

# Franklin *Redivivus*: The Radical Constitution, 1791-1799

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## ABSTRACT

This article focuses on a concerted intellectual and political movement for the reform of the U.S. 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 Benjamin Franklin Bache and Thomas Paine perceived to be the monarchial 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 powerful unicameral legislature and weak plural executive, as their model. Through a survey of radical newspapers, pamphlets, and letters this paper reconstructs this mostly unknown constitutional polemic, as well as the sharp response it drew from John Adams, Alexander Hamilton, and other committed American defenders of the British constitution.

A prologue establishes the enduring importance of Benjamin Franklin and the Pennsylvania constitution of 1776 for *philosophes* and radicals in both France and America. Part I 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. Part II 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 arguments presented here thus underline the surprising fragility and contingency of the constitutional settlement in the early republic and highlight the powerful Atlantic currents that shaped American constitutional debate in the era of the French Revolution.

## “MR. FRANKLIN’S CONSTITUTION”

John Adams was in high spirits on 2 February 1790 as he posted a letter to his friend Benjamin Rush. Dr. Rush, along with other leading citizens of Philadelphia, had

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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>1</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 reprobated mine."<sup>2</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>3</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>4</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>5</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

- 1 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).
- 2 John Adams to Samuel Perley (June 19, 1809), in *FOUNDERS ONLINE (NATIONAL ARCHIVES)*, <http://founders.archives.gov/documents/Adams/99-02-02-5343> (last modified October 5, 2016) [early access document from ADAMS PAPERS].
- 3 GORDON S. WOOD, *THE AMERICANIZATION OF BENJAMIN FRANKLIN*, 164-66 (2003). Cf. Diary entry for June 23, 1778, in *3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS* 391 (L.H. Butterfield ed., 1961) ("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.").
- 4 The judgment of William Hanna that Franklin had no "significant influence on the form of the new government" is greatly overstated. Compare WILLIAM S. HANNA, *BENJAMIN FRANKLIN AND PENNSYLVANIA POLITICS* 223 n.14 (1966) and WOOD, *supra* note 3, at 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*, 16 *FRANCIA* 61, 64 (1989) (Fr.) ("Même si sa contribution a été beaucoup moins importante à l'achèvement de la constitution, Franklin a aimé jouer le rôle du Solon américain").

- 5 Thomas Paine, *Constitutional Reform*, in *4 WRITINGS OF THOMAS PAINE* 465 (Moncure Daniel Conway ed., 1908). See also Timothy Matlack, *To Richard Bache, Esq., Chairman of the Republican Society*, PENN. PACKET, Mar. 30, 1779, at 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").

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 revolutionary generation as unsuited to the needs of a modern commercial republic.<sup>6</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>7</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>8</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 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>9</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>10</sup> Two features in particular attracted the attention of the *philosophes*. First, the Pennsylvania charter was

6 William Temple Franklin, *Editor’s note* in 1 MEMOIRS OF THE LIFE AND WRITINGS OF BENJAMIN FRANKLIN 367 (William Temple Franklin ed., Phila., T.S. Manning 1818). 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. . .”).

7 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”).

8 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).

9 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.

10 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

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>11</sup> Jean-Nicolas Démeunier exaggerated only slightly when he called Pennsylvania “an almost absolute democracy.”<sup>12</sup>

Second, many French commentators were attracted to Pennsylvania’s rejection of the classical ideal of “mixed” or “balanced” powers.<sup>13</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>14</sup>

deeper currents of 18<sup>th</sup> century thought, see JONATHAN ISRAEL, *DEMOCRATIC ENLIGHTENMENT* 472-76 (2011).

- 11 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.
- 12 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.”).
- 13 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., Stynes & Cist 1776). For the political and intellectual background, see M.J.C. VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* 147-62 (2d ed. 1998).
- 14 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.

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>15</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>16</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 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>17</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>18</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>19</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>20</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>21</sup> Indeed, it is sometimes inferred that the written constitutions of 1791 and 1793 were 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

15 Pierre-Georges Cabanis, *Notice de Franklin*, in 5 ŒUVRES COMPLÈTES 266 (Paris, Firmin Didot 1825).

16 See, e.g., MICHEL TROPER, *LA SÉPARATION DES POUVOIRS ET L’HISTOIRE CONSTITUTIONNELLE FRANÇAISE* (1978).

17 *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).

