sup>822</sup> Six years later Henry would publish an autopsy of the Directory regime; he did not mourn its passing. And in ascertaining its cause of death, he returned to his initial prognosis of 1795. The “defective spring” in the “political machine” of *l’an III*, he concluded, had been its fateful decision to deliver responsibility for legislative “drafting and initiative” to the “tumultuous deliberations of a raucous assembly.” The savants of the republic were “reduced to having a

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<sup>820</sup> On the translation history of Harrington in France, and the career and ideas of P.-F. Henry, see Raymonde Monnier, “Pierre-François Henry traducteur de James Harrington,” *Annales Historiques de la Révolution Française* (2016), 2: 3-24, esp. 13-18. || Another translation of Harrington’s work appeared the same year, but its editorial apparatus does not contain any commentary on current events; see *Aphorismes politiques de J. Harrington* ([P.F. Aubin, trans. and ed.,] Paris, 1795).

<sup>821</sup> [Pierre-François Henry], Préface, *Œuvres politiques de Jacques Harrington*, 1: x. || Henry added, on the following page, that “[u]n plan...semblable à celui d’Harrington, a cependant été offert à nos législateurs, & par le plus profond d’entre’eux.” This was a reference to the Abbé Sieyès, whose Thermidorean constitution breathed the same rarefied air of elitism as that of Harrington, albeit with numerous modifications that Harrington could not have accepted. Sieyès’s constitutional ideas will be explored in greater detail in Part IV. The coded commendation of Sieyès would, of course, have caught Rœderer’s eye, though he does not allude to it in his *compte-rendu*.

<sup>822</sup> Rœderer, “Œuvres politiques de J. Harrington,” 4: 526.

negative voice only, and often kept their silence altogether,” while “the most passionate” and impulsive “had the greatest means” to air their views and influence others.<sup>823</sup>

To fly into intellectual combat under the standard of James Harrington had long been in France an alternative means of declaring allegiance to John Adams and the Massachusetts constitution. One of the earliest<sup>824</sup> appearances of Harrington in French letters comes in the course of a highly enthusiastic 1785 review of Mably's *Observations sur le gouvernement et les loix des États-Unis*, in which the author compliments the abbé for his principled defense of the mixed constitution in Massachusetts, and encourages him to “read and re-read the works of the celebrated *James Harrington*,” in whom he will find a kindred spirit.<sup>825</sup> And, in the aftermath of 9 Thermidor it was the rising prominence of Adams's *Defence* that spurred a corresponding intellectual interest in the work of his most important predecessor. “Mr. Adam,” noted Rœderer, narrowly missing the correct orthography, “this enlightened friend of liberty, this wise advocate of the American constitutions, often quotes Harrington as a respectable authority”; for readers of the *Journal de Paris*, this endorsement spoke for itself.<sup>826</sup> In 1796, the longtime *représentant*

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<sup>823</sup> [Pierre-François Henry], *Histoire du Directoire Exécutif* (Paris, 1801), 2: 435. || It is worth noting, in this context, that Harrington quickly become a favorite author among those defending the suppression of the Conspiracy of Equals.

<sup>824</sup> See Rachel Hammersley, “The Harringtonian Legacy in Britain and France,” in *European Contexts for English Republicanism* (Gary Mahlberg and Dirk Wiemann eds., 2013), 203 (“apart from a couple of rather dismissive references...in *L'Esprit des Lois*, the only...reference to Harrington and his ideas [prior to 1785] is to be found in the *Encyclopédie*...not in an entry on Harrington himself, but rather in one on the English county of ‘Rutland’” by Louis de Jaucourt.).

<sup>825</sup> Jean-Jacques Rutledge, No. XLV (Mar. 7, 1785), *Calypso, ou les Babillards* (Paris, 1785), 3: 218-19. During the revolution Rutledge would be associated with the Club des Cordeliers where he helped to diffuse Harringtonian ideas, translated extracts from Harrington's *System of Politics* for his journal *Le Creuset*, and oversaw the composition of a republican draft constitution based on *Oceana* by his friend Théodore Le Sueur. See Michael Sonenscher, *Work and Wages* (1989), 336 ff. 20 (praise of Montesquieu and Harrington in Rutledge's 1786 *Éloge de Montesquieu* “was probably a coded panegyric of Necker”); Rachel Hammersley, “The Commonwealth of Oceana de James Harrington: un modèle pour la France révolutionnaire?,” *Annales Historiques de la Révolution Française* (2005), 4: 3-20, esp. 13-14; Théodore Le Sueur, “Idées sur l'espèce de gouvernement populaire” [1792], in *A French draft constitution of 1792 modelled on James Harrington's Oceana* (S.B. Liljegren ed., 1932).

<sup>826</sup> Rœderer, “Œuvres politiques de J. Harrington,” 4: 525.

Guillaume Goupil de Préfelne was given a column in the *Moniteur* to fawn at length over the *Œuvres politiques de Jacques Harrington*, “this English writer, underrated by Montesquieu [but] better appreciated by Adams, one of the founders of American liberty.”<sup>827</sup> Both were following the lead of Harrington’s French translator, who freely confessed to having discovered the English republican via the American *Defence*:

The Americans have now conquered their independence and freedom, but without traversing the sea of anarchy on which we still sail. History will, without doubt, render homage to these heroes of the New World, who, on the one hand, defended the holiest cause, and, on the other, erected the edifice of their constitution on a plane traced by reason. One must include in the ranks of these enlightened champions of judicious freedom the defender of the American constitutions, the illustrious John Adams. The accolades this scholar of politics so often bestowed on Harrington gave me a desire to learn about the latter’s works, and I was only a few pages into his collected works when I resolved to undertake their translation.<sup>828</sup>

The *Vice radical*, meanwhile, seized on the Convention speech of Boissy d’Anglas, and its memorable evocation of John Adams, to argue for an authentically Harringtonian legislative corps: “Harrington’s works contain the most substantial and most accurate exposition on the senatorial *droit d’initiative*. And Adams, whom the rapporteur of the Commission des Onze has quoted as a famous publicist, says of the same Harrington that ‘the reasons in support of his judgment are often eternal.’”<sup>829</sup> The Convention had harnessed itself to the political thought of Adams, this logic ran, whose own secret motor was Harringtonian bicameralism. And so it was bound to accept a criticism stemming from its own preferred sources: unless and until the Anciens and Cinq-Cents exchanged roles, the *Constitution de l’an III* would remain stalled and lifeless.

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<sup>827</sup> [Guillaume François Charles] Goupil-Préfelne, “Mélanges (20 ventôse an IV),” *Moniteur*, Mar. 13, 1796, RAM 27: 658. Almost simultaneously, Goupil petitioned to place a bust of Montesquieu in the Conseil des Anciens, a request that was politely ignored by his peers; see Goupil, “Conseil des Anciens, Séance du 12 ventôse,” *Moniteur*, Mar. 6, 1796, RAM 27: 606. He would be briefly arrested the following year, during the maneuvers of 18 Fructidor, as a royalist.

<sup>828</sup> [Pierre-François Henry], Préface, in *Œuvres politiques de Jacques Harrington*, 1: iii-iv. Cf. *ibid.*, 1: xi (citing Adams, *Défense*, 1: 537, calling Harrington’s excursus on the balance of property a “[s]ublime découverte”); 1: xiii (comparing Harrington, Adams, and Hume).

<sup>829</sup> *Vice radical*, 19. The quote is taken from Adams, *Défense*, 1: 238. Cf. Lamare, *L’Équipondérateur*, 16 (“Un Publiciste anglais appelle cette double action *débatte & résoudre...le sénat propose, le peuple décide*”). Lamare likely first encountered Harrington in the course of his translation of Adams.

Harrington was, indeed, one of the gilt demigods hovering over Adams's political thought.<sup>830</sup> But this did not place him above criticism. In the third book of the *Defence*, Adams remarks somewhat cryptically that Harrington "wrote in shackles";<sup>831</sup> he meant that Harrington, as a committed republican, could not admit the superiority of the mixed constitution, replete with royal power, to the Protectorate, or indeed to his own fantastical frame of government. Harrington had famously explained the necessity of bicameralism with a parable of two girls sharing a cake: "'Divide,' says one to the other, 'and I will choose, or let me divide, and you shall choose.'"<sup>832</sup> Adams thought this delightful, but inexact:

Harrington, too, instead of his children dividing and choosing their cake, might have alluded to those attractions and repulsions by which the balance of nature is preserved; or to those centripetal and centrifugal forces by which the heavenly bodies are continued in their orbits, instead of rushing to the sun, or flying off in tangents among comets and fixed stars...a complication of forces, of more powers than one; of three powers indeed, because a balance can never be established between two orders in society, without a third to aid the weakest.<sup>833</sup>

That is to say, stable government hinges on more than a division of labor in a binary legislature; it demands a force field of intersecting powers and counterpowers, anchored by a monarchical head—what Benjamin Rush called "a vigorous, ballanced, and triple powered Constitution."<sup>834</sup>

But the celestial balance rhapsodized by Adams was conspicuous in the new *Constitution de l'an III* only by its absence. Following the disaster of 1794, Necker coolly observed, in which "all

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<sup>830</sup> See Ryerson, *John Adams's Republic*, 136-50 (Harrington as the intellectual bedrock of Adams's 1775 *Novanglus* letters). Cf. John Adams to James Warren (June 25, 1774), *Papers of John Adams*, 2: 99; [Nov. 4, 1775], *Autobiography*, Part One [1802-7], in *Diary and Autobiography of John Adams*, 3: 358 ("I read Harrington, Sydney, Hobbs, Nedham and Lock, but with very little Application"); Thomas Brand Hollis to John Adams (Jan. 27, 1787), *Founders Online*, <http://founders.archives.gov/documents/Adams/00-02-02-0030> ("Who lamented the uncouth stile of his favorite Harrington and wished him to be translated?"); John Adams to Anonymous (Jan. 19, 1792), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-1305> ("A Society can no more Subsist without Gentlemen than an Army without Officers, So Says Harrington"); John Adams to John Taylor (Jan. 16, 1815), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-002-02-6395> ("Harrington, whom I read forty or fifty Years Ago...has been called the Neutron in Politicks...").

<sup>831</sup> Adams, *Defence*, 3: 371.

<sup>832</sup> Harrington, "Oceana," 22.

<sup>833</sup> Adams, *Defence*, 1: 108.

<sup>834</sup> Benjamin Rush to John Adams (Apr. 22, 1789), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-02-02-0520>.

power was united and confounded in the monstrous National Convention,” a mushroom faculty of “political teachers” had sprouted overnight, professing a new credo: “there could not be too strong a barrier between the executive and legislative powers.” Thus the executive was deprived of a veto over legislation, and the two Conseils were stripped of their ability to surveil executive administration, or to participate in the staffing of the bureaucracy. Each power would move in its own independent sphere; with no official channels of contact, they would be reduced to communicating with one another through “hortatory addresses.” The foolishness of this decision was proven by its novelty; “the republican constitution of France is the first model,” Necker smirked, “or rather the first attempt at an absolute separation between the two supreme powers.” François d’Ivernois made the same point, with heavyhanded irony. “Those unhappy” with the new constitutional order, he cracked, “will perhaps be consoled by its duration: as it exhibits neither *counterforces*, nor *balance*, nor *equilibrium*, nor *regulation*, it will share the same fate as its three predecessors.”<sup>835</sup> The rhetoric of “separation of powers” had come from Montesquieu via America, where it was one of the perennial political bromides of the founding period. But as Necker discerned, it was highly misleading—the “separate” branches of government in the United States were inextricably intertwined. The president had a significant role in lawmaking through the revisionary negative; the Senate approved all of the “major administrative appointments”; the House controlled impeachment; and members of the Senate were responsible to the governments of the individual states. These “separate” institutions were not balkanized siloes, but rather towers of a bridge connected by a dense mesh of cables.<sup>836</sup>

The surviving Jacobins, chased from the Convention and marginalized in public discourse, could only rage from the sidelines at this apostasy. Pierre-Antoine Antonelle, the most perceptive

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<sup>835</sup> D’Ivernois, *Des révolutions*, 458.

<sup>836</sup> Necker, *De la révolution*, 3: 124-5.

of these radical critics, struck out at every facet of the new constitution, from its evacuation of the primary assemblies to its *de facto* exclusion of the working poor from government service. But he reserved special animus for the new bicameralism, which he insisted, strikingly, advantaged the upper chamber. “It is the Conseil des Anciens, alone, which issues accusations, passes laws...and is responsible for all police and administration in the city where the legislature holds its sessions.” Antonelle was particularly exercised by an obscure clause in the new constitution (Arts. 102-8) allowing the Conseil des Anciens to unilaterally transfer the capital; he predicted that the upper house would relocate the legislature to a city with a reactionary population, which it would marshal against the Cinq-Cents and its radical base in Paris. “Arming in advance against the prospective popularity of the Cinq-Cents, it was thought necessary to place in the hands of the Anciens this torch of civil war,” ready to spark a conflagration at any instant. And the Cinq-Cents, wearying of its bridle, will attempt to break the stranglehold of the Ancients through direct appeals to the Paris mob, precipitating “disorder, cleavage, and anarchy.” If, somehow, the two chambers surmount these difficulties to establish warm relations, they will share the state like two vultures feeding on carrion, extending a “crushing despotism” over France’s twenty-five million citizens.<sup>837</sup> Jean-Claude Chastellain, a deputy from Yonne and a former member of the Plain, was far more moderate than Antonelle, but issued the same warning about the dual legislature: it would be “[t]wo tribunals presenting the awful specter of a disordered sovereignty.” An amateur classicist, Chastellain drew a parallel with the Roman civil war between the *populares* and the *optimates*, foreseeing the same flood of proscriptions and

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<sup>837</sup> [Pierre-Antoine Antonelle], *Observations sur le Droit de Cité, et sur quelques parties du travail de la Commission des Onze* (Paris, 1795), 15-17, 27-9.



reprisals. Paris, he prophesied, will “count as many executioners and assassins as ministers and legislators.”<sup>838</sup>

Tellingly, of the hundreds of *conventionnels* still in office who had voted for the constitution of 1793, only one was willing to speak two years later in support of unicameralism. Appropriately this was Alexandre Deleyre, a distinguished *philosophe*, a friend and correspondent of Diderot and Rousseau, and a contributor to the *Encyclopédie* and the *Histoire des deux Indes*. He did not mince words, calling the “establishment of two chambers...the secret wish of all our enemies...who hope to resurrect gods and kings to rule over the people.” Like the neo-Jacobins,<sup>839</sup> Deleyre accepted that a divided legislature meant a divided populace, and that as the two chambers “collide under the pretext of the balance of powers” they will enter into Machiavellian conspiracies, enlisting crowds and militias as their proxies until they reach the point of rupture and “civil war.”<sup>840</sup> And, with the radical republicans, he questioned the justice of allowing a minority of legislators—a bare majority of the upper chamber—to block legislation desired by the masses. Will such a senate be “doubly wise,” he queried, to match the “double weight of its vote” in the Place du Carrousel?<sup>841</sup> In short, “in this new constitutional plan, everything bends toward aristocracy.”<sup>842</sup> Louvet, a member of the Commission des Onze, was unnerved enough by this oration to rattle off a two-part reply in his newspaper *La Sentinelle*. After some polite preliminaries, he fired back with the heaviest artillery on hand:

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<sup>838</sup> Jean-Claude Chastellain, *Pacte Social* (Paris, 1795), 19-20.

<sup>839</sup> On Deleyre’s uncertain ideological positioning, see Frank A. Kafker, “Les Encyclopédistes et la Terreur,” *Revue d’histoire moderne et contemporaine* (Jul. – Sept. 1967), 3: 291 (“Deleyre...se soumit aux ordres du Comité de Salut public. Effrayé par les mesures d’épuration...il siégeait à la Montagne, mais ne monta jamais à la tribune.”).

<sup>840</sup> Deleyre, Suite de la séance du 30 Messidor, 25: 275-6 (“les nobles, les prêtres et les rois n’y sont plus, à moins que vous ne les fassiez rentrer par les portes de deux chambres”).

<sup>841</sup> *Ibid.*, 25: 276 (“la minorité prépondérante peut se trouver de 126 voix contre 624, et le premier nombre balancer ou même emporter le second par un *veto* qui le réduit à zéro”).

<sup>842</sup> *Ibid.*, 25: 277.

We would not bother to demonstrate that the legislature should be divided into two parts, if this division did not have for an adversary...a citizen so renowned for his talent and enlightenment, and for the great services he has rendered to philosophy and letters...The reasoning of Deleyre, which was also that of Nedham and Turgot, is refuted at great length in John Adams's *Defence of the constitutions of government of the United States of America*. But in this matter one must attend above all to experience, for there is no free people that has not at some point learned the terrible lesson *that the system of two chambers is the only one from which one can expect wise laws, a durable constitution, the maintenance of public tranquility, and individual liberty*.<sup>843</sup>

Louvet cited the Virginia constitution, in which “laws are first proposed in the House of Delegates, and then brought before the Senate to be approved or rejected,” as confirmation that France had followed the path prescribed by Adams.<sup>844</sup> But Louvet was too busy bludgeoning Deleyre with the *Defence* to see the thrust of his argument. Deleyre began his career as a protégé of Montesquieu,<sup>845</sup> and retained a keen understanding of the classical doctrine of separated and balanced powers. And his critique was not only that bicameralism sowed dragon teeth of oligarchy and discord, but also that a double legislature ultimately depended on a third force. Sweden “has a senate, but under a king. England has its two houses, but for this reason also requires a king.” Deleyre was a committed republican, who still burned with the flame of monarchomach radicalism.<sup>846</sup> But he intuited more readily than Louvet the true lesson of the *Defence*: bicameralism without royalism is a confused hybrid that will not long endure. The *Constitution de l'an III*, as he put it, was blighted with “the imperfections of the Anglo-American constitution, without its advantages.”<sup>847</sup>

#### **IV. Franklin in fragments**

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<sup>843</sup> *La Sentinelle*, July 23, 1795.

<sup>844</sup> *La Sentinelle*, July 24, 1795. It is true that under the 1776 Virginia constitution all laws originated in the House of Delegates, but the Senate was allowed to *modify* them to any extent it liked, with the exception of revenue bills, for re-passage by the House. The Conseil des Anciens lacked this ability to alter or amend.

<sup>845</sup> See Alexandre Deleyre, *Le Génie de Montesquieu* (Amsterdam, 1759), a précis of *L'Esprit des Lois*.

<sup>846</sup> See, e.g., Alexandre Deleyre, *Tableau de l'Europe* (Paris, 1774), 57 (“Le peuple ne sortit de la tyrannie féodale que pour tomber un jour sous le despotisme des Rois: tant le genre-humain semble né pour l'esclavage!”).

<sup>847</sup> Deleyre, Suite de la séance du 30 Messidor, 25: 277.

Adams's criticisms of Franklin in the *Defence* had been sufficiently guarded that he could send the doctor a first edition, along with a polite (albeit defensive) note.<sup>848</sup> But after six years of European revolution he painted Franklin in much darker tones—as the primary exponent of radical ideology in the Atlantic world, and the guiding spirit of the reign of terror. “Oh Franklin!” he exclaimed in a 1796 letter to his son, “Thy Rods will not in a thousand Years have half the Number of Lives that has been destroyed already in France by their inconsiderate Admiration to thy Attachment to Marchment Nedhams Legislation.” The consequences of French unicameralism had been harrowing; Adams estimated its death toll, from instability, war, and terror, in the hundreds of thousands. But with Condorcet and Brissot now dead, and their constitution in tatters, there was reason to hope that Franklin's star was in eclipse. As Adams jotted hopefully in the margins of Wollstonecraft: “This experiment is nearly blown out.”<sup>849</sup> But if Adams had earlier overestimated the centrality of the Pennsylvania constitutionalism to French philosophic radicalism, he now exaggerated its death with equal aplomb. The constitutional ideas most closely associated with Franklin—universal suffrage, hatred of kingship, and an aversion for the mixed constitution—persisted in the Thermidorean republic as vital intellectual currents, propounded most forcefully by writers with personal and intellectual ties to Franklin. But the consensus that briefly crystallized around the Girondin draft constitution had shattered; Franklin's ideas survived only in shimmering fragments, allied to a range of mutually contradictory projects.

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<sup>848</sup> John Adams to Benjamin Franklin (Jan. 27, 1787), *Founders Online*.

<sup>849</sup> John Adams to Thomas Boylston Adams (Apr. 7, 1796), in *Founding Families: Digital Editions of the Papers of the Winthrops and the Adamases*, ed. C. James Taylor. Boston: Massachusetts Historical Society, 2018, available at <https://www.masshist.org/publications/apde2/view?id=ADMS-04-11-02-0128> (accessed September 3, 2017); Adams, Annotations to Wollstonecraft, in Haraszti, *Adams*, 203.

By common agreement,<sup>850</sup> one of the most artful defenses of the new constitution was the treatise *De l'état politique et économique de la France sous sa constitution de l'an III*, published anonymously and described on its title page as “traduit de l'Allemand,” but in reality rendered awkwardly into French from the English original of Benjamin Vaughan.<sup>851</sup> Vaughan lived a life emblematic of the age of revolution—a Jamaican colonial, a British radical who defended the American cause, a Foxite MP made radioactive by his sympathy for the French revolution, an expatriate in Paris arrested and interrogated by the Jacobins, and finally an American citizen producing learned treatises on horticulture from his estate on Maine's Kennebec river. Importantly, he stood at the confluence of two complementary intellectual jetstreams: Turgotian economics and Franklinian politics. He translated several key writings by Turgot, including his landmark *Encyclopédie* essay on “Foundations,” his *Réflexions sur la formation et la distribution des richesses*, and the 1776 memorandum on the North American colonies Turgot prepared for the foreign minister Vergennes.<sup>852</sup> He also completed a full translation of Condorcet's 1786 *Vie de Monsieur Turgot*,<sup>853</sup> and produced his own monograph on commercial relations, heavily

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<sup>850</sup> See, e.g., P[ierre] L[ouis] Ginguené, *De M. Necker et son livre intitulé “De la Révolution française”* (Paris, 1797), 59-60 (“Des étrangers...ont fait des éloges...très-raisonnables de notre Constitution de l'an III...Voyez entre-autres un excellent ouvrage intitulé...”); Pierre-Louis Røederer, *De l'état politique et économique de la France*, *Journal d'Économie publique*, Sept. 16, 1796, reprinted in *Œuvres* (A.M. Røederer ed., Paris, 1857), 5: 90 (“Nous y avons trouvé non-seulement une appréciation judicieuse de la constitution française, mais encore une indication très-fine et très-précise de ses ressorts les plus cachés”).

<sup>851</sup> On the attribution and publication history of this text, see Henri Grégoire, *Mémoires* (M.H. Carnot ed., Paris, 1837), 1: 361-2. The English original has never been located. In addition, copies consulted at Harvard University and the Bibliothèque Nationale Française are missing pages 1-3.

<sup>852</sup> Giancarlo de Vivo and Gabriel Sabbagh, “The First Translator in English of Turgot's *Réflexions sur la formation et la distribution des richesses*: Benjamin Vaughan,” *History of Political Economy*, vol. 47 (2015), 1: 185-99.

<sup>853</sup> Marquis of Condorcet, *The Life of M. Turgot* ([Benjamin Vaughan trans.,] London, 1787). In his dedication to the Earl of Shelburne, Vaughan calls special attention to Turgot's “proposal for forming provincial assemblies” (p. v), which, though “originally rejected, has been recommended to the notice of the greatest assembly in his nation, by the order of its sovereign.” This early concept of direct democracy, which Turgot hoped to embed in the *ancien régime*, would eventually become the “primary assemblies” of Condorcet's draft constitution.

inflected with physiocratic ideals.<sup>854</sup> At the same time, his proclivity for radical politics led him first to Joseph Priestley,<sup>855</sup> and then to Benjamin Franklin, with whom he became acquainted in during the latter's long stay in London.<sup>856</sup> On the outbreak of war in 1776 Vaughan proposed an edition of Franklin's political writings for publication in Europe, which he painstakingly compiled over the next three years, with Franklin's periodic supervision from Paris.<sup>857</sup> He would remain marked by this encounter; as he wrote to Franklin in 1779, "there is scarce a subject in politics or philosophy on which I have speculated, where you did not give the occasion and...the rudiments."<sup>858</sup> This philosophy could point in different directions, and like Franklin himself Vaughan initially greeted the coming of the French revolution with a measure of skepticism. In his writings from 1793, a time in which he served as an MP for Calne, he declared his views "a medium between those of Mr. Burke and Mr. Paine," and counseled Britons to eschew a belligerent policy towards the young republic while awaiting its accession to an ordered liberty

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<sup>854</sup> See Benjamin Vaughan, *New and Old Principles of Trade* (London, 1788); Benjamin Vaughan, *Nouveaux & anciens principes du commerce comparés* (London, 1789). The work is an attack on jealousy of trade, advancing a program of *doux commerce* and perpetual peace very similar to that of Thomas Paine, and indebted to the liberal economic principles of Turgot and Smith, as well as Franklin and Shelburne. See Lawrence Dickey, "Doux-commerce and humanitarian values," in *Grotius and the Stoa* (H.W. Blom and Laurens C. Winkel eds., 2004), 271-318, esp. 288-92; Whatmore, *Against War and Empire*, 185-204. || Vaughan was also considered an expert in French political economy; Joseph Priestley wrote that "There is no person...in England who is better acquainted with France and French affairs." See Joseph Priestley to John Wilkinson (Oct. 4, 1791), in W.H. Chaloner, "Dr. Joseph Priestley, John Wilkinson, and the French Revolution," *Transactions of the Royal Historical Society* (1958), 21-40, 28.

<sup>855</sup> Priestley was his tutor in languages and rhetoric at the Warrington Academy in 1767, when Vaughan was sixteen; the theologian would dedicate his *Lectures on History* to his former pupil, now his colleague in a number of overlapping radical societies. See Joseph Priestley, Dedication, *Lectures on History and General Policy* (Birmingham, 1788), iii-iv.

<sup>856</sup> See Andrew Hamilton, *Trade and Empire in the Eighteenth-Century Atlantic World* (2008), 53 (dating their acquaintance to 1767, at a meeting of the Club of Honest Whigs). Cf. *Memoir of William Vaughan, Esq.* (London, 1839), 6 ("His friendship and connexions with Dr. Franklin were intimate and lasting...").

<sup>857</sup> See Benjamin Vaughan to Benjamin Franklin (Apr. 9, 1779), in *Papers of Benjamin Franklin* (Barbara B. Oberg ed., 1992), 29: 290. For the finished edition, see Benjamin Franklin, *Political, Miscellaneous, and Philosophical Pieces* (London, 1779). Translations into German (1780) and Italian (1783) soon followed.

<sup>858</sup> Benjamin Vaughan to Benjamin Franklin (May, 31, 1779), in *Papers of Benjamin Franklin*, 29: 587. Cf. Benjamin Vaughan to Benjamin Franklin (Jan. 3, 1782), in *Papers of Benjamin Franklin* (Ellen R. Cohn ed., 2001), 36: 371 ("These are innocent politics; I wish all politics were as much so; and that there were no risque in proclaiming to the world here, how much I am in all things your follower.").

like that of America.<sup>859</sup> But the next year he was implicated in a treason investigation and fled to France; his dispatches from across the Channel hinted at a growing radicalism.<sup>860</sup> Two years later his zealous defense of the Constitution of 95 demonstrated how easily Franklin's constitutional politics—enunciated in his essays and speeches, and given form in the Pennsylvania constitution—could be mobilized in support of the new regime. But it also made clear the limits of this politics after the Terror.

The *De l'état politique et économique* revived the essential tenets of Girondin constitutional thought. Vaughan's distance from Jacobin extremism is made plain in the opening pages, where he speaks of the "heroic Charlotte Corday."<sup>861</sup> He spurned Britain's mixed constitution with equal force, deeming the republican exemplars of America and France far superior. First, because they took a concrete written form—"established by express agreements, after mature deliberations...written out and accompanied by a formal declaration of the principles on which they are founded." The British constitution, by contrast, was a haphazard farrago of statutes and cultural habits, highly vulnerable to abrogation, usurpation, and decay.<sup>862</sup> Second because, as Vaughan spitefully phrased it, "the *practice* of this government is even worse than its theory." Whatever propagandists like Delolme pretended about the equipoise and ballast of the "matchless constitution," the reality was that the crown was its prime mover, with the Commons and the peerage kept docile through an extensive network of graft and sinecure, and the electoral

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<sup>859</sup> A Calm Observer [Benjamin Vaughan], *Letters on the Subject of the Concert of Princes and the Dismemberment of Poland and France* (London, 1793), xvi ("Mr. Burke and Mr. Paine") and 72 ("France itself, which [*after the example of America*] may succeed in...a second attempt at good government"). Cf. *ibid.*, 130 ("America has given sufficient proof, that we ought to overlook words springing from passion; for notwithstanding the irritated state of America ten years ago...the Vice-President...and his son, have each written in favour of the English Constitution").

<sup>860</sup> On his peripheral involvement in the treason prosecution of the Irish journalist William Jackson, see John Barrell, *Imagining the King's Death* (2000), 191-3.

<sup>861</sup> Vaughan, *De l'état*, 4.

<sup>862</sup> *Ibid.*, 19-20.

map studded with rotten boroughs where placemen could be easily installed.<sup>863</sup> But the crucial advantage of the two republics was their origin in constitutional conventions, which enforced a conceptual division between ordinary and sovereign lawmaking:

A well-constituted state has two kinds of legislatures, and two kinds of laws. –It has a supreme legislature, which is the people, represented, pronouncing after reflection on the institutions they want for their government, and the powers that ought to be assigned to each. This legislature is summoned in imperious and solemn circumstances. Its members are elected *de novo*, and...consent to be elected in order to grapple with the pending crisis...Then there is a secondary legislature, a body that has received determinate powers to make laws in conformity with this plan, and the principles of government established by the supreme legislature...If the ordinary legislature...had the power to act as a convention, it would mislead the public in order to serve its own ambitions...or fail to respect the true general will that must be the basis of its operations.<sup>864</sup>

Surveying the chain of commonwealths that, by 1795, stretched from Philadelphia to Amsterdam, Vaughan marveled at the new technologies of freedom on display: “everyone reads not only of rights of men, but of written constitutions, of constitutions as distinguished from legislatures, of primary assemblies called not only to choose but to ratify the deed of their representatives, & of other similar but natural novelties.”<sup>865</sup> This was a neat summary of the Girondin program, which had been articulated across a range of writings by Pétion, Brissot, and Condorcet between 1789 and 1793. Its major contribution to constitutional theory was the idea that *government*—the authorities issuing the rules and judgments that make collective life

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<sup>863</sup> Vaughan, *De l'état*, 96. Cf. *ibid.*, 20 (“la dégradation de la constitution britannique”). For a similar view, see [Dominique-Joseph Garat], “Relations de la France avec les puissances et avec les nations étrangères,” *Journal politique et philosophique* (Feb. 1795), 30 (“L'Angleterre, qui se vante encore aujourd'hui des éloges donnés à sa constitution, lorsque sa constitution étoit seule au milieu du monde esclave...Cette constitution trouvée dans les bois, comme dit Montesquieu, étoit belle sans doute, mais pour le moment où l'on sortoit des bois; après des siècles de civilisation, et après les modèles si différens des constitutions de l'Amérique et de la France, l'Europe plus éclairée ne pourra plus y voir qu'un édifice construit...avec les matériaux gothiques et barbares du sacerdoce, de la noblesse et de la royauté.”).

<sup>864</sup> *Ibid.*, 20-1.

<sup>865</sup> Benjamin Vaughan to [?] (Oct. 31, 1795), in *Correspondence, 1795-1796, Papers of Benjamin Vaughan* [American Philosophical Society], BV 46p, 46. Cf. Vaughan, *De l'état*, 20 (“Observons encore que les Français ont introduit une nouveauté. Leur constitution, quoique faite par une convention convoquée ad hoc, a été ratifiée par le peuple, come souverain & constituant.”).

possible—is legitimate only insofar as it rests on democratic *sovereignty*.<sup>866</sup> This meant a written constitution, drawn up by a special convention and confirmed by a national plebiscite, to which ordinary government could be made answerable. The Girondin theory was anathema to the Jacobins, who insisted both that the Convention was fully adequate to exercise the powers of government in times of emergency, and that sovereignty could attach to individuals and crowds as well as conventions and primary assemblies.<sup>867</sup> And it enraged Anglophiles by stipulating that their unwritten “constitution” was a legal fiction papering over a ravaging oligarchy.<sup>868</sup>

The Girondin theory of sovereignty implied that any form of government—including kingship or aristocracy—might be legitimate, so long as all power periodically returned to the people. But Condorcet, Brissot, and their confederates nevertheless held strong preferences about the correct design of republican government, which are reproduced nearly verbatim in Vaughan’s text. The Brissotin rallying cry was that government should be *simple*, a direct enactment of the desires of the majority, without the jarring clash of different branches of government drawn from different social orders. Vaughan ventured the metaphor of a “simple machine,” unencumbered by useless wheels and levers:

It would be strange in mechanics to build a machine that could only produce some compound motion by launching three balls in different directions, and waiting for their eventual collision. Would it not be better to have a simple machine that could operate without this confusion and loss of force? Such a machine might have different parts, but its purpose must always be one. There must not be, in one state, any

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<sup>866</sup> See, e.g., Vaughan, *De l'état*, 13 (“Son *Souverain* n’est ni dans son gouvernement entier, ni dans quelqu’une de ses parties, mais dans ce qui donne l’existence à la totalité du gouvernement, savoir le *Peuple* en général. En conséquence le gouvernement, dans *toutes ses branches*, est immédiatement ou médiatement *représentatif*.”).

<sup>867</sup> See Richard Tuck, *The Sleeping Sovereign* (2015), 151-60, esp. 155-6 (“From the point of view of these Girondin theorists, the Jacobins had blurred the distinction between sovereignty and government...they had failed to segregate acts of sovereignty...from acts of government—including, most alarmingly...acts of criminal jurisdiction.”). Most of this theoretical apparatus was of course taken from Rousseau, and was refined in the period before the French revolution through the close observation of the American states.

<sup>868</sup> Cf. Vaughan, *Concert of Princes*, xxii (replying, to Thomas Paine’s imputation that Britain has no constitution, that a “constitution...simply means, that system by which the ordinary governing powers...are themselves confessedly regulated...we have a constitution in this sense, notwithstanding...a part of it is *unwritten*”). The Girondin position on the British constitution—which both Brissot and Condorcet had admired in the 1780s—was heavily indebted to Thomas Paine.



interests...other than the constituents and their representatives...and opposition between them must be regarded and neither inevitable nor useful, since opposition represents a state of unease, and not health, for the body politic.<sup>869</sup>

The Rube Goldberg contraption mocked in this passage is the British constitution. Here, too, Vaughan echoed his predecessors. Condorcet, in his introduction to the Girondin *projet* of 1793, called balanced constitutions “complicated machines prone to self-destruct,” and instead proposed government by “a single power,” a popular assembly moving in sync with the popular will.<sup>870</sup> He was paraphrasing his own 1788 *Lettres d'un bourgeois de New-Heaven*, an incisive critique of John Adams and the mixed constitution, where he employed nearly identical language.<sup>871</sup> But Vaughan was not only reviving the Girondin program; in his vocal preference for a “simple” frame of government, he seemed to be throwing his weight behind the constitutional ideas of his mentor. Rochefoucauld’s misty eulogy for Franklin, his collaborator in the 1783 Paris edition of the American constitutions, pointed to the unicameral government of Pennsylvania as one of the Philadelphian’s greatest achievements, and noted in particular the elegant austerity of its arrangement: “Franklin alone freed the political machine of these numerous gears, and these much-admired counter-balances that complicated it.”<sup>872</sup> A year prior to the revolution, the Italian reformer and Virginia revolutionary Filippo Mazzei was already speaking of Franklin’s Pennsylvania as a potential model for this very reason: “the more

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<sup>869</sup> Vaughan, *De l'état*, 37.

<sup>870</sup> Condorcet, *Plan de constitution présenté à la Convention nationale, les 15 et 16 février 1793* (Paris, 1793), 17-18. || While Jacobins strongly objected to Girondin views of sovereignty, their views on government could be quite similar. See, e.g., Jean-Charles Laveaux, *Discours sur les vices de la constitution anglaise, dans la séance du premier Pluviôse l'an deux* (Paris, 1794), 15 (the English constitution is “une machine inventée pour perpétuer l'anarchie, en modérant seulement un peu ses convulsions”).

<sup>871</sup> [Condorcet], *Lettres d'un bourgeois de New-Heaven*, in *Recherches historiques et politiques sur les États-Unis de l'Amérique* (Colle, 1788), 4: 254 (“...on cessera de vanter ces machines si compliquées où la multitude des ressorts rend la marche violente, irrégulière & pénible, où tant de contre-poids...se réunissent dans la réalité pour peser sur le peuple.”).

<sup>872</sup> Louis Alexandre de la Rochefoucauld d'Enville, quoted in François Auguste Alexis Mignet, *Vie de Franklin* (Paris, 1848), 147.

complicated a machine is, the more it is liable to run off track...it is with this principle in mind that Pennsylvania has entrusted its legislative power to a single body of men.”<sup>873</sup> The theory of simplicity was first given concrete expression in America by one of Franklin’s closest friends. Thus Thomas Paine opens his epoch-making pamphlet *Common Sense* by skewering “the boasted Constitution of England,” and its “farcical” notion of “three powers, reciprocally *checking* each other,” as a kind of sublimated civil war, elevated to the rank of a constitutional theory. A better constitution would respect the principle, drawn from the natural world, “that the more simple any thing is, the less liable it is to be disordered,” and the easier it is to correct when it swerves towards tyranny.<sup>874</sup>

Thus what the *groupe Coppet* identified as the Achilles’ heel of the new constitution—its hermetic separation of powers—Vaughan saw as its aegis against renewed dictatorship. In a floor speech in July 1795, Révellière-Lépeaux would make much of the fact that the “enlightened Americans” resident in Paris were nearly unanimous in preferring the “constitution proposed by the Onze” to their own. “And precisely what they like best here is that powers are divided such that they cannot fall into quarrels or confusion, as in the American constitution.”<sup>875</sup> The future president of the Directory was too coy to offer any names. But by the time he went into print the following year, Vaughan, who held American citizenship through his mother, perfectly matched the description. “It can be argued,” he ventured, “that the French constitution fulfills, better than some of the American constitutions, the goal of separating the legislative, executive, and judicial

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<sup>873</sup> Filippo Mazzei, Gouvernemens des États-Unis, in *Recherches*, 1: 193. On Condorcet’s pivotal role in the text’s composition and translation, see Simon E. Baldwin, *The Authorship of the Quatre Lettres d’un Bourgeois de New-Heaven* (New Haven, 1895), 266. || On the mechanical metaphor for separation of powers, a leading trope in studies of the English constitution by William Blackstone and Jean de Lolme, see M.J.C. Vile, *Constitutionalism and the Separation of Powers* [1967] (2d. ed., 1998), 115.

<sup>874</sup> Thomas Paine, *Common Sense* [1776], in *Complete Writings* (Philip S. Foner ed.), 6-7.

<sup>875</sup> Révellière-Lépeaux, Suite de la séance du 30 Messidor, 25: 274.

branches.”<sup>876</sup> And this was because it looked not forwards but backwards, with a percipient double vision—to the deferred dream of the Gironde, and the vanished utopia of Franklin’s republic.

It was the internal composition and prerogatives of those branches, and not just their mutual interaction, that attracted Vaughan’s attention, and in his extravagant praise of the Thermidorean charter we register a series of sharp attacks on the American constitution. In discussing the new legislature, Vaughan makes clear his distaste for any upper chamber that would accord special privileges to great citizens who aspire to rule on the basis of their talents—their “integrity, skill, economy, or zeal.” The kind of Senate envisioned in the *Defence*, which would provide ambitious, educated, and frequently wealthy men with a permanent base of operations, would quickly become a hothouse of sedition and nest of counter-republican cabals. The Senate established under Article I had not yet metamorphosed into a House of Lords, but it was disturbing that it was so clearly set apart from the House of Representatives—with more demanding eligibility requirements, and longer terms of office—in ways that appeared to promote this future development. “American legislatures,” he warned, “differ from those of Great Britain in that they are directly or indirectly representative...[but] some of them also differ from those of France, in that they have some tendency to establish a distinction of *classes*, or *orders* of persons.” French bicameralism did not establish two social classes locked in a cold civil war, but merely two functions, “one concerned with invention, the other with examination,” like two discrete tasks on a factory floor. Again we see the radical aversion to constitutional checks. But Vaughan did not always push republican radicalism to its bleeding edge. In the same paragraph, he chided Americans for failing to make sufficient use of “indirect election” [*élections redoublées*], the sole kind permitted under the Thermidorean constitution, since the

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<sup>876</sup> Vaughan, *De l'état*, 22-3.

House of Representatives was directly elected by the citizens. Vaughan approved of electoral colleges for straightforwardly elitist reasons: America is “a country in which political principles and education are still developing,” so that the “less enlightened” masses cannot be trusted to make global judgments about complex policy issues.<sup>877</sup> It was perfectly coherent to believe at once that ordinary people have a limited capacity for self-government and that *for this reason* the republic must be vigilant about the machinations of the wealthy and privileged. Nevertheless, there was the savor of paradox in Vaughan’s contention that America would become increasingly aristocratic unless it learned to constrict the suffrage.

It was inevitable that someone with Vaughan’s intellectual background would be drawn to the plural executive of the Directory; Franklin, Turgot, and their many disciples had long ago decided that the concentration of executive power in a single person was, in the words of Condorcet in 1788, reminiscent of kingship and “dangerous to the public good.”<sup>878</sup> Like his progenitors, Vaughan thought that Americans had erred seriously in opting for a single executive magistrate, and catastrophically in arming him with the prerogatives of a European monarch. It was a constitution better suited to a conquering empire than a placid republic, as could be seen in the recent contretemps over the Jay Treaty, in which an alliance had been formed with England by the president and the Senate, without any input or agreement from the popular house:

We should regret to see a country as respectable as America, once home to the pacific Penn, give to its president...and its senators...the exclusive right to decide on war, peace, and treaties. Why not involve the House of Representatives, whose members are only in office for two years, and who, being more recently elected, should be presumed better-informed about...the sentiments of the people? [...] If Americans were not still marked by the prejudices of their ancestors, they might not have been so inclined to follow...the

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<sup>877</sup> Ibid., 36, 16 (“la distinction qu’on fait, soit quant aux électeurs des deux chambres, soit quant à la fortune ou à la durée du pouvoir”), 14-15 (“la constitution française établit dans la législature, non pas deux *intérêts* opposés, mais deux *pensées* distinctes”), 18 (“ce sénat étant un peu, quant à sa durée & ses fonctions, la copie des sénats qu’on trouve dans plusieurs républiques aristocratiques”).

<sup>878</sup> See, e.g., Ezra Stiles, Diary, Entry for Dec. 21, 1787, in *Records of the Federal Convention* (Max Farrand ed., 1911), 3: 170 (“Dr Franklin’s Idea that the American Policy, be one Branch only...with a President assisted with an executive Council: but this last have nothg to do in Legislation”); [Condorcet], Supplément, in *Recherches*, 4: 349 (calling the choice of a unit executive in America a “chose inouïe, dangereuse pour le bien public”).

monarchical and aristocratical politics of Europe. They would not have looked upon their president as a chief, and the Senate merely as his council, in a matter more akin to legislation than administration. They would not have been more seduced by the pretended necessity of secrecy than were the Romans, or the French. In a matter that is public by its nature, and thus subject to public discussion, can it be...kept secret from our representatives? Can a subject that might give rise to accusation be kept hidden from those who have the right to accuse? [...] It seems to be thought, in America as in England, that it is sufficient to give the popular branch control of the purse strings, the sinews of war. As if a war, once started, did not compel support for quite some time!<sup>879</sup>

We see in this paragraph how closely Vaughan followed news from America; the knotty constitutional questions raised by the Jay Treaty dominated the last year of the Washington administration. And like Washington's radical critics, Vaughan began to ask whether the Article II executive, with its capacious authority over war and peace, tilted overmuch towards monarchy. If the president is untrammelled in the sphere of foreign relations—starting wars on his own initiative, forming alliances with the consent of only twenty senators—then American foreign policy will turn to an uncomfortable degree on his biography and temperament. Is he a militarist? Does he maintain ties of affection to certain nations, or nurse bitter resentments against certain others? Does he belong to a profession that would benefit disproportionately from particular commercial treaties or wars? Vaughan summed up the dilemma in a crisp footnote: “We said that we do not want kings because their rule is personal, and yet have recreated the same difficulty in a republic.”<sup>880</sup>

Americans thought they had banished royalty by breaking the crown and sceptre. But for Vaughan, they had only altered its form. Ending royalism meant sealing the cracks in the constitution through which it might reënter, and rethinking the nature of executive power to guard against reversion. This was the achievement of the Constitution of Year III, “the first constitution,” Vaughan exulted, “to marry safely the task of *executing* statutes fixed by law to that of *improvising* new rules for “unforeseen and undefined” situations. Legislative rules would

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<sup>879</sup> Vaughan, *De l'état*, 27.

