OBSERVATIONS OF LEOPOLD OF HABSBURG ON THE PENNSYLVANIA CONSTITUTION OF 1776

By Gerald H. Davis*

THE constitution created by a little group of rough-cut and irate Pennsylvanians in the early autumn of 1776 was closely associated with the national uprising against the British Empire. It was perhaps to a greater extent the product of a social and political revolt by hitherto unprivileged persons within Pennsylvania. As a consequence, it was the most extremely democratic constitution of the original states of the United States. The document attempted to translate into practice the ideals of equality and natural rights, ideals which were peculiar neither to Pennsylvania nor to the United States. They were a part of a general quickening of revolutionary spirit and had long been discussed by philosophers of reform in Europe as well as in America.

To the reformist of the second half of the eighteenth century, the most impressive alternative to popular uprising was the way of the so-called enlightened despot, who desired to recreate society from above, by his own established authority. Frederick the Great of Prussia, Catherine the Great of Russia, and Joseph II of Austria were only the most famous of these autocrats. One of the less dramatic members of this circle, however, sought what amounted to a middle ground between autocratic reform and popular revolution. This was the Grand Duke Peter Leopold of Tuscany, the brother of Joseph II and heir to the Habsburg crowns. In 1790 he was to become the Holy Roman Emperor Leopold II.

Leopold numbered himself among the progressive rationalists and enlightened rulers of his day, zealously entertaining the ideas of Rousseau, Montesquieu, and other philosophes. Unlike most

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Facsimile of the signature of Leopold II. From a diplomatic letter of credence, dated Vienna, March 20, 1790.

"LEOPOLD II, KING OF PRUSSIA AND OF BOHEMIA. ARCHDUKE OF AUSTRIA."

Reduced facsimile of the mezzotint, 1790 by Jacob Adam; original painting, April 1790, by Josef Kreutzinger (1750-1829).

From Adam Wolf, "Oesterreich unter Maria Theresia, Josef II. und Leopold II. 1740-1792" (Berlin: G. Grotesche Verlagsbuchhandlung, 1883), page 323
of the enlightened despots, who professed to govern for the people but declined participation by the people, Leopold hoped eventually to allow the populace to take a role in government. During his years as the Grand Duke (1765-1790), he endeavored through vigorous and sometimes high-handed policy to bring the best and most efficient government to Tuscany. His fondest project was to create a constitution for his duchy. But he never actually introduced either a constitution or popular government. The permanent results of these good intentions are confined to a file of some twenty-five informal preliminary studies of constitutions and political theory. These studies were written in French and are now kept in the Habsburg family archives in Vienna. Number Ten in this series is entitled Observations sur les Constitutions de la Republique de Pensylvanie. Probably written between 1779 and 1782, this rather positive examination of the first Pennsylvania constitution expresses some of Leopold's deepest convictions concerning proper government.

Leopold's Observations are based upon a French translation of the 1776 Pennsylvania Constitution. Just how the Grand Duke came to have a copy is not certain, but an educated guess might trace it back to Benjamin Franklin, who was himself the president of the Pennsylvania constitutional convention. Late in 1776, Franklin took a copy of the constitution of Pennsylvania as well as those of the other states on his celebrated mission to France. Early the following year the young Duc de la Rochefoucauld d'Enville translated these into French, whereupon Franklin had them published in the journal, Affaires de l'Angleterre et de

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1 Leopold summarized his criticism of enlightened despotism in a letter of June 4, 1789, to the Archduchess Christine. "It is difficult," he wrote, "to demonstrate to the people that what they oppose is good because it is difficult for a government or even the enlightened minister to know better than the people—the individuals and their representatives—what is fitting and advantageous for the nation." Quoted in Viktor Bibl, Der Zerfall Österreichs, 2 vols. (Vienna: Rikola Verlag, 1922-1924), I, 26. My translation.


3 Adam Wandruszka, "Joseph II und das Verfassungsprojekt Leopolds II," Historische Zeitschrift, CXC (February, 1960), 19. Wandruszka believes that Leopold did not carry through his plans for the constitution because his brother, the Emperor Joseph II, opposed it.

4 A handwritten copy of the translation is No. 11 in the file, "Fogli da aggiungersi."
l’Amérique. As this journal was a semi-official propaganda organ of the French Foreign Office, and as it was associated with the name of such a renowned philosophe as Franklin, its contents would have been readily accessible to the enlightened Grand Duke of Tuscany.

The commentary itself seems to be in an unfinished condition, and several of the sentences are not complete. It begins by citing Rousseau’s Social Contract, apparently in support of the first paragraph, and then leaves a half-page margin for further citations or notes on the rest of the text. There are, however, no further notations. Finally, the diverse observations, most of which involve the preamble and the declaration of rights, are not summarized or drawn together in any concluding observation. It appears, then, that this document is a working memorandum for Leopold’s future reference, rather than an essay for the edification of others.

Observations on the Constitutions of the Republic of Pennsylvania

If we ask, says Rousseau, precisely in what consists the greatest good of all, which should be the end of all good legislation, we shall discover that it is reduced to these two principal objects—liberty and equality—liberty, because any particular dependence represents so much power taken from the body of the state; equality because liberty cannot subsist without it. With regard to equality, the word does not necessarily mean that the degrees of power and wealth should be absolutely the same [for all], but, as for power, it should never be great enough for violence, and never be exercised except by virtue of the laws.