18 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’aristocratie.” 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 ed., Paris, Buisson 1792)

19 Brissot, *supra* note 12, at 249; *Pantalonnade à 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).

20 Achille François Du Chastellet, *Lettre à MM. Chabroud et Chapelier*, *LE RÉPUBLICAIN* (Fr.), juillet 1791, reprinted in 3 *AUX ORIGINES DE LA RÉPUBLIQUE* 30-31 (Marcel Dorigny ed., 1991).

21 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 REVOLUTION* 239-83 (1959); Appleby, *supra* note 18; 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).

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>22</sup> Thus, when Adrien Lezay-Marnésia circulated a pamphlet denouncing the Jacobin constitution in late 1794, he concentrated his criticism on the Pennsylvania charter, calling it "the cloth from which [the 1793 constitution] has been so roughly cut."<sup>23</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>24</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>25</sup> Between 1780 and 1795 the question of constitutional design moved to the forefront of French intellectual life, and 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>26</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>27</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

22 Dippel, *supra* note 4, at 62-68.

23 ADRIEN LEZAY-MARNÉSIA, QU'EST-CE QUE LA CONSTITUTION DE 93?, at v (Paris, Migneret 1794).

24 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").

25 CHRONIQUE DE PARIS (Fr.), 9 juin 1791, at 637.

26 ROBERT LEVERIE 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").

27 CONN. GAZETTE, Apr. 23, 1791.

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>28</sup> Louis-Guillaume 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>29</sup> The paths of the two revolutions had diverged, it seemed, and the famous Pennsylvania constitution would finish its career in Paris exile.

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. The most famous of these was Thomas Paine.<sup>30</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>31</sup> The *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 newssheet in the country.”<sup>32</sup> It became essential reading for America’s political class—above all

28 *Éloge*, *supra* note 9, at 402.

29 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).

30 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.

31 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 Bache, 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.”).

32 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

for Washington, Adams, and Hamilton, its most frequent targets.<sup>33</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>34</sup> and then (to 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>35</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

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) (“official hints” on how Bache might improve his newspaper and its circulation); Thomas Jefferson, *Notes on the Letter of Christoph Daniel Ebeling*, in (After Oct. 15, 1795), 28 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 509 (John Catanzariti 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”).

33 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).

34 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 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”).

35 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).

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 sanction of great names before they can adopt any opinion, I will observe that these were the favorite propositions of Rousseau and Franklin.<sup>36</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>37</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>38</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>39</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 contemporary historian, "American constitution-making began as an international

36 Casca, *AURORA*, reprinted from the PETERSBURG INTELLIGENCER, Oct. 16, 1795. See also Chevalier de Metternich, *Lettre I, De Berlin, le 22 Mai 1780, Du Comte de . . . à M. de . . .*, in 5 *LETTRES HISTORIQUES, POLITIQUES, ET CRITIQUES, SUR LES ÉVÉNEMENTS, QUI SE SONT PASSÉS DEPUIS 1778 JUSQU'À PRÉSENT* 11 (n.p., n. pub., 1794) ("Le docteur Francklin avoit sans doute bien mérité le *Contrat social*; & c'est, à ce qu'on m'assure, d'après cet ouvrage, qu'il forma le projet de rendre à ses concitoyens leur indépendance."). The association of Franklin with Rousseau was spurred, above all, by their shared rejection of the British constitution as the model of free political life.

37 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).

38 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 21; 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).

39 See, e.g., DAVID ARMITAGE, *THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY* (2007); BILLIAS, *supra* note 21.

process,”<sup>40</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>41</sup> It is difficult to guess what Adams had in mind;<sup>42</sup> although Jefferson was undoubtedly disappointed by the Senate’s failure to vote for removal in the landmark impeachment of the Judge Pickering, no reprisals against the powers or privileges of the Senate were contemplated.<sup>43</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,

40 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 & Antonio De Francesco eds., 2009).

41 *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).

42 For similar anxieties, see John Rutledge, Junior to Alexander Hamilton (Jan. 10, 1801), in 25 *PAPERS OF ALEXANDER HAMILTON*, *supra* note 33, 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]; *Equality No. III* (Nov. 1801), reprinted from *BOS. PALLADIUM*, in 2 *WORKS OF FISHER AMES* 238 (Seth Ames ed., Bos., Little, Brown 1854).