<sup>880</sup> *Ibid.*, 27 ff. 1.

be applied faithfully and mechanically by a prodigious bureaucracy, overseen by the Argus-eyed Directory. And where circumstances demand flexible reinterpretation of the law, or the urgent exercise of new powers, this could be safely vested in a collegial executive of five, chosen from a roster of the nation's most illustrious citizens. "In a directory composed of five persons," he observed, "members who are pure, and acting in good faith are in a position to keep watch on those who are not."<sup>881</sup> But the overarching structure of the constitution made such efforts at usurpation unlikely. Annual rotation would make it difficult for members to conspire with one another, while firewalls would separate the directors from any contact with the armed forces. Hedged in by these precautions, and given a broad and discretionary sphere in which to operate, directors would come to "prefer great power, with security and prestige, to an extreme power accompanied by dangers and crimes."<sup>882</sup>

Critically for Vaughan, whose writings and translations from the 1780s and early 1790s were preoccupied with the continental balance of power and the problem of perpetual peace,<sup>883</sup> the Directory would be disabled from initiating hostilities without the consent of both legislative chambers. "If we consider how easily war begins, and how difficult it is to regain peace," Vaughan opined, in a sideways swipe at the presidency, "we will not find it very surprising that these precautions have been taken." Neither could the directors circumvent the ordinary pathways of legislation through treaty-making, a charge that radicals across the ocean were beginning to hurl at the American executive; treaties, like legislation, required a majority vote in both chambers.<sup>884</sup> Vaughan was well-versed in Federalist political thought—he was sent a first

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<sup>881</sup> Ibid., 23-4.

<sup>882</sup> Ibid., 97, 24-5.

<sup>883</sup> Cf. *ibid.*, 87 ("les apôtres d'un système de paix universelle").

<sup>884</sup> Ibid., 27.

edition of the *Defence* by John Adams<sup>885</sup>—and was intimately acquainted with the Hamiltonian line that executive committees want “[d]ecision, activity, secrecy, and despatch.”<sup>886</sup> In his paean to the *Constitution de l’an III* he spun this charge on its head: the Directory would be far *more* capable of acting decisively in times of exigency than a single magistrate. “The notion that a compound directory will be cleft by divisions is far from solid,” he announced. “And although opinions may be divided, resolutions adopted by the majority will produce as much unity of conduct as in a directory of one.” This would be particularly true in times of emergency, which would focus the minds of the directors and quash unnecessary dissensus. An executive council would also have significant epistemic advantages—the elevation of an incompetent to a “directoire d’un seul” would be devastating in a presidential republic, but only a minor inconvenience in a body whose revolving membership “draws on a class of men in which one can be confident of finding merit.” He also trumpeted the social-scientific hypothesis that larger bodies, operating by majority voting, are less prone to error than small panels or single individuals; here he cited the “jury theorem” introduced in Condorcet’s 1785 *Essai sur l’application de l’analyse à la probabilité des décisions*.<sup>887</sup> Vaughan applied this same tactic to Hamilton’s claim that a plural body would be a sieve for state secrets. This, he replied, was nonsense, grounded in the fanciful belief that a sole magistrate would review all classified information in seclusion, when in reality it would be shared at his discretion with a drove of advisors and secretaries. A “composite directory,” on the other hand, with its diverse array of specialists, might be able to review “classified communications” in closed quarters, with a

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<sup>885</sup> Benjamin Vaughan to John Adams (Jan. 29, 1787), *Founders Online* (“Mr V., when he receives back the copy he has been favored with, expects no less satisfaction from the second perusal of it, than that which he received from the first.”).

<sup>886</sup> Hamilton, *Federalist No. 70*, 344.

<sup>887</sup> Vaughan, *De l’état*, 26, 23.

minimal need to consult others.<sup>888</sup> At any rate, by 1796 there was no need for dreary theoretical jousting; the virtues of the Directory were apparent on the smoldering battlefields of Italy, in the busy ports at Marseille, and in the halcyon civic life of Paris. Vaughan pronounced the question of the Directory's suitability closed: "history does not furnish an example of an administration...more active, more assiduous, more courageous, or more energetic."<sup>889</sup>

When Vaughan explicitly addressed the U.S. constitution it became obvious how much he owed to the political theory of Turgot and Condorcet. Like the marquis, he depicted the "gouvernements américains" as an important but now outmoded advance in the history of human freedom. "Americans made tremendous progress," with the notable exceptions of their feeble guarantees of religious liberty, and their insultingly tepid efforts to end black slavery; he thought that their written constitutions, "so much improved" from the colonial charters, should be carefully studied in the mother country. But it had been "the French, profiting from a growing enlightenment, and finding the path carved out before them," who followed the logic of liberty to its last horizon. Vaughan's surmise of what had gone wrong in the thirteen states could have been lifted from Turgot's letter to Richard Price:

The American governments are viewed by some as a new edition of the British government, with a change of title. This comparison is unfair...The Americans have indeed changed, in a very advantageous manner, the arrangement of their old buildings. But they have preserved too much of the old furniture, and have borrowed too much of the old etiquette from their ancestors, the English, so that the various parts of their work make up a model that will be of most use to *other* peoples.<sup>890</sup>

The American founders were, in short, provincials, who still looked to London for the latest fashions in philosophy and government. And if they had undeniably advanced the science of politics, they had nevertheless failed to produce a perfect prototype. Thus, as Turgot had predicted twenty years prior, it would be left to France to synthesize Enlightenment political

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<sup>888</sup> Ibid., 25.

<sup>889</sup> Ibid., 67.

<sup>890</sup> Ibid., 38.



theory and economics into what Condorcet, in the *Vie de Turgot*, called “a truly republican constitution,” in which “persons of property had an equal right to concur in the formation of laws...and to alter by a regular deliberation the form of every public institution.”<sup>891</sup>

For both Turgot and Condorcet, the sole exception to the rule that the American government was a “senseless imitation of English customs” was the Pennsylvania constitution;<sup>892</sup> we might have expected Vaughan to rehabilitate Franklin’s *chef d’œuvre* as the ensign of the Thermidorean order. Instead, in a dedicated appendix “sur quelques particularités concernant la Pensylvanie & la Grande-Bretagne,” he explained why, despite his affinity for Franklin’s program, this was impossible:

After its separation from Great Britain, Pennsylvania established a *unicameral* legislature, being...alarmed by the shortcomings of England’s *compound* government. This unicameral legislature was, as is said, too hasty in its motions; it committed errors, and was soon overturned...This facet of the original constitution of Pennsylvania is attributed to the great Franklin, who at a minimum strongly approved of it. This philosopher had recognized the vices of English government, which depends on a mechanical balance of different interests, that is to say, *the kind of order we might have imagined would arise from a system of confusion*. His remarks on this subject were sound; the remedy he indicated, less so. He was right to try to banish opposing interests from government, but he ought to have conserved the advantage of a *double thought*. As he was a great lover of maxims, he might have remembered the one which runs: *think twice before acting once*...The British *constitution* is comprised of two types of materials which have no necessary relationship...Its merit consists less in having *three* branches, than in having a *third branch* [i.e., the Commons] which tempers the evil resulting from the two others...The French constitution [of 1795], on the other hand, being the fruit of deliberation rather than of compromise or chance, moves with confidence. It has no need to *correct* the deviations of mutually hostile estates, but rather begins, as it ends, with the people in view. It has a single interest with two positions, a single mind with two eyes, or rather two organs of sight. It flees from anything with the appearance of a privileged order...And, above all, it rejects the idea of a master calling himself a monarch, and of a government calling itself the sovereign.<sup>893</sup>

Franklin had succeeded as a philosopher, but failed as an engineer. His crusade against the mixed constitution had been entirely just; it was a feudal relic propelled by superstition and sustained by endemic corruption. But his single chamber had erred in the opposite direction, transcribing into law every transient impulse of the masses, and obliterating the line between sovereign

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<sup>891</sup> Condorcet, *M. Turgot*, 340-1 (Vaughan’s translation). For the French original, see Condorcet, *Vie de M. Turgot* [1786], in *Œuvres* (A. Condorcet O’Connor and M.F. Arago eds., Paris, 1847), 5: 209.

<sup>892</sup> [Anne-Robert-Jacques] Turgot, *Lettre...écrite à M. le Docteur Price* [1778], in Comte de Mirabeau, *Considérations sur l’ordre de Cincinnatus* (London, 1788), 188-9.

<sup>893</sup> Vaughan, *De l’état*, 95-6.

people and representative government. The result was cataclysmic—and not only in Philadelphia. As Vaughan put it, it was “la *forme simple* de la legislature française,” and the “*cours rapide* de ses délibérations,” which had produced “plusieurs changemens politiques” in the Year I. This was his rather delicate euphemism for the Terror.<sup>894</sup>

Vaughan was briefly swallowed by this leviathan—he was detained as a possible English spy, and was questioned for several days—before being spit out on the orders of Robespierre, and given safe conduct to Geneva.<sup>895</sup> He returned to Paris in late 1794, where he lived under the pseudonym “John Martin” and petitioned for a French passport that would allow him to travel to America. Luckily he had a friend of unimpeachable reputation who was willing to speak on his behalf. “The citizen John Martin,” Thomas Paine pledged to French authorities, “was the intimate friend of the late Benjamin Franklin & the Doctors Price & Priestley & it was at [his] house...that I first became acquainted with the two last mentioned persons...He was the steady friend of the American revolution & has been the same of the French revolution.” Paine dated their friendship to his 1787 voyage to Europe; they remained close thereafter. When the itinerant Paine wrote to George Washington in 1790, he listed Vaughan’s London flat as his forwarding address.<sup>896</sup> It was natural that the two men would share a common sensibility, and Paine joined his comrade in saluting the *Constitution de l’an III* as the zenith of representative democracy. “A better *organized* Constitution,” he gushed in *The Eighteenth Fructidor*, “has never yet been devised by human wisdom. It is, in its organization, free from all the vices and defects to which

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<sup>894</sup> Ibid., 59.

<sup>895</sup> Albert Mathiez, “Robespierre et Benjamin Vaughan,” *Annales révolutionnaires* (January/February 1917), 1: 1-11.

<sup>896</sup> Thomas Paine to [?] (May 21, 1796), Papers of Benjamin Vaughan [APS], BV 46p; Thomas Paine to George Washington (May 1, 1790), in *Papers of George Washington (Presidential Series)* (Dorothy Twohig et al eds., 1996), 5: 370. Cf. Nicholas Hans, “Franklin, Jefferson and the English Radicals at the End of the Eighteenth Century,” *APS Proceedings* (1954), 406-26, 409 (Paine and Vaughan were likely both members of the Club of 13, a radical society that also included Priestley and Franklin).

other forms of government are...subject.”<sup>897</sup> His approbation extended to nearly every article. Like Vaughan he applauded the bipartite legislature for partitioning lawmaking into two discrete tasks, which would bring a welcome “coolness of reflection” to political debate, “correcting the precipitancy or enthusiasm” that had hatched so many grotesqueries during the Jacobin ascendancy. The annual replacement of its membership by *tiers* he thought one of the greatest “improvements in the science of government” of the modern age, imparting a needed conservative stability to a republic that had become a font of apocalyptic politics and visionary idealism. As for the plural executive, scorned as a multicephalous monarchy by the left and a dithering debating society by the right, Paine thought it nearly perfect. In his essay *The Eighteenth Fructidor*, which strongly backed repressive measures taken by the government against a purported royalist conspiracy, he lauded the Directory as a golden mean, “sufficiently plural” to benefit from deliberation and to place brakes on rash actions, “and yet not so numerous as to endanger the necessary secrecy that certain cases, such as those of war, require.” Enumerating the record of the new constitution, concentrating above all on the stunning series of military victories overseen by its generals, Paine built to a delirious crescendo:

Almost as suddenly as the morning light dissipates darkness, did the establishment of the Constitution change the face of affairs in France. Security succeeded to terror, prosperity to distress, plenty to famine, and confidence increased as the days multiplied...A series of victories unequalled in the world, followed each other, almost too rapidly to be counted, and too numerous to be remembered. The Coalition, everywhere defeated and confounded, crumbled away like a ball of dust in the hand of a giant. Everything, during that period, was acted on such a mighty scale that reality appeared a dream, and truth outstripped romance.<sup>898</sup>

Certainly it outstripped the fading glamour of the American republic, which Paine informed Madison was “fast falling into disesteem” in the courts of Europe, and was commonly observed

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<sup>897</sup> Thomas Paine, *The Eighteenth Fructidor* [September-November 1797], in *Complete Writings* (Philip S. Foner ed.), 2: 595. Cf. Thomas Paine, *Agrarian Justice* [February 1797], in *ibid.*, 1: 607 (“I have always considered the present Constitution of the French republic the *best organized system* the human mind has yet produced.”); Thomas Paine to Thomas Jefferson (Jan. 25, 1805), in *ibid.*, 2: 1462 (“the Directory constitution which was in general a good one”).

<sup>898</sup> Paine, *Eighteenth Fructidor*, 2: 595-9.

to be hardening into a corrupted aristocracy. Paine, as we might expect, blamed the deformity of its constitution: "As the Federal Constitution is a copy, though not quite so base as the original, of the form of the British Government, an imitation of its vices was naturally to be expected." The president was a *roi-manqué*, acting impetuously in the realm of foreign affairs, dealing imperiously with a supine Congress, and surrounding himself with a swarm of courtiers and yes-men. And this was only a prelude; many of Washington's closest advisors talked openly of instituting a hereditary presidency and Senate after his departure. The bumbling Machiavelli at the head of this party was John Adams, "one of those men who never contemplated the origin of government, or comprehended anything of first principles."<sup>899</sup>

In dilating on the perfection of the *Constitution de l'an III*, Paine was not simply flattering his hosts;<sup>900</sup> for at least a decade he had been drifting towards a similar ideal. In 1786 he publicized his disillusionment with Pennsylvania's unicameral government, which had been overrun by backcountry radicals intent on issuing paper money and repealing the charter of the Bank of North America. For all of his enmity against John Adams, Paine's searing bill of indictment could have been taken from the *Defence*: "a single legislature, into the hands of whatever party it may fall, is capable of being made a compleat aristocracy...as dangerous to the principles of liberty as that of a despotic monarchy."<sup>901</sup> Paine was infuriated by the content of the

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<sup>899</sup> Thomas Paine to James Madison (Sept. 24, 1795), in *Complete Writings* (Philip S. Foner ed.), 2: 1381; Paine, Letter to George Washington, 2: 693, 2: 695 ("encouraging and swallowing the grossest adulation"), 2: 696, 2: 711 ("the swaggering air of a bravado"); Paine, Eighteenth Fructidor, 2: 597 ("Those whom he admits in consultation will be ministers of his own appointment, who, if they displease by their advice, must expect to be dismissed.").

<sup>900</sup> Nor was he dissembling, which is the conclusion we are led to by J.C.D. Clark, *Thomas Paine: Britain, America, and France in the Age of Enlightenment* (2018), 360 ("Paine was deeply unhappy with the Directory.").

<sup>901</sup> Thomas Paine, On the Affairs of Pennsylvania [1786], in *Collected Writings* (Eric Foner ed., 1995), 360. Cf. *ibid.*, 361 ("At the commencement of the revolution, it was supposed that what is called the executive part of a government was the only dangerous part; but we now see that quite as much mischief...may be done, and as much arbitrary conduct acted, by a legislature"); Thomas Paine, Dissertations on Government, the Affairs of the Bank, and Paper-Money [1786], in *Complete Writings* (Philip S. Foner ed.), 2: 409 ("when a party operates to produce party

populist program,<sup>902</sup> but his epiphany about constitutional forms outlasted the death of this movement. In his *Answer to Four Questions*, published in Condorcet's *Chronique du Mois* in 1791, Paine advised that "a legislature composed of a single chamber is always exposed to the peril of deciding with precipitation," while a divided legislature could be expected to stimulate "judicious reflection." Although he still balked at the thought of "two chambers which have each an arbitrary veto," he now thought it essential that the delegates *deliberate* separately, throwing a maximum of light on every resolution, before *voting* together.<sup>903</sup> Four years later, having seen the depths to which an unrestrained legislature might descend, Paine went a step further. In a letter to his friend Antoine Thibaudeau, a member of the Onze, at a time when the Commission was still finalizing the draft constitution, Paine declared the Jacobin frame of 1793 "very faulty," since "a single assembly deliberating and debating in the same room has all the vices of an individual." It would be better, he thought, if the elected assembly was divided by lot into two chambers, "each capable of checking and censuring the other." It was a complete capitulation to the deliberative argument for bicameralism, and was quoted with glee in America's Federalist press, although it conceded nothing to the sociological justification preferred by Adams and his

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laws, a single House is a single person, and subject to the haste, rashness and passion of individual sovereignty. At least, it is an aristocracy.").

<sup>902</sup> See Matteo Battistini, Insurrections, Bank, and Private Contracts, *Storicamente*, 10 (2014), no. 33; Janet Wilson, "The Bank of North America and Pennsylvania Politics: 1781-1787," in *Pennsylvania Magazine of History and Biography* (Jan. 1942), 1: 3-30.

<sup>903</sup> Thomas Paine, Answer to Four Questions on the Legislative and Executive Powers [June-July 1791], in *Complete Writings* (Philip S. Foner ed.), 2: 526-8 ("My plan would be to divide a legislature...into two equal sections. The first section would discuss...while the second section listened. Then the second section would take up the same question. Then, after each section had heard the arguments of the other, the debate would be closed, and the subject finally submitted to the decision of the entire legislature."). Condorcet, too, was willing to make certain concessions to bicameralism—he thought that a "corps distingué" characterized by "[l]'âge, les lumières, [and] l'expérience des affaires"—might be given a partial negative, one that would slow (but not defeat) rulemaking in the "lower" chamber. See his Examen sur cette question: est-il utile de diviser une assemblée nationale en plusieurs chambres [1789], in *Œuvres*, 9: 357-8.

followers.<sup>904</sup> Given his contacts, Paine could be confident that the new *projet* would adhere to this general outline. But he also reported to Thibaudeau a disquieting rumor circulating in Paris: “that the Convention proposes to attack the principle of equal rights, and to make the distinction of rights the basis of its new constitution.”<sup>905</sup>

A month later these seeds of anxiety had blossomed into an acrid polemic against the Constitution of Year III, which Paine arranged to have read out in the Convention by his friend and translator François Lanthenas. In it, he charged the Convention with traducing the principles of the revolution by restricting the franchise to those who pay a direct tax on land or income (Art. 8). Paine had not been tamed by his yearlong imprisonment—he called the provision “repugnant to reason and incompatible with the true principles of liberty,” and sought its immediate repeal.<sup>906</sup> Paine advanced three arguments, sounding in interlinked registers of law, morality, and prudence. First, and most tangibly, the abolition of manhood suffrage would be destructive of the *fraternité* undergirding the republic. Universal citizenship was the mortar binding together denizens of the republic; the Onze now threatened to replace these unifying bonds of solidarity with the crabbed spirit of the counting-house, emptying each individual’s pockets to judge his social worth. “You will extinguish that enthusiasm and energy which have hitherto been the life and soul of the Revolution,” he cautioned, “and you will substitute in its place nothing but a cold indifference and self-interest.” The *esprit de corps* of the army, which is “composed of men from all strata, from the poorest to the richest,” would likewise be shattered

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<sup>904</sup> See, e.g., Noah Webster's *American Minerva* (Dec. 15, 1795), which (with no small amount of malice) declared Paine's *Dissertation on the Principles of Government* "a short, but excellent eulogium on the constitution of the United States, and on Mr. Adams defence of their principles."

<sup>905</sup> Thomas Paine to A.-C. Thibaudeau (June 6, 1795), in Thibaudeau, *Mémoires*, 1: 115, 1: 112.

<sup>906</sup> Thomas Paine, The Constitution of 1795, in *Complete Writings* (Foner ed.), 2: 589-90. For the original, see Lanthenas, Suite de la Séance du 19 Messidor, *Moniteur*, July 10, 1795, in RAM 25: 171-2. Cf. Paine, Eighteenth Fructidor, 2: 598 (“The only defect in the Constitution is that of having narrowed the right of suffrage”).

by this retreat from equality. Although under the 1795 constitution military service conferred the full rights of active citizenship, this would be cold comfort to the soldier returning from the front to a family exiled forever from civic life. When he “marched soldier-like to the frontiers, and repelled a foreign invasion...[h]e had it not in his contemplation, that he should enjoy liberty...[but] preclude his offspring from that inestimable blessing.” The veterans who risked their lives for the republic deserve better, Paine declaimed, than to prepare “a race of slaves” for a lifetime of servitude and insignificance. Second, Paine took a hatchet to the legalistic distinction between *direct* and *indirect* taxes that governed this exclusion. It was, to begin with, arbitrary and nonsensical—paying a tax on land guarantees the franchise even if its cost is entirely passed on to tenants, while the tenant farmers who supply the bulk of labor and revenue are excluded because they are not the land’s titular owners. Worse, placing freeholders in charge of the state would retard economic development, prioritizing agriculture over industry, trade, and finance. If every “upstart who has...got possession of a few acres of land” is admitted to the arena of debate and public service, while all but the richest merchants and mechanics are humiliated and ignored as “indirect” taxpayers, France will become a stunted backwater, and the prey of its more industrious neighbors. Finally, the restricted franchise was a crime against natural order—civic equality is not a gift made by some men to others, but rather a basic fact about all civil society, the condition of its possibility. Clawing back this equal status is a kind of theft. “[W]hat difference,” Paine asked pointedly, “is there between despoiling a man of his rights, and despoiling him of his property?”<sup>907</sup> He expanded on this idea in his *Dissertation on First Principles*, a pamphlet he brought out simultaneously with the July Convention speech, in which he compared disenfranchisement to a violent attack in the state of nature, activating a Lockean right of self-defense and punishment. “Personal rights, of which the right of voting for

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<sup>907</sup> Paine to Thibaudeau, 1: 113-15; Paine, *Constitution of 1795*, 590-4.

representatives is one, are a species of property of the most sacred kind: and he that would employ" it in order to "dispossess or rob another of his property or rights, uses that pecuniary property as he would use fire-arms, and merits to have it taken from him." It is a usurpation against the *demos* by a vain, self-appointed caste of guardians, convinced that it has a natural right to rule others. In a republic characterized by an "equality of rights," Paine observed, there is no right to revolution, since every grievance can be resolved by representative institutions and majoritarian ballots. But this machinery of democratic legitimation is short-circuited by disenfranchisement, leaving the unjustly excluded with only violent modes of redress. "It is possible to exclude men from the right of voting," he warned, "but it is impossible to exclude them from the right of rebellion against that exclusion." Where a denial of civic status is combined with a diminution of civil liberties—the right to speak and protest—"the right of rebellion is made perfect."<sup>908</sup> The imperative on every tongue in the summer of 1795 was *terminer la révolution*,<sup>909</sup> but a republic that dealt with the majority of its own citizens as unwelcome guests could look forward to a future of permanent insurgency.

It is not an accident that Paine's constitutional views were formed in the crucible of Pennsylvania in 1776, under the tutelage of Benjamin Franklin.<sup>910</sup> The distinguishing mark of

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<sup>908</sup> Thomas Paine, "Dissertation on First Principles of Government [July 1795]," in *Complete Writings* (Foner ed.), 2: 577-8 ("The rich have no more right to exclude the poor from the right of voting...than the poor have to exclude the rich; and wherever it is attempted...it is a question of force and not of right."), 2: 585 ("Nothing...can justify an insurrection, neither can it ever be necessary where rights are equal and opinions free."). Paine admonished the Thermidoreans to recall the gloomy fate of France's aristocrats, who enjoyed special privileges under the *ancien régime*, and found themselves stripped of citizenship when the revolution radicalized; they "experienced in themselves the degrading *inequality* they endeavored to fix upon others."

<sup>909</sup> See, e.g., Delahaye, Discussion sur les moyens de terminer la révolution, *Moniteur*, Aug. 24, 1795, in RAM 25: 534.

<sup>910</sup> In the nineteenth century, one of Franklin's most popular quotations was the parable of a man whose ownership of a jackass, valued at fifty dollars, qualifies him for the ballot. When it dies, he is disenfranchised. "Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass." This quote is found everywhere—it is the epigraph to Alexander Keyssar's *The Right to Vote* (2000)—but it is a misattribution. Its true source is Paine, in the *Dissertation on the First Principles of Government* (p. 2: 579): "When a broodmare shall



that constitution, more even than its unicameral legislature, was its stirring vision of suffrage as a natural right. This was true in practice—it permitted the franchise to all male taxpayers above twenty-one (Sec. 6). And it was true in theory—historians have collected the outpouring of writings in 1776 and 1777 on the imperative of universal suffrage, comparable in scope and depth to the Leveller explosion of 1647-8. That voting was a right was held strongly by Franklin and those in his extended circle of democratic reformers—Timothy Matlack, Thomas Young, Ethan Allen, and Thomas Paine.<sup>911</sup> In *Common Sense* Paine spoke vaguely, if sympathetically, of “the necessity of a large and equal representation.” But in the *Pennsylvania Packet* the next year he was more specific, outlining a maximalist vision of the franchise that would have encompassed all adults, regardless of whether they owned enough real property to pay taxes—with the sole exception of servants, who could not be expected to exercise an independent will.<sup>912</sup> As in 1795, the Paine of 1778 connected the imperative of a wide franchise to the war effort: “To be telling men of their rights when we want their service, and of their poverty when the service is over, is a meanness which cannot be professed by a gentleman.”<sup>913</sup> Franklin took a

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fortunately produce a foal or a mule that, by being worth the sum in question, shall convey to its owner the right of voting...in whom does the origin of such a right exist?” The quote’s transposition is a reminder that Americans preferred to receive these democratic prescriptions from the grandfatherly diplomat and scientist Franklin, rather than the strident revolutionary Paine.

<sup>911</sup> See A Dialogue between a Farmer and a Citizen, *Pennsylvania Packet*, Oct. 31, 1778, 1 (“Remember Sir, that every man who you debar from voting for his rulers, is to all intents and purposes a *slave*. He is governed...*without being represented*.”). Cf. Eric Foner, *Tom Paine’s America* (1976), 131-44; Steven Rosswurm, “As a Lyen out of His Den: Philadelphia’s Popular Movement, 1776-80,” in *The Origins of Anglo-American Radicalism* (James and Margaret Jacob eds., 1984), 300-23, esp. 303-8; Richard Alan Ryerson, *The Revolution is Now Begun* (2012), 234 (“The basic intent and effect of the franchise provision adopted by the conference [in June 1776] was to include all adult white males”).

<sup>912</sup> Paine, *Common Sense*, 37; Thomas Paine, A Serious Address to the People of Pennsylvania, *Pennsylvania Packet*, Dec. 1, 1778, reprinted in *Collected Writings* (Philip S. Foner ed.), 2: 285-7 (“By a generous Constitution I mean a just one; and by a just one that which considers mankind as...*a mere man*, before it can be known what shall be his fortune or his state...I consider freedom to be inseparable from the man as a man; but...the exercise of the right may cease in the servant for the time he continues so.”).

<sup>913</sup> Thomas Paine, A Serious Address to the People of Pennsylvania, *Pennsylvania Packet*, Dec. 5, 1778, reprinted in *Collected Writings*, 2: 288.

similar line at the Philadelphia Convention of 1787 in response to a bid to restrict federal elections to the owners of landed property.<sup>914</sup> It was the brainchild of Gouverneur Morris, later America's first ambassador to the French republic, and a fixture in royalist and counterrevolutionary circles in Paris.<sup>915</sup> But Morris was only picking up on a thread first raveled by John Adams in 1776, in order to bind the democratic furies of revolutionary Philadelphia. As he lectured his friend, the Massachusetts attorney James Sullivan:

What Reason Should there be, for excluding a Man of Twenty years, Eleven Months and twenty-seven days old, from a Vote, when you admit one, who is twenty one? The Reason is, you must fix upon Some Period in Life, when the Understanding and Will of Men in general is fit to be trusted by the Public. Will not the Same Reason justify the State in fixing upon Some certain Quantity of Property as a Qualification.<sup>916</sup>

Adams was sufficiently pleased with this letter to have it reprinted in a Philadelphia literary magazine in 1792, and he fondly recalled it in a 1795 note to his son. He thought it obvious that the Jacobin republic, which combined free suffrage, mob rule, and political terror, had vindicated his instinctive mistrust of mass democracy. "This Letter," he preened, "I prize above a statue or a Monument...as Evidence of my opinion at that time and my Courage to avow it, when many of

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<sup>914</sup> Madison Notes, August 7, in *Records of the Federal Convention*, 2: 201-3 ("Mr. Govr. Morris moved to...restrain the right of suffrage to freeholders...9/10 of the people are at present freeholders and these will certainly be pleased with it. As to Merchts. &c. if they have wealth & value the right they can acquire it. If not they don't deserve it."), King Notes, August 7, *ibid.*, 2: 208 ("Franklin—I am afraid by depositing the rights of Elections in the Freeholders it will be injurious to the lower class of Freemen—this class have hardy Virtues and gt. Integrity—the late war is a glorious Testimony in favor of plebian Virtue...This is the reason—the Americans were all free and equal to any of yr. fellow Citizens—the British once were so—in antient Times every freeman was an Elector—but finally they made a law requiring an Elector to be a Freeholder...the English common people from that period lost a large portion of patriotism.").

<sup>915</sup> Lafayette would plead for Morris's recall in 1792; see Lafayette to George Washington (Mar. 15, 1792), in *Papers of George Washington (Presidential Series)*, 10: 115 ("I am personally a friend to Gouverneur Morris...but the aristocratic, and indeed counter-revolutionary principles he has professed, unfitted him to be the representative of the only nation, whose politics have a likeness with ours."). Cf. Thomas Paine to Thomas Jefferson (Feb. 13, 1792), in *Collected Writings* (Philip S. Foner ed.), 2: 1323 ("I have just heard of Gouverneur Morris's appointment. *It is a most unfortunate one...*").

<sup>916</sup> John Adams to James Sullivan (May 26, 1776), in *Papers of John Adams* (Robert J. Taylor ed., 1979), 4: 211. Cf. John Adams to John Adams (grandson) (Nov. 26, 1821) JA EA ("My opinion—old fashioned to be sure—that property in land is the safest the most equitable and the most likely to produce education independence discretion & will...Would you permit to come out all the paupers of England to vote for members of parliament & to vote themselves into parliament?").

my Co Patriots...[were] inclined to admit all Nature to an equal Vote.”<sup>917</sup> What had been a lonely stance in 1776 was now doxa throughout the republican Atlantic. And nowhere was this more true than in the Paris salons that looked to John Adams as their polar star, where Paine’s incendiary strike on the new constitution and its narrow franchise received a distinctly chilly reception.

A firestorm erupted the moment Lanthenas finished reading Paine’s speech. Deputies on the left demanded that the *discours* be printed and distributed by the national printing-works; although this was a courtesy extended to all speeches by *conventionnels*, a detachment of the Convention now “opposed this motion forcefully.” Louis-Joseph Charlier, a former montagnard, leapt to the aid of Common Sense: “These phrases of T. Paine go to the crux of the constitution. I fail to see why anyone who does not desire either monarchy or an aristocratic republic would stand in the way of their printing.” This drew the ire of Daunou, the new constitution’s primary author, who could not have relished listening to Paine denigrate his handiwork; Daunou and Charlier grappled briefly before the Convention agreed, grudgingly, that the speech would be printed.<sup>918</sup> Two days later this delicate truce was broken, and several other members of the Onze entered the fray. Merlin de Douay insisted that Paine, in his wild “diatribe, presented here two days ago,” was wrong to state that the Convention had stripped ordinary Frenchmen of their

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<sup>917</sup> John Adams to JQA (Sept. 19, 1795), in *Adams Family Correspondence*, 11: 32, and accompanying notes. For a sense of how universal suffrage, philosophic radicalism, and the French revolution were intermingled in Adams’s mind, see [Harvard and Worcester, 1751-1755], in *Autobiography*, Part One, 3: 265-6 (“There were two other Persons in the Neighbourhood, Doolittle and Baldwin, who were great Readers of Deistical Books...They were great Sticklers for Equality as well as Deism: and all the Nonsense of these last twenty Years, were as familiar to them as they were to Condorcet or Brissot....Another excentric Character was Joseph Dyer...According to him Antichrist signified all Tyranny and Injustice through the World. He carried his Doctrine of Equality, to a greater Extremity, or at least as great as any of the wild Men of the French Revolution. A perfect Equality of Suffrage was essential to Liberty. I stated to him the Cases of Women, of Children, of Ideots, of Madmen, of Criminals, of Prisoners for Debt or for Crimes. He could not give me any sensible Answer to these Objections: but still every limitation of the right of Suffrage, every qualification of freehold or any other property, was Antichrist. An entire Levell of Power, Property, Consideration were essential to Liberty and would be introduced and established in the Millenium.”).

<sup>918</sup> Charlier, Suite de la Séance du 19 Messidor, 172-3. Cf. *Journal de Paris*, July 8, 1795, 1170 (“Plusieurs voix de la montagne demandent l’impression de cette opinion.”).

citizenship. First, because the right to vote was open to all—anyone not liable for taxes could simply pay the prescribed electoral fee. And second, because all inhabitants, including women and dependents, would enjoy the substantial rights and liberties associated with passive citizenship. Paine had worked himself into a froth over nothing. But Merlin could not resist a diatribe of his own: “I hardly think that we will want to entrust the state to the sort of man who has nothing and produces nothing, the kind of man who is nothing but a plague...to give such a man the least influence on government...would be to consign it to dislocation and destruction.”

Lanjuinais, who in April 1793 had argued for a democratic franchise that would include foreigners and servants,<sup>919</sup> now made plain his deepening imbrication with the elitist republicanism of the Coppet circle. All citizens, he testified, are “free and equal in rights,” but in a republic there are nevertheless “distinctions” arising from differences in virtue and talent, which it is important to accept and accommodate. One such distinction is intelligence: “the blind must be led by those who can see, and those who have not been gifted with intelligence must take others for their guides.” Another is gender: women, though as intelligent as men, are fitted by nature for “another kind of glory,” that of raising the next generation of virtuous citizens, taking “the mother of the Gracchi as their model.” Once we permit these distinctions, it makes little sense to insist on suffrage for the indigent, most of whom exhibit “idleness and laziness,” or to allow them entry to the legislature so that they might “broadcast their views about the property of the men who feed them!” This would be a republic of drones, in which the sluggish taxed the industrious, and shirkers gave law to military veterans. Soon maximum prices would be set for market transactions, so that no one could sell cloth or wheat except under the watchful eye of a local committee. Lanjuinais compared this dystopia to Athens, where the poor demanded a salary

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<sup>919</sup> J[ean].D[enis]. Lanjuinais *Rapport lu le lundi 9 avril 1793, à la Convention nationale, au nom du comité des Six* (Paris, 1793), 6, 10.

for their daily activity of persecuting the rich. But perhaps the better analogy was Paris, 1794: “All this is nothing but what we have already seen, during the reign of the 40 sous men.”<sup>920</sup> The equal suffrage that Paine thought the *sine qua non* of republicanism carried within it the germ of redistribution and terror.

The *discours* of 19 Messidor cemented the impression that Paine, a longtime critic of populism and political violence, was a destabilizing radical.<sup>921</sup> Staël called him a geometrician of disorder, “reducing demagogy to dogma,” for wanting to allow ordinary workingmen the vote. Miranda advised Hamilton in early 1797 of Paine's imminent departure for America, warning that “he has become a complete Marat,” and adding that he hoped he “would not do more evil in the new world than he has done in France.” The British conservative John Bowles, who thought the censitary qualifications the only sound element of the new constitution, castigated Paine as an “unceasing advocate for Anarchy” and an “inextinguishable firebrand” for opposing it.<sup>922</sup>

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<sup>920</sup> Suite de la Séance du 21 Messidor, *Moniteur*, July 13, 1795, RAM 25: 195-6. || Lanjuinais's rhetorical strategy, in which the exclusion of one class from the ballot then licenses others, was also that of John Adams. The obverse side of this, of course, was that admitting one excluded class to the franchise might induce a cascade. See John Adams to James Sullivan (May 26, 1776), 4: 211 (“The Same Reasoning, which will induce you to admit all Men, who have no Property, to vote, with those who have, for those Laws, which affect the Person will prove that you ought to admit Women and Children: for generally Speaking, Women and Children, have as good Judgment, and as independent Minds as those Men who are wholly destitute of Property. Depend upon it, sir, it is dangerous to open So fruitfull a Source of Controversy and Altercation, as would be opened by attempting to alter the Qualifications of Voters. There will be no End of it. New Claims will arise. Women will demand a Vote. Lads from 12 to 21 will think their Rights not enough attended to, and every Man, who has not a Farthing, will demand an equal Voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Levell.”).

<sup>921</sup> One of the three speeches made at the Convention in support of Paine—by the regicide J.-J.-V. Génissieux—was couched in reservations and qualifications. See RAM 25: 196 (“sans réjeter entièrement l'établissement d'une contribution personnelle, il est telle restriction qui serait de la plus dangereuse conséquence.”) Another, by Edmond Dubois-Crancé (RAM 25: 215), was rather better, petitioning for the voter rolls to be determined not by salary, but by a thorough diagnostic of moral and civic fitness. Pierre Guyomard did best of all; see Suite de la séance du 3 Thermidor, *Moniteur*, July 27, 1795, RAM 25: 307 (“Si l[']on exige une garantie contre les hommes susceptibles de se laisser corrompre, j'en veux un contre les corrupteurs: je demande que tout citoyen qui a plus de trente mille livres de rente ne puisse être électeur.”). Outside the halls of the Convention, Lanthenas circulated an essay titled *Droit de cité* (Paris, 1795), warning that turning poverty into a badge of shame and dishonor would fill the *prolétaires* with resentment, preparing another round of vengeance against the rich.

<sup>922</sup> Staël, *Réflexions/intérieure*, 3: 1: 166. || Francisco de Miranda to Alexander Hamilton (Apr. 1, 1797), in *Papers of Alexander Hamilton* (Harold C. Syrett ed., 1974), 21: 1. Paine did depart Paris for Le Havre in early 1797, but

Louvet, writing in the *Sentinelles*, was gentler—although he thought that Paine had unwisely lapsed into Robespierism, he nevertheless named the author “one of the purest friends of liberty.” Nonetheless, he certified that Paine had veered badly off track, punctuating his reproof with an allusion to the most flagrantly democratic of the American state constitutions:

The Americans respected the virtues and the talents of THOMAS PAYNE but have not adopted his system of Political Equality. They have given to every one the same extent of Civil Liberty, and the same legal protection. They have neither created nor preserved either titles, corporations, or privileges; but they attached too much importance to the rank of a Citizen to admit those to partake of the right of one, who contributed nothing to the public treasure...to have a vote in the Primary Assemblies, it was necessary to have paid the public taxes. This we find even in the Constitution of Pennsylvania, which is the most popular of all. The system of THOMAS PAYNE, though it has been maintained and defended by many honest enlightened men, has, nevertheless, always been productive of ill consequences. The moment this system is established or, or indeed proclaimed, the social order is destroyed, the Government loses all its strength, and anarchy commences. It is a doctrine which has ever been the signal of political troubles—of that lamentable crisis when the despotism of the multitude treads down every barrier of society.<sup>923</sup>

It was Adams's friend, the impeccably reactionary François d'Ivernois, who had the kindest words for Paine's performance. But it was sugar laced with arsenic. The great virtue of Paine's *discours*, argued the Genevan, was to expose the fuzzy thinking and bad faith of the Thermidorean clique. The Commission des Onze had declared in sonorous tones the sovereign equality of all men—but their true philosophy was disclosed by Boissy d'Anglas in an unguarded moment in his speech of 5 Messidor: “A country where the propertyless govern is in the state of nature; a country where the propertied govern is in a state of society.”<sup>924</sup> This secret motive was imprinted everywhere in the *Constitution de l'an III*, and was the animating principle of its rigidly qualified suffrage. And this contradiction between its superficial egalitarianism and its profound spirit of oligarchy—between, as d'Ivernois put it, the Declaration of Rights and the

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turned back when it became apparent that the coast was patrolled by British corsairs. || John Bowles, *Thoughts on the Origin and Formation of Constitutions, suggested by the recent attempt to frame another new constitution for France* (London, 1795), 5.

<sup>923</sup> As translated and reprinted in the *Oracle*, Aug. 6, 1795.

<sup>924</sup> D'Anglas, *Projet de Constitution*, 33. This line is quoted at d'Ivernois, *Des révolutions*, 425, where d'Ivernois calls it “la grande vérité qu'avait si bien exprimée Boissy d'Anglas.”

Constitution—was the gap where Paine aimed his lance. D'Ivernois judged it a fatal blow, and a tearing away of the mask:

*Thomas Paine*, still the champion of these general definitions, has attacked his colleagues more successfully than I could, since he has vanquished them with their own weapons...I reproach them only for the absurd prior commitment [to equality] they have contracted; he accuses them, on the contrary, of having violated it, and *having deprived half the people of their civic rights*. And since they boast, like him, of adhering to these definitions of *liberty*, of *equality*, of *law*, and above all of *sovereignty*, he has every right to...proclaim at the top of his lungs, as he did on July 7, that *every Frenchman without property will leave no inheritance to his children, and will be the father to a race of slaves*.<sup>925</sup>

“Paine,” he concluded, “did not lack for logic.” The Convention wanted to have it both ways—a democratic façade and an oligarchic skeleton. Paine demonstrated, quite astutely, that the former would inevitably collapse into the latter, and that consequently a choice would be necessary. Paine chose the democratic republic. D'Ivernois urged the deputies to expunge the declaration of rights, to state forthrightly that the “people” were not in any sense sovereign, and to restrict citizenship to an elite, as in the midcentury constitution of his native Geneva. Otherwise the primary assemblies would drown in the refuse of the republic: “all the vagabonds, all the beggars...all those with neither hearth nor home.” The Swiss economist in London cast a cold eye on the Anglo-American revolutionary in Paris: “in insisting on the inviolable preservation of the Declaration he lacked sincerity.” He was willing to speak in general, laudatory terms of “democracy” and the “people.” But “he was careful” to keep his language gauzy, and “not to speak aloud” his *arrière pensée*—his secret predilection for an unruly democracy of the rabble.<sup>926</sup>

If Thermidor revived Paine's fortunes as a constitutional thinker, it also buoyed the reputation of his former antagonist, the Abbé Sieyès. Sieyès, christened by Robespierre “la *Taupe de la*

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<sup>925</sup> D'Ivernois, *Des révolutions*, 438 ff. 1. Cf. *ibid.*, 425 (“N'est-ce pas ce misérable subterfuge qui a fourni à T. Payne des armes triomphantes contre tout l'Acte Constitutionnel? Comment la Commission des Onze a-t-elle pu se flatter qu'elle lui en imposerait par de pareilles tergiversations, ou qu'elle jetterait de la poudre aux yeux de la populace qu'il protégeait, & qu'on visait à laisser en dehors du cercle des Français privilégiés?”).

<sup>926</sup> *Ibid.*, 428-30, 438.

*révolution*,<sup>927</sup> survived the Terror by burrowing underground, shunning the revolutionary stage and shrouding himself in "philosophical silence." When he reëmerged into the light of the Convention it was as its most venerable member,<sup>928</sup> and he was offered prestigious positions on the Commission des Onze and the Committee of Public Safety. He declined the former to accept the latter, but closely followed the deliberations of the constitutional committee,<sup>929</sup> and was distinctly unimpressed with its workmanship. He did not hide his disdain. "Cato did not repeat more often in the Roman Senate, *Delenda est Carthago*," Benjamin Constant remembered, "than Sieyès, in his salon, affirmed that *the Constitution de l'an III must be broken*." When, after the crisis of Fructidor, Sieyès was consulted by the Directory about his suggestions for constitutional reform, he snapped that "*I cannot tell you my ideas, you would not understand them*."<sup>930</sup> For a tantalizingly brief period the *coup d'état* of 18 Brumaire promised to bring these ideas to life. Ten days after the putsch, the newspaper *Le Diplomate* gave its readers a hopeful glimpse of the Sieyèsian constitution to come:

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<sup>927</sup> Barère, *Mémoires*, 2: 280. || On Sieyès's "*silence philosophique*" during the Terror, see Charles-Augustin Sainte-Beuve, "Sieyès," *Le Constitutionnel*, Dec. 9, 1851, reprinted in *Causeries du lundi* (Paris, 1851), 5: 208. Cf. John Quincy Adams to John Adams (Nov. 17, 1795), in *Writings of John Quincy Adams*, 1: 432-3 ("The man whose mere existence at this day is a standing miracle..."). || According to the biographical (and possibly autobiographical) *Notice sur la vie de Sieyes*, the cleric made initial plans to seek asylum in America. See [Konrad Oelsner, with Sieyès], *Notice...* [June 1794] (Switzerland, 1795), 53 ("le dessein de se retirer aux Etats unis d'Amérique...").