Contrat social, chap. 2.
What I ask is that, in order to make a good code in all states, even in monarchies, one begin with the principle posed by the Americans, the principle of equality. They extend it to politics; I want it only civil. That all citizens be politically equal is essential to the democratic order of government. But in a monarchy, they should be equal in a civil sense, that is to say, that all might be equally subject to the law, and that there should be no exception made for anyone.

The principle most essential to this spirit appears in the preamble of that new constitution, for one reads there that the object of government is the welfare of the individual and of society, that whenever that object is not fulfilled, the people have the right to change the government by an act of the common will and to take whatever measures that may appear necessary to them to procure their safety and happiness. They attempt to develop elsewhere that principle inherent in the nature of things. All men, says the code, are born equal and independent; they have certain natural, essential, inalienable rights. Government is or should be instituted for the common advantage, for the protection and security of the people, and not for the profit or particular interest of a single man, family, or group of men who are only a part of that community.

They declare that the people alone have the essential and exclusive right to govern themselves and to regulate the internal

8 The portion of the preamble to which he refers reads as follows: "Whereas all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right by common consent to change it, and take such measures as to them may appear necessary, to promote their safety and happiness. . . ." The Proceedings Relative to Calling the Conventions of 1776 and 1780, compiled by John S. Weistling (Harrisburg, 1825), 54. Subsequent references to the text of the constitution are from pages 54-57 of the Proceedings. They will be cited by constitutional chapter and section number only.

9 "That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending of life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety." Ch. I, sec. i.

10 "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish government, in such manner as shall be by that community judged most conducive to the public weal." Ch. I, sec. v.
administration;¹¹ that all powers emanate from the people; that they have the right to remove their officers; that each member can demand to be protected by society in the enjoyment of life, liberty, and property. They establish further, as a base for their constitution, perfect equality among the citizens for elections, the greatest respect for individual property, the right which every free man has to obey only laws to which he has consented,¹² and to leave the state in which he lives, when he finds greater happiness elsewhere.¹³

Convinced that happiness depends upon good criminal laws, they outline in a single article the principles upon which the laws should be based. They deduce them always from man's inherent right; from that right which empowers one to administer, when he is accused, evidence favorable to himself. They require that the inquiry be prompt and public, that it be made by an impartial jury of the land, that without a unanimous opinion he should not be declared guilty.¹⁴

When one understands the human heart, one sees how difficult it is to sustain governments at a certain degree of perfection. It is men who govern and [for perfection] it would be necessary that the leaders be above man, that they be angels. However it might be done, although nature unites with education to cause princes to take measures for the best, they will always be, like the rest of their species, subject to passions, or tossed from pillar to post by errors. Incapable of grasping all the details, they will see superficially and will see poorly, or they will see with the eyes of strangers, which is worse still. Wherever one turns, there is no consolation: everywhere poor humanity is condemned to suffer.

¹¹ "That the people of this state have the sole, exclusive and inherent right of governing and regulating the internal police of the same." Ch. I, sec. iii. Note Leopold's misinterpretation of "internal police."

¹² "Nor are the people bound by any laws but such as they have in like manner assented to, for their common good." Ch. I, sec. viii. Here Leopold has a completely distorted interpretation.

¹³ "That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness." Ch. I, sec. xv.

¹⁴ The constitution says "cannot." "That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council; to demand the cause and nature of his accusation; to be confronted with the witnesses, to call for evidence in his favor, and a speedy public trial by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty." Ch. I, sec. x.
Imagine a king by himself; he will make a great many errors. Give him a council and they will be made for him. Whence comes the evil in all this? It is because one does not consult those whom one governs, those who have a necessary interest in being well governed. They alone can enlighten him about their common interests. [These are] irrevocable grounds why the voice of the people should be heard, why they should always be represented before the executive power.

Since the leaders tend, despite themselves, to deteriorate the constitution, it has been necessary then to establish a bulwark against their passions, against their prejudices, and such was the origin of the tribune in Rome, the parliament in England, of the two powers legislative and executive in America. These bodies balance the authority of the government. Rather than hinder it from doing good, they stop it when it wishes to commit evil. These powers watch over one another and good is indeed done by mutual fear. But of what importance is this? It is always this way.

Despotism, which always ends by absorbing everything into itself, is found not only in monarchies, it insinuates itself even into republics. The Americans have dreaded it, and that is why they grant so many rights to the people; that is why the legislative power and the executive power are restrained by one another. Hence the regulations that no one can be a member of the House of Representatives more than four years out of seven, that the General Assembly can change notin in the present constitution, that the members cannot be removed by their constituents, that the journal of their sessions will be published, that the sessions will be public. From that comes a thousand other precautions to hinder the corruption of its members, who would without fail, bring about the ruin of the constitution.

Another institution, the purpose of which is to hinder corruption in the governing body, is the creation of censors every seven years. Their duty is to inquire if the constitution has been

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15 Ch. II, sec. viii.
16 This seems to be an assumption drawn from Ch. I, sec. vi: "The people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections." Perhaps Leopold assumed that the phrase "certain and regular elections" implied absolute tenure between elections.
17 Ch. II, sec. xiii.
upheld in all its parts, and if the bodies charged with executive and legislative powers have fulfilled the functions as guardians of the people, or if they have arrogated to themselves and exercised greater privileges than those which were granted them by the constitution. The assessment of taxes, the use of public funds, the prosecution of state crimes, and anything that might interest the republic is subject to their examination. It is an excellent institution, well suited to prevent the destruction of the constitution by eradicating the abuses which could creep into it.

18 Ch. II, sec. xcvi.