43 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).

drawing explicit inspiration from the French model of *unicaméralisme* that they observed raptly 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 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>44</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 "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

44 Brutus, *From the Washington Federalist to the People of the United States, No. 1*, REPUBLICAN, OR ANTI-DEMOCRAT, Jan. 1, 1802, at 4.

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>45</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>46</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 republicanism of the house of Representatives."<sup>47</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>48</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.

45 *Debates on the Mode of a Reply to the letter from the King of the French*, N.Y.J., Mar. 3, 1792, at 2. On the celebrity Madison enjoyed among the French Jacobins in this period, see Antonio De Francesco, *Federalist Obsession and Jacobin Conspiracy*, in *ATLANTIC WORLD*, *supra* note 40, 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 42, at 210 ("even the circumspect Madison could pronounce in congress, that France had improved on all known plans of government").

46 CONDORCET, N.Y. DAILY ADVERTISER, reprinted from NAT'L GAZETTE, Dec. 20, 1792, at 2. 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).

47 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 MCKITTRICK, *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* (Phila., Eleazer Oswald 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.").

48 NAT'L GAZETTE, Jan. 2, 1793, at 74.

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>49</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 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>50</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>51</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>52</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

49 CONDORCET, *supra* note 46, at 2. 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.

50 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.

51 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).

52 WIRLS & WIRLS, *supra* note 46, 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.").

the majority, “and at pleasure to defeat the enactment of the most salutary laws.”<sup>53</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>54</sup> struck Republican partisans like a thunderclap.<sup>55</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>56</sup> It goes without saying that the details of the 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>57</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

- 53 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”).
- 54 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.
- 55 Abigail Adams to Thomas Boylston Adams (Sept. 17, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 33, at 28 (“The late Treaty between Great Britain and the United States, has excited all the malevolence and awakened all the animosity of the demotratick 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”).
- 56 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 32, 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”); Thomas Paine to Thomas Jefferson (Apr. 1, 1797), in 2 COMPLETE WRITINGS, *supra* note 31, at 1386 (“Mr. Jay’s treaty of surrender”).
- 57 The most visionary plan for an international alliance is BERESFORD, *supra* note 56, at 48 (daydreaming of “the combining republicks of America, France, and Holland” united “against the drooping head of Britain”).

nation, demoting the House to a “mere cypher.”<sup>58</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>59</sup> And a typically hysterical correspondent for Bache’s *Aurora* pronounced the treaty “the death of liberty” and the end of the republic.<sup>60</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>61</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

58 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”).

59 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* (Mar. 10, 1796), 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 58, at 41 (“We conceive the constitutional doctrine to be that tho’ the P. 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.”).

60 Codrus, *To the People (Letter IV)*, *AURORA*, Mar. 15, 1796, at 3.

61 *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.

to an impotent house of commons.<sup>62</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. In his dispatch Tone castigated “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>63</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>64</sup> As opposition writers increasingly concluded that the “balance” struck in 1787 was weighted towards the interests of a “self created nobility,”<sup>65</sup> their emphasis shifted from *restoring* the Constitution to *altering* it—perhaps drastically.

French observers had long remarked on the ambivalence with which Franklin and his allies supported America’s federal constitution.<sup>66</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

62 *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 piracy. 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.

63 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.

64 *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.”

65 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 monarchial ideas. As they have acquired such large and splendid fortunes, they sicken at republicanism”).

66 CONDORCET, *supra* note 8, 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 55, 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.”).

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>67</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>68</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>69</sup> He was exercised simultaneously by the centripetal pull of executive despotism and the centrifugal forces that threatened to shatter the new union into local fiefdoms and regional blocs.<sup>70</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>71</sup> In an April 1788 letter to Louis-Guillaume Le 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>72</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

67 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.

68 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.

69 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 (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).

70 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”).

71 Benjamin Franklin, *Speech of 17 September, in Madison Notes*, in 2 FARRAND, *supra* note 67, at 641. Cf. George Washington to Thomas Jefferson (Oct. 11, 1787), 3 *id.* at 104.

72 Benjamin Franklin to Louis-Guillaume Le 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”).

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 reformed by the same quiet and rational process by which the Constitution was formed.”<sup>73</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>74</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>75</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>76</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 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.

73 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.

74 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”).

75 Another Jacobin, N.J.J. *reprinted from* the N.Y.J., July 27, 1793.

76 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 59, 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”).