<sup>928</sup> See, e.g., L.M. Réveillère-Lépaux, *Opinion sur le jury constitutionnaire, prononcée dans la séance du 24 thermidor* (Paris, 1795), 1 ("un homme de génie"); Røederer, "Sieyès," 4: 205 ("L'autorité de son talent, la force de ses pensées, la rectitude de ses vues...").

<sup>929</sup> For a summary of the archival evidence that Sieyès consulted repeatedly with the Commission des Onze, see Gauchet, *Révolution des pouvoirs*, 160 ff. 73. Sieyès alludes to these consultations in *Opinion de Sieyès sur les attributions de l'organisation du jury constitutionnaire*, *Moniteur*, Aug. 13, 1795, RAM 25: 442.

<sup>930</sup> Constant, "Souvenirs Historiques (Deuxième Lettre)," 114; Barère, *Mémoires*, 4: 432. Cf. Philip Mazzei to Giovanni Fabbroni (Sept. 10, 1798), in *Philip Mazzei: Selected Writings and Correspondence* (Margherita Marchione et al eds., 1983), 3: 215-16 ("Sieyès...has the courage not to keep silent about his preferring the 1791 constitution"); Albert Mathiez, "Saint-Simon, Lauraguais, Barras, Benjamin Constant, etc. et la Réforme de la Constitution de l'an III après le Coup d'État du 18 fructidor an V," *Annales historiques de la Révolution française* (January/February, 1929), 19 (Sieyès "avait combattu la Constitution de l'an III au moment même de son élaboration.").



It is said that Sieyès has, for a long time, had a constitution in his portfolio, a plan which has won the approval of all who have seen it. During the drafting of the Constitution of 95 he did not think minds were mature enough for the elaboration of his system...If we are to believe the vague rumors, this constitution, perfectly simple...establishes a constitutional jury, a national representation based on property, and an executive power similar to that of the United States. It says nothing about common happiness, equality, unity, etc.<sup>931</sup>

Much of this program, however, had already been previewed in 1795 in a pair of philippics on the Thermidorean instrument,<sup>932</sup> which restored the abbé to the epicenter of French political life. In these interventions Sieyès mapped out an alternative constitutional future for the *république*, defined by two primary features. The first was a constitutional division of labor rather than a separation of powers, what he called, with his customary air of paradox, "division avec unité." The second was a countervailing power standing above the clatter of ordinary government, which would exercise the responsibilities of both constitutional review and constitutional amendment.<sup>933</sup> Both positions flowed from the cataracts of the 1776 Pennsylvania constitution, a fact that many of his contemporaries understood immediately.

Sieyès believed in the separation of powers, but emphatically not in their contraposition or balance. That is to say, he thought it essential that there be multiple sites of power, but that these branches should interact in "harmony" with one another, like the parts of a mechanism, rather than competing and colliding in unpredictable patterns.<sup>934</sup> And he articulated a series of

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<sup>931</sup> *Le Diplomate*, Nov. 20, 1799, reprinted in *Paris sous le consulat, recueil de documents* (François Victor Alphonse Aulard ed., 1909), 1: 14-15. || In spite of Sieyès's reputation for having, in the irreverent words of Burke, "whole nests of pigeon-holes full of constitutions ready made, ticketed, sorted, and numbered," he proved utterly unprepared for the *coup d'état* that he himself instigated. "Sieyès surprised and disappointed his comrades," writes Isser Woloch, "when he revealed...that he simply did not possess a working draft of a constitution for their guidance." Without a document to rally the brumairians, Sieyès lacked a compelling counterweight to Napoleon's charisma and military heroism. See *A Letter from the Right Honourable Edmund Burke to a Noble Lord* (London, 1796), 63; Isser Woloch, *Napoleon and His Collaborators* (2001), 28.

<sup>932</sup> Sieyès, First Thermidorean, 152 ("I worry that it may not have the necessary robustness to withstand new revolutionary upheavals and to safeguard the public order.").

<sup>933</sup> Syèyes, Séance du 2 Thermidor, 25: 291 and 25: 293.

<sup>934</sup> Emmanuel Sieyès, *Fragments Politiques* [ca. 1793], in *Des manuscrits de Sieyès, 1773-1799* (Christine Fauré ed., 1999), 1: 464 ("...c'est un corps complet fédéral qu'ils forment, qui s'organise...comme une pendule entière à l'horloger") and 1: 493 ("la constitution...est une bonne mécanique <sociale>..."). Cf. Emmanuel Sieyès, Pièce 16

interwoven concerns regarding the "système de l'équilibre ou des contre-poids" that was now being advocated openly in the press and on the floor of the Convention. Befitting its author, this argument was highly abstract, and revolved around his most significant contribution to political theory, his labyrinthine idea of social representation. In order for the nation to be *represented*, Sieyès held, its will and personality must be invested in a single, centralized body, a "pouvoir unique," which reflects and refracts the enormous multiplicity of society. This representative must then further divide itself into discrete parts of government, assigned to fulfill particular functions, in order to maximize efficiency and to avoid the "despotic" concentrations of power that tarnished the first republican constitution. In 1789 Sieyès had spoken in favor of a government in one center, a cynosure of rulemaking and enforcement acting on behalf of the *Tiers-État*.<sup>935</sup> Now, drawing a parallel with private contract and the power of attorney,<sup>936</sup> he pushed for a maximum of delegation to a galaxy of specialized bodies:

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(ca. 1789), Fonds Sieyès, 284 AP 5, dossier 2(3), reprinted in Pierre-Yves Quiviger, *Le Principe d'Immanence: Métaphysique et droit administratif chez Sieyès, avec des textes inédits de Sieyès* (2008), 449 ("System de l'équilibre = 2 ou 3 actions en état respectif de tension, ou en contre-actions. Système d'*unique action* = le despotisme et révolutions. Système d'*unité*, est différent. Ce n'est point *unicité* d'action, c'est *organisation* d'actions, au pluriel; toutes les actions s'y trouvent sans confusion, sans dissociation, sans contre-action. Mais toutes les parties sont *organisées* de manière à faire un tout; puisqu'il y a *unité* de but, il doit y avoir une unité de *marche*, unité de *volonté*.").

<sup>935</sup> Though even in 1789, Sieyès was friendly towards the limited bicameralism espoused by Paine and Condorcet, in which a single assembly would divide in order to debate each question, and reassemble following these deliberations in order to vote. He would later be accused by the Jacobins of having supported an upper chamber. See *Dire de l'Abbé Sieyès sur la question du veto royale, à la séance du 7 Septembre 1789* (Paris, 1789), 27-8.

<sup>936</sup> When Sieyès discusses delegation from the people to the government in his speech of 2 Thermidor, he uses the noun "procuration," which is best translated as legal proxy or power of attorney. This rhymes nicely with his reasoning in the unpublished manuscript *Droits de l'homme*, in which he criticizes English, American, and French declarations of rights for their cringing tone of supplication, which he considers unworthy of a sovereign people. See Emmanuel Sieyès, *Droits de l'homme* [ca. 1793], in *Des manuscrits de Sieyès*, 1: 500 ("Il n'y qu'un pouvoir, qu'une autorité. C'est un homme qui commet un procureur à ses affaires, il lui donne des instructions, il lui fait la déclaration de ses devoirs, à lui procureur; il ne s'amuse pas à lui dire: et moi je veux conserver intact tel ou tel de mes droits. Cela serait lâche, misérable, ridicule..."). The deluded man in this example who asks his own representative to grant him rights has made the same mistake as the constitutional architect who erects rival powers to check one another, namely *reifying* instruments that he himself has created, and proceeding as though they were not at all times entirely under his control. || Cf. James Iredell, Speech at the North Carolina ratifying convention, July 28, 1788, in *Debates in the Several State Conventions* (Jonathan Elliot ed., Philadelphia, 1891), 4: 148 (A

It is clear that being represented in as many areas as possible increases one's liberty, while uniting various representative roles in a single person diminishes one's liberty. Look at the realm of private affairs: surely he is most free who has others do the most work for him. Conversely, everyone agrees that a man renders himself more dependent on others the more of his delegated tasks are accumulated in one and the same agent—to the point where he completely alienates his own person, if all his powers come to be concentrated in a single individual...Beware of attaching all your rights to one single representative; distinguish carefully between the various representative tasks, and ensure that the constitution does not allow any group of representatives to overstep their particular jurisdiction.<sup>937</sup>

It followed that the Girondin and Jacobin artificers of 1793, who envisioned the ongoing participation of the citizenry in government via the primary assemblies and the delegation of ordinary government to a single unicameral chamber, had committed three distinct kinds of errors. First, they had misunderstood the technical, expert-oriented character of modern government. Legislators are specialists, elevated for their talents and trained to perfect a narrow task; to require citizens to continually intervene in the legislative process in order to remain free is as senseless as trying "to prove to the citizens who need to send a letter to Bordeaux...that they will better preserve their liberty" by carrying it themselves.<sup>938</sup> A substantial component of modern liberty, as Sieyès redefined it, was freedom from the obligation to pore over statutory minutiae and obsess over minor variations in legislative language. This is what Sieyès meant in his enigmatic private note, composed around 1789, that "progress in liberty ensues naturally upon the establishment of *representative labor*."<sup>939</sup> Second, the alliance of primary assemblies and unicameralism was conceptually incoherent; as Sieyès explained in his unpublished *Fragmens politiques*, "to mix the representative system with a purely democratic system is to

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constitution "may be considered as a great power of attorney, under which no power can be exercised but what is expressly given.").

<sup>937</sup> Sieyès, First Thermidorean Intervention, 155.

<sup>938</sup> Ibid.

<sup>939</sup> Quoted in K.M. Baker, *Inventing the French Revolution* (1990), 246 ("Multiplying the means/powers of satisfying our needs, enjoying more, working less: in this consists the natural increase of liberty in the social state. Now this progress of liberty naturally follows from the establishment of representative work."). Cf. Sieyès, First Thermidorian, 154 ("it is the representative system which allows us to attain the greatest possible degree of freedom and prosperity").

sink into a chaos of contradictions."<sup>940</sup> The primary assemblies and the national legislature, would present two utterly incompatible justifications for rule—the former that the people themselves must rule at all times if they are not to be dominated by elites, and the latter that the people have no coherent will that can be expressed outside of representative channels, where decisions are arrived at through reasoned exchange and shared deliberation. To the extent that one form of rule is legitimate, the other is not,<sup>941</sup> and so the facile project of merging them together is hopeless. Finally, the genuine danger of usurpation is overcome not by avoiding but by *multiplying* delegation, so that no single organ of the state is ever in a position to commandeer its resources and to subjugate its citizens. Unicameral government was akin to signing away one's entire power of attorney to a single individual, and thereby placing oneself utterly at his mercy.<sup>942</sup>

But if the Sieyèsian concept of division-by-delegation struck at the foundations of Girondin and Jacobin constitutionalism, it also targeted the leading alternative, the tradition of the mixed constitution long thought to be synonymous with public liberty in England and America. He made clear his disfavor, if not yet his reasoning, in a draft from the early 1780s he titled *Contre la Balance anglaise*, where he called the idea "worthy of an Englishman whose imagination cannot rise above what is, in order to seek a better order in the realm of possibilities."<sup>943</sup> He expanded on these sentiments with the dawn of the revolution, and the publication of his seminal

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<sup>940</sup> Sieyès, *Fragments politiques*, 1: 464.

<sup>941</sup> Cf. *Dire de l'Abbé Sieyès*, 14 ("Ce concours immédiat est ce qui caractérise la véritable *démocratie*. Le concours médiat désigne le *Gouvernement représentatif*. La différence entre ces deux systèmes politiques est énorme."); The Explanatory Note of M. Sieyès, in Answer to the Letter of Mr. Paine, 138 ("every social constitution of which representation is not the essence, is a false constitution").

<sup>942</sup> Sieyès, *First Thermidorian*, 158 ("an undivided concentration of powers that exposes the nation to all the dangers of despotism").

<sup>943</sup> "Constitution Hypothétique," *Des manuscrits de Sieyès: 1770-1815* (Henri Champion ed., 2007), 2: 425.

*Qu'est-ce que le Tiers état?* If the national will is singular and unified, as Sieyès averred,<sup>944</sup> it cannot enter into contradiction with itself, and thus its delegates cannot differ with one another or descend into conflict. And yet the balanced constitution was premised on perennial competition and mutual surveillance between the branches, what Sieyès termed derisively "gladiatorial combat."<sup>945</sup> The Polybian model of conflictual equilibrium between institutions was a philosophical miscue, whose absurdity he sought to encapsulate in an allegory:

Consider the different kinds of workers needed to build a house. Even though various different trades and skills are involved, they all work towards a common goal. There is no single unique kind of action, but there is clearly a unity of action. My adversaries, on the contrary, have a different idea of the unity of action. Since...they confuse it with solitary action, they will only admit one kind of worker and force him to perform diverse tasks. Then, when they realize that such an accumulation of power leads to abuse, what do they do? They advise the owner, once the house is finished, to call in a second group of workers, each of whom is again competent for all the different tasks, and to have them rebuild the house from the ground up.<sup>946</sup>

Rather than subdividing tasks to boost efficiency, as in the commercial division of labor sketched by the Scottish economists,<sup>947</sup> the ideologists of balanced government promoted the *agglomeration* of legislative, executive, and judicial duties into a single body,<sup>948</sup> and (to supply a "check") the *duplication* of identical powers in other branches. A host of pathological results followed. One was the frustration of the popular will, as the multiplication of veto points brought national affairs to a standstill, and the desires of the majority were "held hostage to the veto" of

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<sup>944</sup> Emmanuel Sieyès, "Reasoned Exposition of the Rights of Man and Citizen" [1789], trans. Marc Allen Goldstein, in *Essential Writings*, 128 ("One society can only have one general interest. No order would be possible if several opposing interests were supposed to be realized...A political association is the result of the unanimous will of the associates."); Sieyès, First Thermidorean, 168 ("there is after all only one party, the people").

<sup>945</sup> Emmanuel Sieyès, "What is the Third Estate?" [1789], trans. M. Blondel, in *Essential Writings*, 85 ff. 27. For a canonical statement of the virtues of balance between the branches, see [James Madison], Federalist No. 51 [1788], in *Federalist Papers* (Terence Ball ed., 2003), 251 ("...contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places").

<sup>946</sup> Sieyès, First Thermidorian, 158.

<sup>947</sup> For his copious notes on Adam Smith's *Wealth of Nations* see Emmanuel Sieyès, "Cahiers Smith" [1770-1785], in *Manuscripts*, 2: 305-61.

<sup>948</sup> So that the House of Lords has legislative, judicial, and (when a peer is prime minister) executive powers, the American presidency has executive and legislative powers, etc.

minority factions.<sup>949</sup> A second was the metastasization of constitutionalist checks into open warfare between the branches. The "system of equilibrium," he chided, stages a "constant civil war between popular representatives and executive power"; inevitably, "one side will be toppled and capitulate, either as the result of bribes or force." And indeed, Sieyès argued that this is exactly what had happened in England, as the patronage power of the crown led both houses of parliament to jockey for royal favor, sapping their native instincts for resistance:

You will see that the political system is able to function only because in practice there is really no such counterweight or equilibrium at all. Instead, through abuse and corruption of the system, what is effectively established is precisely that concentration of power which was meant to be prevented, and which was believed to have been precluded through the institution of [the] veto. Let the most devoted partisans of the English system tell us...whether the king is not in fact the absolute master of both houses of parliament, and whether that famous party of the opposition...is really anything more than a disgruntled petitioner developing schemes and slanders against the royal favorite in order to take the latter's place.<sup>950</sup>

This cynical view of the British constitution was shared by many of Sieyès's contemporaries; when Benjamin Franklin wrote to Richard Price complaining of "your present crazy Constitution and its Diseases," he fixated on "the enormous Emoluments of Place" that made possible the construction of legislative majorities permanently aligned with the crown. "[S]uch a Parliament," he remarked wryly, "appears to me a very expensive Machine for Government."<sup>951</sup>

In his discussions of Britain's mixed constitution Sieyès repeated theories that might have been familiar to him from the writings of Quesnay and Turgot, both of whom he read with great attention.<sup>952</sup> But he also betrayed an awareness of the constitutional literature circulated by

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<sup>949</sup> Sieyès, *First Thermidorian*, 158. Cf. *Dire de l'Abbé Sieyès*, 9 (calling the royal veto "une lettre-de-cachet lancée contre la volonté nationale," precisely because it allows the minority view to triumph).

<sup>950</sup> Sieyès, *First Thermidorian*, 157. He adds that "even when the system of equilibrium consists of homogeneous counterparts"—that is to say, where the parts of government are not differentiated by rank—"it is not therefore any more worthwhile." Contrast this with Sieyès, *Third Estate*, 102 ff. 34, where the philosopher is willing to entertain the possibility of a tripartite legislature, so long as the chambers do not act as the stalking horses for "three *orders* which are hostile to one another."

<sup>951</sup> Benjamin Franklin to Richard Price (Aug. 16, 1784), in *Works of Benjamin Franklin* (Jared Sparks ed., London, 1882), 10: 124.

<sup>952</sup> See Catherine Larrère, "Sieyès, lecteur des physiocrates," in *Figures de Sieyès*, 195-212, 196 ("Ses cahiers de travail [in the 1770s] témoignent d'une lecture attentive non seulement de Quesnay...mais également

Franklin and his French allies in the revolutionary era. Thus the second edition of *What is the Third Estate?* cited the *Examen du Gouvernement d'Angleterre*, the translation and annotation of John Stevens's critique of John Adams organized by Condorcet, Dupont de Nemours, and Mazzei, commending it for "fulfill[ing] almost completely" his wish for a comprehensive tract on the flaws of the English constitution.<sup>953</sup> More striking was the metaphor he selected in his *discours* of 2 Thermidor to explain why the bicameral legislature was precluded in a genuine republic:

There is a good image for this: two horses put before the same carriage, and made to pull in opposing directions. Despite their greatest efforts, the carriage will remain stationary unless a royal driver takes his seat and brings them into unison. But we do not want such a royal driver.<sup>954</sup>

This was a deliberate reworking of one of Franklin's most celebrated fables, which circulated widely in the Atlantic world. The conservative North Carolina statesman Thomas Burke, posted to Philadelphia as a member of the Continental Congress, groused in 1777 that this rustic homily had played a decisive role in establishing the unicameral constitution in Pennsylvania:

I am told Dr. Franklin persuaded them, by a simile, to reject a second branch of the Legislature. He said, two branches would resemble a wagon with two horses at the tongue two at the tail, who by pulling opposite ways would keep the machine still...This simile of the Doctor's is said to have kindled the present flame. One can hardly suppress the reflection, that the people who could be so much influenced by it, were wonderfully competent to frame constitutions.<sup>955</sup>

In the ensuing decades the story would be made famous by eyewitnesses, and repeated promiscuously by Paine and other friends of Franklin.<sup>956</sup> It would also be reproduced, alongside

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des...Turgot...[et] Condillac"); Henry C. Clark, *Compass of Society* (2007), 300-1; Jainchill, *Reimagining politics*, 213 ("Sieyès, like Røederer, was very much an heir to the Physiocrats..."). Turgot was Sieyès's immediate predecessor at the Chartres vicariate.

<sup>953</sup> Sieyès, *What is the Third Estate?*, 84 ff. 26.

<sup>954</sup> Sieyès, *First Thermidor*, 158. Cf. Christophe Achaintre, *L'instance législative dans la pensée constitutionnelle révolutionnaire* (2008), 260 ("Sieyès reprend ici une comparaison dressé par B. Franklin"). The French text of Sieyès's speech ("On en a fait une juste comparaison...") implies that he is citing an unnamed source.

<sup>955</sup> Thomas Burke to Gov. [Richard] Caswell (Mar. 11, 1777), *Colonial Records of North Carolina* (William Saunders ed., Raleigh, 1890), 11: 422.

<sup>956</sup> See, e.g., Graydon, *Memoirs*, 285; "To the People of Pennsylvania," *Pennsylvania Gazette*, Mar. 31, 1784; Thomas Paine, *Constitutional Reform* [August 1805], in *Complete Writings* (Philip S. Foner ed.), 2: 1006.

a critical commentary, in Adams's *Defence*.<sup>957</sup> The latter may have been the original source when Rœderer, one month before Sieyès's first Thermidorean intervention, recalled the anecdote for a French audience, writing in his *Journal de Paris* that unicameralism found its strongest support in "the authority of Franklin, who compared a double assembly to a double carriage...one part of which pulls upwards while the other part drives downwards."<sup>958</sup> John Quincy Adams, meanwhile, carefully transcribed and translated the "declamation against the *balancing system*" in Sieyès's speech to share with his father, and thought it plain that Sieyès was merely regurgitating "Franklin...Mirabeau, and...Condorcet, upon the *system of balances*." The young minister plenipotentiary had crossed paths with Sieyès several months earlier, while both were on diplomatic assignment to the Netherlands, and reported that the cleric dealt with him coldly, and seemed to view himself as his father's leading adversary in the world of ideas. "Sieyès," he recounted to the Vice President, "the humble pupil of Favier and Franklin...bears a personal ill-will to you," as well as "a speculative ill-will to the principles of our Constitution."<sup>959</sup> Three months later, in a rare appearance at the lectern of the Thermidorean Convention, the abbé would unveil his own.

It was a sharply-defined alternative to the constitution presented by the Commission des Onze. His projected constitutional order would have three tiers. The lowest strata would be composed of two bodies—a *tribunat* that would speak for the discontented masses, and a *gouvernement* that would discharge the executive and administrative duties of the state. Sieyès imagined that these two bodies would be opposites and rivals, fighting over the proper scope of

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<sup>957</sup> Adams, *Defence*, 1: 106; Adams, *Défense*, 1: 196. Adams's specific version of Franklin's fable is quoted in [Comte de Murat-Montferrand], *Qu'est-ce que l'Assemblée Nationale?* (n.p., 1791), 243-4, who however gets its meaning backwards.

<sup>958</sup> Rœderer, "Encore quelques lignes sur le partage du pouvoir législatif," 6: 94.

<sup>959</sup> JQA to John Adams (Aug. 31, 1795), in *Writings of John Quincy Adams*, 1: 401-2; JQA to the Secretary of State [Edmund Randolph] (May 14, 1795), in *ibid.*, 1: 345; JQA to John Adams (Jan. 14, 1797), in *ibid.*, 2: 86-7.



popular liberties, and that their primary occupation would be crafting legislation; he called them *ateliers de propositions*. But the laws they authored could not be enacted without first being referred to "the true center and supreme regulator of the whole institutional system," a single chamber of 700 deputies drawn equally from the spheres (agriculture, industry, and education) that spanned the nation's material and spiritual existence. Despite its name, the legislature would be disqualified from "introducing laws of its own accord"; instead, it would "pronounce" on the competing "proposals made by the tribunate and the government," like a judicial court issuing an opinion after briefings by both sides. "[T]he foremost task of the legislature," he summarized, is "to wait patiently; not to legislate spontaneously, but to respond to [the] requests" of subsidiary bodies. This triangular arrangement would have a triple benefit. First, it would guard against overreach by the unicameral assembly, since no law could be made without responding to some strongly felt need among the masses. It was the Jacobin belief that the people might be made "more free than they wish or desire," that they might be molded into a higher caliber of republican citizen through intrusive state interventions, that created the original conditions for the Terror. Second, this adversarial model of lawmaking would ensure that every law is thoroughly discussed and deliberated before being voted on—first with complete freedom in the lower "deliberative assemblies," and then in the framework of a formal, juridical debate in the *législature*. Finally, there was an unmistakably Machiavellian dimension to Sieyès's political thought—a suspicion that upsurges of popular anger and public discontent were "sometimes salutary, [and] never truly worrisome," provided that they could be safely domesticated by legal forms, colorfully described as "dikes to contain this torrent within its constitutional bounds."<sup>960</sup>

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<sup>960</sup> Sieyès, First Thermidorian, 160-7.

Sieyès was notoriously reluctant to assign credit for his ideas, and carefully cultivated the aura of a solitary and self-sustained genius.<sup>961</sup> Nevertheless, we can disentangle two philosophical influences from the skein of his constitutional theory. The first is James Harrington, who may have been the source of several peripheral aspects of Sieyès's 1795 constitutional plan, including its projected division of French territory into uniform legislative districts, and its emphasis on regular rotation of office. Its stark division between proposal and acceptance in the framing of laws was also, in a broad sense, Harringtonian, although it was not until his 1799 constitution that Sieyès specified that the legislative body must "listen in silence to the two parties" appearing before it, as stipulated in *Oceana*.<sup>962</sup> The second is Immanuel Kant, a philosopher Sieyès corresponded with sporadically, and greatly admired. The ex-vicar was acquainted with a range of Kant's writings, and may have known his 1784 essay *Idea for a Universal History with a Cosmopolitan Purpose*, which sets out to reconcile the "inevitable *antagonism*" of men with the "calm and security" of a "law-governed constitution." The Königsberg professor believed that "a perfectly just civil constitution" would not seek to extinguish the ingrained tendency of men to clash and compete, since it is precisely this impulse that spurs them to "abandon idleness" and to develop their productive and creative faculties to the fullest extent. Rather, it would render such competition *lawful*, subjecting it to a common authority capable of disciplining it, and redirecting it from lethal conflict towards constructive and civilized ends.<sup>963</sup> This, too, was the way that

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<sup>961</sup> See, e.g., Dumont, *Souvenirs*, 63 ff. 1 ("il me dit ce mot qui me frappa: "*La politique est une science que je crois avoir achevée.*").

<sup>962</sup> Sieyès's borrowing from Harrington was suspected by his contemporaries, and confirmed by his private papers, which include several pages of notes taken from the 1795 edition of the *Œuvres*. See André Morellet, *Mémoires inédits* (Paris, 1821), 43-4 ("il est difficile de ne pas regarder Sieyes comme plagiaire dans les prétendues inventions..."); Emmanuel Sieyès, [Notes on Harrington], in *Manuscrits*, 1: 453. On Harrington and the Constitution of 1799 see Rachel Hammersley, *The English Republican Tradition and Eighteenth-Century France* (2013), 166.

<sup>963</sup> Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Purpose" [1784], in *Political Writings* (H.B. Nisbet trans., Hans Reiss ed., 1991), 41-53, 44-8. || Cf. "Variété," *Journal Litteraire de Lausanne* (July 1796), 6:195 ("Plusieurs gassettes ont publié, que l'abbé Sieyes avoit écrit à Kant...pour lui demander son opinion sur la

Sieyès conceived of political unrest in the well-ordered republic: as a kinetic energy to be harnessed, rather than a fire to be snuffed out. Thus the lowest tier of his constitution was structured around an unceasing rivalry between popular and anti-popular forces, unfolding under the supervision of a higher authority:

The presence of two parties similar or analogous to those that are everywhere called the governing party and the opposition party is an integral component of any type of representative system...They will shine more and be less dangerous in the deliberative assemblies of a truly free republic. When two parties make full use of their right to speak and to write, they will come to resemble opponents in a state of nature, as long as they have no recognized superior. But as soon as there is an authority competent to adjudicate between them, both are reduced to the role of mere attorneys...During these contests, it is in the people's best interest to listen by turns to these rival parties, who debate in more or less good faith.<sup>964</sup>

By reframing class conflict as a juridical proceeding, terminating in a definitive legislative judgment, Sieyès claimed to have squared the circle: the state would reap the benefits of social dynamism and watchfulness against tyranny, without risking a return to the bedlam of barricades, club dictatorship, and justice *à la lanterne*.

The keystone in Sieyès's Thermidorean blueprint was, without question, the *jury constitutionnaire*, the highest echelon of his constitutional order, which the abbé grandly designated the "preserver and guardian of the constitution."<sup>965</sup> It was greeted in the Convention with a queasy mixture of awe and apprehension. In a floor speech of August 5, 1795 Sieyès outlined its form—108 members on rotating three-year terms, recruited by coöptation from the outgoing members of the legislature, and meeting in private. And he delineated its multiple

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constitution & la forme actuelle du gouvernement François...a de transplanter sa nouvelle philosophie en France"). || On the philosophic interchange between Kant and Sieyès more generally, see Isaac Nakhimovsky, *The Closed Commercial State* (2011), 23-5; Alan Ruiz, "A l'aube du kantisme en France," *Cahiers d'études germaniques* (1980), 147-93; Susan M. Shell, "Kant on citizenship, society, and redistributive justice," in *Kant and Social Policies* (Andrea Faggion et al eds., 2015), 1-24, esp. 7-12.

<sup>964</sup> Sieyès, First Thermidorian, 167-8.

<sup>965</sup> *Ibid.*, 164. || The Sieyèsian jury experienced a radical makeover in the weeks between its first and second editions, though these differences are often elided by historians: (1) in the first version, the jury is charged with reviewing "les décrets de la législature"; in the second, "les actes soit du Conseil des Anciens, soit du conseil des Cinq-Cents, soit des Assemblées électorales, soit des assemblées primaires, soit du tribunal de cassation," a greatly expanded ambit (2) in his first speech, Sieyès does not mention any role for the jury in either drafting constitutional amendments, or in exercising "équité naturelle dans des occasions graves," as he does in the final design. See Troper, *Terminer la révolution*, 205-7.

functions: "(1) as a court of appeals within the constitutional order; (2) as a committee for considering constitutional amendments; [and] (3) as a supplement of natural jurisdiction when there are gaps in positive jurisdiction."<sup>966</sup> The first of these prongs meant that the jury would serve as a roving court of constitutional review, a *jury de cassation*, overturning laws passed by the two chambers and scrutinizing irregularities in the elections conducted by the primary assemblies. The theory was appealingly simple: a constitution is a dead letter if there is no body competent to enforce it, and this could hardly be entrusted to ancillary magistracies like the Directory or the civil courts, powerful institutions like the Conseil des Cinq-Cents who would be the major subjects of its enquiries, or the hopelessly fragmented primary assemblies. Nor could the role of guarantor be assigned jointly to the different branches, as in America and Britain, since Sieyès was convinced that this would produce endless strife without ever generating a final resolution. Hence the necessity of a neoteric institution, solely preoccupied with interpreting and enforcing the constitution, and unable to wield any powers itself. "The Constitutional Jury can...serve as a force to prevent or remove disturbances threatening the political order," Sieyès boasted, "and to end stalemates that are deadly to public administration." And by assuming its place as the "authoritative arbiter in political and constitutional matters," to whom even the primary assemblies must yield, his plan would consign the increasingly unpopular idea of popular sovereignty to extinction.<sup>967</sup>

The second task of the constitutional jury was to act as a *jury de proposition*; to this end it would convene once per decade to consider constitutional amendments. From his first forays into constitutional theory Sieyès had taken seriously the danger that, having once ratified a written constitution, a people might be ruled in perpetuity by the dead hand of the past. Thus his various

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<sup>966</sup> Emmanuel Sieyès, Second Thermidorian Intervention [August 5, 1795], in *Essential Writings*, 172.

<sup>967</sup> *Ibid.*, 171-6; Sieyès, First Thermidorian, 165.

drafts for a declaration of rights in 1789 had reliably concluded with the maxim "un peuple a toujours le droit de revoir et de réformer la Constitution," for which there must be "époques fixes où cette revision aura lieu."<sup>968</sup> The Terror did not shake this conviction—he could still write in 1795 that "the constitution must be able" to change with the times, "to continually draw on the knowledge and experience of the past so that it can meet the needs of the present." But the Jacobin ascendancy had cured Sieyès of his prior infatuation with constitutional conventions, which he now believed must be avoided at all costs:

Once a constitution has been placed on a reliable foundation, it should no longer be exposed to moments of complete renewal. It is not up to us to say to our constitution, "You shall convoke at fixed intervals, and you shall solemnly declare those moments to be signals of your impending destruction." Some like to claim that a constitution, like a phoenix, can rise from its own ashes. In fact, the rebirth of a phoenix is a chimera; the periodic return of a constitutional convention is a calamity...It follows that...our constitution should be guided by a principle of unlimited perfectibility, which makes it adaptable to the needs of different eras, rather than a principle of destruction by total revision, which leaves it at the mercy of contingent events.<sup>969</sup>

Conventions were a "calamity," he thought, a vessel for demagoguery and usurpation; at every constitutional moment France would be wracked by intrigue, "unrest[,] and incalculable harm" as elites scrambled to reset the balance of power in their favor, while the people out of doors rediscovered the ghostly electricity of mass politics. A permanent or recurring constituent power would send the message that there was nothing fixed about the constitutional order, and thus nothing that merited the "love and veneration" of its citizens; one, sneered the abbé, "might just as well have no constitution at all." Thus revision ought to be sparing, and Sieyès regretted that constitutions could not be made perfect and immutable, like the "grand and terrible permanence of the laws governing the universe." Under his proposal of August 5, the constitutional jury would meet every ten years, beginning in 1800, to collect and publish promising ideas for amendment; this dossier would be forwarded to the primary assemblies, who would in turn vote

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<sup>968</sup> Emmanuel Sieyès, *Préliminaire de la Constitution Française* (Paris, July 1789), 51 (adding that the lifespan of every constitution ought to be "la vie moyenne de l'homme, c'est-à-dire, de trente-trois ans").

<sup>969</sup> Sieyès, *Second Thermidorian*, 177.

on whether to "temporarily cede part of their constituent power" to the legislature to execute these changes.<sup>970</sup> The complexity of this circuit, Sieyès hoped, would insulate it from the combustible populism that remade the constitution in the Year II.

Third, and finally, the *jury* would sit as a "court of human rights," correcting miscarriages of justice by applying the "timeless" principles of natural law, "written into human nature itself as an indelible sense of justice and injustice." Again Sieyès proceeded cautiously, forbidding the jury from interfering in prosecutions absent a referral from the lower courts. Nevertheless, since he believed that all written constitutions were subordinate to the prior dictates of natural law, this function was of a piece with the overarching purpose of the *jury constitutionnaire* as a "guardian and preserver of the constitution."<sup>971</sup>

The Sieyèsian *jury* captured the imagination of the Paris literati,<sup>972</sup> and became the subject of a lively debate among the *conventionnels*.<sup>973</sup> Jean Mailhe pronounced it "one of the most beautiful ideas devised by the human mind," and a brilliant failsafe for the separation of powers. "I can't conceive," he lilted, "of a more secure guarantee of liberty." Joseph Eschassériaux was even more complimentary, announcing that France should cherish "no hope of a long duration

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<sup>970</sup> Ibid., 177-8. For a similarly baroque plan of constitutional amendment, involving two legislative chambers, the primary assemblies, and a special committee charged with receiving and evaluating citizen petitions, see Vaublanc, *Réflexions/bases*, 47-50.

<sup>971</sup> Ibid., 180-3. For the origins of this theory of the judiciary, see Mario Einaudi, *The Physiocratic Doctrine of Judicial Control* (1938).

<sup>972</sup> [Pierre-Louis] R[œderer], "Opinion de sieyes sur plusieurs articles des titres IV & V du projet de constitution," *Journal de Paris*, July 27, 1795, 1348 ("Si les vues de Sieyes n'ont pas obtenu le suffrage ni peut-être l'attention de nos politiques, ses analyses fixeront certainement l'attention des philosophes.").

<sup>973</sup> This, at least, was the self-serving account of Sieyès, who recalled that the jury had been strongly supported by Daunou and Lanjuinais, until they lost their nerve after being bombarded with letters by female activists. See the 1798 diary of his friend Wilhelm von Humboldt, Entry 220, *Journal Parisien*, 183 ("Encore à la veille de la présentation de cette dernière à l'Assemblée, Daunou et Lanjuinais étaient tout à fait favorables à son *jury* constitutionnel. Daunou avait même poussé l'idée plus loin que Sieyès, mais le lendemain matin, il reçut quantité de billets envoyés par des femmes lui disant qu'il ne fallait se méfier de personne plus que de Sieyès, que son *jury* était un trône qu'il contruisait pour le parti de d'Orléans, etc. Alors, Daunou abandonna tout d'un coup."). || For a more hardheaded view of Convention politicking around the *jury*, see Troper, *Terminer la révolution*, 201-3.

for its constitution if you fail to adopt this idea of a *corps conservateur*," which is "indispensable for the structure and harmony of your political machine." The deputy for Charente-Inférieure equated "the advantages of the constitutional jury" with Machiavelli's *ritorno al principio*, a means for recalling the republic to its founding principles and original virtues.<sup>974</sup> On the other hand the jurist Théophile Berlier, a member of the Onze, demolished the plan in nearly every particular, even as he praised its "génie créateur" with a crocodile grin. He was particularly concerned that a jury would propose a constant stream of needless amendments to ensure that it was always "the center of conversation," draining the constitution of whatever reverence might attach to it. P.-F. Louvet sniped that the jury was "a superfluity as useless as it was dangerous," and predicted that, "armed with the right to paralyze every law...and to destroy the constitution in detail...having, in a word, no counterweights," this camarilla of 108 men would find it easy to bring the fragile republic crashing down.<sup>975</sup> Antoine-Claire Thibaudeau shared these concerns—he called the Sieyèsian *jury* a "monstrous power," a praetorian guard for the constitution "that would enslave the public authorities in order to keep watch over them more easily." The only "reasonable and possible guarantee of a republican constitution," he continued, was the division of the legislature. Here he could have been parroting his colleagues. But he also opened up a novel line of attack:

We find in Pennsylvania an institution that closely resembles the constitutional jury that is now proposed to you. Every seven years the people nominate a council of censors; its duty is to examine whether the constitution has been preserved in all its elements, without the slightest derogation, and whether the bodies charged with legislative and executive power have fulfilled their functions as guardians of the people, or whether they have exceeded the rights granted them by the constitution. It recommends to the legislature

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<sup>974</sup> Mailhe, Séance du 8 Thermidor, 25: 350. But cf. Daunou, Suite de la discussion sur l'acte consitutionnel, *Moniteur*, Aug. 2, 1795, in RAM 25: 358 (Mailhe mistakenly believed that the jury would have the right to arraign members of the executive for violations of the constitution; Sieyès has confirmed that "rien n'était plus contraire aux [ses] principes"); Eschassériaux, Suite de la séance du 24 Thermidor, 25: 481-2 ("Machiavel a dit que les républiques, pour être durables, avaient besoin souvent d'être rappelées à leurs principes...").

<sup>975</sup> [Théophile] Berlier, Suite de la séance du 24 Thermidor, 25: 475, 25: 478; Louvet (de la Somme), *ibid.*, 25: 480-1. Thibaudeau liked this last phrase enough to steal it; see his *Mémoires*, 1: 186 ("Elle me parut une superfétation inutile et dangereuse.").

the repeal of laws that appear to be based on principles opposed to the constitution, and it has the power to convene a convention to correct or modify the constitution...This council was convened in 1783, and its examination concluded that the constitution had been violated quite often...the expectation of public censorship exercised even by an institution this powerful and respected could not prevent these violations...Throughout its sessions this council was divided, and governed by party spirit more than respect for the constitution...the legislature then sitting refused to respect its decisions. This example proves...the impotence of the remedy proposed to you. Giving "guardians" to a constitution, and overseers with superior powers, is chasing a chimerical perfection. The safest and most natural guardians of any constitution are the depositaries of power, and the citizenry.<sup>976</sup>

Sieyès had not broken new ground; he had dug up a corpse, a decrepit model that was now a laughingstock in North America. A journalist for the *Nouvelles Politiques*, smitten with this analogy, rushed to share it with his readers: "the constitution of Pennsylvania" he instructed, in an article published the same day as Thibaudeau's lecture, "composed by Franklin in 1783, also had a body of *censors*, instituted expressly to defend the constitution." Like Thibaudeau, he was unsure whether this was an accidental echo or an *imitation volontaire*.<sup>977</sup> Certainly the two institutions were not perfectly parallel; per article 47 of the Pennsylvania constitution, when it judged that the charter had not been "preserved inviolate," the Council of Censors retained the right to summon a convention, an expedient Sieyès judged highly unsound. Nevertheless, scholars have connected the Sieyèsian project to the 1776 frame<sup>978</sup> for reasons that go beyond their structural similarities. We can speculate about direct lines of influence, since Sieyès paid magnanimous tribute to Franklin in 1790 on behalf of the National Assembly<sup>979</sup> and would have

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<sup>976</sup> Thibaudeau, *ibid.*, 25: 484 and Thibaudeau, Suite de la séance du 24 Thermidor, *Moniteur*, Aug. 18, 1795, in RAM 25: 487-8.

<sup>977</sup> *Nouvelles politiques, nationales et étrangères*, Aug. 11, 1795, 1295. Cf. *Nouvelles politiques*, Aug. 12, 1795, 1300 (correcting the date of the Pennsylvania constitution to 1776).

<sup>978</sup> See, e.g., Marco Goldoni, *La dottrina costituzionale di Sieyès* (2009), 181-2 ("Alla base di questa impostazione si ritrova probabilmente una critica del modello americano della riconvocazione periodica delle assemblee nazionali prevista, ad esempio, dall'art. 47 della costituzione della Pennsylvania.").

<sup>979</sup> The President of the National Assembly of France [Sieyès] to "The President of Congress" (June 20, 1790), Enclosure II, in *Papers of Thomas Jefferson* (Julian P. Boyd ed., 1974), 19: 109 ("The name of *Benjamin Franklin* will be immortal in the records of Freedom and Philosophy"). Condorcet, in his eulogy for Franklin, perceptively connected the political biographies of the two men; see Condorcet, "Éloge de Franklin" [1790], in *Œuvres*, 2: 421 ("Par une circonstance heureuse, [the National Assembly] avait alors pour président un philosophe qui, comme Franklin, avait éclairé ses concitoyens sur leurs droits, avant d'être choisi pour en être le réparateur, et qui, comme



encountered several discussions of the Pennsylvania Council of Censors in the course of his readings, above all in the French translation of the *Federalist Papers*.<sup>980</sup> He may also have been familiar with the short essay, published in the *Moniteur* of August 1791, tracing the anatomy of the Council of Censors, and concluding that its powers were "perhaps too extensive," but that a French "council of censors, reduced to the simple surveillance of the *pouvoirs constitués*, would hold great promise."<sup>981</sup> But Sieyès's private archives do not indicate any particular fixation on the 1776 constitution.

The case is stronger for an indirect linkage, since the Sieyèsian jury shared much of its DNA with several earlier Girondin constitutional schemes, crafted by men with clear ties to Paine and the Pennsylvania constitutional tradition. The earliest version came from Paine himself, in the penultimate paragraph of his 1776 broadside *Four letters on interesting subjects*. Having charted the coördinates of the "continental Constitution" he hoped to see in North America, Paine turned to the difficult question of "preserving it" from violation by Congress, which despite its representative character could no more be trusted to respect its boundaries than a hereditary king. The answer was suggested by a throwaway phrase in a 1766 speech by the Whig politician Lord Camden, opposing the Declaratory Act and sympathizing with the patriot credo that taxation and representation necessarily ran together in the British constitution: "I wish," Camden reflected, that "the maxim of Machiavel was followed...of examining a constitution at certain periods, according to its first principles," in order to "correct abuses and supply defects." This gave Paine a burst of insight, one which appears to have been taken seriously by the delegates to

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lui, n'a vu dans cet honneur qu'une occasion précieuse de réaliser tout ce qu'une âme forte et un génie élevé lui ont révélé pour le bonheur des hommes.").

<sup>980</sup> See [James Madison], No. 48, *Le Fédéraliste*, 2: 148 ("L'autre Etat dont je consulterai l'exemple, est la Pensylvanie, & mon autorité sera le conseil de censeurs convoqués en 1783 & 1784..."). For Sieyès's notes on the *Federalist*, see *Des manuscrits de Sieyès*, 2: 450-3.

<sup>981</sup> G. Hom., "Réflexions d'un ami de la constitution," *Moniteur*, Aug. 29, 1791, in RAM 9: 515.

Pennsylvania's constitutional convention who assembled two months later in Philadelphia: "at the expiration of every seven...years a *Provincial Jury* shall be elected, to enquire if any inroads have been made in the Constitution, and to have power to remove them," as well as to alter the constitution if approved by majority referendum.<sup>982</sup> Paine never denied that the Pennsylvania constitution had "errors and defects," but he gave the "Council of *censors*" his full-throated endorsement: "It is, in my opinion, one of the best things in the Constitution, and that which the people ought never to give up, and whenever they do they will deserve to be cheated."<sup>983</sup>

In 1792 the administrator and naval expert Armand-Guy-Simon, comte de Kersaint, a friend and colleague of Thomas Paine, recommended a new body he called a "tribunal de censeurs," to be "charged with preserving the forms and rules of government," and holding the legislature and executive to account for breaching the terms of the social compact. He announced its advent with great fanfare, and claimed credit for its invention:

In studying the diverse political institutions of different nations, I have noticed that legislators have searched everywhere without discovering a *pouvoir conservateur* for the social compact, and that in the organization of the political body this regulating power had never been organized without being mixed together with an aristocratic leaven, a seed of discord and corruption that has led, sooner or later to the ruin of the social edifice. The moment has come, I think, to offer a more perfect model to the world. The tribunal of censors I now propose to you, far from damaging equality, the first principle of our constitution, is created in order...to defend it against the blind attacks of the rich and ambitious.