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>77</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>78</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>79</sup> John Adams, writing to his wife in December, denounced what he called “hair brain’d Resolutions for amending the Constitution,” 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>80</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>81</sup> If equilibrium

77 *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.

78 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”).

79 MICHAEL LEIB, *supra* note 59, 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 59, 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 58, at 35 (“I know not when I have received greater satisfaction than on reading the speech of Dr. Lieb”).

80 John Adams to Abigail Adams (Dec. 24, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 33, 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 Old maid.”).

81 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?”).

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>82</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 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>83</sup>

The Federalist press was predictably aghast at these intimations of legislative supremacy. The *Columbian 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>84</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

82 *The People, No. I*, AURORA, Apr. 4, 1796.

83 AURORA, Apr. 14, 1795, at 3.

84 COLUMBIAN 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.

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>85</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>86</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 principal 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 dissentions soon divided*” and broke it apart.<sup>87</sup>

85 *On the Amendments Proposed in the Assembly of Virginia*, AUGUSTA CHRON., reprinted from COLUMBIAN CENTINEL, (Boston) 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 COLUMBIAN CENTINEL (Boston), Jan. 13, 1798, at 1.

86 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].

87 *Speech of Boissy d’Anglas*, RURAL REPOSITORY (Leominster, MA), Oct. 22, 1795. 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 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 33, 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 33, at 349 (“In France, the operation of what is called the regular or Constitutional Government, has been in

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>88</sup> Reviewing the intellectual career of Condorcet, the *New York Herald* observed rather cruelly that the great philosopher had been guillotined 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>89</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 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>90</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>91</sup> Jefferson would maintain that the monocratic tendencies of the new republic could be corrected without resort to constitutional reform.<sup>92</sup> But as a statement about the

every respect superior to that of any of its predecessors. Compared with antecedent experiments, it may even be styled a Government of laws.”).

88 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”).

89 N.Y. HERALD, Oct. 8, 1796, at 3.

90 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.”).

91 Thomas Jefferson to John Taylor (June 4, 1798), in 30 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 389 (Barbara B. Oberg ed., 2003).

92 Thomas Jefferson to James Sullivan (Feb. 9, 1797), in 29 PAPERS OF THOMAS JEFFERSON (MAIN SERIES), *supra* note 58, 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

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 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>93</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>94</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. 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

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.").

93 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").

94 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").

diplomatic distance, they shared a common climate of thought and opinion, so that the sudden vogue for Adams's political theory in France might very well speed the ascension of Adams to the presidency in America. This was, at least, the conclusion drawn by John Adams, who beamed 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>95</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 aloud to them from the Golgotha of their Allies"<sup>96</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>97</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 challenge.<sup>98</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>99</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,

95 John Adams to Abigail Adams (Dec. 24, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 33, at 104.

96 Abigail Adams to John Adams (Jan. 15, 1796), *id.* at 138.

97 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 33, 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. . . .").

98 Fisher Ames to Thomas Dwight (Feb. 16, 1796), in 1 WORKS OF FISHER AMES, *supra* note 42, 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.")

99 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).

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>100</sup>

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>101</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 reformatations 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>102</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

100 Decius, *The Jeffersoniad No. VII*, GAZETTE U.S., reprinted from COLUMBIAN CENTINEL (Boston), 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.”).

101 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”).

102 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. . .”).

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 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>103</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>104</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>105</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 prophetically positive. . . could not foresee the French revolution.”<sup>106</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

103 *Id.* at 29.

104 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.”).

105 FORREST, *supra* note 102, at 13.

106 *Id.* at 58.

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>107</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>108</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 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>109</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>110</sup> But Bentham had

- 107 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).
- 108 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).
- 109 JEREMY BENTHAM, TO HIS FELLOW-CITIZENS OF FRANCE, ON HOUSES OF PEERS AND SENATES (London, Robert Heward 1830).
- 110 JEREMY BENTHAM, ANTI-SENATICA 264 (Sidney Bradshaw Fay & Harold Underwood Faulkner eds., Northampton, MA, Smith College 1926) (1830).

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 Neapolitan constitution of 1820, the Portuguese constitution of 1822, the provisional Greek constitution of 1822,<sup>111</sup> and most famously the French constitution of 1848.<sup>112</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>113</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 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

111 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).

112 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).

113 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.")

and the monarchial 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>114</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>115</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 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 urgently unsettled, 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>116</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>117</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

114 TOCQUEVILLE, *SOUVENIRS*, *supra* note 113, 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.

115 Thomas Jefferson to Harry Innes (Jan. 23, 1800), in 31 PAPERS OF THOMAS JEFFERSON (MAIN SERIES) 336 (Barbara B. Oberg ed., 2004).

116 Codrus, *To the Members of the House of Representatives of the United States*, AURORA, Dec. 7, 1795.

117 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”).

the Federalists were a “party become British,”<sup>118</sup> matching unstinting support for Britain abroad to a desire to impose royal government at home.<sup>119</sup> And the presidency was the instrument through which this 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*:

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>120</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>121</sup> Washington understood that he was a symbol of the Union incarnate and

118 BENJAMIN FRANKLIN BACHE, REMARKS OCCASIONED BY THE LATE CONDUCT OF MR. WASHINGTON, at iii (Phila., Benjamin Franklin Bache 1797).

119 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, 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.”).

120 *Discourses on Davila* (1790), in 6 The Works of John Adams 256 (Charles Francis Adams ed., Bos., Little & Brown 1856).

121 GORDON S. WOOD, EMPIRE OF LIBERTY 76-77 (2009). Cf. BACHE, *supra* note 118, 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 73, 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 32, at 312 (“we have a sect preaching up and panting after an English constitution of king, lords, and commons, and whose heads are itching for crowns, coronets and mitres”); John Monroe to James Monroe (Mar. 23, 1794), in 1 PAPERS OF JAMES MONROE, *supra* note 119, at 703 (“...even the Pompous President, seem[s] absorbed in extending Prerogative, & founding Aristocracy, on which the Ambitious hope to build Monarchy.”).

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>122</sup> Thomas Paine, who made no secret of his affinity for the Commonwealth tradition, inveighed against “the debasing idea of obeying an individual.”<sup>123</sup> From Dublin, an anonymous correspondent compared the veneration of Washington to the Roman practice of worshipping statues of Augustus.<sup>124</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 sole object of their love and admiration, have made one man a colossus, before which they prostrate themselves. . .<sup>125</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>126</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>127</sup> Under the sign of Federalism, American statecraft had

- 122 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 worshippers”); 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”).
- 123 Paine, *Letter to George Washington*, *supra* note 73, at 214. For the ideological background to these arguments about royalty and divinity, see Eric Nelson, *Talmudical Commonwealthmen*, 50 HIST. J. 809 (2007).
- 124 *Extract of a letter from a gentleman in Dublin. . .*, AURORA, May 2, 1796, at 7.
- 125 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 31, 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”).
- 126 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. . .”).
- 127 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. . .”).

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>128</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>129</sup> Just as Federalists had eagerly drawn on the literature of enlightened kingship in their petitions for a unit 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>130</sup> Or the Bourbon monarchy—Benjamin Bache grimly joked in the *Aurora* that Louis XVI had been executed for pretending to “*presidential omnipotence*.”<sup>131</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 and Adams 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.<sup>132</sup> Once again, the major catalyst for dissent was the 1794 Jay Treaty. 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 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

128 See, e.g., THE FEDERALIST NO. 69, at 334 (Alexander Hamilton) (Terence Ball ed., 2003).

129 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 73, at 217.

130 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. . .”).

131 *To the House of Representatives of the State of Pennsylvania*, AURORA, Jan. 6, 1797.

132 Although the radicals of the time did not, it is worth drawing a sharp distinction between Hamilton and Adams on foreign policy. Adams would remain as skeptical of alliance with England as with France. See, e.g., John Adams to Abigail Adams (Mar. 17, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), <http://founders.archives.gov/documents/Adams/99-01-02-1351> (last modified Oct. 5, 2016) [early access document from ADAMS PAPERS] (“at the next Election England will sett up Jay \or Hamilton/ and France Jefferson and all the Corruption of Poland will be introduced. Unless the American Spirit should rise and say we will have neither John Bull nor Nicholas \Louis/ Baboon”).

the assent of the Commons.<sup>133</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>134</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>135</sup>

In the aftermath of the Jay Treaty, American radicals 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>136</sup> Paine thought that the presidential veto was “copied from the English government, without ever perceiving the inconsistency and absurdity of it, when applied to the representative system.”<sup>137</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>138</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

133 Rep. Holland, *Floor Speech of 14 Mar. 1796*, AURORA, Mar. 22, 1796, at 2. Cf. Tom Thumb, COLUMBIAN HERALD (S.C.), March 10, 1794 (Genêt has awakened America to the “dangerous tendency of those clauses of the constitution, which, in the case of treaties, vest in the president and his council” sole authority, and predicting “a revision of our federal constitution” along French lines).