Complaints that the separation of powers had been violated, or individual rights injured, could be lodged by citizens or state officials. Violations of the constitution by the executive would be denounced before the National Assembly, which would assume responsibility for rectifying civic injustices and punishing their authors. Every law passed by the legislature, meanwhile, would be scrutinized by the censors for conformity with constitutional text and structure. "The tribunal

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<sup>982</sup> [Thomas Paine], Letter IV, *Four Letters on Interesting Subjects* (Philadelphia, July 1776), 24. For the original quote by Camden, see Speech of Lord Camden on the American Declaratory Bill (March 1766), in *Debate on the Disturbances in America in consequence of the Stamp Act*, in *Cobbett's Parliamentary History* (London, 1813), 16: 177-8.

<sup>983</sup> Thomas Paine, "To the People," *Pennsylvania Packet*, Mar. 12, 1777, reprinted in *Complete Writings*, 2: 271; Thomas Paine, "The Affair of Silas Deane," *Pennsylvania Packet*, Dec. 15, 1778, in *ibid.*, 2: 125 ff. 40.

ought to behave in the political order," Kersaint opined, "like the court of cassation in the civil judicial order," a forum of last resort for infractions of extraordinary gravity. In the legislature, meanwhile, new laws stamped with the opprobrium of the censors would have to be reconsidered at the beginning of the next legislative session, a characteristically Girondin proviso that gave the people the final say.<sup>984</sup>

Kersaint's pamphlet first appeared in *La Chronique du Mois*, a newspaper he edited alongside a distinguished roster of republican thinkers, including Paine, the Edinburgh poet and Paris pikeman John Oswald, the social theorist Nicolas Bonneville, and the marquis de Condorcet.<sup>985</sup> And when the last of these men turned his attention to the composition of a republican constitution in October 1792,<sup>986</sup> he capitalized on his colleagues' flash of inspiration. Per his *Projet de Constitution*, ministers accused of *lèse-république* would be arraigned before a National Jury, elected by the primary assemblies, while judges suspected of exceeding the bounds of the constitution would be brought before a council of judicial censors, who would be vested with the authority to annul unconstitutional rulings. As with Kersaint, there was no suggestion that it would review or amend the constitution itself. But as Condorcet makes plain in his February 1793 commentary, the jury and censorship are pillars of his projected constitutional order, since by taking charge of the surveillance of the executive and judiciary it preëmpts the National Assembly from acting in this domain, and thus trespassing the strict separation of powers. This is why he can write that the "censorship, exercised in the name of the people," will

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<sup>984</sup> [Armand] Guy-Kersaint, *De la Constitution et du gouvernement qui pourraient convenir à la république française* (Paris, 1792), 8, 19-22. Cf. Lucien Jaume, "Sieyès et le sens du jury constitutionnaire: un réinterprétation," *Historia Constitucional* (2002), 3: 178 ("Kersaint était un ami de Sieyès..[et] Sieyès avait tiré une partie de ses idées du projet Kersaint").

<sup>985</sup> A. Guy-Kersaint, "De la constitution et du gouvernement...," *Chronique du Mois (Supplément)* (1792), 3-30. For the full masthead, which also included Brissot and Mercier, see Prospectus, *La Chronique du Mois* (1791), 2-3.

<sup>986</sup> Williams, *Condorcet and Modernity*, 268 ("a project that Condorcet would bring to fruition with the help of Paine, the Reverend David Williams, Siéyès...").

ensure that "the legislature exercises no improper functions...and is elevated above even the suspicion of having abused its power."<sup>987</sup> M.J.C. Vile is one of several historians to see in this attribute of the Girondin constitution the critical missing link between the censorship of Franklin and the *jury* of Sieyès.<sup>988</sup>

As we might expect, the Sieyèsian program was savaged by the *groupe Coppet*. Adrien Lezay took to the pages of the *Journal de Paris* to counter the appalling "idea of guaranteeing a constitution by means of a *jury*," which he expected would "find many partisans" inside and outside the Convention. He was disturbed, for two seemingly opposite reasons. On the one hand, a *jury constitutionnaire* would be laughably ineffectual at its mission of preserving a balance between the branches, a lesson he illustrated with an episode from Plutarch. When Lycurgus was asked why Sparta lacked extensive fortifications, he replied that if the city possessed only the courage of its citizens it would be well-defended, but that lacking these virtues no wall would suffice.<sup>989</sup> "It is the same," Lezay averred, "with a constitution." In "an order of things in which the two branches of the legislature and the executive power are reciprocally endowed with the rights of *initiative* and *veto*," there is no need for a high court to police their relations. And an unbalanced constitution will topple no matter how many cantilevers one adds to it. In contrasting the regime of constitutional self-help he favored with the crackpot idea of a Sieyèsian jury, Lezay reached for another martial metaphor. "The idea of removing from someone his means of

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<sup>987</sup> Discours prononcé dans la séance du vendredi 23 février, par Condorcet, au nom du comité de constitution, *Moniteur*, Feb. 17, 1793, in RAM 15: 486; 15: 464. Cf. [Nicholas] Raffron, Observations...sur un point essentiel omis dans la Constitution [June 24, 1793], Annex 57, in *Archives Parlementaires* (Paris, 1891), 67: 390 ("Il faut, dis-je, leur mettre un frein capable de préserver la République d'agitations funestes. *Ce frein est le conseil de censure*, qui surveillera indistinctement tous les citoyens.").

<sup>988</sup> Vile, *Separation of Powers*, 213 ("This problem, which Rousseau had set, Condorcet attempted to solve by the introduction of the 'national jury' as did the creators of the Council of Censors in Pennsylvania earlier, and Sieyès later").

<sup>989</sup> See Plutarch, "Lycurgus" [ca. 75 A.D.], *Lives* (Bernadotte Perrin trans. and ed., 1921), XX.

defense, in order to entrust it to another," he remarked, put him in mind of "a combatant who, to better defend himself," sets down his weapons, and "hands over his armor to a referee."<sup>990</sup> This would be worthless for preserving constitutional balance, but it would give immense clout and authority to the jury, with unpredictable and perhaps dire consequences:

It is here that we will experience all the dangers of a body that, supplied with a *veto* without taking any active part in politics, can...impede everything in order to dominate everything. It is a body that, acting through simple denunciations, can fatigue, confuse, and drive to distraction all of the powers that are submitted to its jurisdiction..It is a body that, deliberating in a single assembly, that is to say in a forum where passion and intrigue...have free rein, will become the tool of the ambitious and clever. And, slowly crippling by its *veto* the power that overshadows it [i.e. the legislature], it will, in time, make itself the master of the constitution.

After ratification there would be no means of dislodging this body or narrowing its jurisdiction, short of violent insurrection, since it would have an indefeasible negative over all further constitutional amendment. Contemplating this dreadful alternative, Lezay was led to some wan words of praise for the Commission des Onze, which for all of its flaws had at least made it difficult to summon a new meeting of the Convention, obviating the dangers of a runaway *pouvoir constituant* that Sieyès so heedlessly courted.<sup>991</sup>

If Lezay was caustic on the subject of Sieyès, and the retreat from the *triple division du pouvoir* signaled by his Thermidorean speeches, his friend and patron Madame de Staël was more generous.<sup>992</sup> Writing in the wake of 18 Fructidor, Staël declared the *Constitution de l'an III* bankrupt, urging a return to "the first principles at the base of the republic and the revolution." She credited Sieyès with discerning its defects early on, above all the irrepressible tendency of its different departments, representing different social interests, to fall into conflict. His constitutional jury, she assessed, was meant to dampen these hostilities by erecting a common

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<sup>990</sup> Adrien Lezay, "Sur le jury constitutionnaire de Sieyès," *Journal de Paris*, Aug. 9, 1795, 1298-9.

<sup>991</sup> Adrien Lezay, "Suite de l'examen du jury constitutionnaire," *Journal de Paris*, Aug. 10, 1795, 1303-4.

<sup>992</sup> Particularly since she accused Sieyès in 1795 of conspiring to have her hanged; see Germaine de Staël to [Louis-Adolphe de] Ribbing (Apr. 25, 1795), *Correspondance Générale* (Beatrice W. Jasinski ed., 1962), 3: 1: 310 ("Sieyès dit partout qu'à mon arrivée à Paris je rétablirai la constitution [of 1791]: tous ces gens-là pourraient bien me faire pendre.").

tribunal capable of holding both legislature and executive to account, while pronouncing definitively on the text and values of the constitution in case of disagreement. But Sieyès, too, had a blind spot: by making the members of his jury "subject to election, and temporary," he ensured that they would be ruled by the same inflammatory impulses infecting the other parts of government. "Far from assuring liberty, it adds to the number of rival passions that, wishing to...dominate by means of disorder, will not rest content with the role the constitution has assigned them." What was needed was not a fourth power, standing above ordinary politics, but rather a correctly calibrated system of balance, anchored by a revived Senate: "I would prefer," she wrote, "that the attributes of this constitutional jury were merged with the powers of the Conseil des Anciens," a permanent body distinguished by its "enlightenment, fortune, and...celebrity."<sup>993</sup> Sieyès wanted to crown a rickety structure with an *aréopage*; she would shore up its foundations, and entrust the conservation of the constitution to an elite sourced from France's most conservative class.

One notable exponent of the balanced constitution was won over by Sieyès's presentation: Pierre-Bernard Lamare, the translator of John Adams. In March 1795 Lamare reached out to Sieyès after making his acquaintance at the home of Clement de Ris, Lamare's supervisor at the Bureau of Public Instruction. He proudly enclosed a copy of *L'Équipondérateur*, along with a brief summary of its "system of the balance of three powers...to which I profess to be irrevocably attached."<sup>994</sup> Revocably, as it turned out, because following Sieyès's intervention of 2 Thermidor Lamare renewed their correspondence, repudiating this earlier work, and claiming that his veins now ran hot with Sieyèsian metaphysics:

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<sup>993</sup> Staël, *Circonstances*, 120, 126, 130. Cf. Germaine de Staël, "Supplément," in *ibid.*, 339 ("n'avoir pas d'autres fonctions, vivre d'infractions").

<sup>994</sup> Lamare to Sieyès (Mar. 26, 1795), Fonds Sieyès, 284 AP/9. Sieyès wrote to Lamare at least once, but his side of the correspondence has been lost.

Come, let us have the French system; it is better in all respects. Do not believe me madly infatuated with Anglicanism or Americanism. I might say, in my own defense, that I have never understood the word *équilibre* to denote anything besides a judicious separation of powers, which leaves to the genius of legislators the greatest latitude for different kinds of combinations. But that's all over now. Why quibble over words, when one is already agreed on the substance. I am prepared to recant my *équilibre* and enlist in the ranks of your *unité organisée*, which seems to me an altogether superb design.<sup>995</sup>

He raved about nearly every aspect of the Sieyèsian program; in particular, he professed to have "never seen anything better than your constitutional jury," and offered, rather ludicrously, to intercede with Daunou to have it included in the official Convention draft.<sup>996</sup> We can surmise that this fawning display was prompted by something other than the force and clarity of Sieyès's thought, since Lamare had previously written to the abbé asking for help in securing a diplomatic post.<sup>997</sup> But there are moments when opportunists see more clearly than others. And his abrupt conversion to Sieyèsian republicanism is an important reminder that a battle of ideas raged around the *Constitution de l'an III*, and that for the intellectuals of Thermidor nothing was more important than choosing sides.

### **Conclusion**

In the last days of the summer of 1812 Napoleon's *Grande Armée* massed on the Moskva River for what it expected would be a decisive confrontation with Russian forces. Later this action would be named after the nearby village of Borodino, and identified as the pyrrhic victory that doomed the French invasion. Two months earlier, as French battalions first began to stream across the frontier, America's ambassador to St. Petersburg John Quincy Adams recognized that

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<sup>995</sup> Lamare to Sieyès (July 25, 1795), Fonds Sieyès, 284 AP/9. Four days earlier, Lamare had written a much longer letter, summarizing what of Sieyès's constitutional draft he could reconstruct from newspaper reports. He had consequently missed Sieyès's firm rejection of constitutional checks and balances, and so wrote, rather naïvely, that the abbé was "un excellent Équipondérateur." Sieyès replied, delineating his true position on "balance."

<sup>996</sup> Lamare to Sieyès (Aug. 9, 1795), Fonds Sieyès, 284 AP/9.

<sup>997</sup> Lamare to Sieyès (Apr. 29, 1795), PVR 22/37 ("La Carrière diplomatique me plairait beaucoup...je voudrais y pouvoir faire mon apprentissage."). Cf. Lamare to Sieyès (Feb. 7, 1799), Fonds Sieyès, 284 AP/9 ("la paix générale pourrait se traiter à Berlin...Si vous jugiez à propos de m'appeler après de vous...quelque fut le poste que vous me destinassiez...").

he now had a front-row seat to an event "unparalleled even in the sanguinary modern annals of Europe." But with the Tsar and his ministry scattered into the field to coordinate the national defense, he also found himself with little to do.<sup>998</sup> And so it was that on the day of the great clash at Borodino—September 7—he came to accept an unexpected invitation to lunch with Madame de Staël, then "on a transient visit" to the Russian capital. He had never met the noted authoress, though he had followed her literary career with interest for more than a decade.<sup>999</sup> Adams listened politely to her panegyrics on Britain ("the most astonishing nation of ancient or modern times"), and helped her assess the value of her substantial financial and landed holdings in America. After several hours, the subject turned to Adams himself:

She soon asked me if I was related to the celebrated Mr. A. the author of the book upon government. I said I had the happiness of being his son. She replied that she had read it and admired it very much. That her father, Mr. Necker, had also always expressed a very high opinion of it.<sup>1000</sup> John and Abigail were elated by this tribute,<sup>1001</sup> boasted of it lightly to their close friends, and renewed their study of de Staël's works.<sup>1002</sup> The elder Adams was ultimately moved to write the *femme de lettres* for the first time, thanking her for her "obliging politeness to my son in

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<sup>998</sup> JQA to John Adams (June 29, 1812), in *Writings* (Worthington Chauncey Ford ed., 1915), 4: 360; JQA to Thomas Boylston Adams (July 14, 1812), *ibid.*, 4: 375.

<sup>999</sup> JQA to Abigail Adams (Jan. 18, 1797), in *Adams Family Correspondence*, 11: 512 ("I intend soon to send several new *french* publications to my father, and among them a very curious work of Madame de Stael...").

<sup>1000</sup> JQA to John Adams (Mar. 22, 1813), in *Writings*, 4: 450-2. || By coincidence, JQA made the acquaintance of François d'Ivernois, traveling in Russia an advisor to the British government, at almost precisely the same moment. Indeed, he describes meeting d'Ivernois in the same letter to his father outlining his encounter with Staël. "I should ask Sir Francis d'Ivernois' pardon," he ends the letter. "I began this letter with him, but whom can one help deserting for Madame de Staël?" (p. 4: 455).

<sup>1001</sup> John Adams to JQA (Aug. 1, 1813), in *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-2347> ("I congratulate you on the new acquaintances you have made. Madam de Stael and Sir Francis D'Ivernois are illustrious personages who will make a figure in history; a more splendid figure, that I can expect; or even that you can hope.").

<sup>1002</sup> See, e.g., Mercy Otis Warren to Abigail Smith Adams (Mar. 22, 1814), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-2470> ("You never informed me Madam, whether you found that Letter in which your Son mentioned Madam de Stael"); John Adams to JQA (Apr. 8, 1815), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-2821> ("I am reading Madam de Staels Germany: and it has opened before me Speculations that would require the Investigations of 50 Years").



Petersburg," as well as for "the delight I have received from many of your Writings."<sup>1003</sup> It was left to the former Dutch revolutionary François Adriaan Van der Kemp, now a conservative farmer in New York, to strike a note of skepticism. "Her Father admired mr Adams' defence!— and—what did he—to create to model the French monarchy after this plan?"<sup>1004</sup> He might have added that de Staël, in spite of her stated devotion to Adams's text, had enjoyed no more success than her unlucky father in realizing its principles.

Scholars of the French revolution, from Georg Jellinek to Marcel Gauchet, have often noted the profusion of American histories, theories, and typologies in the writings of its most prominent actors between 1788 and 1799. Careful students of the period have detected an intensification of this rhetoric in 1795, timed to the elaboration of the *Constitution de l'an III*, and symbolized by the quotation of John Adams in the official report of the Commission des Onze. This chapter has advanced on these earlier studies in two ways. First, it has made clear the depth and extent of French engagement with American sources during the Thermidorean moment, which goes far beyond what has been understood by intellectual historians. The American vogue of 1795 spawned an immense variety of programs, including detailed plans for a presidency, a proposal to subdivide France into confederated districts, and a blueprint for a *Sénat Français* with life tenure. Second, it has provided a schema for making sense of these references by highlighting the diversity of intellectual commerce between France and America. The assumption of many historians that these references were rare, or merely superficial, can no longer be sustained. On the one hand, a highly influential circle of intellectuals, centered on the

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<sup>1003</sup> John Adams to Anne-Louise-Germaine Necker, Baronne [de] Staël-Holstein (Apr. 8, 1817), *Founders Online*, <https://founders.archives.gov/documents/Adams/99-02-02-6737>.

<sup>1004</sup> François Adriaan Van der Kemp to Abigail Smith Adams (June 15, 1815), *Founders Online*, <http://founders.archives.gov/documents/Adams/99-03-02-2887>. On Van der Kemp's career in the Netherlands, see Jonathan Israel, *The Expanding Blaze* (2017), 227.

*groupe Coppet* of Staël and Necker, but wide enough to take in more peripheral figures like Pierre-Bernard Lamare and François d'Ivernois, gravitated towards the texts and values of Federalist constitutionalism, as embodied in the *Federalist Papers*, the Massachusetts constitution, and the *Defence* of John Adams. The fundamental points of their loose catechism—a *chef unique*, a concatenation of legislative checks, and a leadership role reserved for citizens of property and education—were taken without apology from the writings of the American Vice President, and from authors like Harrington and Mably who helped to inspire them. And on the other hand, these positions were resisted most forcefully by the surviving members of the Gironde, who marshaled the concepts and vocabulary developed in Pennsylvania's constitutional moment of 1776. It is not a coincidence that we find among the most resolute opponents of Coppet constitutionalism two of Franklin's most renowned protégés, Benjamin Vaughan and Thomas Paine.

The cosmopolitan careers of these two men remind us that the traffic in constitutional thought ran in both directions. Just as French republicans kept abreast of political developments in North America, and familiarized themselves with the treatises and documents underpinning its constitutional order, we have seen how closely American observers like James Monroe and John Quincy Adams tracked the mercurial intellectual climate of the *république*. And Monroe and Adams, like Paine and Vaughan, would translate these lessons to the political struggles of the early American republic, where they remained active participants. In New York, in Charleston, and in Philadelphia, newspapers ran transcripts of Convention debates, indulged long essays treating the influence of Rousseau on revolutionary events, and speculated darkly about the machinations of Sieyès. Back pages loudly advertised the latest treatises from Paris and Geneva, often in the original French. This immersion in the political life of the French republic was not

casual, or merely scholastic; it formed part of an ongoing investigation into the construction and maintenance of republican institutions, for which France served, alternately, as a model to be emulated and as a dystopia to be averted. And so at the very moment that French republicans issued a clarion call to "copy, word for word, the American constitution,"<sup>1005</sup> radical journalists and politicians in America were appealing for the dissolution of the 1787 compact, and its reconstruction along French lines. They were answered by a fusillade of reactionary pamphlets and editorials, accusing them of preparing the ground for an American Terror. The battle lines were surveyed by Constantin François de Chassebœuf, comte de Volney, the distinguished French *philosophe* and orientalist then living temporarily in Philadelphia, who framed it as a confrontation between critics and supporters of the newly-installed president:

There are very few people here who are devoted to England, but a great number who have a taste for its constitution, and Mr. Adams is at the head of that party. In sum, what we have here is a quarrel between English and French principles.<sup>1006</sup>

This bitter contest, which dominated the political and intellectual life of the early republic, is the subject of the next chapter.

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<sup>1005</sup> Lamare, *L'Équipondérateur*, 56.

<sup>1006</sup> C. Volney à \*\*\* (May 31, 1797), in J.-F. Bodin, *Recherches historiques sur l'Anjou* (Angers, 1847), 2: 560.

### **3. Franklin *Redivivus*: The Radical Constitution, 1791-1799**

#### **“Mr. Franklin’s Constitution”**

John Adams was in high spirits on February 2, 1790 as he posted a letter to his friend Benjamin Rush. Dr. Rush, along with other leading citizens of Philadelphia, had recently organized a constitutional convention to replace Pennsylvania’s outmoded “democratic” constitution of 1776 with a new charter, one closely modeled on the 1787 federal compact. “I congratulate you,” the Vice President wrote, “on the prospect of a new Constitution for Pennsylvania. Poor France I fear will bleed for too exactly copying your old one. When I see such miserable crudities approved by such Men as Rochefoucauld and Condorcet, I am disposed to think very humbly of human understanding.”<sup>1007</sup> As he instructed another correspondent two decades later, he had been dismayed to discover, on arriving in France in February 1780, that the Massachusetts Constitution he had played a leading role in drafting and ratifying was widely dismissed in the fashionable journals and salons. The *lumières* were particularly discomfited by the strong executive and the highly-articulated separation of powers, two principles on which the Massachusetts Constitution departed sharply from its predecessors in the American states. The *beau idéal* of the French elite was the simple, highly democratic frame of Pennsylvania, which featured a remarkably wide franchise, a unicameral legislature, and a supreme executive council of 12 men that carried out the law but did not veto legislation. Adams recounted his chilly reception with evident bitterness in the 1809 letter: “Mr. Turgot, the Duke de la Rochefoucauld, and Mr. Condorcet and others, admired Mr. Franklin’s Constitution and

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<sup>1007</sup> John Adams to Benjamin Rush (Feb. 2, 1790), in *OLD FAMILY LETTERS: COPIED FROM THE ORIGINALS FOR ALEXANDER BIDDLE, SERIES A 54* (Phila., J.B. Lippincott 1892). Rush ensured that this pithy aperçu, suitably anonymized, soon found its way into print. See *Extract of a letter from New-York, dated Feb. 2*, *FED. GAZ.*, Feb. 5, 1790, at 2.

reprobated mine.”<sup>1008</sup>

Benjamin Franklin was certainly not the sole author of Pennsylvania’s 1776 charter. Indeed, preoccupied by his simultaneous service in the Continental Congress, he was only intermittently present at the deliberations from which it emerged.<sup>1009</sup> But he was known to, and admired by, its most influential delegates, and his intellectual signature is clearly visible on the final document.<sup>1010</sup> Thomas Paine, present at the charter’s creation, would later recall that Franklin’s intervention was decisive on several points, including the choice of a unicameral legislature.<sup>1011</sup> In the words of Franklin’s grandson and literary executor William Temple Franklin, “the single legislative and plural executive appear to have been his favorite tenets.” He was responsible for disseminating these ideals in Europe by arranging for the translation of the Pennsylvania constitution into French, which was included in every edition of his best-selling *Almanack*. And he would continue to defend its ideals long after they had been abjured by the rest of the

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<sup>1008</sup> John Adams to Samuel Perley (June 19, 1809), *Founders Online*.

<sup>1009</sup> Gordon S. Wood, *The Americanization of Benjamin Franklin* (2003), 164-6. Cf. Diary entry for June 23, 1778, in *Diary and Autobiography of John Adams*, 3: 391 (“It is believed that he made all the American Constitutions, and their Confederation. But he made neither. He did not even make the Constitution of Pensilvania, bad as it is.”). Adams's view is supported by Alexander Graydon; see Graydon, *Memoirs*, 285 (“It is rather probable the philosopher was of opinion...[that] the form of a constitution was scarce worth quarreling about...Hence, his demeanour to both parties was so truly oily and accommodating, that it always remained doubtful to which he really belonged.”). But neither Graydon nor Adams was present for these deliberations.

<sup>1010</sup> The judgment of William Hanna that Franklin had no “significant influence on the form of the new government” is greatly overstated. Compare William S. Hannah, *Benjamin Franklin and Pennsylvania Politics* (1964), 223 ff. 14 and Wood, *Americanization*, 164. And of course Franklin’s actual authorship is less important than his subsequent endorsement of its principles, and his role in Europe as its translator and leading evangelist. See Horst Dippel, “Aux origines du radicalisme bourgeois,” *Francia*, vol. 16 (Jan. 1989), 61-73, 62 (“Même si sa contribution a été beaucoup moins importante à l’achèvement de la constitution, Franklin a aimé jouer le rôle du Solon américain”).

<sup>1011</sup> Thomas Paine, “Constitutional Reform,” in *Complete Writings*, 2: 992. See also Timothy Matlack, “To Richard Bache, Esq., Chairman of the Republican Society,” *Pennsylvania Packet*, Mar. 30, 1779, 2 (“When the debate was nearly closed, Doctor Franklin was requested by the Convention to give his opinion on the point—and he declared it to be clearly and fully in favor of a legislature to consist of a single branch”). Bache was Franklin's son-in-law, so it is unlikely that Matlack is falsifying the record.

revolutionary generation as unsuited to the needs of a modern commercial republic.<sup>1012</sup>

The modern consensus is that Franklin was not a political theorist of note; as the editor of the Cambridge edition of his works concedes, “[h]e was not an abstract or systematic thinker.”<sup>1013</sup> Nevertheless, for the revolutionary generation in France, where he served as ambassador from 1776 to 1785, Franklin was the preeminent political philosopher of the age. Philippe-Antoine Grouvelle, who two years later would vote for the execution of Louis XVI, compared Franklin to the great lawgivers of antiquity. Brissot de Warville lauded Franklin as the greatest legislator of the epoch and proudly boasted of his ambition to become the “Franklin” of a future French republic. In a glowing portrait published in 1790 Jean-Pierre-Louis de Luchet credited Franklin with erecting the first genuinely egalitarian republican system: “Before him the majority of publicists had reasoned like educated slaves of their masters; like Montesquieu they had used all their wit to justify the status quo.” Condorcet called him “the Solon of Philadelphia, who placed the constitution of his country on the unshakeable foundation of the rights of man.” And Mirabeau insisted that the Philadelphian was “one of the greatest men who ever served philosophy and liberty.”<sup>1014</sup> For the generation that would make the French Revolution, Franklin was not merely the scientist who ripped thunderbolts from heaven or the statesman who wrested

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<sup>1012</sup> William Temple Franklin, “Editor’s note,” in *Memoirs of the Life and Writings of Benjamin Franklin* (William Temple Franklin ed., Philadelphia, 1818), 1: 367. See also Benjamin Franklin, *Hints for the Members of the Convention*, CARLISLE GAZETTE, Dec. 23, 1789 (“The division of the Legislature into two or three branches in England, was it the product of wisdom or the effect of necessity, arising from the pre-existing prevalence of an odious feudal system? Which government, notwithstanding this division, has now become in fact an absolute monarchy...”).

<sup>1013</sup> Alan Houston, *Introduction to BENJAMIN FRANKLIN, THE AUTOBIOGRAPHY AND OTHER WRITINGS ON POLITICS, ECONOMICS, AND VIRTUE*, at xii (Alan Houston ed., 2004). See also Clinton Rossiter, *The Political Theory of Benjamin Franklin*, 76 PENN. MAG. HIST. & BIOG. 259 (1952) (“The sum total of his strictly philosophical musings about government and politics would fill, quite literally, about two printed pages”).

<sup>1014</sup> M. Grouvelle, *Lettre au Rédacteur*, JOURNAL DE LA SOCIÉTÉ DE 1789 (Fr.), 24 juillet 1790, at 8; JEAN-GABRIEL PELTIER, 2 DERNIER TABLEAU DE PARIS, OU RÉCIT HISTORIQUE DE LA RÉVOLUTION DU 10 AOÛT 1792, at 63 (Londres, chez l’auteur 1793); JEAN-PIERRE-LOUIS DE LUCHET, 2 LES CONTEMPORAINS DE 1789 ET 1790, at 34 (Paris, Lejay fils 1790); Marquis de Condorcet, *Vie de Voltaire*, in 4 ŒUVRES DE CONDORCET 158 (A. Condorcet O’Connor & M.F. Arago eds., Paris, Firmin Didot 1847); Comte de Mirabeau, *Discours*, in 2 ŒUVRES DE MIRABEAU 211 (M. Mérilhou ed., Paris, Brissot-Thivaris 1825).

scepters from the hands of tyrants; he was above all the thinker who perfected the idea of the democratic republic.

He accomplished this not through a weighty treatise,<sup>1015</sup> but through his authorship and advocacy of the Pennsylvania constitution, widely viewed in its time as the crystallization of the Enlightenment's most radical tendencies.<sup>1016</sup> Two features in particular attracted the attention of the *philosophes*. First, the Pennsylvania charter was significantly more democratic than any existing frame of government. Section II.13 guaranteed that the General Assembly would remain open to public observation, while Section II.15 provided that no bill would become a law without being confirmed by a subsequent election. And Section I.7 promised universal manhood suffrage without any of the restrictions that circumscribed the franchise in the other newly-independent states.<sup>1017</sup> Jean-Nicolas Dêmeunier exaggerated only slightly when he called Pennsylvania “an almost absolute democracy.”<sup>1018</sup>

Second, many French commentators were attracted to Pennsylvania's rejection of the

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<sup>1015</sup> Condorcet would lament in his funeral oration that Franklin “n’a laissé aucun grand ouvrage” on politics. See *Éloge de Franklin*, in 3 ŒUVRES DE CONDORCET, *supra* note 8, at 417.

<sup>1016</sup> For a standard French account of Franklin's authorship, see J.N. DÉMEUNIER, 3 L'AMÉRIQUE INDÉPENDANTE 37 (Paris, Gand 1790) (“il a rappelé, dans la constitution de la *Pensylvanie*, les vrais principes du droit naturel, du droit civil & du droit politique”). For an effort to situate the Pennsylvania constitution in the deeper currents of 18<sup>th</sup> century thought, see JONATHAN ISRAEL, DEMOCRATIC ENLIGHTENMENT 472-76 (2011).

<sup>1017</sup> CONSTITUTION OF THE COMMON-WEALTH OF PENNSYLVANIA 7, 15 (Phila., John Dunlap 1776). Franklin arranged for a translation of all 13 state constitutions into French—but his translation of the Pennsylvania constitution was also included in every French edition of his best-selling *Poor Richard's Almanack* in the 1770s and 1780s.

<sup>1018</sup> DÉMEUNIER, *supra* note 10, at 42 (“La constitution de la *Pensylvanie* est la plus démocratique de toutes celles des provinces de l'union américaine; elle n'a établi qu'une chambre de législation; elle n'a point de gouverneur”); Jacques-Pierre Brissot, *Sur le code de Pensylvanie*, in 3 BIBLIOTHÈQUE PHILOSOPHIQUE DU LÉGISLATEUR, DU POLITIQUE, DU JURISCONSULTE 244 (Paris, Desauges 1783) (“Un article permet même à tout citoyen d'examiner, de discuter les projets de loix, d'exposer librement sa maniere de voir, avant que la loi soit arrêtée”); CHARLES DE VILLERS, DE LA LIBERTÉ: SON TABLEAU ET SA DÉFINITION 171 (Metz, Collignon 1791) (“Le gouvernement de Pensylvanie...est une pure démocratie.”).

classical ideal of “mixed” or “balanced” powers.<sup>1019</sup> And in particular, they thought the simplified design of the constitution, with its single legislative house and its weakened, pluralized executive, threw the irrationalities of Britain’s mixed government into stark relief. La Rochefoucauld identified this as the Doctor’s great contribution to the science of politics:

Every man has not equally reflected on the bold attempt of Franklin as a legislator. Having asserted their independence, and placed themselves *in the rank of nations*, the different colonies, now the United States of America, adopt each its own form of government, and retaining almost universally their admiration for the British constitution, framed them from the same principles variously modelled. Franklin alone, disengaged the political machine from those multiplied movements and admired counterpoises that rendered it so complicated, proposed the reducing it to the simplicity of a single legislative body. This grand idea startled the legislators of Pennsylvania; but the Philosopher removed the fears of a considerable number, and at length determined them to the adoption of a principle which the National Assembly has made the basis of the French Constitution.<sup>1020</sup>

Similarly, Pierre-Georges Cabanis would reminisce that the philosopher always “made great sport of the *balance of powers*, not sharing the admiration that many of our writers, and even some of his friends, harbored for the English constitution, which was in his view a piece of work moulded by circumstances and maintained by corruption.”<sup>1021</sup> The doctrine of checks and balances was anathema to the leading pamphleteers of the Third Estate, who saw it as a legacy of English feudalism and a smokescreen for aristocratic domination.<sup>1022</sup> Worst of all for the *philosophes*, the theory of “balance” was hopelessly confused. “What would become of the public liberty,” queried Condorcet, “if these powers, instead of opposing each other, combined

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<sup>1019</sup> In no sense did Franklin originate the attack on the “mixed” constitution in America—indeed, until the eve of revolution he was committed to a theory of the British constitution that ascribed highly exaggerated prerogatives to the crown. See Eric Nelson, *Patriot Royalism: The Stuart Monarchy in American Political Thought, 1769-75*, 68 WM. & MARY Q. 539 n.13 (2011). The first attacks on the mixed constitution in revolutionary America originated in Philadelphia, where democratic currents ran strongest: see Thomas Paine, *Common Sense*, in PAINE: POLITICAL WRITINGS 6-7 (Bruce Kuklick ed., Cambridge Univ. Press 2000) (1776); THOMAS PAINE, FOUR LETTERS ON INTERESTING SUBJECTS 14-15 (Phila., Styner & Cist 1776). For the political and intellectual background, see M.J.C. VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS 147-62 (2d ed. 1998).

<sup>1020</sup> M. Rochefoucauld, *Discours*, JOURNAL DE LA SOCIÉTÉ DE 1789 (Fr.), 19 juin 1790, at 43. Translated as M. de la Rochefoucauld, *Eulogium on Dr. Franklin*, N.Y. DAILY GAZETTE, Jan. 15, 1791.

<sup>1021</sup> Pierre-Georges Cabanis, *Notice de Franklin*, in 5 ŒUVRES COMPLÈTES 266 (Paris, Firmin Didot 1825).

<sup>1022</sup> See, e.g., MICHEL TROPER, LA SÉPARATION DES POUVOIRS ET L’HISTOIRE CONSTITUTIONNELLE FRANÇAISE (1978).



against it? What would become of the general tranquility if, by a division of public opinion, the whole body of citizens was split in favor of this or that power and took action for or against them?”<sup>1023</sup> Proponents of a single legislative chamber carried the day in 1789 by the crushing margin of 849 to 89; they called themselves *américanistes* and associated their views with those of “Turgot and Franklin.”<sup>1024</sup> At the same time, Franklin was celebrated in France as an implacable foe of kingship and executive prerogative. Brissot marveled that the Pennsylvania constitution “excludes forever the authority of a single person,” while Marat ridiculed Mirabeau for holding himself out as a disciple of Franklin despite his unstinting support for the royal veto.<sup>1025</sup> The Marquis du Chastellet, writing in Paine and Condorcet’s journal *Le Républicain*, reminded his readers that Franklin had regarded royalism as “a crime equivalent to poisoning.”<sup>1026</sup>

The prominence of Franklin and the Pennsylvania constitution in the constitutional discourse of revolutionary France is striking and has been explored in a number of important books and articles.<sup>1027</sup> Indeed, it is sometimes inferred that the written constitutions of 1791 and 1793 were

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<sup>1023</sup> *Exposition des principes et des motifs du plan de Constitution*, in 12 ŒUVRES DE CONDORCET, *supra* note 8, at 353, translated in CONDORCET, SELECTED WRITINGS 155-56 (K.M. Baker ed., 1976).

<sup>1024</sup> C. Bradley Thompson, *The American Founding and the French Revolution*, in THE LEGACY OF THE FRENCH REVOLUTION 109, 138-39 (Ralph C. Hancock & L. Gary Lambert eds., 1996). See also Joyce Appleby, *The Jefferson-Adams Rupture and the First French Translation of John Adams’ Defence*, 78 AM. HIST. REV. 1084 (1968); JOHN STEVENS, EXAMEN DU GOUVERNEMENT D’ANGLETERRE COMPARÉ AUX CONSTITUTIONS DES ÉTATS-UNIS (Condorcet et al. eds., Paris, Froullé 1789). Consider also the defensive tone adopted by the French translator and editor of Adams’s *Defence*, and his eagerness to disassociate the idea of a “triple division du pouvoir” from “l’aristocracie.” JOHN ADAMS, DÉFENSE DES CONSTITUTIONS AMÉRICAINES, OU, DE LA NÉCESSITÉ D’UNE BALANCE DANS LES POUVOIRS D’UN GOUVERNEMENT LIBRE, AVEC DES NOTES ET OBSERVATIONS DE M. JACQUES VINCENT DE LA CROIX, at i (Pierre-Bernard Lamare trans. and ed., Paris, Buisson 1792).

<sup>1025</sup> Brissot, *supra* note 12, at 249; *Pantalonnade a l’occasion de Franklin*, L’AMI DU PEUPLE (Fr.), 16 juin 1790, reprinted in ŒUVRES DE J.P. MARAT 105 (A. Vermorel ed., Paris, Décembre-Alonnier 1869).

<sup>1026</sup> Achille François Du Chastellet, *Lettre a MM. Chabroud et Chapelier*, LE RÉPUBLICAIN (Fr.), juillet 1791, reprinted in 3 AUX ORIGINES DE LA RÉPUBLIQUE 30-31 (Marcel Dorigny ed., 1991).

<sup>1027</sup> Allan Potofsky, *French Lumières and the American Enlightenment during the French Revolution*, 92 REVUE FRANÇAISE D’ÉTUDES AMÉRICAINES 47, 50 (2002) (Fr.); R.R. PALMER, 1 THE AGE OF DEMOCRATIC

directly modeled on the Pennsylvania charter on the basis of both structural similarities and the extensive testimony of their respective authors. For instance, the Jacobin constitution of 1793 provided for annual elections, universal suffrage, a unicameral house, and the right of the people to contest and nullify laws made by their representatives, all features that appeared for the first time in 1776. The same was true for the stillborn Girondin constitution, authored by men (Brissot, Condorcet, and Thomas Paine) who made no secret of their affinity for Franklin's ideas.<sup>1028</sup> Thus, when Adrien Lezay-Marnésia circulated a pamphlet denouncing the Jacobin constitution in 1794, he concentrated his criticism on the Pennsylvania charter, calling it "the cloth from which [the 1793 constitution] has been so roughly cut."<sup>1029</sup> But even as early as 1790, the Abbé Fauchet could praise Franklin as one of the primary authors of France's new constitutional order, and La Rochefoucauld could credit Pennsylvania's unicameral house with inspiring the new National Assembly.<sup>1030</sup> The Assembly itself was even more direct when it dispatched an official letter of thanks to the State of Pennsylvania in June 1791: "France can hardly forget its debt to the far-sighted example of Pennsylvania, in whose breast the legislators of America first dared to announce the true principles of the social art."<sup>1031</sup> Between 1780 and 1795 the question of constitutional design moved to the forefront of French intellectual life, and

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REVOLUTION 239-83 (1959); Appleby, *supra* note 17; Dippel, *supra* note 4; J. Paul Selsam & Joseph G. Rayback, *French Comment on the Pennsylvania Constitution of 1776*, 76 PENN. MAG. HIST. & BIOG. 311 (1952); GEORGE ATHAN BILLIAS, *AMERICAN CONSTITUTIONALISM HEARD ROUND THE WORLD, 1776-1989*, at 53-104 (2009).

<sup>1028</sup> Dippel, *supra* note 4, at 62-68.

<sup>1029</sup> ADRIEN LEZAY-MARNÉSIA, *QU'EST-CE QUE LA CONSTITUTION DE 93?*, at v (Paris, Migneret 1794).

<sup>1030</sup> ABBÉ FAUCHET, *ÉLOGE CIVIQUE DE BENJAMIN FRANKLIN AU NOM DE LA COMMUNE DE PARIS* 30 (Paris, J.R. Lottin 1790) ("nous devons regarder ce grand homme, comme l'un des premiers compositeurs de cette constitution sacrée"); M. Rochefoucauld, *supra* note 14, at 44. Cf. *Extract from a Paris Journal*, AURORA GEN. ADVERTISER [Hereinafter AURORA], Apr. 22, 1795 ("Franklin...by his habitual communications with some men of talents, contributed more to our emancipation from his modest dwelling in Passy, than all the batteries and armies of the Congress would have served to obstruct it.").

<sup>1031</sup> CHRONIQUE DE PARIS (Fr.), 9 juin 1791, at 637.

the Pennsylvania charter loomed over those debates with immense significance.

Its prominence was hardly affected by the surprising news that, shortly after Franklin's death, Pennsylvania dissolved its famous constitution at a 1790 convention spearheaded by Benjamin Rush and James Wilson. The reformist party in Pennsylvania had been immeasurably aided by the new federal constitution, which split their opponents over the question of ratification and made the constitution they defended seem like an anachronism.<sup>1032</sup> Observers could not help but register the irony that the popular constitutional tradition was being abandoned in Philadelphia at precisely the moment it was being embraced in Paris:

It is remarkable, that while France seems animated with the warm spirit of democracy, the infant Governments of North America are verging to an aristocratic form. The institution of an Upper House, and the negative given to the Governor in Pennsylvania, which had been the purest democracy on earth, are striking proofs of this assertion.<sup>1033</sup>

Condorcet ascribed the reversion to *anglomane* government in Pennsylvania to a failure of nerve; having botched the original design by making its single house insufficiently accountable to the public, its citizens opted for the familiar physics of division and balance over the exhausting work of drafting a more perfect system of government.<sup>1034</sup> Louis-Gillaume Otto, meanwhile, joked in the *Moniteur* that the Cherokees, Chickasaws, and Choctaws would soon call constitutional conventions of their own to partition their governments into three branches, “since no other kind of government is known in America.”<sup>1035</sup> The paths of the two revolutions had diverged, it seemed, and the famous Pennsylvania constitution would finish its career in Paris exile.

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<sup>1032</sup> ROBERT LEVERE BRUNHOUSE, *THE COUNTER-REVOLUTION IN PENNSYLVANIA* 205 (1942); Christian Lerat, *La première Constitution de Pennsylvanie: son rejet à Philadelphie, ses échos en France*, in *LE DISCOURS SUR LES RÉVOLUTIONS* 121 (Jean-Louis Seurin et al. eds., 1991) (“Les Républicains, dont les thèses avaient prévalu pour la Constitution fédérale, avaient cette fois le vent en poupe”).

<sup>1033</sup> *CONN. GAZETTE*, Apr. 23, 1791.

<sup>1034</sup> *Éloge*, *supra* note 9, at 402.

<sup>1035</sup> *Quoted in* GILBERT CHINARD, *L'APOTHÉOSE DE BENJAMIN FRANKLIN* 53 (1955) (who adds that Rayneval appears to have underlined this sentence in the official copy of the *Moniteur* kept by the National Assembly).

And yet through a kind of boomerang trajectory, the constitutional principles that began their life in Philadelphia in 1776 suddenly returned to America in the age of Federalism. The rising prestige of the French Republic, and in particular its unparalleled record of military victory, underwrote the export of its ideas and the mimicry of its constitutional forms. And French radical ideas—which were, of course, in significant part *American* radical ideas—were eagerly and articulately defended by a cosmopolitan circle of democratic activists eager to present themselves as the heirs of Franklin. This loose constellation of journalists and pamphleteers included many radical émigrés from Europe who had long admired Franklin and shared his cosmopolitan outlook, his sympathy for France, and his commitment to majoritarian popular democracy.<sup>1036</sup> The most famous of these was Thomas Paine.<sup>1037</sup> But the single most important figure in the revival of the radical tradition was Franklin’s grandson and heir, Benjamin Franklin Bache, who opened his newspaper the *General Advertiser* in 1790 at the age of 21.<sup>1038</sup> The

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<sup>1036</sup> On the false contrast between Franklin and radicals like Paine, still a staple of the literature on Atlantic politics, see Philipp Ziesche, “Thomas Paine and Benjamin Franklin’s French Circle”, in *PAINE AND JEFFERSON IN THE AGE OF REVOLUTIONS* 121-136, 130 (Simon P. Newman and Peter S. Onuf, eds., 2013) (“the differences between Franklin and Paine had little to do with ideology, but, instead, with the two Americans’ political acumen and with the historical moment in which their works appeared”). This was appreciated by many of their contemporaries, particularly the most reactionary; see [Anon.], *Definition of a constitution. By Thomas Paine* (London, 1791), 11 (listing a rogue’s gallery of insurrectionists, “a Paine, a Cromwell, a Franklyn, a Ravailac, and a Mirabeau”).