134 LETTERS OF FRANKLIN ON THE CONDUCT OF THE EXECUTIVE 48 (Phila., E. Oswald 1795). See ELKINS & MCKITTRICK, AGE OF FEDERALISM, *supra* note 47, at 834 n.112, for the authorship controversy, which remains unresolved. A writer calling himself “Sidney” published a short note in *Independent Chronicle* of May 7, 1795 celebrating these letters, and expressing his belief that “the great statesman and philosopher” would have approved of them.

135 MICHAEL LEIB, *supra* note 59, 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*”).

136 BACHE, *supra* note 118, at 56, 38.

137 *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”).

138 Casca, AURORA, *reprinted from the PETERSBURG INTELLIGENCER*, Oct. 16, 1795, *supra* note 36, at 2.

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>139</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>140</sup>

The anonymous “Democrat from Massachusetts” 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>141</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>142</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

139 Jefferson, *Notes on the Letter of Christoph Daniel Ebeling*, *supra* note 32, 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.

140 SAMUEL BRADFORD, *THE IMPOSTOR DETECTED, OR A REVIEW OF THE WRITINGS OF “PETER PORCUPINE”*, at xii (Phila., Free & independent literary press 1796). Cf. 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”).

141 A Democrat of Massachusetts, *To John Adams, President of the United States*, AURORA, May 30, 1798, at 2.

142 Nestor, *The Catastrophe, Number IX*, AURORA, May 17, 1798, at 2. The name was no doubt selected as an homage to Franklin; Sieyès, while serving as President of the National Assembly, had praised Franklin as “the Nestor of America” in the official condolences he sent to the United States in March 1791.

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>143</sup>

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 objective remained. “Their creed is obedience. Their resolution to be slaves.”<sup>144</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>145</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>146</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>147</sup> The jingoistic language was a clever feint, since in 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>148</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>149</sup> Initially, these authors framed the case for executive plurality in the classical republican idiom of 1776:

143 *A Dream*, *AURORA*, Jan. 22, 1796, at 5.

144 Casca, *AURORA*, reprinted from *PETERSBURG INTELLIGENCER*, Oct. 16, 1795, *supra* note 36, at 2.

145 REV. JOHN MOIR, *POLICY OF PREVENTION: OR THE WORTH OF EACH, THE SAFETY OF ALL* 142 (London, John Moir 1796).

146 BACHE, *supra* note 118, at 65, iii.

147 Cf. BRADFORD, *supra* note 140, 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”).

148 A Bristol correspondent for the *National Gazette* (*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*.”

149 Ostracism, *Remarks on the Above*, *AURORA*, Oct. 31, 1795, at 2.

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>150</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>151</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>152</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 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>153</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 evidence, seeping slowly across 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>154</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>155</sup> By 1795 sympathetic writers and activists could scarcely speak of French statecraft without lapsing into panegyric:

150 *Remarks on the French Constitution, By a citizen of America*, ALB. REG., reprinted from the N.Y.J., Oct. 21, 1793, at 2.

151 See, e.g., DIONYSIUS OF HALICARNASSUS, *ROMAN ANTIQUITIES* IV, at 73 (Earnest Cary ed., trans., Harvard Univ. Press 1939) (7 BCE).

152 See BERNARD BAILYN, *IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 55-93 (Enlarged ed., 1992).

153 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.

154 *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").

155 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

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>156</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>157</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

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”).

- 156 *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.”).
- 157 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.

expedition to Ireland,) was well kept, and therefore the number is not too great to endanger the necessary secrecy.<sup>158</sup>

Paine's opponents gleefully mocked his seemingly arbitrary reasoning,<sup>159</sup> but missed its sting. 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>160</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>161</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:

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

158 *Eighteenth Fructidor*, in 3 WRITINGS OF THOMAS PAINE, *supra* note 5, at 348.

159 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.”). 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.).

160 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”).

161 Thomas Paine to James Madison (Sept. 24, 1795), in 2 COMPLETE WRITINGS, *supra* note 31, at 1381.

other departments, nor even the notorious professional ignorance of its chiefs, have as yet bereft of its native vigor.<sup>162</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>163</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 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>164</sup> And for Bache, Paine, and their radical allies, the French experience seemed to reopen a question that had seemed, until then, firmly settled.

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>165</sup> But confronted with

- 162 *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 to 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”).
- 163 BACHE, *supra* note 118, at 38. Cf. Sidney, ARGUS (Wicasset, ME), June 22, 1795 (attacking the “pusillanimity” of the American executive in its conduct toward Britain).
- 164 BACHE, *supra* note 118, 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.”).
- 165 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

evidence that the multicephalous French government was as well-administered as any in Europe<sup>166</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>167</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>168</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>169</sup> Others put aside these caveats and simply marveled at the "energy and decision" of Jacobin government.<sup>170</sup>

This grudging admiration for the French executive became even more pronounced under the 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

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 ed., Cambridge Univ. Press 1994) (1797).

166 See *Original Anecdotes*, *supra* note 162, at 802 ("they are, in all points of government, at least equal, if not superior, to any other cabinet in Europe").

167 THE FEDERALIST NO. 70, at 343 (ALEXANDER HAMILTON) (Terence Ball ed., 2003).

168 WEBSTER, REVOLUTION, *supra* note 165, 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. . .").

169 *To the Rev. David Osgood (cont.)*, INDEP. CHRON. (Boston), Mar. 26, 1795, at 2.

170 INDEP. CHRON. (Boston), Oct. 21, 1793.

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>171</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>172</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>173</sup> Indeed, it was common to hear Federalists—here the *Columbian Centinel* was typical—complain that “[t]he *French Directory* are clothed with much more power than THE PRESIDENT OF THE UNITED STATES.”<sup>174</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>175</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>176</sup> The willingness of Federalists to modify key tenets

171 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].

172 Reprinted in WESTERN STAR (Stockbridge, MA), Apr. 24, 1797.

173 *American Jacobins in France*, ORACLE DAY (N.H.), Aug. 18, 1798, at 1.

174 COLUMBIAN CENTINEL (Boston), July 16, 1796, at 2.

175 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.

176 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

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-independent colonies.<sup>177</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>178</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

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 32, 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”).

177 BAILYN, *supra* note 152, at 144; cf. BERNARD BAILYN, *THE ORDEAL OF THOMAS HUTCHINSON* 224 (1976); GORDON WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 136 (1969).

178 Federalists would later insist in all seriousness that the republic had tottered on the brink of Jacobin revolution. Genêt’s mission to Philadelphia was marked by an outburst of public celebration and radical republican sentiment, including the widespread formation of popular societies patterned on the Jacobin Club. 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). Cf. 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’état* only by an outbreak of yellow fever in Philadelphia). For an indication of Genêt’s interest in constitutional politics, see LOUIS-GILLAUME OTTO, *CONSIDÉRATIONS SUR LA CONDUITE DU GOUVERNEMENT AMÉRICAIN* 12 (Gilbert Chinard ed., Princeton Univ. Press 1945) (1797) (“le Ministre [Genêt] trouva étrange que et tyrannique l’établissement sage et intéressant d’une seconde Chambre législative, d’un pouvoir exécutif indépendant. . .”).

between the Northern and Southern states.<sup>179</sup> But not content to vituperate France alone, JQA began to connect the dots between French plotting and American radicalism.<sup>180</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>181</sup> And it was self-evident what part of the 1787 compact would be the first to be re-invented *à la française*:

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>182</sup>

The accusation got more specific a year later. Writing to his father, now President Adams, Adams *files* implicated Paine and the French statesman Jacques Necker in a plot to prostrate America through the drastic reconfiguration of its legislative and

- 179 John Quincy Adams to Abigail Adams (Feb. 8, 1797), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 33, 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 judgment of De Francesco, *Federalist Obsession*, in ATLANTIC WORLD, *supra* note 40, at 249 (“ . . . the Federalists’ accusations were not entirely without foundation”).
- 180 John Quincy Adams to John Adams (Apr. 3, 1797), in FOUNDERS ONLINE (NATIONAL ARCHIVES), *supra* note 179 (“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’embrasement,’ 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”).
- 181 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”).
- 182 John Quincy Adams to John Adams (Apr. 4, 1796), in 1 WRITINGS OF JOHN QUINCY ADAMS, *supra* note 94, 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”).

executive branches. In a sly 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>183</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>184</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 wealthy power like France “a more certain and effectual influence over our

183 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] motive 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 58, at 343.