<sup>1037</sup> For an excellent overview of the radical tendency in American political thought of the 1790s, see SETH COTLAR, *TOM PAINE’S AMERICA* (2011). I am sympathetic to Cotlar’s general approach and especially to his insistence on the importance of the French Revolution in shaping the conversation about democracy in the early republic. My essay can be distinguished by its emphasis on political and constitutional themes, rather than the questions of national identity and economic equality that form the core of this monograph.

<sup>1038</sup> Paine spoke for many old line radicals when he wrote that “[a]s Dr. Franklin has been my intimate friend for thirty years past you will naturally see the reason of my continuing the connection with his grandson.” Thomas Paine to Colonel John Fellows (Jan. 20, 1797), in *2 COMPLETE WRITINGS* 1384 (Philip Foner ed., 1945). Emphasis in original. Cf. *Testament*, in *1 ŒUVRES DE CONDORCET*, *supra* note 8, at 626 (urging his infant daughter to seek aid “chez Bache, petit-fils de Franklin, ou chez Jefferson”); Cabanis, *supra* note 15, at 258 (“Benjamin Beach, digne de rappeler son grand-père par...l’attachement le plus sincère aux principes républicains...C’était lui qui imprimait et rédigeait en grande partie *l’Aurore*, l’un des journaux les plus patriotiques des États-Unis.”); *ANNÉE DE LA FEUILLE VILLAGEOISE* (Fr.), Dec. 16, 1790, at 221 (“Son petit fils...appeloit aux premiers emplois de la république, a préféré la profession estimable dans laquelle Benjamin Franklin avoit commencé sa carrière...[l]’imprimerie et la philosophie”); Jean-Marie Roland, *A J.P. Brissot*, LE

*General Advertiser*, rechristened the *Aurora* in 1793, took a strong stance against what it saw as the creeping progress of monarchial and aristocratic ideas under the Federalist Party, worsened (it thought) by defects in the design of the original Constitution. Bache's talent for polemic and his coruscating attacks on Washington and Adams won the *Aurora* a large circulation; one historian estimates that "[f]rom 1793 on it was in all likelihood the most influential newsheet in the country."<sup>1039</sup> It became essential reading for America's political class—above all for Washington, Adams, and Hamilton, its most frequent targets.<sup>1040</sup> Its popularity may have also been linked to the many translations of European writings and speeches that appeared in its pages. At the insistence of his grandfather, Bache had been educated first in Paris<sup>1041</sup> and then (to

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PATRIOTE FRANÇAISE (Fr.), Nov. 21, 1792, at 587 (“Le petit fils de Franklin, Bache, vient d'imprimer dans sa gazette...”).

<sup>1039</sup> DONALD STEWART, *THE OPPOSITION PRESS OF THE FEDERALIST PERIOD* 611 (1969). *See also* Mutius Scævola, *GAZETTE U.S.*, Sept. 26, 1800 (“It is no difficult thing to account for the celebrity and the extensive circulation of “the Aurora”...it is the official governmental paper of the French Republic, and the only authority to which the British government appeal for the truth of facts relating to this country”). STEWART, *supra*, at 613, adds that, due to Bache's radical sympathies, the *Aurora* was never the “official” paper of the Jeffersonian Party, though Jefferson found its pitiless editorials against John Adams highly congenial. On the other hand, Jefferson was a regular reader and supporter of the paper throughout the 1790s; *see* Thomas Jefferson to Benjamin Franklin Bache (Apr. 22, 1791), in 20 *PAPERS OF THOMAS JEFFERSON (MAIN SERIES)* 246 (Julian P. Boyd ed., 1982) (“officious hints” on how Bache might improve his newspaper and its circulation); Thomas Jefferson, *Notes on the Letter of Christoph Daniel Ebeling*, in 28 *PAPERS OF THOMAS JEFFERSON (MAIN SERIES)* 509 (John Catazariti ed., 2000) (listing the *Aurora* as one of the five most important Republican newspapers); Thomas Jefferson to James Madison (Apr. 26, 1798), in 17 *PAPERS OF JAMES MADISON (CONGRESSIONAL SERIES)* 120 (David B. Mattern et al. eds., 1991) (“The object of [Alien and Sedition] is the suppression of the whig presses. Bache's has been particularly named...if these papers fall, republicanism will be entirely brow-beaten”).

<sup>1040</sup> Adams: Abigail Adams to John Adams (Dec. 20, 1795), in 11 *ADAMS FAMILY CORRESPONDENCE* 97 (L.H. Butterfield ed., 1973); John Adams to Abigail Adams (Feb. 10, 1796), *id.* at 171; John Adams to Abigail Adams (Feb. 15, 1796), *id.* at 178; Abigail Adams to Elbridge Gerry (June 6, 1797), in *FOUNDERS ONLINE (NATIONAL ARCHIVES)*, <http://founders.archives.gov/documents/Adams/99-01-02-1460> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS].

Washington: George Washington to Alexander Hamilton (Nov. 5, 1794), in 17 *PAPERS OF GEORGE WASHINGTON (PRESIDENTIAL SERIES)* 357 (David R. Hoth & Carol S. Ebel eds., 2013); George Washington to Jeremiah Wadsworth (Mar. 6, 1797), in 1 *PAPERS OF GEORGE WASHINGTON (RETIREMENT SERIES)* 17 (W.W. Abbot ed., 1998); George Washington to James McHenry (Aug. 14, 1797), *id.* at 291; George Washington to Timothy Pickering (Feb. 6, 1798), *id.* at 76. || Hamilton: Alexander Hamilton to George Washington (Oct. 26, 1795), in 19 *PAPERS OF ALEXANDER HAMILTON* 350 (Harold C. Syrett ed., 1973); Alexander Hamilton to Oliver Wolcott, Jr. (Aug. 3, 1800), in 25 *PAPERS OF ALEXANDER HAMILTON* 54 (Harold C. Syrett ed., 1977).

<sup>1041</sup> He was enrolled in a school in Passy, where his classmates included John Quincy Adams. *See* John Quincy Adams to Abigail Adams (Oct. 7, 1797), in *FOUNDERS ONLINE (NATIONAL ARCHIVES)*, <http://founders.archives.gov/documents/Adams/99-01-02-1552> (last modified Oct. 5, 2016) [early access

inculcate “Presbyterian and Republican” values) Geneva, where he boarded with a prominent family of booksellers and intellectuals, becoming fully fluent in French and fully conversant in Enlightenment political thought. Bache’s education in liberty was rounded out by the Geneva Revolution, which closed his school in 1782 and left him to wander the streets, observing firsthand the climate of revolutionary violence. His grandfather recalled him to Passy several months after its outbreak; soon after, the conflict was resolved by French military intervention.<sup>1042</sup>

Paine, Bache, and their allies continued to suspect that behind the Constitution’s mask of ordered liberty and republican virtue was the grim visage of monarchy, a monster slouching towards Philadelphia to be born. These suspicions would intensify markedly during the Adams presidency. And the solution they settled on was drastic constitutional reform, a reinvention of the American republic along the lines first suggested by the Pennsylvania constitution and realized most perfectly in the theory and practice of the French Republic. Their credo is perfectly encapsulated in an arresting passage that ran in Bache’s Philadelphia newspaper in October 1795:

Let Sparta, let Carthage, let Rome, let Genoa, and let Venice, proclaim the evils with which senates have afflicted humanity. Oh! if the bleeding victims of their ambitions could rise, and tell their crimes, a scene of horror would be unfolded that would harrow up the soul. One legislative assembly and an executive composed of many persons possessing few powers and no splendor will soon form every enlightened politician’s creed. To those humble and timid persons who require the

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document from ADAMS PAPERS]. (“As for Bache, he was once my school mate; one of the companions of those infant years when the heart should be open to strong and deep impressions of attachment...”). Cf. John and Abigail Adams to Benjamin Franklin (Sept. 11, 1784), in 6 ADAMS FAMILY CORRESPONDENCE 459 (Richard Alan Ryerson ed., 1993) (“...[we] hope to have the Honour of his company to day at Dinner, with his Grandson, Mr. Bache”).

<sup>1042</sup> Benjamin Franklin to John Quincy Adams (Apr. 21, 1779), in 29 PAPERS OF BENJAMIN FRANKLIN 351 (Barbara B. Oberg ed., 1992) (“As he is destined to live in a Protestant Country, & a Republic, I thought it best to finish his Education, where the proper Principles prevail.”); CLAUDE ANN LOPEZ, THE PRIVATE FRANKLIN 220, 230 (1975); LUCIEN CRAMER, UNE FAMILLE GENEVOISE, LES CRAMER, LEURS RELATIONS AVEC VOLTAIRE, ROUSSEAU, ET BENJAMIN FRANKLIN-BACHE 60 (1952).

sanction of great names before they can adopt any opinion, I will observe that these were the favorite propositions of Rousseau and Franklin.<sup>1043</sup>

As this extract hints, the debate over the Constitution in the first decade of the republic was stranger, more radical, and more closely contested than we might have assumed.

It was, above all, more *international*. It is still the case today that studies of constitutional ideas and practices tend to scrupulously respect national borders, explaining the development and deterioration of constitutions primarily with reference to internal events and local contexts.<sup>1044</sup> Significantly less emphasis has been given to the role of diffusion, influence, and emulation in constitutional theory and design, even in the domain of what is often called “Atlantic history”.<sup>1045</sup> And while a new wave of histories has emphasized the loud echo of American constitutional thought and practice in Western Europe and Latin America,<sup>1046</sup> little consideration has been given to the inverse proposition that the reception of international models has also exerted a critical influence on American constitutional politics. If, in the words of one

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<sup>1043</sup> Casca, AURORA, *reprinted from* the PETERSBURG INTELLIGENCER, Oct. 16, 1795. || The French government followed these conversations with great interest. Joseph Fauchet, France’s ambassador to Philadelphia, wrote to his superiors about a sect of “*Républicains démocratiques...un parti nombreux d’hommes mécontents du nouveau système,*” who shared a “*croyance raisonnée, systématique, que les formes actuelles peuvent êtres changées en mieux.*” Their demands were quite simple: “*fondre la Legislature en une seule branche et...confier à un conseil la partie Executive que tient un seul homme.*” Fauchet perceived numerous obstacles to realizing “*ces changemens extrêmes,*” above all the moderatism of the Jeffersonians. But he did not judge it impossible that they might succeed. See Joseph Fauchet to Committee of Public Safety (No. 6) (5 floréal l’an 3e.), in *Correspondence of the French Ministers to the United States*, 2 ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR THE YEAR 1903 664-65 (Frederick Jackson Turner ed., Washington, D.C. 1904).

<sup>1044</sup> See, e.g., Linda Colley, *Writing Constitutions and Writing World History*, in *THE PROSPECT OF GLOBAL HISTORY 160-177* (James Belich et al. eds., 2016).

<sup>1045</sup> Since the 1950s “Atlantic history” has emphasized the close correspondence between the American and European revolutions of the late 18<sup>th</sup> century, including on occasion their constitutional legacies. See JACQUES GODECHOT, *FRANCE AND THE ATLANTIC REVOLUTION OF THE EIGHTEENTH CENTURY, 1770-1799* (Herbert H. Rowen trans., 1965); PALMER, *supra* note 20; BERNARD BAILYN, *ATLANTIC HISTORY: CONCEPTS AND CONTOURS* (2005). For recent works dealing with constitutional coevolution in America and francophone Europe, see ANNIE JOURDAN, *LA RÉVOLUTION BATAVE ENTRE LA FRANCE ET L’AMÉRIQUE: 1795-1806* (2005); *RÉPUBLIQUES SOEURS: LE DIRECTOIRE ET LA RÉVOLUTION ATLANTIQUE* (Pierre Serna ed., 2009); JANET POLASKY, *REVOLUTION WITHOUT BORDERS* (2015).

<sup>1046</sup> See, e.g., Armitage, *Declaration of Independence*; Billias, *Constitutionalism*.

contemporary historian, “American constitution-making began as an international process,”<sup>1047</sup> this was no less true of the interpretation, elaboration, and contestation of the constitution in its first decade. Thus, this study of political theory in the revolutionary Atlantic is preeminently a story about the international origins of the American republic.

### **The radical legislature**

In November 1802 John Quincy Adams was nearing the end of his first, failed run for the House of Representatives on the rickety platform of the Federalist Party. On the eve of the election the friendly *Boston Commercial Gazette* ran an eye-catching advertisement, touting his virtues and denigrating his opponent in angry bursts of exclamation marks and capitalized type. The circular features all the puffery and partisan rancor one might expect, but at its heart is a warning to the voters that may strike the modern reader as puzzling: “Your Constitution totters to its centre; the virtual abolition of your National SENATE is publicly threatened and resolved; --a SINGLE HOUSE, unchecked by an efficient Superior, *like an ocean without a shore*, is shortly to exhibit . . . in its mountainous turbulence the moderation of their measures.”<sup>1048</sup> Although Adams lost, and the Federalists were routed across the nation, his augury went unfulfilled;<sup>1049</sup> Jefferson,

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<sup>1047</sup> Daniel J. Hulsebosch, *The Revolutionary Portfolio: Constitution-Making and the Wider World in the American Revolution*, 47 SUFF. L. REV. 759, 761 (2014). See also Pierre Serna, *In Search of the Atlantic Republic: 1660-1776-1799 in the Mirror*, in *RETHINKING THE ATLANTIC WORLD* 257 (Manuela Albertone & Antonino De Francesco eds., 2009).

<sup>1048</sup> BOS. COMM. GAZETTE, Nov. 1, 1802. “Mountainous turbulence” gestures at the Jacobin *montagne*. “[T]otter to its centre,” meanwhile, echoes John Adams’s attack on Turgot for having advocated “collecting all authority into one centre” in his famous letter to Richard Price; see Will Slauter, *Constructive Misreadings: Adams, Turgot, and the American State Constitutions*, 105 BIB. SOC. AM. 33, 36 (2011).

<sup>1049</sup> For similar anxieties, see John Rutledge, Junior to Alexander Hamilton (Jan. 10, 1801), in 25 PAPERS OF ALEXANDER HAMILTON, *supra* note 32, at 309; Thomas Boylston Adams to John Adams (Feb. 15, 1802), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-03-02-1053> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS]; Thomas Boylston Adams to William Smith Shaw (Feb. 8, 1801), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <https://founders.archives.gov/documents/Adams/99-03-02-0888> (last modified Mar. 30, 2017) [early access



though undoubtedly disappointed by the Senate's failure to vote for removal in the landmark impeachment of the Judge Pickering, did not seek to cabin its powers or privileges.<sup>1050</sup> But in prophesying the Senate's pending dissolution in favor of a "SINGLE HOUSE", Adams and his allies were giving voice to a radical strain of constitutional theory that had enjoyed great prominence in the early republic. For ten years, a cosmopolitan group of writers allied with Thomas Paine and Benjamin Franklin Bache had insisted that the Senate was at best an inefficient anachronism stopping the wheels of government and at worst the incubator of a future aristocracy. Where they did not advocate its outright abolition, they advanced far-reaching proposals to remodel its internal orders and curb its prerogatives, drawing explicit inspiration from the French model of *unicaméralisme* that they observed from across the Atlantic.

Even after the ascendance of Jefferson to the nation's highest office quieted the most radical demands for constitutional amendment, Federalists maintained a sleepless watch for signs of relapse. Thus, a writer for the Baltimore *Republican* calling himself Lucius Junius Brutus dismissed the seeming moderation of the ruling Democrats as a transparent ruse. "Their long-stifled, deep-rooted enmity to your constitution has not lost one particle of its ancient venom . . . Your constitution is to be destroyed; although most of them have repeatedly bound themselves by oath to support it." And Brutus was quite clear on how this plan of demolition would proceed: "their next step will be to secure a majority of the Senate who will be treacherous enough to

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document from ADAMS PAPERS]; *Equality No. III* (Nov. 1801), *reprinted from* BOS. PALLADIUM, *in* 2 WORKS OF FISHER AMES 238 (Seth Ames ed., Bos., Little, Brown 1854).

<sup>1050</sup> See Thomas Jefferson to Levi Lincoln (Aug. 26, 1801), *in* 35 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 147 (Barbara B. Oberg ed., 2008) ("we are secure of a majority in the Senate; and consequently that there will be a concert of action between the legislative & executive"). Jefferson defended the necessity of an upper chamber as early as 1776, support that he reaffirmed in his 1783 NOTES ON VIRGINIA and its accompanying draft constitution. See *in particular* Thomas Jefferson to Duc de la Rochefoucauld d'Enville (Apr. 3, 1790), *in* 16 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 296 (Julian P. Boyd ed., 1961) (arguing that the "single error" of a unicameral legislature "will shipwreck your new constitution"). For additional commentary, see Frances Harrold, *The Upper House in Jeffersonian Political Theory*, 78 VA. MAG. HIST. & BIOG. 281 (1970).

surrender the rights of that body, and a President base enough to surrender *his* rights also . . . all power being virtually centered in the house of Representatives.” The secret design that Brutus descried was the emasculation of the Senate and the concentration of all prerogative power in a single, unicameral house. And there was every reason to suspect that this democratic program would end in an anti-democratic fiasco. “The scenes which have passed before our eyes in France”—that is to say, the disturbingly frictionless transition from Jacobin legislative supremacy to Napoleonic dictatorship—“are lessons of wisdom from which we ought to take warning.”<sup>1051</sup>

This conspiratorial narrative may seem doubtful with the benefit of hindsight; neither Jefferson nor the moderates underpinning his national majority had any interest in revisiting the constitutional settlement of 1787. But his intervention becomes more intelligible in the context of the decade-long debate over the status of the Senate that wracked the republic between 1791 and 1799. A reexamination of the political literature of the Early Republic reveals a deep dissatisfaction with the constitutional commitment to bicameralism and a surprising willingness to revise and restrict the prerogatives accorded to the upper chamber. Crucially, the rising prestige of the French model, which was strictly unicameral from 1790 to 1795 and featured a weak upper chamber thereafter, lent *éclat* to radical efforts to reimagine the balance of legislative power and to bend the arc of American constitutionalism back towards the vanished republicanism of 1776.

Six months after reluctantly acquiescing to France’s first written constitution, Louis XVI sent official notification, along with a translated copy, to President Washington. But when Thomas Tudor Tucker of South Carolina invited the House of Representatives to adopt a resolution

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<sup>1051</sup> Brutus, *From the Washington Federalist to the People of the United States, No. 1*, REPUBLICAN, OR ANTI-DEMOCRAT, Jan. 1, 1802, at 4.

“congratulating the king on the important and happy event,” passionate debate erupted on the floor. A clear majority of the fifty-one members backed the resolution. This included James Madison, who voiced his “anxiety to favor an event so glorious to mankind”; allowing that the 1791 charter might be flawed in certain respects, “yet I think it contains more wisdom than any instrument that has ever fallen under my eye.” But the seemingly innocuous resolution also attracted opposition, led by the Charleston planter William Smith, who expressed the fear that a congratulatory note would be taken by the public as an implicit endorsement of French unicameralism:

Mr. W. Smith objected to the mode of writing an answer from each branch of the legislature, as he supposed it would appear ridiculous to send three answers; he had another objection, that of approving of the constitution of France, for thereby we would advocate a single house of legislature and several other articles that are perfectly different from our own constitution; this would have the appearance of agreeing, in what is said to be the popular opinion, that our senate are a useless body, which would be a dangerous doctrine to propagate in this country.<sup>1052</sup>

Smith was responding to a persistent undercurrent of populist discontent with the American Senate, given expression mostly by editorialists in opposition newspapers like Bache’s *General Advertiser*. An early preoccupation of these writers was the “*Patrician stile*” of the Senate, a phrase that encompassed both the Senate’s supposed aristocratic pretensions and its contentious decision to conduct its affairs in closed session.<sup>1053</sup> Thus, a writer for the *General Advertiser* calling himself Portius railed against “the Jackalls of aristocracy,” accusing Vice-President Adams of conspiring to poison the civic culture of the republic by introducing titles for the President and the Senate. The plot was frustrated, he wrote, only by “the unanimity and

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<sup>1052</sup> *Debates on the Mode of a Reply to the letter from the King of the French*, N.Y.J., Mar. 3, 1792, at 2. || For reaction to the floor debate among French diplomats, who followed it closely, see Ternant to Lessart (No. 27) (Mar. 13, 1792), in *Correspondence*, *supra* note 37, at 94-96. || On the celebrity Madison enjoyed among the French Jacobins in this period, see Antonino De Francesco, *Federalist Obsession and Jacobin Conspiracy*, in *ATLANTIC WORLD*, *supra* note 39, at 240 (“...considered Madison their political reference point”). For the long afterlife of Madison’s remark, see Fisher Ames, *Foreign Politics*, No. 1 (1801), in *2 WORKS OF FISHER AMES*, *supra* note 41, at 210 (“even the circumspect Madison could pronounce in congress, that France had improved on all known plans of government”).

<sup>1053</sup> CONDORCET, *NAT’L GAZETTE*, Dec. 15, 1792, at 54. The deliberations of the Senate were closed to the public from its inception until January 1794. See DANIEL WIRLS & STEPHEN WIRLS, *THE INVENTION OF THE UNITED STATES SENATE 167-69* (2004).

republicanism of the house of Representatives.”<sup>1054</sup> Strikingly, an editorialist for Philip Freneau’s *National Gazette* in early 1793 credited this victory against “tinsel dignities” to the French constitutional example: “The scene of affairs . . . in France, has operated as a perpetual discouragement to such high-minded innovators amongst us . . . and the total downfall of royalty and nobility in that country . . . will, like an early frost, utterly blast and annihilate the germ of this poisonous weed in America.”<sup>1055</sup> Even more telling were two essays on the American Senate published in the *Gazette* in the same period, pointedly signed “Condorcet” and “Mirabeau.” The former detected sinister motives behind the decision of the Senate to exclude the public, comparing it to the notorious “*Venetian Senate*,” and accusing it of swaddling itself in pomp and splendor. Just as Augustus hollowed out Rome’s free institutions while maintaining their forms, so the ruling Federalists might gradually convert the American republic into despotism. “Familiarize the mind to the shadow of aristocracy and monarchy . . . and the substance must and will follow.”<sup>1056</sup> “Mirabeau,” meanwhile, portrayed the Senate as contemptuous of the people it claimed to represent, a House of Lords in chrysalis:

The PEERS of America disdain to be seen by vulgar eyes; the music of their voices is harmony only for themselves, and must not vibrate in the ravished ears of an ungrateful and uncourtly multitude. Is there any congeniality, excepting in the administration, between the government of Great-Britain, and the government of the United States? The Senate suppose there is, and usurp the *secret privileges* of

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<sup>1054</sup> Portius, GEN. ADVERTISER, Dec. 1, 1792, at 2. The reference is to the 1789 debate over formal modes of address for the President, the Speaker of the House, and other high officials, capably summarized in STANLEY M. ELKINS & ERIC MCKITRICK, *AGE OF FEDERALISM* 46-49 (1993). See also THE DIARY OF WILLIAM MACLAY AND OTHER NOTES ON SENATE DEBATES 19-38 (Kenneth R. Bowling & Helen E. Veit eds., Johns Hopkins Univ. Press 1988) (1789-91); GEORGE LOGAN, FIVE LETTERS, ADDRESSED TO THE YEOMANRY 12 (Philadelphia, 1792) (“The American Aristocrats have failed in their attempt to establish titles of distinctions by law; yet the destructive principles of aristocracy are too prevalent amongst us, and ought to be watched with the most jealous eye.”); *États-unis d’Amérique*, 17 decembre 1792, LE PATRIOTE FRANÇAIS (Fr.), février 14, 1793, at 181 (“de substituer à ces ridicules décorations...le beau titre de *citoyen*”).

<sup>1055</sup> NAT’L GAZETTE, Jan. 2, 1793, at 74. Cf. Ternant to Dumourier (No. 45) (July 28, 1792), in *Correspondence*, *supra* note 37, at 146 (“le levain d’aristocratie qui fermente ici...ne peut manquer d’être promptement anéanti, dès qu’on verra ici que notre constitution réussit dans la pratique”).

<sup>1056</sup> CONDORCET, *supra* note 45. It is telling, too, that the National Gazette made a point of publishing the actual Condorcet; consider M. Condorcet, *Reflections on the English Revolution of 1688 and that of France on the 10<sup>th</sup> of August, 1792*, NAT’L GAZETTE, Feb. 6, 9, 1792.

the House of Lords—But whom do the lords represent? not a free people, but a nobility; and who does the Senate represent? not a free people, not a nobility *as yet*, but *themselves*.<sup>1057</sup> In speaking out against the noxious machinations of an upper house, “Mirabeau” was true to his namesake, as well as to the rising concern among French observers that, as in France, America’s republican institutions were in danger of being hijacked by a nascent aristocracy.<sup>1058</sup> But despite the stridency of his rhetoric, “Mirabeau” contemplated neither a dissolution of the Senate nor a dramatic reinvention of its place in the constitutional order; he gestured more modestly towards a right of citizens to instruct their representatives, mirroring provisions in the more populist state constitutions.<sup>1059</sup> As radical as this agenda was, it did not call the fundamental assumptions of the bicameral legislature into question.

The same cannot be said about the extraordinary essay by “Ascarides” published by the *New York Journal* and reprinted in the *Greenleaf* in the summer of 1794, which flatly denied that a Senate could form any part of a well-ordered republic. The influence of Paine and the French *américanistes* is unmistakable when in a vivid turn of phrase the author designates the upper chamber “a striking likeness of the British house of Lords drawn by the pencil of Aristocracy,” and when he mocks the “absurd and ridiculous notion” of checks and balances in government. But if his diagnosis was familiar, his prescription was extreme: after briefly contemplating the direct election of senators, he concluded that he was “utterly opposed to this branch of our Government,” which allowed a narrow elite to contravene the reasoned judgment of the

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<sup>1057</sup> MIRABEAU, *To the Freeman of America*, NAT’L GAZETTE, Feb. 13, 1793, at 122. Cf. Coriolanus, *To the free and independent Electors of the City and County of New York*, N.Y. DAILY GAZETTE, Apr. 25, 1791.

<sup>1058</sup> Thus G.J.A. Ducher, former consul to the United States, warned of “une aristocratie naissante dont les vrais Américains sont alarmés,” and compared this class of men to “nos ci-devant grands et petits seigneurs” in France. See his NOUVELLE ALLIANCE À PROPOSER ENTRE LES RÉPUBLIQUES FRANÇAISE ET AMÉRICAINNE (1792), reprinted in 14 RÉIMPRESSION DE L’ANCIEN MONITEUR 327 (Léonard Gallois ed., Paris, A. René 1840). Cf. Ternant to Minister of Foreign Affairs (No. 68) (Mar. 6, 1793), in *Correspondence*, supra note 37, at 185 (“la prétention aristocratique des Sénateurs américains”).

<sup>1059</sup> WIRLS & WIRLS, supra note 45, at 196 (“Tucker from South Carolina moved to include among the rights of citizens [protected by the Bill of Rights] the “right to instruct their representatives,” parallel to the provisions in state constitutions.”).

majority, “and at pleasure to defeat the enactment of the most salutary laws.”<sup>1060</sup> The Senate was not merely unworkable in its existing configuration but conceptually incoherent and corrupt beyond reformation. In 1794 this was still a minority sentiment, even in the taverns and printing presses of the republican left. But the firestorm of polemic that followed the ratification of the Jay Treaty convinced its most prominent members that America would remain captive to a swaggering aristocracy until it resolved to break the chains of the old constitution, constrict the jurisdiction of the Senate, and reorganize the government according to the republican blueprint of Geneva, Philadelphia—and Paris.

The Jay Treaty, secretly negotiated in London in the fall of 1794 and revealed to the public by Bache in July 1795,<sup>1061</sup> struck Republican partisans like a thunderclap.<sup>1062</sup> With the understatement characteristic of the times, Albert Gallatin dubbed it “a foul leprosy upon the body politic, which ages will hardly cleanse.”<sup>1063</sup> It goes without saying that the details of the

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<sup>1060</sup> Ascarides, GREENLEAF (N.Y.), *reprinted from* N.Y.J., July 2, 1794, at 2. *See also* The Old Man of the Woods, VT. FARMER’S LIBR., July 22, 1794 (defending Vermont’s unicameral legislature, and associating senates with “British monarchial and aristocratical government”). *Cf. The Revolution in France*, AM. MINERVA, Oct. 21, 1794 (“Vermont is still making the experiment of a legislature in a single branch, in defiance of the experience of her sister states”).

<sup>1061</sup> *See* TREATY OF AMITY, COMMERCE, AND NAVIGATION, BETWEEN HIS BRITANNICK MAJESTY, AND THE UNITED STATES OF AMERICA (Phila., Benjamin Bache 1795). The treaty was transmitted to Bache by Senator Thomas Mason of Virginia.

<sup>1062</sup> Abigail Adams to Thomas Boylston Adams (Sept. 17, 1795), *in* 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 28 (“The late Treaty between Great Britain and the United States, has excited all the malevolence and awakened all the animosity of the democrattick Societies throughout the United States. tis death to their hopes.”). *See also* DUC DE LA ROCHEFOUCAULD-LIANCOURT, 3 VOYAGE DANS LES ÉTATS-UNIS D’AMÉRIQUE, FAIT EN 1795, 1796 ET 1797, at 14 (Paris, Du Pont 1799) (“On ne parle par-tout que du traité avec l’Angleterre, et on en parle sans cesse”); ANNALES PATRIOTIQUES ET LITTÉRAIRES (Fr.), 27 mars 1796, at 956 (“Depuis Portsmouth, dans le Hampshire, jusqu’à Savanah en Georgie, des petitions nombreuses circulent...elles condamnent toutes le traité, et en demandent l’anéantissement”).

<sup>1063</sup> ALBERT GALLATIN, AN EXAMINATION OF THE CONDUCT OF THE EXECUTIVE OF THE UNITED STATES 50 (Phila., Francis & Robert Bailey 1797). *See also* Thomas Jefferson to Edward Rutledge (Nov. 30, 1795), *in* 28 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 31, at 199 (calling the treaty “an alliance between England and the Anglomen of this country, against the legislature and people of the United States”); RICHARD BERESFORD, SKETCHES OF FRENCH AND ENGLISH POLITICKS IN AMERICA 35 (Charleston, W.P. Young 1797) (the Jay Treaty is an “arch terror” and a womb for “monster[s]...as multitudinous as the vipers of Africa”); JOEL BARLOW, COPY OF A LETTER FROM AN AMERICAN DIPLOMATIC CHARACTER IN FRANCE 2 (Fairhaven, VT, James Lyon 1798) (“that act of submission to the British Government, commonly called *Jay’s Treaty*”);

pact—the evacuation of British forts in the Northwest Territory and trade concessions in the West Indies in exchange for acquiescence to Britain’s naval war against France—were detested by the radicals who pined for an alliance of free republics against the corrupt kingdoms of Europe.<sup>1064</sup> But accepting that its ratification by the reliably Federalist Senate was a *fait accompli*, these writers and activists slipped into a different register, proclaiming that the Jay Treaty was flatly unconstitutional. Because it interposed in spheres of government assigned to Congress by Article I—including the payment of debts, the regulation of commerce, and the punishment of crimes against the law of nations—it seemed to open a loophole through which the President and the Senate might jointly legislate for the nation, demoting the House to a “mere cypher.”<sup>1065</sup> Thus Michael Leib, a radical delegate to the Pennsylvania House, observed that “as there is no commercial regulation that cannot be comprehended in a treaty,” the administration’s construction of treaty power would guarantee “the omnipotence of the President and the Senate” and the “annihilate the constitution.”<sup>1066</sup> And a typically hysterical correspondent for Bache’s

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Thomas Paine to Thomas Jefferson (Apr. 1, 1797), in 2 COMPLETE WRITINGS, *supra* note 30, at 1386 (“Mr. Jay’s treaty of surrender”).

<sup>1064</sup> The most visionary plan for an international alliance is BERESFORD, *supra* note 55, at 48 (daydreaming of “the combining republics of America, France, and Holland” united “against the drooping head of Britain”).

<sup>1065</sup> A Cheshire Farmer, RISING SUN (Keene, NH), June 6, 1796 (“...has not the same Constitution explicitly declared, that Congress [not the President and the Senate] shall have power to regulate commerce with foreign nations?”). See also Codrus, *To the People (Letter I)*, GREENLEAF, *reprinted from* AURORA, Mar. 8, 1796, at 2 (“The rights of the people will be surrendered into the hands of a President and Senate, and our Representatives will become the shades of a Legislative Body.”); William Branch Giles to Thomas Jefferson (Mar. 26, 1796), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 46 (Barbara B. Oberg ed., 2002) (“completely Checkmates the whole constitution”).

<sup>1066</sup> MICHAEL LEIB, DR. LEIB’S PATRIOTIC SPEECH, ADDRESSED TO THE HOUSE OF REPRESENTATIVES OF PENNSYLVANIA. FEBRUARY 24, 1796, at 11 (New-London, James Springer 1796). See also *Speech of Mr. Samuel Lyman*, *reprinted in* PHILA. GAZETTE, Apr. 20, 1796; JOSEPH PRIESTLEY, 2 LETTERS TO THE INHABITANTS OF NORTHUMBERLAND 15-16 (Northumberland, Andrew Kennedy 1799) (“Could they give the Congress the power of making peace and war, and also that of regulating commerce in one part of that instrument, and take it out of their hands in another”); *Speech on Jay’s Treaty*, in 16 PAPERS OF JAMES MADISON (CONGRESSIONAL SERIES) 262 (J.C.A. Stagg et al ed., 1989) (“utterly inadmissible, in a Constitution marked throughout with limitations & checks”); Albert Gallatin, *Speech in the House of Representatives*, AURORA, Mar. 14, 1796; Thomas Jefferson to James Monroe (Mar. 21, 1796), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 57, at 41 (“We conceive the constitutional doctrien to be that tho’ the P.

*Aurora* pronounced the treaty “the death of liberty” and the end of the republic.<sup>1067</sup> But it was the citizen-orator J. Thompson, addressing a town meeting in Petersburg, Virginia, who most convincingly fused this new strand of constitutional critique with the older discourse of oligarchy and senatorial prerogative:

[The Jay Treaty] has received, in every article but one, the sanction of the senate. The conduct of that assembly has, indeed, been uniform. Since the establishment of the federal government, it has never deigned to adopt the sentiments of the people . . . The majesty of that assembly has never been polluted by the vile feet of the *swinish* multitude. The existence of an aristocracy in this country is too often regarded as the chimera of some distempered enthusiast, or the fiction of some dangerous demagogue. I will appeal to the understandings of this audience, if the funding system has not organized a great aristocracy, which has usurped the dominion of the senate...<sup>1068</sup>

The senatorial elite, Thompson continued, plainly preferred “that mouldering Gothic edifice, the British constitution, to the elegant temple of liberty, which philosophy has just erected in France.” It did not aspire to a mere *alliance* with Great Britain; with the leverage provided by the treaty power it hoped to remake itself as a house of lords, to set Washington on a throne, and to reduce the democratic branch to an impotent house of commons.<sup>1069</sup> This was roughly the conclusion reached by the Irish revolutionary Wolfe Tone, who wrote a disgusted letter to Thomas Russell during his brief exile in Philadelphia, at the height of the Jay Treaty controversy.

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and Senate have the general power of making treaties yet wherever they include in a treaty matters confided . . . to the three branches of legislature, an act of legislation will be requisite to confirm these articles.”).

<sup>1067</sup> Codrus, *To the People (Letter IV)*, *AURORA*, Mar. 15, 1796, at 3.

<sup>1068</sup> *Speech of Mr. J. Thompson, at a meeting of the citizens of Petersburg, (Virginia) convened August 1, 1795, to debate on the pending Treaty with Great Britain*, *JERSEY CHRON.*, Sept. 12, 1795. Thompson’s speech was widely circulated; within two weeks of being delivered it was republished in *The American Remembrancer*, a collection of essays and speeches on the treaty controversy edited by Matthew Carey.

<sup>1069</sup> *Speech of Mr. J. Thompson (cont.), at a meeting of the citizens of Petersburg, (Virginia) convened August 1, 1795, to debate on the pending Treaty with Great Britain*, *JERSEY CHRON.*, Sept. 19, 1795 (“They will usurp the power of making rules with respect to aliens, of ceding territory, of regulating commerce, of paying debts, of regulating duties, of establishing courts, and of defining piracie. The house of representatives will be degraded to a house of commons; summoned to answer an address to regulate a few subjects of internal policy, and to vote money.”). It was axiomatic among American Francophiles that the commons in Great Britain was the tool of the king and his ministry, and that the peerage enjoyed an outsized influence on affairs of state. Here Thompson refers to the Jacobin constitution of 1793, not the Thermidorean constitution of 1795, whose text would not be finalized in France until late August and would not be circulated in America until October.



In his dispatch Tone lambasted “the abominable selfishness of spirit” he observed in America, which he ascribed to “their government, or more properly speaking their aristocracy, for the House of Representatives are sincere Republicans.” He lamented that under the terms of the Constitution, matters as central to the republic as war and peace were left to the sole discretion of that aristocracy, while “the great majority of the people” were utterly ignored. “Here are twenty-one men,” he marveled, “controlling the almost universal sense of five millions.”<sup>1070</sup> This was equally the understanding of France’s diplomatic corps, which dismissed the Federalists’ broad construction of the treaty power as a contradiction—“invoking the constitution to destroy the constitution”—reporting to Paris that it had been “counseled by the English party” to strike a blow against France.<sup>1071</sup> Ordinary citizens, too, made the connection between Anglophilic foreign policy and constitutional politics; if we believe the account given in the *Massachusetts Mercury*, when Jay was appointed minister to England in 1794, dissidents in Lexington burned him in effigy with a copy of Adams’s *Defence* suspended from his neck.<sup>1072</sup> As opposition writers increasingly concluded that the “balance” struck in 1787 was weighted towards the interests of a “self created nobility,”<sup>1073</sup> their emphasis shifted from *restoring* the Constitution to *altering* it—perhaps drastically.

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<sup>1070</sup> Theobald Wolfe Tone to Thomas Russell (Sept. 1, 1795), in 2 WRITINGS OF THEOBALD WOLFE TONE 13 (T.W. Moody et al. eds., 2001). The Fourth Congress had 30 senators, so 20 formed the two-thirds majority required to ratify treaties.

<sup>1071</sup> Pierre-August Adet to Minister of Foreign Relations (11 Germinal an 4), in *Correspondence*, *supra* note 37, at 883.

<sup>1072</sup> *Epitome of Intelligence*, MASS. MERCURY, July 4, 1794, adding that “[a]fter exhibiting him in this condition for some time, he was ordered to be guillotined.”

<sup>1073</sup> Investigator, INDEP. CHRON. (Boston), Jan 5, 1795, at 2 (“We have another party consisting of a “self created” nobility, men of a “PRINCELY” appearance,” who are desirous to destroy the *republican principles* of the Federal constitution, and are attempting to introduce a system of government more congenial to their own *monarchical* ideas. As they have acquired such *large* and *splendid fortunes*, they sicken at republicanism”).

French observers had long remarked on the ambivalence with which Franklin and his allies supported America's federal constitution.<sup>1074</sup> Far from revising his political ideals of 1776 in light of the changed circumstances of 1787, Franklin at the convention repeatedly and emphatically defended the Pennsylvania model of a single legislature and a plural executive over the objections of his colleagues. Madison records that when Edmund Randolph proposed, as part of his Virginia Plan, "that the national Legislature ought to consist of two branches", it was accepted "without debate, or dissent, <except that of Pennsylvania, given probably from complaisance to Doctr. Franklin who was understood to be partial to a single House of Legislation>."<sup>1075</sup> Franklin was even more critical of the convention's decision to vest the executive power—and many significant prerogatives—in "a single person", predicting in a forceful address that the installation of a sole executive would end in monarchy or civil war.<sup>1076</sup> When the presidential model came to seem inevitable, Franklin fought to minimize its prerogatives and to ensure that it would be constrained by robust mechanisms of accountability.<sup>1077</sup> He was exercised simultaneously by the centripetal pull of executive

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<sup>1074</sup> CONDORCET, *supra* note 9, at 413 ("Il vit avec peine la pluralité vouloir donner une forme compliquée à une assemblée qui, par la nature de ses fonctions, semblait forcée à préférer la plus simple; établir d'inutiles contre-poids à une autorité qui ne devait presque jamais s'exercer sur des individus isolés et faibles, mais seulement sur des états puissans . . . Mais c'était un dernier hommage que l'Amérique rendait à son insçu aux préjugés de la mère-patrie."); ROCHEFOUCAULD-LIANCOURT, *supra* note 54, at 201 ("Franklin était, et s'était toujours déclaré, pour les principes les plus démocratiques; une seule chambre, et un exécutif très-limité dans ses pouvoirs et dans la durée de ses fonctions, devaient former, suivant son opinion, la constitution la plus désirable. Le sacrifice de l'opinion de sa vie entière, généreusement offert au bien public en cette grande circonstance, est certes d'un mérite digne d'admiration.").

<sup>1075</sup> Benjamin Franklin, *Speech of 31 May, Madison Notes*, in 1 RECORDS OF THE FEDERAL CONVENTION 47 (Max Farrand ed., 1911) [Hereinafter FARRAND]. Farrand argues that there is a transcription error in Madison's records, and that Pennsylvania did not register a formal vote against the bicameral plan. The account of the same vote in records by Yates and McHenry indicate that the vote was unanimous. But whether or not the Pennsylvania delegation registered a formal objection is less interesting, for our purposes, than the fact that Madison attributed this vote to Franklin's deep philosophical commitments.

<sup>1076</sup> Benjamin Franklin, *Speech of 4 June, Madison Notes*, 1 *id.* at 98. Cf. Benjamin Franklin, *Speech of 4 June, King Notes*, 1 *id.* at 108.

<sup>1077</sup> Benjamin Franklin, *Speech of 7 September, in Madison Notes*, 2 *id.* at 542 (Executive Council appointed by the legislature should make all appointments); Benjamin Franklin, *Speech of 4 June, King Notes*, 1 *id.* at 106

despotism and the centrifugal forces that threatened to shatter the new union into local fiefdoms and regional blocs.<sup>1078</sup> In his last speech at the convention Franklin trumpeted ratification with a muted horn: “I agree to this Constitution with all its faults, if they are as such; because I think a general Government necessary for us.”<sup>1079</sup> In an April 1788 letter to Louis-Gillaume de Veillard he conjectured that the “Articles of the propos”d new Government will not remain unchang”d after the first meeting of the Congress”; in the same sentence, he restated his preference for a unicameral legislature.<sup>1080</sup>

Paine shared Franklin’s mistrust of the Convention’s handiwork, “particularly to the manner in which, what is called the Executive, is formed, and to the long duration of the Senate.” But like Franklin he was persuaded that the Constitution was a necessary innovation and professed that “I would have voted for it myself, had I been in America, or even for a worse.” In a series of essays he explained his reasoning at length. First, he touted the “the absolute necessity” of replacing the paralytic Confederation with a fully consolidated federal government capable of supervising its disparate parts. Indeed, Paine even attempted to take credit for the idea, pointing to a letter he wrote to Robert Livingston in 1782 outlining the deficiencies of the Articles. Second, Paine clung to the guarantee in Article V that “any error in the first essay could be

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(against the absolute veto favored by Wilson and Hamilton); Benjamin Franklin, *Speech of 4 June, Madison Notes*, 1 *id.* at 103 (for a suspensive veto); Benjamin Franklin, *Speech of 20 July, Madison Notes*, 2 *id.* at 65-68 (impeachment clause).

<sup>1078</sup> See, e.g., Benjamin Franklin to Charles Carroll of Carrollton (May 25, 1789), in 12 WORKS OF BENJAMIN FRANKLIN 73 (John Bigelow ed., 1904) (“We have been guarding against an evil that old states are most liable to, *excess of power* in the rulers; but our present danger seems to be *defect of obedience* in the subjects”).

<sup>1079</sup> Benjamin Franklin, *Speech of 17 September, in Madison Notes*, in 2 FARRAND, *supra* note 66, at 641. Cf. George Washington to Thomas Jefferson (Oct. 11, 1787), 3 *id.* at 104.

<sup>1080</sup> Benjamin Franklin to Louis-Gillaume de Veillard (Apr. 22, 1788), 3 *id.* at 297. Cf. Ezra Stiles, *diary entry for December 21, 1787*, 3 *id.* at 168 (“Dr Franklin sd he did not entirely approve of it but, tho”t it a good one, did not know but he shd. hereafter think it the best, on the whole was ready to sign it & wished all would sign it, & wished all would sign it, & that it shd be adopted by all the States. Dr Franklins Idea that the American Policy, be one Branch only or Representative Senate of one Order, proportioned to Number of Inhab. & Property—often elected—with a President assisted with an executive Council”).

reformed by the same quiet and rational process by which the Constitution was formed.”<sup>1081</sup> This was not a ringing endorsement of the new instrument, but rather a limited and tactical embrace. Like many of their contemporaries, Franklin and Paine took for granted that drastic revisions would be necessary to establish the conditions of republican liberty.<sup>1082</sup> Three years after his death, a radical critic speculated that had Franklin lived to see its fruits, he would repent affixing his signature to “the specious form, designed to sap the liberties of his country.”<sup>1083</sup>

A decade later, swept up in the maelstrom surrounding the Jay Treaty, Bache and his allies came to the same conclusion. In a passage laced with black sarcasm and written while the Jay Treaty was still only a rumor, Bache complained that the secular religion of the Constitution had become an obstacle to clear thinking and an alibi for anti-democratic politics:

The Constitution of the United States is said to be the perfection of human wisdom, and although emanating from the people, they dare hardly question its delivery from *Mount Sinai*. According then to this perfection of human wisdom, the people can be legislated for without the consent of their immediate representatives; indeed the laws made by their representatives can be superseded by the decrees of the President and the Senate. By this perfection of human wisdom, treaties are declared to be the supreme law of the land.<sup>1084</sup>

Others were vibrating on the same frequency; increasingly, an opposition that saw itself routed in the dispute over constitutional *interpretation* found itself drawn inexorably toward a debate over

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<sup>1081</sup> Thomas Paine, *Letters to American Citizens (Letter II)*, in 3 WRITINGS OF THOMAS PAINE, *supra* note 5, at 388; Thomas Paine, *Letter to George Washington*, 3 *id.* at 214.

<sup>1082</sup> *Cf.* Thomas Jefferson to Moustier (May 17, 1788), in 13 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 174 (Julian P. Boyd ed., 1956) (“There are indeed some faults which revolted me a good deal in the first moment: but we must be contented to travel on towards perfection, step by step”); INDEP. CHRON. (Boston), Sept. 11, 1788 (many patriots have “conceded to the Constitution in its present form, only with a view of unanimity in the pursuit of necessary alterations”); *A Defence of the Constitutions of Government of the United States of America*, in 6 THE WORKS OF JOHN ADAMS 220 (Charles Francis Adams ed., Bos., Little & Brown 1856) (“That it may be improved is not to be doubted, and provision is made for that purpose in the report itself.”).

<sup>1083</sup> Another Jacobin, N.J.J. *reprinted from* the N.Y.J., July 27, 1793.

<sup>1084</sup> AURORA, Feb. 10, 1795, at 3. *See also* AURORA, Dec. 30, 1795 (“He thinks the Constitution a good one; but cannot see that it is stamped with the seal of perfection”). *Cf.* James Monroe to James Madison (Oct. 29, 1795), in 16 PAPERS OF JAMES MADISON (CONGRESSIONAL SERIES), *supra* note 57, at 115 (“...essentially improve the government especially by introducing the principle of equal representation in the Senate...The H.R. too should ratify treaties.”); Rev. James Madison to James Madison (July 25, 1795), 16 *id.* at 41, (“if we wish really to preserve Republicanism, that the sooner certain radical Defects in the fed. Constitution be amended, the better”).

constitutional *revision*. The first salvo was fired in December 1795 by the Virginia House of Delegates, which sublimated its fury over the Jay Treaty into three proposed amendments that threatened to strip the Senate of its most important prerogatives. First, that no treaty affecting any “of the powers vested in the Congress by the eighth section of the first article, shall become the supreme law of the land” without separate ratification by a majority of the House. Second, “[t]hat a tribunal other than the Senate be instituted for the trial of impeachments.” And third, that the terms of senators be slashed to three years, with annual elections ensuring frequent rotation in office.<sup>1085</sup> The Virginia program did not catch on everywhere—the *Vermont Gazette* noted glumly that the legislature of North Carolina quickly rejected a similar set of measures “by a very large majority”<sup>1086</sup>—but it was received jubilantly by Pennsylvania radicals like Michael Leib, who thought it an essential antidote to the “smallness and permanency” of the upper chamber. “If the Senate of the United States had had even a triennial duration, that disgraceful compact, which has prostrated the American interests, honour, faith, dignity, and independence,” he fulminated, “would never have had a being.”<sup>1087</sup> John Adams, writing to his wife in December, denounced what he called “hair brain”d Resolutions for amending the Constitution,”

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<sup>1085</sup> *Amendments to the Constitution, Virginia, House of Delegates*, in JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA 91-92 (Richmond, Augustine Davis 1795). Delegates also proposed a fourth amendment forbidding federal judges from accepting any other government commission; during his mission to London Jay was Chief Justice of the Supreme Court.

<sup>1086</sup> VT. GAZETTE, Jan. 13, 1796. See also Thomas J. Farnham, *The Virginia Amendments of 1795: An Episode in the Opposition to Jay’s Treaty*, 75 VA. MAG. HIST. BIOG. 75, 85 (1967) (“the resolutions generally met with little favor”).

<sup>1087</sup> MICHAEL LEIB, *supra* note 58, at 21. Cf. the more tentative support of Samuel Adams, recorded in the PENN. GAZETTE, Feb. 3, 1796 (“I am far from being desirous that unnecessary alterations of our constitution should be proposed: But it is of great consequence to the liberties of a nation, to review its civil constitution...”). On Madison’s sympathies, see James Madison to Thomas Jefferson (Jan. 31, 1796), in 16 PAPERS OF JAMES MADISON (CONGRESSIONAL SERIES), *supra* note 58, at 209 (lamenting Massachusetts’s “unhandsome treatment of the Virga. Amendments”); Joseph Jones to James Madison (Feb. 17, 1796), *id.* at 225 (“I was not only astonished but concerned to see in what manner the resolutions of the Virginia Ass: was treated by the Mass. Legislature . . . I fear your attempts to do what is right will be frustrated as appearances are So unfavourable and the resentmt. agt. Virginia so manifest”). On Jefferson’s sympathies, see Thomas Jefferson to William Branch Giles (Mar. 19 1796), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 57, at 35 (“I know not when I have received greater satisfaction than on reading the speech of Dr. Lieb”).

and confessed his bewilderment that such a “flight of ignorance and folly” had captured the public imagination of America’s most populous state. He predicted, hopefully, that no state would second the effort.<sup>1088</sup>

Although this project of revision was initially framed as an effort to restore equipoise to the Constitution by checking a predatory aristocracy, these modest ambitions were quickly displaced by a mounting dissatisfaction with the baroque physics of constitutional “balance.” Where Bache had once dutifully recited the catechism of checks and balances, he now ridiculed it as an unworkable and “jarring” contraption on the brink of collapse: “the powers which are to ballance are striving to encroach . . . and the most adroit will eventually supersede the others.”<sup>1089</sup> If equilibrium between the departments was illusory, then naturally one of the branches would have to predominate over the rest. As an essayist calling himself THE PEOPLE reasoned in Bache’s *Aurora*, “when one department of constituted authority acts in collision with another . . . it is morally impossible that both should prevail.” Who better to give law to the other departments, then, than that single branch from which, by virtue of its direct connection to the public, “all just power emanates”?<sup>1090</sup> Another article in the *Aurora* pointed out that the notorious Yazoo land fraud, facilitated by legislative bribery in Georgia, had occurred despite the state having jettisoned its unicameral constitution in 1789 in favor of a “magic” balance of legislative and executive branches. “We submit . . . whether, all things considered, the best

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<sup>1088</sup> John Adams to Abigail Adams (Dec. 24, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 104. *Cf.* Charles Adams to John Adams (Feb. 7, 1796), *id.* at 164 (“Our Legislature have \been/ some time occupied in debating upon what are called The Virginia resolutions which you have doubtless seen and which have been so industriously forwarded to the different States for their concurrence though our good Sister has not been treated quite so cavalierly by New York as she was by Massachusetts yet I believe they both concur in thinking her a very whimsical Oldmaid.”).

<sup>1089</sup> *Compare* GEN. ADVERTISER, Jan. 16, 1792 (“Government is naturally divided into three branches . . . one branch will watch and check the others”); AURORA, Jan. 29, 1795 (“Was it *wisdom* that planned a government containing within its own bosom the elements of eternal discord? Or was it designed, that the people might become weary of their condition, and at length call out for a king?”).

<sup>1090</sup> *The People*, No. I, AURORA, Apr. 4, 1796.

security the people have for the good conduct of their public servants is not to be found in frequent and pure elections,” rather than in the clutter of counterpoised powers. Against John Adams, whose *Defence* was the *summa theologica* of modern constitutional dogma, the *Aurora* offered the authority of “the late BENJAMIN FRANKLIN: This statesman, from the beginning of his political career . . . objected to a double legislature as absurd and prejudicial.” Checks and balances, the author concluded, are employed mostly to check the “boldness of the starving multitude” aspiring to rule itself.<sup>1091</sup>

The Federalist press was predictably aghast at these intimations of legislative supremacy. The Boston *Centinel* warned the public that the “same power which can disobey your decree, that treaties shall be laws . . . may declare the President and Senate and Courts of Justice unnecessary, and may consolidate in the same hands the whole legislative, executive, and judiciary power.” The *New York Herald* accused the House of grasping at “a sovereign right of controul over every other branch of government.”<sup>1092</sup> If the House was permitted to insert itself in the treaty-making process and to decide on a more fitting distribution of powers between the branches, what was to stop it from dissolving the tripartite scheme of government altogether, and concentrating all authority in a single chamber? The prospect was all-too familiar, and a writer for the *Columbian Centinel* traced its genealogy in a sharp attack on the Virginia Resolutions:

The amendment adopted by that vote proposes to bring the ratification of treaties before the house of representatives...This is obviously a complete revolution of government, a fundamental alteration of its first and most essential principles. It is an abolition of that part which gives the whole *executive* authority to the President, and in defiance of the most sacred maxim of free governments, mixes the legislative and executive powers. The effect would be, and no doubt it is intended to make the government a simple democracy in the hands of a convention or single assembly, like the late convention of France, the President to retain the name of office like a Doge of Venice, but to be reduced to a cypher. The Senate, in like manner, to be virtually annihilated by

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<sup>1091</sup> AURORA, Apr. 14, 1795, at 3.

<sup>1092</sup> BOS. CENTINEL, Apr. 20, 1796; N.Y. HERALD, Apr. 17, 1796, at 3. Cf. SUN (Dover, NH), reprinted from AM. MINERVA, Sept. 21, 1796, at 1; Charles Carroll to George Washington (Apr. 23, 1796), Early Access (“Do they wish to engross all power to themselves, & to destroy the checks & balances established by the Constitution?”).

a subsequent article . . . They perhaps will say they design to build a more glorious temple after the model of the late French single assembly.<sup>1093</sup>

In other words, both supporters and opponents of the project to reform Article I understood it to be a deliberate attempt to imitate the centripetal form of the French constitution, with all power concentrated in a single legislative chamber. And John Adams, whose *Defence* supplied much of the vocabulary and theory for proponents of the status quo, never tired of explaining that the ultimate source of these ideas could be found in the Pennsylvania Constitution of 1776—what he called “Turgot and Franklins Absurdity.”<sup>1094</sup>

And yet, even as these words were being written, a *volte-face* in France was recalibrating the compass of constitutional arguments in America. The Thermidorean constitution, promulgated in August 1795 to correct the “democratic” excesses of the Jacobin terror, made significant concessions to the *anglomane* theory of the constitution, restricting the franchise, instituting a second house of the legislature, and providing for an independent (though plural) executive magistracy. Its spokesman, Boissy d’Anglas, praised the doctrines of John Adams and declared that he could not think of “*a single reasonable objection*” to the bifurcation of the legislative power. And he dealt with the Pennsylvania Constitution in the condescending manner long characteristic of Federalists: “*Pennsylvania* alone, resisted a long time in favour of a single Assembly, and notwithstanding the purity of the manners of its inhabitants...*intestine dissensions soon divided*” and broke it apart.<sup>1095</sup>

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<sup>1093</sup> *On the Amendments Proposed in the Assembly of Virginia*, AUGUSTA CHRON., reprinted from COLUMBIAN CENTINEL, Feb. 27, 1796, at 2. Cf. NAT’L GAZETTE, Apr. 16, 1796 (“...converts...the House of Representatives, into a National Convention”); An American, *Political Miscellany*, ARGUS (Wicasset, ME), reprinted from BOS. CENTINEL, Jan. 13, 1798, at 1.

<sup>1094</sup> John Adams to Francis D’Ivernois (Apr. 26, 1795), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1665> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS].

<sup>1095</sup> *Speech of Boissy d’Anglas*, RURAL REPOSITORY (Leominster, MA), Oct. 22, 1795 (referring, however, to “Samuel” Adams). An extract of this speech was republished in the appendix of an influential pro-Adams pamphlet released on the eve of the 1796 presidential election, indicating its importance in American political discourse—see WILLIAM LOUGHTON SMITH, *THE PRETENSIONS OF THOMAS JEFFERSON TO THE PRESIDENCY*



At a stroke, the ideological polarity of the French example was reversed. The Constitution of Year III, an editorialist for a New York newspaper smirked, must be “peculiarly instructive to our American Jacobins, who have looked with impatience upon the checks and balances in our political institutions.” The *New Hampshire Sun*, meanwhile, opined that “[s]imple democracy is certainly going to disgrace in France and America.”<sup>1096</sup> Reviewing the intellectual career of Condorcet, the *New York Herald* observed rather cruelly that the great philosopher had been liquidated by precisely the kind of simple government he had always championed, and lamented that what it sarcastically termed “that *specious* balance of *two houses*” had come to France too late to save him.<sup>1097</sup> Meanwhile, John Lowell, writing as the *Anti-gallican*, associated the now failed idea of unicameralism with the Jeffersonian opposition:

It is a *fact known to thousands*, that Mr. Jefferson in his admiration of every thing that was French, openly contended that the Senate of the United States was an useless and a dangerous branch of the legislature; that it ought to be annihilated. In this sentiment he echoed Brissot and his fellow

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EXAMINED 42 (Phila., John Fenno 1796). On the influence of John Adams on the Constitution of Year III, see ANDREW J.S. JAINCHILL, *REIMAGINING POLITICS AFTER THE TERROR* 36-39 (2008). John Quincy Adams was unimpressed with these claims of inspiration, highlighting its divided executive and weak upper chamber. “You will perceive that [d’Anglas] quotes your authority in support of a divided legislature; but his very quotation shews that he knew as little of you, as of your book.” See John Quincy Adams to John Adams (July 27, 1795), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1679>, (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS]. See also Thomas Boylston Adams to John Adams (July 13, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 10 (“Your Book Sir, has been both consulted and cited upon this occasion, but I believe you would be loth to acknowledge the sketch of a Constitution, as being formed & fashioned after your prescriptions.”). Nevertheless, after observing the new constitution in action for six months, JQA offered more generously that “[t]he division of their new Legislative body has given to their deliberations a character of order and decorum hitherto unknown since the commencement of their Revolution.” See John Quincy Adams to John Adams (Dec. 29, 1795), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1712>, (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS]; Thomas Boylston Adams to John Adams (Aug. 13, 1796), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 349 (“In France, the operation of what is called the regular or Constitutional Government, has been in every respect superior to that of any of its predecessors. Compared with antecedent experiments, it may even be styled a Government of laws.”).

<sup>1096</sup> COLUMBIAN HERALD, Nov. 5, 1795, at 2; SUN (Keen, NH), Sept. 21, 1796, 1; OTSEGO HERALD (N.Y.), Feb. 11, 1796, at 2 (“It is a circumstance that deserves remarks, that the French, after much confusion and vibration from opinion to opinion, have finally founded this government on the same essential principles as the Americans have theirs.”); CHARLESTON CITY GAZETTE, Oct. 8, 1796 (“the French have unfortunately appeared *more friendly* to our government, than our *own Democrats*”); A REPUBLICAN, WKLY. ADVERTISER (Penn.), Oct. 29, 1796, at 3 (“...the Federal Constitution, which has proved so great a blessing to America, that the great French Nation have imitated it”).

<sup>1097</sup> N.Y. HERALD, Oct. 8, 1796, at 3.

philosophers of France . . . Now indeed it would be treason against our French friends, to contend for this principle, and forsooth, we hear no more about *one* branch, the “Checks and balances” of our admired President, have ceased to be the object of “Chronicle” ridicule...<sup>1098</sup> Jefferson, as we have seen, had little sympathy for the avant-garde constitutional ideas of Bache, Paine, and their allies; from 1776 forward he had been a consistent exponent of bicameralism and executive prerogative. Even in the darkest moments of the Adams presidency, a time he famously branded “the reign of witches,”<sup>1099</sup> Jefferson would maintain that the monocratic tendencies of the new republic could be corrected without resort to constitutional reform.<sup>1100</sup> But as a statement about the constitutional program of the most radical wing of the opposition press, Lowell’s crude broadside hit its mark. And indeed, as early as the summer of 1795 we find Benjamin Bache laboring to show that contemporary developments in France have not rendered his reform project obsolete. The French Constitution, he assures his reader, is still a model for

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<sup>1098</sup> JOHN LOWELL, *The Pseudo-Patriot No. IV*, in THE ANTIGALLICAN; OR, THE LOVER OF HIS OWN COUNTRY 52 (Phila., William Cobbett 1797). See also John Quincy Adams to Abigail Adams (Apr. 25, 1795), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/04-10-02-0268>, (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“Our American Jacobins I imagine will be puzzled to fix upon their creed as to french affairs. I question whether they will give at full length the debates in the Convention of the present time. If they do, you will perceive that Jacobin Clubs, Sans culottism . . . which it was so long a fashion to profess and to admire, are now rated at their true value.”).

<sup>1099</sup> Thomas Jefferson to John Taylor (June 4, 1798), in 30 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 389 (Barbara B. Oberg ed., 2003).

<sup>1100</sup> Thomas Jefferson to James Sullivan (Feb. 9, 1797), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 57, at 289, (“Where a constitution, like ours, wears a mixed aspect of monarchy and republicanism, it’s citizens will naturally divide . . . Some will consider it as an elective monarchy which had better be made hereditary, and therefore endeavor to lead towards that all the forms and principles of it’s administration. Others will [view it] as an energetic republic, turning in all it’s points on the pivot of free and frequent elect[ions]. The great body of our native citizens are unquestionably of the republican sentiment . . . and our countrymen left to the operation of their own unbiassed good sense, I have no doubt we shall see a pretty rapid return of general harmony, and our citizens moving in phalanx in the paths of regular liberty, order, and a sacro-sanct adherence to the constitution.”). See also Thomas Jefferson to James Madison (Aug. 3, 1797), 29 *id.* at 490 (denying any objection “to the *form* of our government, that is to say to the constitution itself”); Thomas Jefferson to Peregrine Fitzhugh (Feb. 23, 1798), in 30 PAPERS OF THOMAS JEFFERSON, *supra* note 91, at 130 (Barbara B. Oberg ed., 2003) (“that beautiful equilibrium on which our constitution is founded”). Cf. JAMES ROGER SHARP, AMERICAN POLITICS IN THE EARLY REPUBLIC 42 (1993) (“Madison and Jefferson came to see themselves both as protectors of the Constitution and the republican form of government . . . They had to distinguish their opposition to Hamilton’s policies from any appearance of being hostile to the Constitution or to the union.”). The basic conservatism of his constitutional ideas was recognized by many of his contemporaries; see, e.g., William Griffith, EUMENES: BEING A COLLECTION OF PAPERS, WRITTEN FOR THE PURPOSE OF EXHIBITING SOME OF THE MORE PROMINENT ERRORS AND OMISSIONS OF THE CONSTITUTION OF NEW-JERSEY 122 (Trenton, G. Craft 1799) (citing both Adams’s *Defence* and Jefferson’s *Notes on Virginia* in support of robust checks and balances).

America, despite its recent and dramatic revisions.

They boast much of their having established two branches; but observe how differently constituted our Senate and their Council of Censors are. Our Senate are chosen for six years, theirs for four. Our Senators may be re-elected till their death; the principle of rotation is *fixed* in the organization of the French Senate; our Senate represents the people, as the rotten boroughs of Great Britain represent the people...they do not, to the exclusion of the other branch, make treaties, appoint numerous officers, and transact all the executive business of the State as ours do in the face of that wholesome maxim so often recognized, and so often trampled under foot, that these great powers of government should be kept distinct.<sup>1101</sup>

Bache was of course correct that the new *Conseil des Anciens* closely resembled the reformed Senate envisaged by American radicals in the aftermath of the Jay Treaty.<sup>1102</sup> And yet his manifestly defensive tone, and his close and careful analysis of France's new frame of government, suggests his recognition that the ground had shifted and that the fate of radical constitutional ideas in America depended critically on events unfolding 4000 miles away. American radicals were not quite sure what to make of the new French constitution; Adams reported that when he toasted the new government and its constitution at a dinner in late 1795 attended by the French ambassador Pierre Adet, the "French Company seemed to relish it better than our Frenchified Americans."<sup>1103</sup> And with good reason: the suspicion that France might be retreating from core elements of the radical constitutional project threatened to deprive these reformers of the sharpest arrow in their quiver. Even as the two republics maintained a chilly diplomatic distance, they shared a common climate of thought and opinion, so that the sudden

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<sup>1101</sup> AURORA, Aug. 29, 1795. Cf. AURORA, Sept. 12, 1795 ("One striking excellence may be observed in [the 1795 constitution]—the ratification of the whole Legislature is necessary to the existence of a Treaty").

<sup>1102</sup> See also INDEP. CHRON. (Boston), Oct. 22, 1795 ("[The French Constitution] comprehends all the beauties and excellencies of our own, in their full lustre. But it avoids its defects. It has a numerous senate, chosen for four years, but subject to a biennial election rotation; the members are not eligible for the ensuing period. -- Here then is the strength of an aristocracy, without the general influence which must necessarily form a too long continuance in office . . . It is in a word, a true elective democracy..."); N.H. GAZETTE, Apr. 16, 1796, at 3 ("we find, that the dangers of placing the treaty making power, in all cases, in the Executive, without a check from the Legislature, has been clearly apprehended in France"). Cf. John Quincy Adams to John Adams (July 27, 1795), in 1 WRITINGS OF JOHN QUINCY ADAMS (Worthington Chauncey Ford ed., 1913), 383 ("The legislative body is to be divided, but the two houses are not invested with equal powers. The council of *elders* [that is the Senate,] will have no right to originate any laws, but only a negative").

<sup>1103</sup> John Adams to Abigail Adams (Jan. 2, 1796), JA EA.

vogue for Adams's political theory in France might very well speed his ascension to the presidency in America. This was, at least, the conclusion he himself drew, beaming in a 1795 letter to his wife that "Checks and Ballances having been adopted in Part at least in France, begin to grow more popular all over Europe & America," which could only be a promising sign for the "approaching Election of Electors of P. and V.P."<sup>1104</sup>

The effect was not as instantaneous as Adams might have hoped; Abigail replied a few weeks later that the newspapers were still clotted with proposals to emasculate—if not entirely abolish—the upper chamber, even as dispatches from France seemed to confirm the folly of such a step. She concluded, gloomily, that populist reformers "are a very mad people, they will neither believe in the experience of those States which have been obliged to change from a single Assembly, to a balanced government, nor in the Host of departed Spirits who cry alloud to them from the Golgotha of their Allies"<sup>1105</sup> In April, as the polemic over the Jay Treaty reached its meridian, Adams predicted that the resulting constitutional crisis might end the republic and lamented to his wife that "as the People of France Scrambled for Power against every Majority and set up Robespierre so the H. of R. of the U.S. will Scramble for Power against the P. & Senate."<sup>1106</sup> But this pessimism was premature; the rejection of the Virginia resolutions would mark the end of the constitutional reform project as a serious political and intellectual

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<sup>1104</sup> John Adams to Abigail Adams (Dec. 24, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 104.

<sup>1105</sup> Abigail Adams to John Adams (Jan. 15, 1796), *id.* at 138.

<sup>1106</sup> John Adams to Abigail Adams (April 16, 1796), *id.* at 252. *Cf.* John Adams to Abigail Adams (Mar. 13, 1796), in ADAMS FAMILY PAPERS: AN ELECTRONIC ARCHIVE, Massachusetts Historical Society, <http://www.masshist.org/digitaladams> (last accessed Oct. 7, 2016) ("There are bold and daring Strides making to demolish all the P. Senate and all but the House . . . Be not alarmed however, *they* will not carry their Point."); John Adams to Abigail Adams (Apr. 21, 1796), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 260 ("Our Constitution is coming to a Crisis—I calculated at its Commencement about ten Years for its duration. The People will this summer have to determine whether it shall Survive its Eighth Year. The H. of R. seem determined to dictate to the whole Govt and Virginia is equally desirous of dictating to the H...").

challenge.<sup>1107</sup> While the revision of the upper chamber remained a live political issue in a small number of states, it receded into obscurity in national politics, kept alive primarily by Federalists as a cudgel against their “extremist” opponents.<sup>1108</sup> One of these attacks, the sarcastic “Jeffersoniad” published in the summer of 1800, perfectly summarized the Federalist perspective on the movement for a single legislature that had become so prominent in the first decade of the American republic. In his *Notes on Virginia*, Jefferson had subscribed to the sound political principle that the legislative power must be divided to guard against elective despotism. But “[t]he early French philosophers Turgot, and the Girondists, thought differently, and accordingly Dr. Franklin and Mr. Jefferson as soon as they came in contact with them, became wonderfully converted.” This French heresy was responsible for the “vehement denunciations of the Senate, by all the tools of his faction, and in all the venal newspapers in the employment of that faction, and of France.” If today no more is heard of reforming the Senate, this is because the dissident party could only navigate by the starlight of French example:

Have they forgotten the attempts in the papers of the faction to run down the Senatorial branch? Why have those clamours long since ceased? Why did they ever exist? Was it because their masters the French had then adopted a single branch? And have they since grown tired of experiment? Did Mr. Jefferson and our faction change their opinions with French measures? To these queries, all honest and observing men can readily reply—Is it possible that the philosophic Jefferson, so attached to theory, can have so changed his creed as to approbate the present *mold* and *lawfully founded* republic of *France*? Is he enraptured with the *Conservative Senate*? Does he approve the *Tribunate*, and the Legislative Body? The Five Thousand oligarchists to whom all offices are confined—The thirty thousand *body guards*—the Palace of the *Luxembourg* and the modest Consul with full *power*, that *something* better than a diadem?<sup>1109</sup>

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<sup>1107</sup> Fisher Ames to Thomas Dwight (Feb. 16, 1796), in 1 WORKS OF FISHER AMES, *supra* note 41, at 187 (“The United States behold the failure of the schemes of foreign corruption and domestic faction; the States, one after another, fulminating contempt on Virginia and Co . . . Every such proceeding chills the Catilines here, like the touch of the torpedo.”).

<sup>1108</sup> See, e.g., INDEP. CHRON. (Boston), May 19-22, 1800; ALEXANDRIA ADVERTISER, *reprinted from* GAZETTE U.S., Oct. 25, 1802. *But see* A New-Jerseyman, *To the Free and Independent Electors of the State of New Jersey*, TRENTON FEDERALIST, Sept. 27, 1802 (summarizing criticisms of the federal constitution made recently in New Jersey’s Republican press).

<sup>1109</sup> Decius, *The Jeffersoniad No. VII*, GAZETTE U.S., *reprinted from* BOS. CENTINEL, Aug. 11, 1800. *Cf.* A Republican, WKLY. ADVERTISER, Oct. 29, 1796, at 3 (“There is no more said in favour of Jefferson, than that he has been instrumental in framing the first Constitution of the United States. This Constitution of a single Branch of Legislature, and without giving a negative to the Executive Power, has not only been disapproved off, by John Adams . . . but it has also decidedly been rejected by the Majority of the People.”).

Although this philippic vastly overstates Jefferson's sympathy for the unitary legislature, it confirms that radical arguments to curtail or abolish the Senate had largely disappeared, and that their disappearance was linked to the constitutional remodeling of France in 1795. There was no longer any danger of the Jeffersonians amending the Constitution to diminish the Senate; in light of developments in France, his opponents jested, Jefferson would be more likely to declare himself First Consul.<sup>1110</sup>

But like a collapsing star, the unicameral idea in America expired with a final, brilliant flare. In the autumn of 1796 the Irish expatriate poet Michael Forrest drafted a "proposed plan of reformation in the laws and governments of the United States," packaged with a detailed refutation of Adams's newly-prominent *Defence*. He explained the impetus behind the project at the outset: "If a reformation does not shortly take place in government, this treaty-making power may gradually rise to such a height as to overthrow the whole constitution."<sup>1111</sup> But Forrest did not rest content with a chastened Senate, deprived of its executive functions and stripped of its supervision over foreign affairs. Instead, he provided for a single national council with plenary power over executive, judicial, and legislative affairs. According to Article XIII and XIV of the instrument, "The National Code being thus established, all courts of justice shall be abolished; the President of the United States shall give up his authority to congress, and congress shall dissolve, and yield up their authority to the sovereign people . . . [and] a National Council shall

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<sup>1110</sup> Cf. the judgment of DUGALD STEWART, 2 LECTURES ON POLITICAL ECONOMY 433 (Sir William Hamilton ed., Edinburgh, T. Constable 1856) (1801) ("the general sense and experience of the American politicians is now decidedly in favour of a division of the Legislature, as analogous as their circumstances enabled them to make it, to that which exists in the Constitution of England"). This is not, of course, to say that proposals to remodel the Senate disappeared entirely from the American intellectual scene; see, e.g., James Thomson Callender, 1 THE PROSPECT BEFORE US 170 (Callender, Richmond 1800) (proposing that the upper chamber be elected according to population).

<sup>1111</sup> MICHAEL FORREST, THE POLITICAL REFORMER 15 (Phila., W.W. Woodward 1797) ("Having now plainly shown that a *small minority* in congress, can prevent a *very large majority* from making wise and wholesome laws . . . and consequently, that the government needs a reformation...").

annually be appointed.” Forrest pointed to the Jay Treaty as definitive evidence of the pathologies that arise from a balanced constitution:

The sixteenth article unites all the powers of government in the National Council; namely, the legislative, judicial and executive. Of the advantages which would result from this union of powers, the United States have had a recent example in the treaty of amity, commerce and navigation, concluded with his Britannic Majesty, in opposition to the general will of the house of representatives. Can the head of an individual, because he is President of the United States, be supposed to contain more wisdom than the whole house of representatives? If not, why should his bare opinion, approved only by two thirds of the senate, be sufficient to make laws in *defiance* of the whole house of representatives, and the largest minority that could possibly be in the senate?<sup>1112</sup>

Forrest’s blueprint makes clear how different transatlantic radicalism was from classical American “Anti-Federalism,” with its orientation towards state sovereignty and the virtues of small republics.<sup>1113</sup> In Forrest’s utopia, the states would be districts subordinate to the sovereign National Council, the backwards obscurities of the common law would be replaced by a legible and highly-articulated national code, and the death penalty would be abolished. But he reserved his most severe censure for what he called the “disguised aristocracy” of the Senate: “it is a model of the house of lords in England, with only some trifling exceptions, and may one day, if a reformation does not take place in our government, be the ruin of this country.”<sup>1114</sup> Forrest was particularly scandalized that, according to the arcane rules of the Senate quorum, as few as nine eminent personages might stand in the way of a vital act of legislation or else rewrite the constitution in the guise of international agreements. Enough, he exclaimed, with this “checking gentry”—the example of France is manifest proof that a republic can flourish in its absence. “The French republic has organized a frame of government, as useful to society as it is honorable to humanity; and this government has *no principal personage*...But [Adams], though he speaks

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<sup>1112</sup> *Id.* at 29.

<sup>1113</sup> See, e.g., SAUL CORNELL, *THE OTHER FOUNDERS: ANTI-FEDERALISTS AND THE DISSENTING TRADITION IN AMERICA* 11 (1999) (“Anti-Federalists agreed on the need to resist greater centralization of authority. Their response included three components: federalism, constitutional textualism, and support for a vigorous public sphere of political debate.”).

<sup>1114</sup> FORREST, *supra* note 100, at 13.

prophetically positive...could not foresee the French revolution.”<sup>1115</sup> And yet Forrest himself displayed no awareness that the French constitution had been revised to include precisely the kind of upper chamber he now ranted against. The rise of the Directory and the partial resuscitation of the mixed constitution in France meant that radical programs of centralization and democracy could no longer plausibly present themselves as having been tested in the crucible of real politics.

Forrest’s remarkable *pannomion* for America—a combination criminal code and constitutional program—rhymed with the work of another transatlantic radical, one who would also set himself in opposition to the “ultra-aristocrats” of the Federalist Party.<sup>1116</sup> While the American Revolution raged across the ocean, Jeremy Bentham repeatedly attempted to arrange an audience with Benjamin Franklin in Paris, praising him in a fulsome 1780 letter as a “benefactor of mankind,” and arranging to send him both his *Fragment on Government* and the *Principles on Morals and Legislation*. Bentham expected that Franklin would be receptive to his ideas, noting optimistically in a letter to his brother that Franklin was already deeply engaged in the reading of Helvétius.<sup>1117</sup> And while Bentham never made Franklin’s acquaintance, when he ultimately turned to constitutional theory in the second decade of the 19<sup>th</sup> century his prescription turned out to be startlingly similar to that of Franklin, the Girondins, and Benjamin Franklin Bache: a weak executive and a unicameral house. Indeed, one of Bentham’s final obsessions was

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<sup>1115</sup> *Id.* at 58.

<sup>1116</sup> Jeremy Bentham to John Quincy Adams (June 19, 1826), in 10 WORKS OF JEREMY BENTHAM 555 (John Bowring ed., Edinburgh, W. Tait 1843). For a review of Bentham’s voluminous, mostly one-sided correspondence with JQA, see James E. Crimmins, *From an “Ultra-Democrat” to an “Ultra-Aristocrat”*, 43 BOOK COLLECTOR 229 (1994).

<sup>1117</sup> Jeremy Bentham to Samuel Bentham (Oct. 27, 1778), in 2 CORRESPONDENCE: 1777-80, at 183 (Timothy L.S. Sprigge ed., 1968), (“Here you see a ladder by which my Code, and upon occasion either your pretty person or mine might be hoisted up to Franklin. Code might do for America when settled.”); Jeremy Bentham to Etienne Dumont (May 18, 1802), in 7 CORRESPONDENCE: JANUARY 1802 TO DECEMBER 1808, at 40 (J.R. Dinwiddy ed., 1988); Chilton Williamson, *Bentham Looks at America*, 70 POL. SCI. Q. 543 (1955).



the collation and publication of his many fragmentary writings on the “needlessness” and “perniciousness” of upper chambers, however selected or organized. The July Revolution prompted the publication of *Jeremy Bentham to his Fellow-Citizens of France, on Houses of Peers and Senates*, in which he inveighed against the over-complications of senates, which stop the machinery of government and permit sinister interests to block vital legislation.<sup>1118</sup> And in response to the election of Andrew Jackson in the United States on a populist-democratic platform, Bentham hastily assembled a selection of his critical writings on bicameralism and dispatched them to Jackson under the title *Anti-Senatica*. The document is classic Bentham—carefully reasoned, haphazardly organized, and frequently repetitive. But it demonstrates Bentham’s awareness that, in censuring the upper chamber as a dangerous imposition on democracy and castigating the (now defunct) “federal party . . . who really ought to be called the British aristocratic party,” he was writing in a tradition. “It has been long the opinion of many thinking men in the Union along with Franklin that the Senate was a useless and perhaps a hurtful incumbrance and every day increases the number of the party that are against the Senates; so that the probability is that the progress of civilization will lop off that unnecessary complication of power and make the Legislature one and indivisible.”<sup>1119</sup> But Bentham had misjudged the moment; the core of Jackson’s constitutional program was the expansion of executive prerogative, not the reform or abolition of a Senate where he enjoyed majority support. His missive to Jackson went unanswered.

Inspired in part by Bentham, the populist demand for unicameralism was revived at every significant revolutionary juncture in Europe—in the Spanish constitutions of 1812 and 1820, the

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<sup>1118</sup> JEREMY BENTHAM, *TO HIS FELLOW-CITIZENS OF FRANCE, ON HOUSES OF PEERS AND SENATES* (London, Robert Heward 1830).

<sup>1119</sup> JEREMY BENTHAM, *ANTI-SENATICA* 264 (Sidney Bradshaw Fay & Harold Underwood Faulkner eds., Northampton, MA, Smith College 1926) (1830).

Neapolitan constitution of 1820, the Portuguese constitution of 1822, the provisional Greek constitution of 1822,<sup>1120</sup> and most famously the French constitution of 1848.<sup>1121</sup> Abolition of the upper house was strenuously opposed by Alexis de Tocqueville, 19<sup>th</sup> century France's *américaniste par excellence*, who pointed to the United States Senate as evidence that bicameralism was something more than a stalking horse for aristocracy. In an impassioned speech before the Constituent Assembly, he cited the failure of unicameralism in Pennsylvania as a warning to contemporary republican reformers, alluding to the definitive judgment he had rendered a decade earlier in *Democracy in America*:

Alone among the united republics, Pennsylvania initially attempted to establish a single assembly. Franklin himself, carried away by the logical consequences of the dogma of popular sovereignty, concurred in this measure. But the legislators were soon forced to change the law and constitute two houses. This marked the final consecration of the division of legislative power. Hence the need for several bodies to share the work of legislation may now be taken as a demonstrated truth.<sup>1122</sup>

For Tocqueville the ignominious end of the 1776 Pennsylvania constitution and America's return to the time-tested virtues of British bicameralism were sufficient proof that the unicameral experiment in France was bound for disaster. But popular sentiment in Paris and the departments was incandescently against a second parliamentary chamber, and when the Constitution of the Second Republic was ratified on 4 November 1848, it placed the full legislative power in a single

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<sup>1120</sup> See RICHARD STITES, *THE FOUR HORSEMEN: RIDING TO LIBERTY IN POST-NAPOLEONIC EUROPE* 37-46, 75-79 (Spain), 92-98 (Portugal), 152 (Naples), 219-20 (Greece), 13, 46 (Bentham) (2014).

<sup>1121</sup> See Malcolm Crook, *Elections and Democracy in France, 1789-1848*, in *RE-IMAGINING DEMOCRACY IN THE AGE OF REVOLUTIONS* 83, 96. (Joanna Innes & Mark Philp eds., 2013).

<sup>1122</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 95 (Arthur Goldhammer ed., trans., 2004) (1835). Cf. ALEXIS DE TOCQUEVILLE, *SOUVENIRS* 266-73 (Marie Joseph Pierre Christian de Clerel comte de Tocqueville ed., Paris, Calmann Lévy 1893). See also the complementary judgments in Michel Chevalier, *Étude sur la Constitution des États-Unis VI*, *JOURNAL DES DÉBATS POLITIQUES ET LITTÉRAIRES* (Fr.), 11 juillet 1848 (“j’ose dire que si Franklin et Turgot revenaient au monde, ces deux hommes de bien...ils nous conjureraient l’un et l’autre de préférer les deux Chambres”); Pellegrino Rossi, *Du gouvernement parlementaire*, in 2 PELLEGRINO ROSSI, *MÉLANGES D’ÉCONOMIE POLITIQUE, D’HISTOIRE, ET DE PHILOSOPHIE* 140 (Paris, Guillaumin 1857) (1822), (“chez une nation enfin où la question des deux chambres a été vivement agitée par des hommes du premier mérite, et où le système d’une chambre unique fut, pendant quelque temps du moins, défendu par Franklin: c’est la constitution anglaise qu’on retrouve, c’est son système des deux chambres qui y est presque universellement consacré”); 1 FRANCIS LIEBER, *ON CIVIL LIBERTY AND SELF-GOVERNMENT* 211 (Phila., Lippincott, Grambo & Co. 1853) (“A few attempts were made in our earlier times to establish a single house, for instance in Pennsylvania, but the practical and sober sense of the Anglican people soon led them back to the two houses.”).

assembly elected through universal suffrage. Franklin's spectre still haunted Tocqueville's republic.

The architects of 1848 paid scarcely more attention to Tocqueville's second warning: that a president elected by national plebiscite would reproduce all the most dangerous features of a monarchy. Given the shallow roots of republicanism in France and the monarchical habits that were still deeply ingrained in the public psyche, "what could a President elected by the people be other than a pretender to the crown?"<sup>1123</sup>

### **The Radical Executive**

Ten months before being elected America's third president, Thomas Jefferson penned a letter to his friend Harry Innes, a federal judge in the newly-formed Sixth Circuit of Kentucky. "The republican world," he wrote, "has been long looking with anxiety on the two experiments going on of a *single* elective Executive here, & a *plurality* there." He was referring to France, whose Directory had been summarily dismissed by the coup of 18 Brumaire just a few months earlier. Jefferson, noting the preeminent position of Napoleon in the new regime, announced that the great experiment had come to a close. The American model was triumphant.<sup>1124</sup>

Today this outcome may seem to have been preordained. But that is assuredly not how it seemed to republicans on both sides of the question—and both sides of the Atlantic—in the decade between 1791 and 1799. During that period France was without question the world's greatest military power, and the uncomfortable fact that it was a republic headed by an executive committee unsettled the core theoretical assumptions of the Article II presidency. Radical journalists used the French example to promote the "democratization" of the executive, while the

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<sup>1123</sup> TOCQUEVILLE, *SOUVENIRS*, *supra* note 111, at 275. Tocqueville favored indirect election by an electoral college, with election by the Assembly in all cases where no candidate gained an absolute majority.

<sup>1124</sup> Thomas Jefferson to Harry Innes (Jan. 23, 1800), in 31 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 336 (Barbara B. Oberg ed., 2004).

Federalists in power reacted with nervous apprehension, seeing in these calls for constitutional reform the sharp glimmer of the guillotine. To these publicists and politicians brimming with venomous invective and quick to attribute the most pernicious motives to their opponents, the contest between the singular and plural executive was very live indeed, and the stakes were nothing less than the future of the republic.

Surveying the national scene at the close of the Washington presidency, a penman calling himself CODRUS noted sadly that “[t]he United States have travelled with inconceivable velocity towards practical Monarchy.”<sup>1125</sup> For the opposition figures clustered around the *Aurora General Advertiser*, the Washington and Adams presidencies marked a dark time in the history of the republic. Their disaffection stemmed in large part from disagreement about foreign policy, in particular what they saw as a scandalous alliance with monarchist Britain and an overt hostility towards newly-republican France.<sup>1126</sup> But the *Aurora* did not confine its critique of Washington and Adams to policy matters; it had a constitutional politics as well, one that focused largely on the dangers posed by the Article II presidency. In the radical imagination the Federalists were a “party become British,”<sup>1127</sup> matching unstinting support for Britain abroad to a desire to impose royal government at home.<sup>1128</sup> And the presidency was the instrument through which this

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<sup>1125</sup> Codrus, *To the Members of the House of Representatives of the United States*, AURORA, Dec. 7, 1795.

<sup>1126</sup> AURORA, Mar. 14, 1798 (“the conduct of our executive has been a series of ill offices towards France”); *Extracts from the British Annual Register*, AURORA, Dec. 6, 1797, at 2 (“the English party . . . had acquired an undue preponderance in the counsels of the Executive power of the United States”); JOEL BARLOW, THE SECOND WARNING, OR STRICTURES ON THE SPEECH DELIVERED BY JOHN ADAMS 8 (Paris, Social-Circle 1798) (Adams “might have been seduced by Pitt . . . to become, if not his property, at least one of his many tools now working mischief in the United-States”); 2 MÉMOIRES DE LAREVELLIÈRE-LÉPEAUX, PUBLIÉS PAR SON FILS 258 (Paris, J. Hetzel 1873) (1823) (Adams “servait l’Angleterre dans son projet de monarchiser l’Amérique, d’y fonder une aristocratie, et, en conséquence, de la faire rompre avec la France démocratique”).

<sup>1127</sup> BENJAMIN FRANKLIN BACHE, REMARKS OCCASIONED BY THE LATE CONDUCT OF MR. WASHINGTON, at iii (Phila., Benjamin Franklin Bache 1797).

<sup>1128</sup> See Agricola, VA. GAZETTE & GEN. ADVERTISER (Richmond), Sept. 4, 1793, in 1 PAPERS OF JAMES MONROE 642 (Daniel C. Preston, ed., 2003) (“It is well known that there exists among us a powerful faction,

metamorphosis from republic to monarchy might be achieved.