184 *A French Faction*, in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 157, 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 paritidal sentiment, that in case of invasion, they would join the standard of France”).

national Executive,” presumably by making it easier to install a cipher as one of the myriad members of a new American Directory.<sup>185</sup>

Adams was not alone in his morbid assessment. 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>186</sup> Fisher Ames called this confederacy “the Mazzei sect in America,” and associated its views with the exploded philosophies of Condorcet. Two years earlier, a Federalist member of Congress had 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>187</sup> Like Adams, this Federalist stalwart 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>188</sup> The Thermidorean executive seemed to be spreading like a bacillus from the tip of French bayonets.<sup>189</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>190</sup>

185 John Quincy Adams to John Adams (Aug. 13, 1796), in 2 WRITINGS OF JOHN QUINCY ADAMS, *supra* note 182, at 22.

186 Alexander Hamilton to George Washington (May 19, 1798), in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 157, at 467.

187 *Laocoon. No. II*, reprinted from the BOS. GAZETTE, in 2 WORKS OF FISHER AMES, *supra* note 42, at 123; *Extract of a letter from a member of Congress to a gentleman of this town, dated 13th 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 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”).

188 *The Stand, No. II* (Apr. 4, 1798), in 21 PAPERS OF ALEXANDER HAMILTON, *supra* note 157, 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”).

189 MARTYN LYONS, FRANCE UNDER THE DIRECTORY 211 (1975).

190 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/>

Many Federalists, scandalized by the politics and manners of the Pennsylvania radicals, fell down a rabbit hole of conspiracy theorizing.<sup>191</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>192</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>193</sup> In the final years of Federalist

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 182, 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 157, 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.”).

- 191 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 consign 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”).
- 192 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 Suppressd, 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.”).
- 193 Quoted in JEFFREY L. PASLEY, THE TYRANNY OF PRINTERS: NEWSPAPER POLITICS IN THE EARLY AMERICAN REPUBLIC 98 (2001).

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 dysfunction, left it permanently marginalized in America.<sup>194</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>195</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>196</sup> His mother registered approvingly that the “Jacobins in this Country have never been so completely foiled.”<sup>197</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>198</sup>

194 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”).

195 *Summary of European Events, No. II*, N.H. GAZETTE, July 7, 1801, at 1.

196 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”).

197 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.”).

198 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”).

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 a black crepe was draped over 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 paid extravagant and rhapsodic tribute to the departed. 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 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>199</sup> Though doubtful as a portrait of the American general, it perfectly captured the radiant self-image of the new First Consul. The performance was convincing—and not only to the French. One year later, William Vans Murray, America’s ambassador to the Netherlands, 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>200</sup> If the *république* began its life in 1790 by mourning Franklin, it expired in 1800 while paying extravagant tribute to Washington.<sup>201</sup>

199 LOUIS DE FONTANES, *ÉLOGE FUNÈBRE 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 monarchial 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’apparat, prononcés à Paris depuis dix ans.”).

200 William Vans Murray to Alexander Hamilton (Aug. 28, 1801), in 25 *PAPERS OF ALEXANDER HAMILTON*, *supra* note 33, at 406. 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*. See Alexander DeConde, *William Vans Murray’s Political Sketches*, 41 *MISS. VALL. HIST. REV.* 623 (1955).

201 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

## CONCLUSION

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, disdaining 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>202</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>203</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 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>204</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

symbol of monarchical order at a time when the direct advocacy of monarchy was politically impossible. See BERNARD FAY, *L'ESPRIT RÉVOLUTIONNAIRE EN FRANCE ET AUX ÉTATS-UNIS À LA FIN DU XVIIIÈME SIÈCLE* 264 (1925). Cf. *id.* at 298 (“Bonaparte n'aimait pas Franklin et tâcha d'étouffer son influence”).

202 NEWBURYPORT HERALD, reprinted from the N.Y. SPECTATOR, Feb. 28, 1800.

203 MARK HULLIUNG, CITIZENS AND CITOYENS 68 (2002)

204 Thus the judgment of WOOD, *supra* note 177, 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.

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 maintain when one considers 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>205</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 American experiments in government that preceded and guided their decade of revolution. And Adams was 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.

205 Thomas Boylston Adams to John Adams (July 13, 1795), in 11 ADAMS FAMILY CORRESPONDENCE, *supra* note 33, at 10.