The principal contention of the radical faction was that the Article II executive was incompatible with republican liberty. The elevation of one citizen above all others, they alleged, destroys political equality and encourages citizens to look to the chief magistrate as something more than a man, rather a fetish object for a new civil religion. This was explicitly how John Adams envisioned the office in his *Discourses on Davila*, published in the first years of the Washington administration:

In elective governments, something very like this always takes place towards the first character. His person, countenance, character, and actions, are made the daily contemplation and conversation of the whole people . . . When the emulation of all the citizens looks up to one point, like the rays of a circle from all parts of the circumference, meeting and uniting in the centre, you may hope for uniformity, consistency, and subordination; but when they look up to different individuals, or assemblies, or councils, you may expect all the deformities, eccentricities, and confusion, of the Polemic system.<sup>1129</sup>

Washington did not fail to meet these expectations. He traveled with “an entourage of chamberlains, aides-de-camp, and masters of ceremonies.” He was carried by an elaborate coach attended by servants in livery. He spent a small fortune entertaining. And he was habitually addressed as “Your Excellency” by members of his inner circle.<sup>1130</sup> Washington understood that

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who are opposed to the great principles of the French revolution, and who are likewise much more attached to the constitution of England, than to that of their own country. To introduce this latter form of government here, upon the ruin of our own, is believed to be the ruling motive of this party in all its councils; and [that] the dissolution of our connection with France would greatly forward that end, must be too obvious to admit of any controversy.”); Callender, *supra* note 101, at 18 (“The Parisian preference of Dr. Franklin was to be revenged. The British constitution was to be defended, not only by three tiresome volumes, but by the sixteen United States.”). || For the French perspective, see LE PATRIOTE FRANÇAIS, 29 Floréal an VI, at 958 (denouncing President Adams for his belligerence against France, and boasting that “la véritable réponse à John Adams sera bientôt datée de Londres, écrite sur les débris du palais de Saint-James.”).

<sup>1129</sup> *Discourses on Davila* (1790), in 6 THE WORKS OF JOHN ADAMS 256 (Charles Francis Adams ed., Bos., Little & Brown 1856).

<sup>1130</sup> GORDON S. WOOD, EMPIRE OF LIBERTY 76-77 (2009). Cf. BACHE, *supra* note 116, at 2 (“One of the usurpations which at one period was meditated by their party as a remedy to its fears, was that of rearing up again the fragments of the British throne in America, and placing upon it Mr. George Washington.”). See also WILLIAM FINDLEY, REVIEW OF THE REVENUE SYSTEM ADOPTED BY THE FIRST CONGRESS, IN THIRTEEN LETTERS TO A FRIEND 100 (Phila., T. Dobson 1794) (“monarchical etiquette”); Paine, *Letter to George Washington*, *supra* note 72, at 217 (“You commenced your Presidential career by encouraging and swallowing the grossest adulation, and you traveled America from one end to the other to put yourself in the way of receiving it. You have as many addresses in your chest as James II.”); Thomas Jefferson to Thomas Paine (June 19, 1792), in 20 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 31, at 312 (“we have a sect preaching up and panting after an English constitution of king, lords, and commons, and whose heads are

he was a symbol of the Union incarnate and wanted to enhance the dignity of his office as a way to bind together the new nation. But radical republicans, reaching back to the vocabulary and analytic categories of the 17<sup>th</sup> century, were apt to descry the outlines of something more ominous. William Duane recalled Milton in his attack on the “PERSONAL IDOLATRY” of Washington, meaning both the cult of the president as savior of his country and the regal splendor with which he carried himself in office.<sup>1131</sup> Thomas Paine, who made no secret of his affinity for the Commonwealth tradition, inveighed against “the debasing idea of obeying an individual.”<sup>1132</sup> From Dublin, an anonymous correspondent compared the veneration of Washington to the Roman practice of worshipping statues of Augustus.<sup>1133</sup> But it was Casca, a pamphleteer named for one of Caesar’s assassins, who most convincingly translated Commonwealth iconoclasm into a thoroughgoing condemnation of America’s single executive magistrate:

What shall America be called the seat of equality, when the people have in spite of nature exalted one man above his species; when the people in the language of oriental baseness, ascribe to one man, because he is invested with power, every splendid quality of which the human soul is susceptible; when the people insensible to the divine charms of liberty, incapable of making her the

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itching for crowns, coronets and mitres”); John Monroe to James Monroe (Mar. 23, 1794), in 1 PAPERS OF JAMES MONROE, *supra* note 117, at 703 (“...even the Pompous President, seem[s] absorbed in extending Prerogative, & founding Aristocracy, on which the Ambitious hope to build Monarchy.”); Michel Ange Bernard Mangourit to Edmond-Charles Genet (No. 17) (Oct. 5, 1793), in THE MANGOURIT CORRESPONDENCE IN RESPECT TO GENET’S PROJECTED ATTACK UPON THE FLORIDAS 1793-’94 601 (Frederick J. Turner ed., Washington City 1898) (“Whashington sera bientôt rélégué de son olimpe...La Sentillation des 15 Etoiles gênoit Ses yeux, il projettoit de s’en emparer pour S’en faire une Couronne”).

<sup>1131</sup> JASPER DWIGHT OF VERMONT [WILLIAM DUANE], A LETTER TO GEORGE WASHINGTON 48 (Phila., Benjamin Franklin Bache 1796). *Cf.* Belisarius, *To the President of the United States*, AURORA, Sept. 11, 1795 (lambasting Washington for his “six years, administration, which has been trumpeted to the world by your idolatrous worshipers”); CITOYEN DE NOVION [JAMES SULLIVAN], THE ALTAR OF BAAL THROWN DOWN 10 (Bos., Chronicle-Press 1795) (“you can never erect the Altar of Baal in United America, or set up your idol called a *mixed monarchy* here”).

<sup>1132</sup> Paine, *Letter to George Washington*, *supra* note 72, at 214. For the ideological background to these arguments about royalty and divinity, see Eric Nelson, *Talmudical Commonwealthmen*, 50 HIST. J. 809 (2007).

<sup>1133</sup> *Extract of a letter from a gentleman in Dublin...*, AURORA, May 2, 1796, at 7.

sole object of their love and admiration, have made one man a colossus, before which they prostrate themselves...<sup>1134</sup>

The quasi-royal pageantry of the Washington administration was often likened to the ceremony and hierarchy of Catholicism, a trope familiar from Roundhead attacks on throne and altar.<sup>1135</sup> Thus the pseudonymous Atticus could lament that “he who will not subscribe to the divine attributes of the President is excommunicated . . . with all the fury which characterized the vatican of Hildebrand,” encouraging his fellow freemen to look past the finery of Washington’s “pontifical robes” to see the unworthy pretender beneath.<sup>1136</sup> Under the sign of Federalism, American statecraft had become indistinguishable from Romish priestcraft. The fear that a unitary executive would take on prelatical or regal trappings—what Duane called “incense and tinsel”—was only theoretical during the debates over ratification, making it an easy target for Federalist satire.<sup>1137</sup> But as this anxiety reappeared in the Federalist era, republicans responded by echoing the most extreme anti-royalist language in the Commonwealth tradition, when they weren’t hinting that Washington might be given a crown outright.<sup>1138</sup> Just as Federalists had eagerly drawn on the literature of enlightened kingship in their petitions for a unit

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<sup>1134</sup> Casca, *AURORA*, reprinted from the PETERSBURG INTELLIGENCER, Jan. 27, 1796, at 2. Cf. Thomas Paine to James Madison (Sept. 24, 1795), in 2 COMPLETE WRITINGS, *supra* note 30, at 1381 (“Mr. Washington appears to be to[o] fond of playing the old Courtier”); EDWARD CHURCH, THE DANGEROUS VICE 1 (Boston, Thomas & Andrews 1789) (“To mimic monarchs, on his mimic throne”).

<sup>1135</sup> This language was adopted by French republicans as well; see *Survey of the Principles underlying the Draft Constitution*, in CONDORCET: FOUNDATIONS OF SOCIAL CHOICE AND POLITICAL THEORY 190 (Iain McLean & Fiona Hewitt eds., trans., Brookfield, VT, Elgar 1994) (“We can no longer allow those in power to be surrounded with the kind of pomp that inspires in weak-minded men an almost inebriated respect, followed by blind devotion...”).

<sup>1136</sup> Atticus, *To the Freemen of the United States*, *AURORA*, Oct. 24, 1795, at 2. Cf. INDEP. CHRON. (Boston), Dec. 12, 1793 (“Neither is it any part of their creed, that any MAN by the investure of the sacred papal purple,—a royal crown or sceptre, or even the PRESIDENCY OF A FREE REPUBLIC, is become infallible...”).

<sup>1137</sup> See, e.g., THE FEDERALIST NO. 69, at 334 (Alexander Hamilton) (Terence Ball ed., 2003).

<sup>1138</sup> Portius, *To the President of the United States*, *AURORA*, Sept. 24, 1795 (“the history of the society of which you are President [the Order of the Cincinnati] might perhaps furnish some proofs to shew with how little delicacy a crown might be offered to a Washington”). This seems to refer to the rumor, circulated by Paine, that Adams had proposed making the presidency hereditary in the Washington family. Paine claimed to have heard this from the painter John Trumbull in 1787, though he would not air the charge publicly for a decade. See Paine, *Letter to George Washington*, *supra* note 72, at 217.

executive, radicals returned to the themes and ideas of the English regicide to make the case that a sole executive was as antithetical to true republicanism as the Stuart monarchy.<sup>1139</sup> Or the Bourbon monarchy—Benjamin Bache grimly joked in the *Aurora* that Louis XVI had been executed for pretending to “*presidential omnipotence*.”<sup>1140</sup>

The second radical argument looked outwards rather than inwards; it posited that the monarchical form of the presidency was both symptom and cause of a disturbingly close connection with Britain. It was a symptom because Article II had been drafted by men like Hamilton who made no secret of their admiration for British forms of government, including prerogative powers (like the veto) that the mother country had long since abandoned. And it was a cause because the unitary nature of the executive they designed allowed the Federalists to monopolize foreign relations and cement strong ties (if not a formal alliance) with England. Once again, the major catalyst for dissent was the 1794 Jay Treaty; its revelation in 1795 prompted howls of outrage, and calls for Washington to withdraw from public life.<sup>1141</sup> Opposition writers considered the negotiation process a case study in the defects of the American constitution, concentrating in particular on the unchecked sway that the treaty-making power accorded the executive. Since by the terms of the Constitution treaties were the “law of the land,” the President (with the aid of a pliant Senate) might exploit international agreements to circumvent the basic guarantees of popular liberty, imposing taxes and dispensing with jury trials at his

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<sup>1139</sup> Harrison Gray Otis, *Speech, On the Amendment to the Foreign Intercourse Bill*, *MIRROR* (Concord, NH), Apr. 24, 1798 (“But when, in the same breath, he heard insinuations comparing the President of the United States to Charles I, and the mild exercise of a constitutional power to the odious claim of ship money, in that reign...”).

<sup>1140</sup> *To the House of Representatives of the State of Pennsylvania*, *AURORA*, Jan. 6, 1797.

<sup>1141</sup> Typical of the radical temperament was the open letter to Washington published in the *Aurora*, written by an author calling himself “Scipio”: “You now, like Cæsar, stand on the banks of the Rubicon. Cato gave him good council. *Let him, says he, disband his legions, and come and submit himself to the Senate...Retire immediately*; let no flatterer persuade you to rest one hour longer at the helm of state.” See Scipio, “To the President of the United States,” *Aurora*, Nov. 20, 1795, 2.



leisure. Not even “the king of England with his lords spiritual and temporal,” remarked an outraged James Holland in Congress, would dare to so boldly remake the British constitution at a stroke—there, treaties required the assent of the Commons.<sup>1142</sup> One author, writing under the *nom de plume* “Franklin”, insisted that if the President could initiate negotiations for peace on his own authority, he would vitiate the Congressional prerogative of making war and peace. “A President with *tribunitian* powers,” he warned, alluding to Caesar Augustus, “is a political basilisk at whose look Liberty must expire.”<sup>1143</sup> Michael Leib, the fiery Philadelphia orator and close ally of William Duane, dismissed the treaty provision of Article II as “a solecism in a republican government,” and punctuated his harangue by reading an entire chapter from the British radical William Godwin’s *Political Justice* on the floor of the Pennsylvania House. The chapter was titled “Of a president with regal powers.”<sup>1144</sup>

It is not by accident that this early critique of the royalist presidency was articulated most forcefully by Edmond-Charles Genet, France’s highly controversial ambassador to America for 1793. Genet’s father was a distinguished diplomat and one of the editors of the Versailles-backed propaganda journal *Affaires d’Angleterre et de l’Amérique*. Between 1776 and 1777 the *Affaires* published the first French translation of the early American state constitutions, the Declaration of Independence, and Paine’s *Common Sense*, alongside commentaries that attacked Britain’s

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<sup>1142</sup> Rep. Holland, *Floor Speech of 14 Mar. 1796*, AURORA, Mar. 22, 1796, at 2.

<sup>1143</sup> LETTERS OF FRANKLIN ON THE CONDUCT OF THE EXECUTIVE 48 (Phila., E. Oswald 1795). See ELKINS & MCKITRICK, AGE OF FEDERALISM, *supra* note 46, at 834 n.112, for the authorship controversy, which remains unresolved. A writer calling himself “Sidney” published a short note in the INDEP. CHRON. of May 7, 1795 celebrating these letters, and expressing his belief that “the great statesman and philosopher” would have approved of them. Cf. Pittachus, “Letter II,” *Aurora*, Sept. 18, 1795, 2 (“If the President is to be paramount to the general will, we certainly do not live in a republic”).

<sup>1144</sup> MICHAEL LEIB, *supra* note 5, at 14. Leib prefaced the passage by declaiming, “No wonder it should have been the opinion of GODWIN that monarchy had one refuge left in the United States.” The quote is from 2 WILLIAM GODWIN, AN ENQUIRY CONCERNING POLITICAL JUSTICE 13 (London, G.G. & J. Robinson 1793). Cf. GAZETTE U.S., Aug. 11, 1801 (“...the Editor of this Gazette is *no Jacobin*, no eulogist of the *Justice* of Godwin or the *morality* of Paine, or of the *economy* of Franklin”).

mixed constitution as a vicious solecism.<sup>1145</sup> The bulk of these American sources were furnished by Franklin,<sup>1146</sup> and many of them were translated by Genêt, occasionally with the assistance of his prolific young son.<sup>1147</sup> Their letters radiate mutual admiration; Edmé called Franklin “the Cato of America,” while Franklin warmly recommended Edmond to the American expatriate community at Nantes, where he resided for a time to improve his English.<sup>1148</sup> Having been formed in the cauldron of transatlantic republicanism, it is hardly surprising that, after 1789, the younger Genet gravitated towards the constitutional tenets of Franklin and his Girondin circle. His predecessor, Louis-Guillaume Otto, would recollect that Genet “found...the establishment of a second chamber and an independent executive power” in America both “strange and tyrannical.”<sup>1149</sup> And from the moment of his arrival in Charleston, South Carolina, in April 1793, Genet sought to rekindle the cold torch of radical constitutionalism in America. As he announced in a dispatch to his superiors:

America is lost to France if the purifying fire of our revolution does not pierce its breast. The men who made the revolution of 1775 are now excluded from almost all employment by the governing faction, itself

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<sup>1145</sup> MANUELA ALBERTONE, *NATIONAL IDENTITY AND THE AGRARIAN REPUBLIC* 130 (2014). His co-editors included Rochefoucauld and Turgot; see “Affaires d’Angleterre et de l’Amérique,” in *Dictionnaires des Journaux, 1600-1789* (Jean Sgard et al. eds., 1991), 7.

<sup>1146</sup> Edmé-Jacques Genet to Benjamin Franklin (Jun. 5, 1778), in *26 PAPERS OF BENJAMIN FRANKLIN* 592 (William B. Wilcox ed., 1987) (“You won’t be surpris’d at my offer for the translation of any article or Essay you may want to be publish’d and at my readiness to print them”); Benjamin Franklin to Edmé-Jacques Genet (1778 or after), in *28 PAPERS OF BENJAMIN FRANKLIN* 310 (Barbara B. Oberg ed., 1990). (“All American papers will be sent to Mr Genet this Evening.”); John Adams and Benjamin Franklin to Edmé-Jacques Genet (Oct. 23, 1778), in *27 PAPERS OF BENJAMIN FRANKLIN* 617 (Claude A. Lopez ed., 1988) (“Messrs. Franklin and Adams present their Compliments to Mr. Genet, with Thanks for communicating the Papers, which they will read and consider, and furnish him with such Notes upon them as may occur.”).

<sup>1147</sup> Condorcet to Thomas Jefferson (Dec. 21, 1792), in *24 PAPERS OF THOMAS JEFFERSON* 760 (John Catanzariti ed., 1990) (“Son pere et lui ont été en france les premiers amis des americains parmi les employés du gouvernement. Ce Sont eux qui nous on fait connaitre votre declaration d’indépendence, votre declaration des droits.”).

<sup>1148</sup> Edmé-Jacques Genet to Benjamin Franklin (Apr. 10, 1778), in *26 FRANKLIN, supra* note 138, at 271; Benjamin Franklin to Jonathan Williams, Jr. (July 8, 1779), in *30 PAPERS OF BENJAMIN FRANKLIN* 71 (Barbara B. Oberg ed., 1993).

<sup>1149</sup> LOUIS-GILLAUME OTTO, *CONSIDÉRATIONS SUR LA CONDUITE DU GOUVERNEMENT AMÉRICAIN* 12 (Gilbert Chinard ed., Princeton Univ. Press 1945) (1797).

nothing other than the former *Tories, Aristocrats, English* naturalized since the war, and ambitious...men who have forgotten, in their fever of pride and their thirst for wealth, that their existence depends on the people, whose happiness should be their sole concern.<sup>1150</sup>

To the horror of the Federalist Party, the charismatic minister lived up to these words. His debarkation in Charleston was followed by a triumphant tour of the eastern seaboard, where large crowds applauded as he encouraged the formation of popular societies modeled on the *Club des Jacobins*, and recruited privateers to spread the contagion of revolution to Canada, Louisiana, and Florida.<sup>1151</sup> His objective was broader than merely advancing the strategic interests of the *r epublique*; as one scholar puts it, he hoped to galvanize “the formation of an oppositional public sphere” in America that would place true republicans in power, and relegate the ruling Anglophiles to the margins.<sup>1152</sup> Its nucleus was a plan to remake America’s constitution in the light of France’s example. For Genet, Washington’s regal ambitions were self-evident; he informed his superiors in Paris that Washington admired France’s royalist constitution and “wished to give himself the title of constitutional monarch of the Americans.” This aspiration was thwarted, he continued, only by France’s insurrection of August 10, 1792, which overthrew the crown and thus “aborted these liberticidal projects” in America. “The [American] people...intuited this conspiracy” against their liberty, he added, “and this is the principal reason...for the stunning popularity that we enjoy here today.”<sup>1153</sup> For Genet, the two revolutions were so intertwined as to be almost indistinguishable. And this implied that France’s

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<sup>1150</sup> Genet to Minister of Foreign Affairs (No. 13 A) (Aug. 7, 1793), in *Correspondence*, *supra* note 37, at 248.

<sup>1151</sup> Federalists were deeply unsettled by Genet’s tour, which they perceived as an attempt to precipitate a revolutionary uprising against the government. *See, e.g.*, John Adams to Benjamin Rush (June 20, 1808), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-5242> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (Washington saved from a *coup d’ etat* only by an outbreak of yellow fever in Philadelphia); PETER PORCUPINE, HISTORY OF THE AMERICAN JACOBINS 28 (Philadelphia William Cobbett Nov. 1796) (“things seemed as ripe for a revolution here, as they were in France, in the month of July, 1790”).

<sup>1152</sup> ROBERT J. ALDERSON JR., THIS BRIGHT ERA OF HAPPY REVOLUTIONS 20-24 (2008).

<sup>1153</sup> Genet to Minister of Foreign Affairs (No. 13 B 2nde Lettre) (Aug. 7, 1793), in *Correspondence*, *supra* note 37, at 252.

democratic rupture of 1792/93—the displacement of limited monarchy with “a constitution that annihilates all privilege, and which quiets all prejudice”—might find an American echo.<sup>1154</sup> Genet worked tirelessly to bring his vision of legislative supremacy to fruition. He presented his ministerial credentials to Congress rather than the President, and argued publicly that Washington had overstepped his constitutional limits in issuing the neutrality proclamation,<sup>1155</sup> drawing a series of sharp rebukes from Thomas Jefferson, America’s Secretary of State.<sup>1156</sup> Genet’s retort made clear his mistrust of presidentialism: Washington’s authority over embassies “was not in any sense defined by the Constitution, and no example justifies it.”<sup>1157</sup> Washington, for his part, was convinced that Genet’s ultimate goal was to alter America’s “frame of

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<sup>1154</sup> Edmond Charles Genet to Thomas Jefferson (Sept. 30, 1793), in 27 PAPERS OF THOMAS JEFFERSON 165 (John Catanzariti ed., 1997).

<sup>1155</sup> Edmond Charles Genet to Thomas Jefferson (Sept. 18, 1793), in 27 PAPERS OF THOMAS JEFFERSON, *supra* note 144, at 126-27 (“Persuadé que la souveraineté des Etats-unis reside essentiellement dans le Peuple et sa representation dans le Congrès; Persuadé que le pouvoir exécutif est le seul qui ait été confié au President des Etats-unis; Persuadé que ce magistrat n’a point le droit de décider des questions dont la Constitution reserve particulièrement la discussion au Congrès...les actes proclamations et decisions de Mr. Le President des Etats unis relativement à des objets qui necessitent par leur nature la sanction du Corps legislatif.”). Genet was hardly alone in this critique; consider James Madison to Thomas Jefferson (June 19, 1793), in 26 PAPERS OF THOMAS JEFFERSON 324 (John Catanzariti ed., 1995) (“it seems to violate the form and spirit of the Constitution, by making the executive Magistrate the organ of...war and peace”).

<sup>1156</sup> Thomas Jefferson to Edmond Charles Genet (ca. July 16, 1793), in 26 PAPERS OF THOMAS JEFFERSON, *supra* note 145, at 513 (“When you shall have had time to become better acquainted with the constitution of the US. you will become sensible that...the Executive is the sole organ of our communications with foreign governments.”); Thomas Jefferson to Gouverneur Morris (Aug. 16, 1793), in *id.* at 708 (“Mr. Genet...undertakes also to direct the civil government, and particularly, for the Executive and Legislative bodies, to pronounce what powers may, or may not, be exercised by the one or the other.”); Thomas Jefferson to Edmond Charles Genet (Oct. 2, 1793), in 27 PAPERS OF THOMAS JEFFERSON, *supra* note 144, at 176 (“by our constitution all foreign agents are to be addressed to the President”); Thomas Jefferson to Edmond Charles Genet (Nov. 13, 1793), in *id.* at 144, at 414 (“I had observed to you that we were persuaded that...the error in the address had proceeded from no intention in the Executive Council of France to question the functions of the President, and therefore no difficulty was made in issuing the commission...But...you personally question the authority of the President, and in consequence of that have not addressed to him the commissions of Messrs. Pennevert and Chervi.”).

<sup>1157</sup> Edmond Charles Genet to Thomas Jefferson (Dec. 3, 1793), in 27 PAPERS OF THOMAS JEFFERSON, *supra* note 144, at 480. Cf. Vox Populi, *From the Daily Advertiser*, NEW HAMPSHIRE JOURNAL, Dec. 13, 1793, at 2 (“...who dares to say to our beloved President that he is unacquainted with the constitution, and a stranger to the duties of his office”).

government,” in collaboration with sympathetic radicals enamored of Jacobin government.<sup>1158</sup> But Genet professed only to be vindicating the classical whig values of American constitutionalism, which he had absorbed while translating American political documents for his father in 1776 and 1777. Having helped to transmit America’s republican ideals to monarchist France, he now hoped to reëxport them to the United States in an age of Anglophilia and Federalist reaction.<sup>1159</sup> When Genet was dismissed from office in 1794, his deputy nevertheless congratulated him on having helped to forestall “Columbian monarchy” in the New World; an editorialist in South Carolina thanked him for exposing the “dangerous tendency” of the treaty clause, and predicted a coming “revision of our federal constitution” along French lines.<sup>1160</sup>

In the aftermath of the Jay Treaty, American radicals, too, increasingly sought to discredit the presidency as an imposition of British, monarchical values on a republican body politic. Benjamin Franklin Bache declared that the British constitution had “in too many respects served as the model and prototype of those in America,” and took the presidency as clear evidence that his fellow citizens had not yet “sufficiently *un-monarchized* their ideas and habits.”<sup>1161</sup> Paine thought that the presidential veto was “copied from the English government, without ever

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<sup>1158</sup> Thomas Jefferson, *Notes of a Conversation with George Washington* (Aug. 6, 1793), in 26 PAPERS OF THOMAS JEFFERSON, *supra* note 145, at 628 (“I could undertake to assure him...that there was not a view in the Republican party as spread over the US. which went to the frame of the government...that the manoeuvres of Mr. Genet might produce some little embarrassment, but that he would be abandoned by the Republicans the moment they knew the nature of his conduct”).

<sup>1159</sup> Genet to Jefferson (Sept. 18, 1793), *supra* note 145, at 128 (“lorsqu’on se rappellera que placé à l’age de 12 ans dans le bureau des affaires etrangeres c’est moi qui ai eu l’avantage de contribuer a pénétrer les Français de l’esprit de 1776. et de 1777. en traduisant dans notre langue sous la direction de mon Pere, alors chef de Bureau, la plupart de vos loix et des ecrits de vos politiques”).

<sup>1160</sup> Magnourit to Genet (No. 46) (Mar. 23, 1794), in MANGOURIT CORRESPONDENCE, *supra* note 123, at 640; Tom Thumb, COLUMBIAN HERALD (S.C.), Mar. 10, 1794.

<sup>1161</sup> BACHE, *supra* note 116, at 56, 38.

perceiving the inconsistency and absurdity of it, when applied to the representative system.”<sup>1162</sup>

And Casca, seeming to channel a century of Whig pamphleteers, thundered that the unitary executive was:

incompatible with the spirit of a Republican constitution, and on precedents derived from the corrupt government of England, a government contrived to produce the greatest possible quantity of wealth, splendour and power, for the *governors*, and to excite the superlative degree of credulity and ignorance in the *governed*.<sup>1163</sup>

Jefferson voiced the same dissensus, albeit more cautiously, observing in his personal notes that a body of “Monocrats” had attempted to hijack the Philadelphia Convention in 1787 “with a hope of introducing an English constitution.” “In this,” he continued, “they were not altogether without success,” and this faction was now attempting to replicate the British political economy of debt and patronage centered in the executive branch, in order to give the office of the presidency “a kingly authority.”<sup>1164</sup> These complaints took on a new urgency in the context of the Anglo-French conflagration. The fact that the most outspoken partisans of England were also the strongest proponents of a unitary executive made it easy to imagine an international anti-republican conspiracy seeking to roll back popular government at home and abroad:

There cannot be a doubt that there exists a disposition in certain characters in the United States to assimilate our government to that of Great Britain—Monarchy is the idol of these men, and republicanism of course, their abhorrence and hence the several attempts to establish a monarchy instead of a republic...To alienate this country from the Republic of France is the first step towards this their favourite object, and hence the dark picture which has been held up of the men and the measures of the Revolution; hence the assertion that the treaty with France is no longer binding.<sup>1165</sup>

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<sup>1162</sup> *Constitutional Reform*, in 4 WRITINGS OF THOMAS PAINE, *supra* note 5, at 457. Cf. *Executive Veto*, AURORA, Oct. 22, 1795, at 2 (reporting that journalists and deputies to the National Convention of 1795 were of the opinion that “the American veto [as they called it] was the first step to a throne”).

<sup>1163</sup> Casca, AURORA, *reprinted from* the PETERSBURG INTELLIGENCER, Oct. 16, 1795, *supra* note 35, at 2.

<sup>1164</sup> Jefferson, *Notes on the Letter of Christoph Daniel Ebeling*, *supra* note 31, at 507. Crucially, even in these private notes Jefferson expressed confidence that the Anglicizing tendencies could be reversed through new elections rather than constitutional revisions.

<sup>1165</sup> SAMUEL BRADFORD, THE IMPOSTOR DETECTED, OR A REVIEW OF THE WRITINGS OF “PETER PORCUPINE”, at xii (Phila., Free & independent literary press 1796). Cf. INDEP. CHRON. (Boston), *reprinted from* Nat. Gaz., Apr. 26, 1793 (“British habits, British affections, ideas, attachments, prejudices, & even resentments have vegetated rapidly in this country since the late war. No better evidence of this truth is wanting than the torren of abuse daily poured forth from many of the American presses, by the vile tols of British ministerialism and British king worshipers, against the republicans and patriots of France...If the enlightened citizens of America know how to venerate the French, and would not be considered in Europe...as degenerate from the manly

An anonymous “Democrat” struck the same chord in a May 1798 attack on John Adams. He saw the stratagem plainly: “by artfully stirring up the Americans to hate the French, it was intended that they should hate their cause also; that both Frenchmen and Republicanism might be *wrapt up in one general undistinguished ruin.*”<sup>1166</sup> That same month a polemicist with the pseudonym Nestor ripped the President for his free use of presidential power as well as his continuing fealty to England, both hallmarks of his “predilection for monarchical government.” Nestor went so far as to issue a second Declaration of Independence, cataloguing Adams’s abuses and blunders as confidently as Jefferson had once done for George III.<sup>1167</sup> And “Oeneiophilus” put the matter even more sharply in drawing up a bill of indictment against Alexander Hamilton, who stood accused of a long-term design to extinguish republican government in North America:

Is not one of the objects of that FACTION to knit America and Britain inseparably together; to foster every possible change in the federal government that favors a MONARCHY; to PAVE THE WAY THERETO; to strengthen the hand of the government, by an *alliance* with the *crown* of *Great Britain*; and finally by the *aid of that government* to ESTABLISH A MONARCHY IN AMERICA?<sup>1168</sup>

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principles of 1776, they will turn with abhorrence from the men, who, by the aid of the press, are endeavoring to prejudice the community against France, and to excite the sympathy of the public to favor of royalty”); Don Quixote, IMPARTIAL HERALD (Suffield, CT), *reprinted from* AM. MERCURY, Mar. 28, 1798 (“the design of approximating our government in spirit and substance at least, if not in form, to that of England, which they consider as the most perfect and finished work of political wisdom . . . its consequences have clearly been our present disputes with France”). || For parallel French rumors, see *Variétés*, COURIER DE L’EGALITÉ, Dec. 22, 1795, at 6 (“on y a découvert...qu’il existoit dans l’Amérique septentrionale un complot pour renverser la constitution des États-Unis”); [Michel-Ange] Gouvain, Letter (Apr. 2, 1797), in *The Memoir of James Monroe, Esq.* (Charlottesville, 1828), 35 (“...respecting the President, General Washington...They painted him as a man intoxicated with ambition, and who would finish by usurping soon all the powers with which he was invested.”).

<sup>1166</sup> A Democrat of Massachusetts, *To John Adams, President of the United States*, AURORA, May 30, 1798, at 2. Regarding the suspect sympathies of Washington, see Valerius, “To the President of the United States,” *Aurora*, Dec. 1, 1795, 2 (“The President intimate with French aristocrats, and cold and distant to French Democrats.”).

<sup>1167</sup> Nestor, *The Catastrophe, Number IX*, AURORA, May 17, 1798, at 2. The name was no doubt selected as an homage to Franklin, who was eulogized by Sieyès as “the Nestor of America” in the official condolences sent by France to the United States in March 1791. || One Federalist newspaper in 1799 reported---it is hard to say how seriously---that radicals now believed that the president had “entered into co-partnership with John Q. Adams, his son, now Minister at Berlin, for the express purpose of importing Monarchy, by wholesale” by marrying “one of the daughters of the King of England.” This would have required a divorce from Louisa, whom JQA married in 1797. See “Genuine Wit. Extracts from Daggett’s Oration. New-Haven, July 4, 1799,” reprinted in [New Hampshire] *Oracle of the Day*, Nov. 2, 1799, 1-2.

<sup>1168</sup> *A Dream*, AURORA, Jan. 22, 1796, at 5.

This clique, Casca warned, had simply transferred its allegiance from “the hereditary dominion of George the third” to the prerogative presidentialism of George Washington. The figurehead had changed, but the substance remained. “Their creed is obedience. Their resolution to be slaves.”<sup>1169</sup> For radicals of the late 18<sup>th</sup> century, Federalist nostalgia for the monarchy and Federalist sympathy for England seemed part and parcel of the same anti-popular conspiracy. Meanwhile, defenders of the Hanoverian regime in England admitted that America had achieved an impressive level of “splendour and prosperity” for a republic, but attributed its success to “the official power and personal virtues of her illustrious president, who under the semblance of private independence, virtually exerts the prerogatives of a monarch.”<sup>1170</sup>

It is not surprising, then, that the *soi-disant* commonwealthsmen of the *Aurora* would urge a renovation of constitutional forms as well as a realignment of international policy. Bache took the lead, writing that “[t]o prevent any other man also from availing himself of a like dangerous ascendancy to do mischief, it is necessary to revise the federal and several of the state constitutions, *without delay*.” He gave this call to constitutional reform a patriotic tincture: “America, if it *remains* a nation, must soon call for an American system of government.”<sup>1171</sup> And what he considered “American” government was no great mystery: a return to the classical republican tradition of a unicameral house and a divided executive that had prevailed in Pennsylvania from 1776 until 1790.<sup>1172</sup> The jingoistic language was a clever feint, since in

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<sup>1169</sup> Casca, *AURORA*, reprinted from *PETERSBURG INTELLIGENCER*, Oct. 16, 1795, *supra* note 35, at 2.

<sup>1170</sup> REV. JOHN MOIR, *POLICY OF PREVENTION: OR THE WORTH OF EACH, THE SAFETY OF ALL* 142 (London, John Moir 1796).

<sup>1171</sup> BACHE, *supra* note 116, at 65, iii.

<sup>1172</sup> *Cf.* BRADFORD, *supra* note 138, at xiv (“All however will not be secure until the late Revolution which gave independence and republicanism to our country can be brought into disgrace, until sunshine patriots, old Tories, and proscribed traitors shall have superseded the patriots of 76; hence the traduction of Dr. Franklin, Mr. Paine and others—If the agents of the Revolution can be covered with opprobrium, the Revolution itself will be implicated”).



conceiving an alternative to British models of executive leadership, Bache and his compatriots drew heavily on the theory and practice of the French Republic.<sup>1173</sup>

Radicals put forward a plethora of proposals for constitutional revision in the decade after ratification, many of which centered on the aristocratic tendencies of the Senate and the constitutional infirmity of the treaty power. But the necessity of amending the Article II presidency was the *idée fixe* of the republican mind; its powers of patronage and its monarchical overtones made its dissolution a precondition of obtaining “a *pure republican administration*.”<sup>1174</sup> Initially, these authors framed the case for executive plurality in the classical republican idiom of 1776:

In short, search every corner of the globe, and wherever a single executive head, loaded with prerogatives and influence, is to be found, there, also, will power and corruption take up abodes! Man is man; that is, he is a weak, frail being; give him money, and he wants more, give him adulation and he wants more . . . The more he gets the more rapacious he grows.<sup>1175</sup>

That the division of the executive was a prophylactic against abuse of office and tyrannical usurpation had been a commonplace of republican theory since the Roman consuls.<sup>1176</sup> And the aversion to unchecked power, which feeds on itself like Shakespeare’s universal wolf, was a major leitmotif of the 18<sup>th</sup> century Whig literature that supplied much of the intellectual scaffolding for the revolution.<sup>1177</sup> But by 1793 this ancient prudence seemed outmoded to those who expected America to join the great game of trade and empire; in a world of commercial nation-states jostling for advantage, “energy in the executive” was essential, not anathema, and

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<sup>1173</sup> A Bristol correspondent (NAT’L GAZETTE, Oct. 17, 1792) perceptively connected the two: “It is the fashion among the high flying gentry of England to rail at the Jacobins of France--Let not the *word* frighten you, on your side of the water—they are the same as *your whigs of seventy six*.”

<sup>1174</sup> Ostracism, *Remarks on the Above*, AURORA, Oct. 31, 1795, at 2.

<sup>1175</sup> *Remarks on the French Constitution, By a citizen of America*, ALB. REG., reprinted from the N.Y.J., Oct. 21, 1793, at 2.

<sup>1176</sup> See, e.g., DIONYSIUS OF HALICARNASSUS, ROMAN ANTIQUITIES IV, at 73 (Earnest Cary ed., trans., Harvard Univ. Press 1939) (7 BCE).

<sup>1177</sup> See BERNARD BAILYN, IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 55-93 (Enlarged ed., 1992).

state success was the ultimate test of constitutional wisdom. A rigorous republicanism that seemed to promise poverty and isolation as the price of liberty appeared distinctly less attractive.<sup>1178</sup> This was the crack in classical republican theory that Hamilton and Jay had turned into a gaping fissure. And having been routed in that earlier debate, exponents of the republican tradition seized eagerly on the mounting evidence from beyond the Atlantic that a plural executive posed no obstacle to the acquisition of international hegemony.

We can detect an abrupt tonal shift among American defenders of the multiplex executive, timed to the realization that the French Republic had become the most formidable military power in Europe. Maneuvers on the continent were closely observed in America; as early as 1793, the *Charleston State Gazette* observed with satisfaction that the unbroken record of French military victories was beginning to unnerve the American “aristocracy,” who had hoped that France’s wild republicanism would be decisively refuted on the battlefield.<sup>1179</sup> In 1794, James Monroe, America’s ambassador to France, wrote to President Washington that “[t]he successes of this republic have been most astonishingly great.”<sup>1180</sup> By 1795 sympathetic writers and activists could scarcely speak of French statecraft without lapsing into panegyric:

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<sup>1178</sup> See ISTVAN HONT, *JEALOUSY OF TRADE* 17 (2005). It is telling that the Citizen of America presented an extensive catalogue of nations “which boast of energetic executives”—Holland, England, Spain, Sardinia, Prussia, Russia, and Turkey among them—all of which he airily dismissed as despotic, while boasting that the newly-formed French Republic stood “as a striking” exception to the rule. The author intended to win France esteem, but in a modernist context dominated by concerns of empire and competition, France’s exceptionality served only to confirm its folly.

<sup>1179</sup> *To the Democrats (Called Jacobins)*, ST. GAZETTE (Charleston), Dec. 17, 1793, at 5 (“the jacobins of France, our preceptors, are at last the conquerors of the infernal league . . . To describe to you the disorder and confusion that that intelligence diffused into the minds of our aristocrats, is something impossible”).

<sup>1180</sup> James Monroe to George Washington (Nov. 19, 1794), in 3 PAPERS OF JAMES MONROE 151 (Daniel C. Preston & Marlena C. DeLong, 2009). Cf. James Monroe to James Madison (Feb. 18, 1795), in 3 *id.* at 232 (“Fortunately the successes of this republic have been great even beyond the expectation of everyone.”); Thomas Jefferson to William Short (Jan. 3, 1793), in 25 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 15 (John Catanzariti ed., 1992) (“There are in the U.S. some characters of opposite principles . . . The successes of republicanism in France have given the coup de grace to their prospects, and I hope to their projects.”); *To the Legislature of Massachusetts, May 31, 1794*, in 4 WRITINGS OF SAMUEL ADAMS 364 (Harry Alonzo Cushing ed., 1908) (“crowned the astonishing efforts of its defenders with astonishing victories”).

We have seen the flag of the French Republic displayed in triumph from the straits of Calais to the margin of the Mediterranean; from the Pyrennian mountains, to the fens of Batavia. In the irresistible career of Freemen, we have observed the hitherto invincible order of the German phalanx broken and destroyed by the armed citizens of France. We have seen with ineffable delight the proud spirit of British maritime usurpation humbled, and even the sovereignty of the ocean contested with such determined courage, as to leave but little doubt of future victory.<sup>1181</sup>

By 1797, even dedicated opponents like James McHenry, the hawkish U.S. Secretary of War, were forced to concede that the “triumphs of France have been such as to confound and astonish mankind.”<sup>1182</sup> The myriad conquests of France’s republican armies sent shockwaves through the Atlantic world, undermined the credibility of the Federalist elite, and supplied a jolt of credibility to longtime advocates of plurality in the executive. Thus Paine could lecture America in the fall of 1797 that:

[e]stablishing, then, plurality as a principle, the only question is, What shall be the number of that plurality? Three are too few either for the variety or the quantity of business. The Constitution has adopted *five* ; and experience has shewn, from the commencement of the Constitution to the time of the election of the new legislative third, that this number of Directors, when well chosen, is sufficient for all national executive purposes . . . That the measures of the Directory during that period were well concerted is proved by their success; and their being well concerted shews they were well discussed ; and, therefore, that *five* is a sufficient number with respect to discussion ; and, on the other hand, the secret, whenever there was one, (as in the case of the expedition to Ireland,) was well kept, and therefore the number is not too great to endanger the necessary secrecy.<sup>1183</sup>

Paine’s opponents gleefully mocked his seemingly arbitrary reasoning,<sup>1184</sup> but missed its sting.

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<sup>1181</sup> *An Address from the Massachusetts Constitutional Society (W.M. Cooper, President pro tem)*, INDEP. CHRON. (Boston), Jan. 5, 1795, at 1. Cf. Elbridge Gerry to John Adams (Apr. 25, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1946> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“The French republic, vastly more formidable than the monarchy, having detached from the coalition, Prussia, Spain, Holland, Sardinia, Naples, & a number of the German & Italian states & Principalities, has added several of them to her own scale, & has great influence over the rest, who are verging to the same point.”).

<sup>1182</sup> James McHenry to John Adams (Apr. 29, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1950> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS]. Cf. Alexander Hamilton to William Loughton Smith (Apr. 10, 1797), in 21 PAPERS OF ALEXANDER HAMILTON 31 (Harold C. Syrett ed., 1974) (“Externally we behold France most formidably successful...”). An April 12, 1797 meeting of a republican club in Philadelphia, organized to celebrate France’s military victories in Italy, featured toasts to “the memory of Franklin and Rittenhouse”, and “to Benjamin Franklin, Bache, and LIBERTY OF THE PRESS”. These toasts were followed with great interest in France; see Vincent Barbet du Bertrand’s newspaper L’ÉCHO DES CERCLES PATRIOTIQUES (Fr.), No. 3 (1797), at 15.

<sup>1183</sup> *Eighteenth Fructidor*, in 3 WRITINGS OF THOMAS PAINE, *supra* note 5, at 348.

<sup>1184</sup> JAMES CHEETHAM, THE LIFE OF THOMAS PAINE 114 (London, A. Maxwell 1817) (“The number which France had hit upon, and which I agree with him, is *quite sufficient*, he seems to think designed by *nature* for all governments, although human wisdom in no part of the world, except in France, has as yet adopted it.”).

America should carefully reproduce the French original, Paine insisted, because of its evident success in war and foreign affairs; that is to say, he was standing the Federalist theory of the executive on its head.<sup>1185</sup> If, as the authors of the *Federalist Papers* suggested, international competition is the final test of constitutional design, the miraculous sequence of French victories in the European theater demonstrated the evident superiority of its frame. Conversely, the weak and isolated position of the United States spoke to its *constitutional* and not merely its political infirmities. That, at any rate, was the thrust of the chilly letter Paine sent to James Madison in 1795—his prediction that “the states will see the necessity of shortening the time of the Senate and new modeling the Executive Department” follows directly from his observation that “America is falling fast into disesteem” in the courts of Europe.<sup>1186</sup> Paine’s effusive praise for the vitality of the French executive was mirrored in an essay on the Directory that appeared in England’s radical *Monthly Magazine* in 1796. Underscoring the many diplomatic and military achievements of the Directory, the *Monthly* contrasted its rapid resolution with the torpor of the British monarchy:

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*See also* N.Y. COM. ADVERTISER, Mar. 24, 1798 (“And will the reader believe that this celebrated man, has let himself down so very low, as to justify the choice of *Five*, as the number of the directory, from the analogy of nature, in giving to the human body, *five senses, five fingers and five toes!!!* This is certainly going beyond Lord Coke, in vindicating the number *Twelve* in a jury, from the same number of apostles and of signs in the zodiac”). Paine was committed to plurality in the executive, though there was nothing magical for him about the number five, and prior to the Constitution de l’an III and the triumphs of the Directory he had suggested that wars be overseen by a legislative-executive committee of seven members; *see* Thomas Paine, *Observations sur la partie de la Constitution de 1793*, in Bernard Vincent, *Cinq inédits de Thomas Paine*, in 40 REVUE FRANÇAISE D’ÉTUDES AMÉRICAINES 229 (1989) (Fr.).

<sup>1185</sup> As Richard Whatmore explains, it was a commonplace in the revolutionary era that the ultimate test of a constitution’s viability was the state’s capacity to wage war and conduct commerce effectively. This was the mantra not only of commercial modernists like Hamilton and Jay, but also of Thomas Paine, who insisted from 1776 forward that republics like America (and later, France) would inevitably triumph over the chaotic, corrupt “mixed” constitution of Britain on the battlefield. *See* Richard Whatmore, *Thomas Paine*, in CONSTITUTIONS AND THE CLASSICS 414, 432 (Dennis Galligan ed., 2015) (“Britain had to be defeated by France in war, because of the weakness of Britain Paine had identified since 1776 . . . and above all because of the superiority of France’s republican government”). *Cf.* J-P. BRISSOT DE WARVILLE, PLAN DE CONDUITE POUR LES DÉPUTÉS DU PEUPLE, at x (Paris 1789) (“L’Angleterre est jugée; ou elle reformera sa Constitution, ou elle perdra sa puissance.”).

<sup>1186</sup> Thomas Paine to James Madison (Sept. 24, 1795), in 2 COMPLETE WRITINGS, *supra* note 30, at 1381.

Avoiding the two extremes, and equally rejecting the supreme direction of “one,” and of “one hundred,” they have formed an executive of five, an idea well known to the Dutch, and with which we ourselves are familiar in the management of our different boards, particularly the admiralty, the most, perhaps the *only*, flourishing establishment among us, and which—owing to its republican form—neither the degeneracy of the times, nor the corruption of the other departments, nor even the notorious professional ignorance of its chiefs, have as yet bereft of its native vigor.<sup>1187</sup>

Among the many remarkable features of this paragraph we can list its equation of “vigor” with “republican form,” and its equation of “republican form” with a multiplex executive. It is only because the admiralty had kept its traditional plural structure, the *Monthly* argued, that it had avoided the sclerosis that plagued the rest of England’s executive ministries. Like the Federalists, the *Monthly* agreed that the best model for civil government was the organization of the military, but it broke with a long chain of political thought in holding that the best military organization will have a fragmented, “republican” form, and not an autocratic, hierarchical one.

Benny Bache was reading from the same hymnal. He self-consciously appropriated Hamilton’s rhetoric of national security in stating that the Directory’s “vigor, secrecy, and celerity” made it “more than a match for *any* monarchy or for *any* aristocratical republic in Europe.” Indeed, he thought that the Directory had repeatedly out-manuevered the Washington administration, which Bache considered incompetent and pusillanimous in foreign affairs.<sup>1188</sup> As he reminded his audience, the American Revolution had been overseen by a rotating series of Congressional subcommittees, yet it had managed to deal a humiliating defeat to the world’s greatest empire. The Committee of Public Safety was a joint executive; would anyone suggest that it had lacked the dispatch to carry out its aims? The Directory conquered Corsica and Lombardy while the vaunted presidency, led by America’s greatest general, had struggled to

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<sup>1187</sup> *Original Anecdotes and Remains of Eminent Persons: The French Directory, in 1 MONTHLY MAG.* 800 (1796). *Reprinted as Account of the Present Directory of France, in SOUTH-CAROLINA WKLY. MUSEUM & COMPLETE MAG. ENT.*, Mar. 4, 1797, 261. *Cf.* John Thelwall, *Preface*, in WALTER MOYLE, *DEMOCRACY VINDICATED: AN ESSAY ON THE CONSTITUTION & GOVERNMENT OF THE ROMAN STATE* 39 (John Thelwall ed., Norwich, J. March 1796) (1699) (calling the Directory “the best organized executive power that ever existed”).

<sup>1188</sup> BACHE, *supra* note 116, at 38. *Cf.* Sidney, *ARGUS* (Wicasset, ME), June 22, 1795 (attacking the “pusillanimity” of the American executive in its conduct toward Britain).

tamp down the Whiskey Rebellion. “It has never been properly discussed in America,” Bache insisted, “whether vigor, secrecy, celerity, and the other fine things talked of by monarchists cannot be had otherwise than through a *monocrate* president.”<sup>1189</sup> And for Bache, Paine, and their radical allies, the French experience seemed to reopen a question that had seemed, until then, firmly settled. Rochefoucauld-Liancourt was struck by the new mood during his 1795 sojourn to Virginia: “the opposition party,” he recorded, “wishes to change the current constitution to restrict the power of the executive. They prefer the new French constitution...and see its durability as a point in favor of the amendment of the U.S. Constitution.”<sup>1190</sup>

The extent to which the French Republic had scrambled the terms of the debate can be measured by Noah Webster’s 1794 pamphlet *The Revolution in France*. Webster, an arch-Federalist, cleaved to the Hamiltonian dictum that “the Executive power must be vested in a single hand” to govern effectively.<sup>1191</sup> But confronted with evidence that the multicephalous

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<sup>1189</sup> BACHE, *supra* note 116, at 38. Cf. AN AMERICAN [JAMES SULLIVAN], AN IMPARTIAL REVIEW OF THE CAUSES AND PRINCIPLES OF THE FRENCH REVOLUTION (Boston, Benjamin Edes 1798) 64 (“The Directory of France consists of five members. Our’s under the old confederation, and in the time of the revolutionary war, consisted of about sixty, with powers to legislate, and execute. We were not destroyed or run away with, but maintained with unparalleled dignity, a glorious conflict.”).

<sup>1190</sup> DUC DE LA ROCHEFOUCAULD-LIANCOURT, 4 VOYAGE DANS LES ÉTATS-UNIS D’AMÉRIQUE, FAIT EN 1795, 1796 ET 1797, at 309 (Paris Du Pont 1799).

<sup>1191</sup> NOAH WEBSTER, THE REVOLUTION IN FRANCE 71 (N.Y., George Bunce 1794). The brochure was reprinted by order of the United States Congress, suggesting that Webster’s intervention was congenial to the ruling Federalist majority. Cf. John Adams to Elbridge Gerry (May 3, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1957> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“Your Brief of the formidable Position of France is very true as it appears, at present: but Intelligence of the surest kind which is not laid before the public shews it to be all hollow at home and abroad.”). It was not only American champions of order who found themselves disconcerted by the unprecedented military success of the French Republic; Joseph de Maistre lamented in 1797 that “Conquests by the French have drawn a great deal of attention and created illusions about the prospects of their government; even the best minds are dazzled by the glamour of these military successes, and so they do not at first perceive to what degree these successes have nothing to do with the stability of the Republic . . . Did the Constitution of 1793 receive the seal of longevity from its three years of victory? Why should it be otherwise for that of 1795? . . . It suffices for me to indicate the falsity of the argument that *the republic is victorious, therefore it will last*. If it were absolutely necessary to prophesy, I would rather say that *war keeps it alive, therefore peace will kill it*.” JOSEPH DE MAISTRE, CONSIDERATIONS ON FRANCE 59 (Richard Lebrun trans. and ed., 1994) (1797).

French government was as well-administered as any in Europe<sup>1192</sup> (in 1793-94 it had organized the *levée en masse*, suppressed an uprising in Lyon, and triumphed decisively at the Battle of Fleurus), he changed tack. The crux of Hamilton's argument in Federalist 70 had been that the compound executive was unsuited to "critical emergencies of state."<sup>1193</sup> For Webster, on the other hand, emergencies rendered an active executive superfluous, since crises transform even the most indolent governments into powerful motors of activity:

France cannot enjoy peace or liberty, without a government, much more energetic than the present constitution would be, without the aid of danger without and a guillotine within. The moment France is freed from external foes, and is left to itself, it will feel the imbecility of its government. France now resembles a man under the operation of spasms, who is capable of exerting an astonishing degree of unnatural muscular force; but when the paroxysm subsides, languor and debility will succeed.<sup>1194</sup>

Some French sympathizers were inclined to agree with this assessment. A writer for Boston's *Independent Chronicle*, for instance, defended the Jacobin program of rule by committee as an emergency measure, one that mimicked the structure of American government during the Revolutionary War. "It was owing to the energy and informed proceedings of Conventions and Committees, that the American Revolution was supported; and we ought not to condemn our allies for adopting our measures."<sup>1195</sup> Others put aside these caveats and simply marveled at the "energy and decision" of Jacobin government.<sup>1196</sup>

This grudging admiration for the French executive became even more pronounced under the

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<sup>1192</sup> See *Original Anecdotes*, *supra* note 160, at 802 ("they are, in all points of government, at least equal, if not superior, to any other cabinet in Europe").

<sup>1193</sup> THE FEDERALIST NO. 70, at 343 (ALEXANDER HAMILTON) (Terence Ball ed., 2003).

<sup>1194</sup> WEBSTER, REVOLUTION, *supra* note 163, at 35. Another tactic to deflect the awkward successes of France's plural executive was to dub it a monarchy in disguise, with great individuals like Robespierre ruling alone for short periods until being dethroned, executed, and replaced by the next despot in line. See Webster, AM. MINERVA, May 20, 1795, at 2 ("Until this, or some other system of checks, shall be adopted, France will be subject to monarchy – not indeed to hereditary monarchy for their reign will not generally last more than *six weeks*; but temporary monarchs, the Marats, the Robespierres, the Dantons, the Legendres, the Talliens of the day...").

<sup>1195</sup> *To the Rev. David Osgood (cont.)*, INDEP. CHRON. (Boston), Mar. 26, 1795, at 2.

<sup>1196</sup> INDEP. CHRON. (Boston), Oct. 21, 1793.

Constitution of Year III. The Boston lawyer William Tudor, a protégé and close friend of John Adams, was forced to concede after visiting Paris in 1798 that, “[d]etestible” as the French government might be,” it deserved “Credit for Decision and Promptitude”; he expressed hope that, under Adams’s firm leadership, the American government might match its energy.<sup>1197</sup> The rabidly anti-Gallic *New-York Herald* conceded that the French Directory had enjoyed remarkable success in war and foreign affairs and criticized it on the very different grounds that, being only suited to times of tumult and danger, it would be unable to build the kind of peaceful, enlightened civilization then being constructed in America. “Peace, ye blind admirers of French warriors and French victories! *Savages* are soon taught to be the *best of soldiers*, and the Goths vanquished the Romans.”<sup>1198</sup> The fractured French executive had proven itself well-suited to the bloody project of imperialist expansion, the *Herald* allowed, but the *jeu maudit* of conquest and empire was not worth the candle. It much preferred America’s “mild, peaceful, but energetic” presidency, overseeing a society devoted to liberty, industry, and the rule of law. As the Directory set France on a glide path towards continental dominion, defenders of the American model of executive power began to praise stability and moderation rather than energy and dispatch as the defining trait of sound government. Indeed, a surplus of energy and organization now appeared sinister, even in a republic; thus an American visitor to Paris in 1798 marveled with disgust that the Directory was “the most perfectly organized and most despotic executive that ever existed.”<sup>1199</sup> Indeed, it was common to hear Federalists—here the *Boston Centinel* was typical—complain that “[t]he *French Directory* are clothed with much more power than THE

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<sup>1197</sup> William Tudor, Sr. to John Adams (July 23, 1798), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-2752> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS].

<sup>1198</sup> Reprinted in WESTERN STAR (Stockbridge, MA), Apr. 24, 1797.

<sup>1199</sup> *American Jacobins in France*, ORACLE DAY (N.H.), Aug. 18, 1798, at 1.



PRESIDENT OF THE UNITED STATES.”<sup>1200</sup> Meanwhile, the *New-York Commercial Advertiser*, seeking to refute a minor point in one of Paine’s missives, made a striking admission: the unit executive might not be any more unitary than its plural counterpart:

It is not in *unity* of number, but in *unity of principle and views*, that party consists; and this *unity* will be formed as certainly in a Directory of *five*, as in an individual; nay, it would be as certainly formed, only with more intrigue and corruption, in an executive of *five hundred*.<sup>1201</sup>

If five Directors could be as unified as a single magistrate, the classical arguments in favor of a single magistrate that featured so prominently in the *Federalist Papers* were now outmoded. The Federalist theory of the unitary executive seemed to be buckling under the pressure of events.<sup>1202</sup> The willingness of Federalists to modify key tenets of their constitutional theory to meet the challenge of the French Directory is another confirmation that intellectual and political currents of the transatlantic world continued to inform the American discourse on executive power in the decade after ratification.

One of the most important transatlantic currents was a kind of paranoid style, defined by Bernard Bailyn as a “conviction on the part of the Revolutionary leaders that they were faced with a deliberate conspiracy to destroy the balance of the constitution and eliminate their freedom.” This perpetual vigilance against plots and conspiracies, an inheritance of radical Whig ideology, manifested itself in the highly circumscribed governors created by the newly-

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<sup>1200</sup> BOS. CENTINEL, July 16, 1796, at 2.

<sup>1201</sup> N.Y. COM. ADVERTISER, Mar. 24, 1798, at 2. Paine had contended that the presidency was more prone to partisanship than a polycratic executive, reasoning that one individual can head a party or bloc, but that five individuals cannot.

<sup>1202</sup> There were, of course, important exceptions, most notably John Adams and Thomas Jefferson. *See, e.g.*, John Adams to Abigail Smith Adams (Mar. 7, 1796), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/04-11-02-0055> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“they will find that their plural executive will be a fruitful source of division, faction, and civil war”); John Adams to Timothy Pickering (Oct. 31, 1797), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-2200> (“as a plural Executive must from the Nature of Man be forever divided this is a demonstration, that a plural Executive is a great Evil and incompatible with Liberty”). *Cf.* Thomas Jefferson to John Adams (Feb. 28, 1796), in 28 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 31, at 618 (“I fear the oligarchical executive of the French will not do. we have always seen a small council get into cabals & quarrels, the more bitter & relentless the fewer they are”).

independent colonies.<sup>1203</sup> And, as we have seen, the radical promotion of the plural executive in the 1790s was informed by a belief that the Article II presidency was a tool of Anglophile oligarchs, the cord meant to bind the democratic furies unleashed by the American Revolution. Stepping through the looking-glass, we see that the circles around Adams and Hamilton had convinced themselves that a parallel conspiracy was being hatched by the radicals. Just as Bache and Paine saw the unit executive as a harbinger of a permanent alliance with Britain and the restoration of monarchy under the title of “president”, Federalist leaders saw the plural executive as a stalking horse for subservience to a rising France and the importation of revolutionary terror to American shores.<sup>1204</sup>

The tocsin was sounded loudest by John Quincy Adams, then the ambassador to The Hague, in a series of increasingly urgent dispatches to his father in 1796 and 1797. When the French Directory suspended diplomatic relations with America in reaction to its drift towards England, the younger Adams saw it as a less-than-subtle insinuation that a third term for the Federalists would trigger a war. He surmised an attempt to meddle in the election of 1796 and to foment a civil war in America between the Northern and Southern states.<sup>1205</sup> But not content to vituperate

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<sup>1203</sup> BAILYN, *supra* note 150, at 144.

<sup>1204</sup> In the aftermath of the Whiskey Rebellion, with the memory of civil disorder fresh in the Federalist imagination, the Medford cleric David Osgood wrote that the men who denounced Washington as a despot and the Senate as an aristocracy “*almost wish for a revolution, and the guillotine of France, to punish such miscreants.*” DAVID OSGOOD, A DISCOURSE DELIVERED FEBRUARY 19, 1795, at 23 (Boston, Samuel Hall 1795). Fauchet reported, meanwhile, that Washington and Hamilton had likely “*faisoit susciter cette insurrection pour river les fers des Etats Unis,*” with the tacit support of English merchants. Joseph Fauchet to Commissioner of Foreign Relations (Politique No. 6) (Fructidor 19 An 2), in *Correspondence*, *supra* note 37, at 414. For an overview of conspiracy theorizing in the early republic, see Marie-Jeanne Rossignol, *L’obsession de la conspiration ou toute la vérité sur l’influence française aux États-Unis (1789-1800)*, in *L’AMÉRIQUE ET LA FRANCE: DEUX RÉVOLUTIONS* 131 (Élise Marienstras ed., 1993).

<sup>1205</sup> John Quincy Adams to Abigail Adams (Feb. 8, 1797), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 548 (“Their vexation at this proof that they were not able to make a President of the United States...”); John Quincy Adams to John Adams (Apr. 3, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-01-02-1379> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“a Southern republic must be formed in alliance with France . . . \She/ can send an army to support an assist \her/ allies of the New Republic”). Consider in this context the striking

France alone, JQA began to connect the dots between French plotting and American radicalism.<sup>1206</sup> In particular, he saw the radical demand for a plural executive as a deliberate stratagem to place America under the French yoke by dismantling its constitutional defenses. The “attack upon Washington” launched by Bache and his confederates, he assured his mother, “is a mere feint to cover an attack upon the Constitution.”<sup>1207</sup> And it was self-evident what part of the 1787 compact would be the first to be reinvented *à la français*:

The removal of the President, however effected in the tactics of the combined French and party powers, is to be followed by a plan for introducing into the American Constitution a Directory instead of a President, and for taking from the supreme Executive the command of the armed force. This hopeful project has been intimated to you in a former letter. How far it has been shaped and organized I know not . . . but of the design to bring it forward at the first favorable moment I have not the shadow of a doubt.<sup>1208</sup>

The accusation got more specific a year later. Writing to his father, now President Adams, Adams *filis* implicated Paine and the French statesman Jacques Necker in a plot to prostrate America through the drastic reconfiguration of its legislative and executive branches. In a sly

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judgment of De Francesco, *Federalist Obsession*, in *ATLANTIC WORLD*, *supra* note 39, at 249 (“...the Federalists” accusations were not entirely without foundation”).

<sup>1206</sup> John Quincy Adams to John Adams (Apr. 3, 1797), in *FOUNDERS ONLINE* (NATIONAL ARCHIVES), *supra* note 177 (“The french Government calculate that in the War they intend, the Eastern States will side with their Government, but that our Western Country and perhaps the Southern States will side with them.—Pain therefore is going “pour server ces étincelles d’embrâsement,” for which Madame Roland judged him so proper”). *Cf.* George Washington to David Stuart (Jan. 8, 1797), in *11 WRITINGS OF GEORGE WASHINGTON* 179 (Jared Sparks ed., Cambridge, Folsom, Wells, & Thurston 1848) (“...I send you a letter from Mr. Paine to me, printed in this city, and disseminated with great industry. Others of a similar nature are also in circulation. To what lengths the French Directory will ultimately go, it is difficult to say; but, that they have been led tot he present point by our own people, I have no doubt.”).

<sup>1207</sup> John Quincy Adams to Abigail Adams (Oct. 7, 1797), in *FOUNDERS ONLINE* (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-01-02-1552> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS]. *Cf.* John Quincy Adams to John Adams (Dec. 24, 1796), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-1813> (“no less than a Revolution in the Constitution of our Nation”). The earliest reference to this conspiracy is John Quincy Adams to John Adams (Dec. 29, 1795), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-1712> (“the scheme for dividing the American Executive . . . for the purpose of bringing forward in due time a change of men or of Government in our Country”).

<sup>1208</sup> John Quincy Adams to John Adams (Apr. 4, 1796), in *1 WRITINGS OF JOHN QUINCY ADAMS*, *supra* note 92, at 486. *Cf.* John Quincy Adams to John Adams (June 6, 1796), in *1 id.* at 492; Abigail Adams to John Quincy Adams (Dec. 2, 1797), in *FOUNDERS ONLINE* (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-01-02-1588> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“the design of these publications is to descry the Government of the united States, and to recommend one similar to the French constitution, with a Directory”).

turn-about of a charge that Paine often hurled at his father, he depicted Paine and Necker as indelibly imprinted with the habits and vices of monarchy:

But it is their uniform and constant policy, adopted from the monarchy under which they were bred, to weaken foreign nations by divisions. Their designs upon our Constitution have long since been known to you. Paine in his letter to General Washington has let them out by pledging himself to attempt to effect a change. Necker discovers himself to have the same disposition, as I have heretofore mentioned. The motive is obvious ; the only strength of the American government is in the attachment of the people to it, and in the constitution of the executive and Senate. By attacking, therefore, that part of the Constitution, they hope to render those branches of the government odious, and if they succeed, to give the finishing blow by assimilating them to their own Directory and Council of Elders. We must not imagine that these pernicious purposes are entertained only by the present prevailing party. They will soon get sick of popular elections themselves, and of a plural executive too. They have long been sliding their system of adulation from the *people*, and bringing it to bear upon the *armies* . . . But be that as it may, they will always have some pretext for distinguishing, as Necker has done in his book, between us and themselves; and the more convinced they may become of the imbecility inseparable from their present system, the more desirous they will be to recommend it to us.<sup>1209</sup>

This is a tidy summation of Federalist paranoia on the eve of the Quasi-War, and it speaks to the ongoing obsession with the plural executive among American elites. For JQA, radical journalists like Bache and Paine were de facto French agents—the “satellites of France” as Hamilton dubbed them<sup>1210</sup>—and their calls for a compound executive and an enervated Senate edged toward treason. The unitary executive was, in Adams’s understanding, the nation’s sword and shield; the “reform” of Article II would leave America defenseless. Indeed, in Adams’s fervid imagination the French were *already convinced* that the plural executive was a failure and wanted to export it to America as an act of political sabotage even as they prepared to abandon it themselves. Similarly, Adams fretted that the multiplication of chief magistrates would give a

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<sup>1209</sup> John Quincy Adams to John Adams (Sept. 19, 1797), in 2 WRITINGS OF JOHN QUINCY ADAMS 209 (Worthington Chauncey Ford ed., 1913). JACQUES NECKER, DU POUVOIR EXÉCUTIF (n.p., n. pub. 1792) was the locus classicus of the French *anglomane* theory of the executive. He gave the 1795 constitution and its multiple executive an extremely cautious endorsement in DE LA RÉVOLUTION FRANÇOISE (n.p., n. pub. 1796), while making clear his preference for the American presidency. Paine, on the other hand, was open about his dissatisfaction with the unit executive, and wrote Jefferson that “my princip[al mot]ive for wishing that you might be president, was, that [you might?] the better promote that alteration.” Thomas Paine to Thomas Jefferson (Apr. 1, 1797), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 57, at 343.

<sup>1210</sup> *A French Faction*, in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 155, at 452. Cf. *The Stand*, No. 1, *id.* at 384 (“A few, happily a contemptible few, prostituted to a foreign enemy, seem willing that their country should become a province to France. Some of these dare even to insinuate the treasonable and parricidal sentiment, that in case of invasion, they would join the standard of France”).

wealthy power like France “a more certain and effectual influence over our national Executive,” presumably by making it easier to install a cipher as one of the myriad members of a new American Directory.<sup>1211</sup>

Adams was not alone in his morbid assessment. His replacement as ambassador to the Netherlands, William Vans Murray, wrote him in 1799 that he was convinced by a recent meeting with the Massachusetts Jeffersonian Benjamin Hichborn that the objective of the republican party in America was now “a change of government in the United States,” an insurrectionary aim previewed by Fries's rebellion in Pennsylvania. “Their object is, as it has been, to Democratise the government, to *pluralise* the executive; to lodge much of its functions in the legislature,” and to “overthrow” the substance of the constitution.<sup>1212</sup> In 1798 Hamilton warned Washington, now in retirement at Mount Vernon, that “the powerful faction which has for years opposed the Government” was now readying a plan “to *new model* our constitution under the *influence* or *coertion* of France.”<sup>1213</sup> Washington passed the admonition on to Lafayette: “a party exists in the United States...to subvert the Constitution” by aligning itself with the Directory, while slandering Federalists as “Monarchists—Aristocrats—& Infractors of the Constitution; which, according to their interpretation of it, would be a mere cypher.”<sup>1214</sup>

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<sup>1211</sup> John Quincy Adams to John Adams (Aug. 13, 1796), in 2 WRITINGS OF JOHN QUINCY ADAMS, *supra* note 181, at 22.

<sup>1212</sup> CXIII. (May 3, 1799), in *Letters of William Vans Murray to John Quincy Adams, 1797-1803* (Worthington Chauncey Ford ed., 1914), 548-9. Vans Murray was a disciple of John Adams, and a close associate of Washington and Hamilton; his *Political Sketches* of 1784-87 carry a dedicatory epistle to Adams, and helped to inspire the latter's own *Defence of the Constitutions*.

<sup>1213</sup> Alexander Hamilton to George Washington (May 19, 1798), in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 155, at 467. Cf. [Alexander Hamilton], The Defence, No. I (July 22, 1795), in *Papers of Alexander Hamilton* (Harold C. Syrett, ed., 1973), 18: 480 (“there will always exist among us, men irreconcilable to our present national constitution...such men will watch with Lynx's eyes for opportunities of discrediting the proceedings of government...A treaty with Great Britain was too fruitful an occasion not to call forth all their activity.”).

<sup>1214</sup> George Washington to Lafayette (Dec. 25, 1798), *Papers of George Washington* (Retirement Series) (Edward G. Lengel, ed., 1999), 3: 282.

Fisher Ames called this confederacy “the Mazzei sect in America,” and associated its views with the exploded philosophies of Condorcet.<sup>1215</sup> This was more accurate than he could have known; in a 1796 letter to the scientist Giovanni Fabbroni, Mazzei connected the necessity of constitutional reform to his original constitutional program of 1787-88, developed in concert with Condorcet, and expressed optimism that their prescriptions would be taken up by a future convention:

As I foresaw the sleep (of liberty), as was seen in the public papers of America and may still be seen in my *Recherches historiques et politiques*, I flatter myself I am not mistaken in foreseeing a reawakening. Two of the three branches of *legislative power* which you say are part of the *present constitution*, comprise fewer than 30 individuals who soon will have no voice in deliberations. If the party described by Jefferson had delayed manifesting itself till after the present generation, it might perhaps have been one to be feared. But all it can do right now is to speed up the revision of the Articles of Confederation in which I hope those changes will be made that I indicated in my supplement and not a few of which were (even while I was writing in France) proposed for future revision by various States.<sup>1216</sup>

Two years later, a Federalist member of Congress railed against “the *French zealots*” overrunning the printing-presses, men “disappointed in fortune or politics” who had set in motion an intricate plot against the nation with the aid of the French government. Every newspaper and pamphlet clamoring against “British influence” had been carefully orchestrated by these projectors to sap the confidence of the people, and Paine in particular had been suborned by the Directory to “attack [Washington’s] private, as well as public character.” The great end of these machinations was to depict the Article II presidency as a cat’s paw for Britain, clearing the way for “the introduction of a Directory here instead of a President, in order effectually to establish their influence over us hereafter.”<sup>1217</sup> Like Adams, this Federalist stalwart

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<sup>1215</sup> *Laocoon. No. II, reprinted from the BOS. GAZETTE, in 2 WORKS OF FISHER AMES, supra note 41, at 123.*

<sup>1216</sup> Philip Mazzei to Giovanni Fabbroni (Nov. 12, 1796), in *Writings and Correspondence* (Margherita Marchione et al eds., 1983)

<sup>1217</sup> *Extract of a letter from a member of Congress to a gentleman of this town, dated 13<sup>th</sup> Feb. 1797, MD. HERALD, reprinted from VT. J., May 11, 1797, at 2. Cf. VERGENNES GAZETTE, reprinted from COLUMBIAN MIRROR, Nov. 29, 1798, at 4 (“there was a regular cooperation of the French faction here, and the French*

saw the constitutional critique of the radical faction as a prelude to constitutional coup d'état.

The roots of this anxiety are not hard to guess. Wherever France exerted political influence—Switzerland, Milan, the Netherlands—it replaced existing structures of governance with a constitutional architecture modeled after its own.<sup>1218</sup> The Thermidorean executive seemed to be spreading like a bacillus on the tip of French bayonets.<sup>1219</sup> And so as French designs for a sphere of influence in the Western hemisphere became more obvious, calls for an American Directory came to seem more threatening, the phantom footsteps of a fifth column. “The fate of Switzerland,” Francis Dana wrote darkly to Abigail Adams, “stares us in the face.”<sup>1220</sup> Many Federalists, scandalized by the politics and manners of the Pennsylvania radicals, fell down a

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rulers there to destroy and essentially change the present constitution, and to put the affairs of America under the guidance of men devoted to France”).

<sup>1218</sup> *The Stand, No. II* (Apr. 4, 1798), in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 155, at 396 (“the prominent original feature of her revolution is the spirit of proselytism, or the desire of new modelling the political institutions of the rest of the world according to her standard”); J. MALLET DU PAN, 1 THE BRITISH MERCURY 7 (London, T. Cadell Jun. 1799) (“A *constitution* arrives from Paris as the Alcoran was brought from Heaven”).

<sup>1219</sup> MARTYN LYONS, FRANCE UNDER THE DIRECTORY 211 (1975).

<sup>1220</sup> Francis Dana to Abigail Smith Adams (June 23, 1798), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-03-02-0109> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] Cf. Abigail Adams to John Adams (Apr. 15, 1796), in ADAMS FAMILY PAPERS: AN ELECTRONIC ARCHIVE (Mass. Historical Soc’y ed.), <http://www.masshist.org/digitaladams> (last accessed Oct. 7, 2016) (“take Warning from Holland poland and Geneva—”); Jonathan Bell to John Adams (June 5, 1798), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-2544> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“when a foreign Power has menaced the Independence of our Country and That as Venice and Genoa America shall no longer be read in the catalogue of nations”); Rufus King to John Adams (June 6, 1798), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-2550> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“The Fate of Switzerland is an instructive lesson to america”); John Quincy Adams to Abigail Adams (Jan. 9, 1798), in 2 WRITINGS OF JOHN QUINCY ADAMS, *supra* note 181, at 234 (“The proposal for establishing a Directory in America, like that of France is no new thing. They have given one to their Cisalpine Republic, prepared one which they still destine for their Batavian Republic, and are upon the point of forcing one upon Switzerland.”); John Adams to [Washington County Militia] (Jan. 4, 1799), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-3283> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“If the warning Voice of Venice, Geneva And Switzerland, and of the Batavian, Legurian and Cisalpine Republics had not been heard by Americans, they must have been destitute of all Understanding, as well as all Regard to their own Honor and Safety”); *The Stand, No. III* (Apr. 7, 1798), in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 155, at 406 (“France professing eternal hatred to kings was to be the tutelary Genius of Republics—Holland, Genoa, Venice, the Swiss Cantons and the United States, are agonizing witnesses of her sincerity.”).



rabbit hole of conspiracy theorizing.<sup>1221</sup> At its bottom was the Alien and Sedition law used to prosecute, among others, Benjamin Franklin Bache, who died of yellow fever in September 1798 while awaiting trial.<sup>1222</sup> His charge, not incidentally, was “libeling the President, & the Executive Government, in a manner tending to excite sedition and opposition to the laws.”<sup>1223</sup> In the final years of Federalist rule, the multiple executive had become a metonym for the radical crusade to democratize the new Constitution and a crystallization of the worst fears of the ruling elite.

But if the perceived successes of the Directory once again pushed the plural executive to the center of the national conversation, its ignominious end, amidst revelations of its chronic

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<sup>1221</sup> See, e.g., PENN. HERALD & YORK GEN. ADVERTISER, reprinted from AM. MINERVA, June 8, 1796 (linking the Francophile press to the Whiskey Rebellion, and to a more general French plot to make the Western United States a French protectorate). See also Abigail Adams to John Quincy Adams (July 14, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-02-02-1501> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“amongst the papers inclosed you will find Some of your Friend and old School mate Bene Baches virtuous Auroras . . . all the writers in that paper are said to be foreigners . . . incendiaries who kindle Flames where ever they go, and who for the peace of mankind, might be very readily consigned to the Element they delight in”); Abigail Smith Adams to William Smith (June 9, 1798), *id.* at <http://founders.archives.gov/documents/Adams/99-03-02-0070> (insisting that Benjamin Franklin Bache was recruiting a private army of Irishmen, with French support, in order to lead an uprising against the government); John Adams to Thomas Welsh (Jan. 19, 1797), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-1827> (speculating about the loyalty of Samuel Adams in the event of a French invasion); Deborah Norris Logan, MEMOIRS OF DR. GEORGE LOGAN OF STENTON 59, (Frances Logan ed., Phila., Historical Soc’y of Penn. 1899) (quoting the suggestion of the *Philadelphia Gazette* that the purpose of Logan’s 1798 mission to France was “to teach us the genuine value of true & essential liberty by re-organizing our government”).

<sup>1222</sup> See Abigail Smith Adams to Mary Smith Cranch (May 10, 1798), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-03-2-0014> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“Congress are upon an Allien Bill, this Bache is cursing & abusing daily, if that fellow & his Agents Chronical, and all is not Suspresd, we Shall come to a civil war. I hope the Gen’l Court of our State, will take the Subject up & if they have not a strong Sedition Bill, make one—before I close this I Shall Send to the post office”); Timothy Pickering to John Adams (July 24, 1799), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-3803> (“There is in the Aurora of this city, an uninterrupted stream of slander on the American Government . . . I shall give the paper to Mr. Rawle, and, if he thinks it libellous, desire him to prosecute the Editor.”); John Adams to Timothy Pickering (Aug. 13, 1799), *id.* at <http://founders.archives.gov/documents/Adams/99-02-02-3877> (“I do not think it wise to execute the Alien Law against poor Priestley, at present. He is as weak as water as unstable as Reuben or the Wind. His Influence is not an Atom in the World.”).

<sup>1223</sup> Quoted in JEFFREY L. PASLEY, THE TYRANNY OF PRINTERS: NEWSPAPER POLITICS IN THE EARLY AMERICAN REPUBLIC 98 (2001).



dysfunction, left it permanently marginalized in America.<sup>1224</sup> A New Hampshire newspaper crowed when the Batavian Republic scrapped its “clumsy and inadequate” directory in 1801, reveling in the triumph of the Napoleonic model over what it sarcastically termed the “sublime invention of a plural executive.”<sup>1225</sup> John Quincy Adams noted with satisfaction that Napoleon’s *coup d’état* and the monocratic *Constitution de l’an VIII* had utterly discredited radicals like Joseph Priestley, who as late as 1799 still held out hopes of reforming the American executive along French lines. “The plural executive,” he concluded, “is going out of fashion as much as the single legislature. Almost every principle upon which the Revolution was pretended to be founded is now formally renounced.”<sup>1226</sup> His mother registered approvingly that the “Jacobins in this Country have never been so compleatly foild.”<sup>1227</sup> And his colleague William Vans Murray predicted that the constitution of Sieyès and Bonaparte would spell the end of the radical movement in America: “The Anti’s have pinned their cause upon the triumph of the principles now formally abandoned by France...and the fall of these will greatly tend to the overthrow of those.” The dogmas and dreams of the philosophers—“rights of man, sovereignty of the

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<sup>1224</sup> As early as 1797, JQA could find the idea of the Directory as a model for the American executive mordantly funny. See John Quincy Adams to Abigail Adams (Oct. 7, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-01-02-1552> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“I confess that I was not a little diverted at reading the laboured and pompous panegyric upon the wisdom of the french Constitution in establishing a Directory of five persons, at a moment, when three of the five had just expelled and proscribed the other two”).

<sup>1225</sup> *Summary of European Events, No. II*, N.H. GAZETTE, July 7, 1801, at 1.

<sup>1226</sup> John Quincy Adams to Abigail Smith Adams (May 25, 1800), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-03-02-0677> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (adding that “it has afforded me some amusement, upon perusing Dr: Priestley’s Letters to the inhabitants of Northumberland, to see him cry up the french Directorial Constitution, as superior to that of the United States, for the very articles which the french have been the first to abolish”).

<sup>1227</sup> Abigail Smith Adams to John Quincy Adams (Feb. 8, 1800), *id.* at <http://founders.archives.gov/documents/Adams/99-03-02-0576>. Cf. Thomas Boylston Adams to John Quincy Adams (Feb. 1, 1800), *id.* at <http://founders.archives.gov/documents/Adams/99-03-02-0570>. (“Our systematic admirers of french fashions in politics have been much at a loss what comments to make upon the new order of things and the manner in which it has been brought about.”).

people"—had at last been put to rest.<sup>1228</sup> By 1811, Jefferson would feel confident enough to pronounce the question settled for all time:

The failure of the French Directory, and from the same cause, seems to have authorized a belief that the form of a plurality, however promising in theory, is impracticable with men constituted with the ordinary passions. While the tranquil and steady tenor of our single executive, during a course of twenty-two years of the most tempestuous times the history of the world has ever presented, gives a rational hope that this important problem is at length solved.<sup>1229</sup>

Some, like William Duane in America and Destutt de Tracy in France, would continue to press for an authentically “republican” executive, a collegiate body that eschewed the form and substance of royal power. But Paris no longer furnished a plausible counterpoint to the American model.

George Washington died in December 1799 following a brief illness. In Paris, Napoleon decreed ten days of mourning: a bust of Washington was placed in the Tuileries, and black crêpe was attached to the flags of the *Grande Armée*. Napoleon also arranged for an elaborate ceremony to be held on the steps of the Hôtel des Invalides and commissioned the *monarchien* poet Louis de Fontanes to deliver a eulogy. The speech rhapsodized the former president in lavish terms. Fontanes acknowledged the republican critique of the American presidency, which had been so prominent in the previous decade, but dismissed it as unimportant. If Washington occasionally indulged in pomp and splendor, it was not out of vanity, but from a desire to instill respect for the institutions of the new republic; he “wanted republican habits to be surrounded by a certain dignity.” That is to say, he wanted to give the first magistracy the patina, if not necessarily the substance, of monarchy. The *discours* was capped with a romantic vision of the

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<sup>1228</sup> CLXX (Dec. 24, 1799), *Letters of William Vans Murray to John Quincy Adams*, 633-4.

<sup>1229</sup> Thomas Jefferson to A.C.V.C. Destutt de Tracy (Jan. 26, 1811) in 3 PAPERS OF THOMAS JEFFERSON (RETIREMENT SERIES) 386 (J. Jefferson Looney ed., 2006). It is likely that Jefferson’s own election also helped to dissipate radical energies; anti-executive fervor had been sustained in large part by a mistrust of the Federalist Party, now in disarray. And any residual sympathies High Federalists may have harbored for the British constitution were exploded by the War of 1812. See Thomas Jefferson to William Short (Jan. 8, 1825), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Jefferson/98-01-02-4848> (last modified Oct. 5, 2016) [early access document from JEFFERSON PAPERS] (“monarchy, to be sure, is now defeated; and they wish it should be forgotten that it was ever advocated”).

republican magistrate as warrior, dictator, and national savior, a neutral arbiter standing above the petty intrigues of the parliamentary republic. “It is typically necessary that, following grand crises of the state, there arises an extraordinary person who, by the sole force of his glory, checks the audacity of all factions and brings order out of confusion. He must, if I dare say it, resemble the god of mythology, the sovereign of winds and seas, who silences the storms the moment he raises his head above the waves.”<sup>1230</sup> Though doubtful as a portrait of the American general, it perfectly captured the radiant self-image of the newly-commissioned First Consul. The performance was convincing—and not only to the French. One year later, William Vans Murray reported with no little satisfaction in a letter to Hamilton that Napoleon, “that extraordinary man,” was now seated firmly on the throne of France and that “the great *dæmon* Democratic philosophy is done, & pretty well chained for a thousand years.”<sup>1231</sup> If the *république* began its life in 1790 by mourning Franklin, it expired in 1800 while paying extravagant tribute to Washington.<sup>1232</sup>

## Conclusion

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<sup>1230</sup> LOUIS DE FONTANES, ÉLOGE FUNEBRE DE WASHINGTON; PRONONCÉ DANS LE TEMPLE DE MARS L’AN VIII, LE 20 PLUVIÔSE, AN 8 9, 10, 13 (Paris, Henri Agasse 1800). Fontanes obliquely acknowledged the ideological tension between Franklin and Washington: “Les opinions du négociateur [Franklin] et du héros des treize États unis furent quelquefois opposées; mais leurs volontés se rencontrèrent toujours, lorsqu’il fallut travailler au bien commun de la patrie.” On the explicitly monarchical orientation of the speech, see the approving editor’s note in *Sur la Mort de Washington: Lettre d’un Américain au Spectateur, Hambourg, 26 Février 1800*, in 13 LE SPECTATEUR DU NORD 304, 307 (Basse-Saxe 1800) (“Ce n’est pas dans ce passage seulement que l’Orateur a eu le bon esprit de lier à son sujet des souvenirs honorables pour la Monarchie, pour ce Gouvernement si souvent et si basement calomnié dans tous les discours d’apparât, prononcés à Paris depuis dix ans.”).

<sup>1231</sup> William Vans Murray to Alexander Hamilton (Aug. 28, 1801), in 25 PAPERS OF ALEXANDER HAMILTON, *supra* note 32, at 406. Cf. John Quincy Adams to Abigail Smith Adams (May 25, 1800), *supra* note 195, at <http://founders.archives.gov/documents/Adams/99-03-02-0677> (“That hideous monster of democracy...is now so thoroughly exploded from the country where it originated that I could not imagine it necessary to send any comment upon the transactions at Paris”).

<sup>1232</sup> It is notable, in this context, that in the later years of the Directory Washington had become the mascot of leading royalists like Mallet du Pan, De Peltier, Lally-Tollendal, and Barbé-Marbois, who saw him as a symbol of monarchical order at a time when the direct advocacy of monarchy was politically impossible. See BERNARD FAÏ, L’ESPRIT RÉVOLUTIONNAIRE EN FRANCE ET AUX ÉTATS-UNIS À LA FIN DU XVIIIÈ SIÈCLE 264 (1925). Cf. *id.* at 298 (“Bonaparte n’aimait pas Franklin et tâcha d’étouffer son influence”).

The staunchly Federalist *New York Spectator* took the opportunity of Napoleon’s 1799 *coup d’état* to review the constitutional history of the previous 25 years. What it discovered was a remarkably close—and highly disquieting—imbrication of constitutional movements in France and America. “One of the most prominent principles of the authors of the revolution in France,” it asserted, was the combination of legislative and executive functions in a single unicameral house. “This was the favorite theme of Mr. Turgot,” as well as the estimable Dr. Franklin, who inscribed this idea at the center of the Pennsylvania Constitution. “This doctrine Dr. Franklin maintained till his death,” and in part owing to his influence and example, it became the orthodoxy among the French reformers who masterminded the events of 1789 and sounded the clarion for a new constitution. And this package of radical ideas, originally launched as an experiment in American government, would return at the height of the French Revolution under the sign of the tricolor:

[T]he wise heads of modern philosophers, disdain[ing] the maxims of experience, and with the highest contempt for the British and American constitutions, projected a constitution and organized a legislature, consisting of more than seven hundred members. In this body, were concentrated all legislative powers, all wisdom, all patriotism, and all security of public and private rights. No sooner had the French begun the experiment, than their friends in the United States, who drank in all their principles, and attempted to imitate all their follies & blunders, began to think of abolishing the constitution of the United States, and forming a new one.<sup>1233</sup>

The *Spectator* did not purport to break new ground; it merely rehearsed a well-established history of mutual influence and declared an end to the French moment in American constitutional thought. And yet today the story of the Pennsylvania Constitution’s exile and return remains shrouded in obscurity, where it is not airily dismissed as “backwater republicanism.”<sup>1234</sup>

That is unfortunate, because the events narrated above open up a new vista on the history of the early republic. They demonstrate, above all, that the constitutional order of 1787 was far

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<sup>1233</sup> NEWBURYPORT HERALD, *reprinted from* the N.Y. SPECTATOR, Feb. 28, 1800.

<sup>1234</sup> MARK HULLIUNG, *CITIZENS AND CITOYENS* 68 (2002)

more controversial in the first decade of the new republic than is often assumed; not only the guaranteed rights, but also the basic arrangement and configuration of powers, remained subject to vigorous contestation.<sup>1235</sup> Not every critic was mollified by the promulgation of a Bill of Rights or the gradual extension of judicial review. Radicals in every state, spurred by the nation's leading polemicist and its most popular newspaper, sounded the call for constitutional reforms that would break definitively with what they saw as the sublimated royalism and feudalism of the 1787 compact. Their model was the freest, largest, and most powerful nation in Europe. And they enjoyed substantial support across the new union, and set Federalists scrambling to answer and finally to suppress these dissonant voices. The claim that these ideas were marginal or irrelevant is difficult to square with their massive circulation, and their impressive ability to set the terms of public debate.

When, just after the promulgation of the *Constitution de l'an III* in 1795, Thomas Boylston Adams declared from his perch in The Hague that the "political breeze" blowing from France "never fails to produce a coincident variation in the American weather vane," he was calling attention to a commonplace of his own time, but one that is little-appreciated by historians of the early republic.<sup>1236</sup> It is certainly true, as Adams intuited, that American constitutional ideas were challenged and transformed by models from the French Revolution. But taking a wider perspective, we can see that this was not merely an ill wind blowing from Paris, but rather a transatlantic climate of thought and opinion that over two crucial decades remade the theory and practice of the constitutional republic. If some citizens of the early republic sought to adopt and absorb French examples, these "French" ideas were themselves indelibly marked by the

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<sup>1235</sup> Thus the judgment of WOOD, *supra* note 175, at 606, that the ratification of the Constitution in 1787 signaled the "climax and the finale of the American Enlightenment" and its constitutional debates, and "shattered the classical Whig world of 1776," is far too sweeping.

<sup>1236</sup> Thomas Boylston Adams to John Adams (July 13, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 32, at 10.

American experiments in government that preceded and guided their decade of revolution. The English barrister John Bowles, tracing the origins what he called “the GALLIC VORTEX,” drew precisely this conclusion: “the principles, originally imported from the British Colonies, have, in their *improved state*, subverted the French Monarchy, and exposed every European establishment to the most imminent danger; and *which*, by its reverberation across the *Atlantic*, shook even America itself.”<sup>1237</sup> Both Adams and Bowles were in a strong position to appreciate what the present age has tended to forget: at the very center of this storm “Mr. Franklin’s Constitution” stood, fixed, like a lightning rod.

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<sup>1237</sup> JOHN BOWLES, THOUGHTS ON THE ORIGIN AND FORMATION OF POLITICAL CONSTITUTIONS 20-1 (London, 1795).

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