Brissot de Warville on the Pennsylvania Constitution of 1776

Jacques or Jean Pierre Brissot de Warville, the author of "Reflections on the Constitution of Pennsylvania," was born at Chartres on January 15, 1754. His ambition was to become a writer, a profession in which he was eminently successful. Greatly influenced by Montesquieu, Voltaire, and Rousseau, he determined at an early age to reform society, his chief interest being the improvement of criminal law, but he realized that this involved the entire social and political structure of society. He therefore turned his interest to government and wrote prodigiously on political matters. Montesquieu's influence here was very marked for Brissot advocated the system of checks and balances in government and this concept strengthened his admiration for the United States.

Brissot was strongly attached to the United States because of his passion for democracy. Passion is not too strong a word, for democracy became for him a deep, abiding, burning conviction. He came to the United States in the summer of 1788, and was so enthusiastic about everything he saw that he failed to note any faults of the new democracy. He made plans to settle with his family in Pennsylvania, whose government he greatly admired. Before definite arrangements were made, however, news arrived from France which led him to believe that his native land was on the verge of a revolution. Because he was no escapist and wanted to be in France to aid in her fight for democracy, he returned home late in 1788, hoping to come back to America when the victory had been won.

Upon his return to France he threw himself into the electoral struggle for representatives to the States-General, but he failed to be elected. This undoubtedly was a great disappointment to him, but he soon started a newspaper and through his Patriote Francaise wielded considerable influence on the course of events. He was
elected to the Legislative Assembly where his importance increased rapidly. With the opening of the Convention on September 22, 1792, Brissot reached the height of his career. All students of the French Revolution are familiar with his sad fate. When the Girondins fell from power Brissot was arrested, tried, and found guilty. He was executed on October 31, 1793.

From 1782 to 1785, Brissot published a collection of his essays, discourses, and writings in ten volumes entitled Bibliothèque Philosophique Du Législateur, Du Politique, Du Jurisconsulte. His "Réflexions Sur le code de Pensylvanie" appeared in volume three, together with the Pennsylvania Constitution of 1776 in French. The essay clearly reveals his admiration for this democratic constitution framed by a convention presided over by Benjamin Franklin.¹ Franklin sailed for France about a month after the new Constitution was adopted. He took a copy with him and it soon became widely known in France and other countries of Europe. On March 26, 1777, Franklin received a request from the Duc de la Rochefoucauld to examine his translation of the Constitution of Delaware, and to return it to him with Franklin's corrections so that it could be published. In the same letter, the Duc de la Rochefoucauld asked Franklin to send him a copy of the Constitution of Maryland so that he might translate that as well as Virginia's.² Maryland's Constitution was adopted November 11, 1776, but Virginia had adopted hers on June 29. Franklin could have taken a copy of the new constitution of the latter state with him to France, but not the former. One may presume, then, that the constitution nearest to Franklin's heart had already been translated by the spring of 1777. At the end of that year and early in 1778, Franklin had received several letters from people in France and Switzerland concerning the Constitution of Pennsylvania.³

The earliest collected translations of the American state constitutions appeared in 1778, and contained those of Pennsylvania, New

¹ Démeunier, in his Encyclopédie Méthodique, etc. (Paris & Liège, 1784), III, 578, wrote: "The constitution of Pennsylvania is the most democratic of all those of the states of the American union."


³ See Ibid., I, 320, 345, 365.
Jersey, Delaware, Maryland, Virginia and South Carolina. Many collections of these constitutions, as well as commentaries on them, appeared later, but Brissot’s essay was the first.

The Pennsylvania State College

The Pennsylvania Constitution of 1776

The writer is indebted to Dr. Julian P. Boyd, Librarian of the Princeton University Library, for calling his attention to this essay. While Dr. Boyd was connected with The Historical Society of Pennsylvania, he found among its possessions a volume of 217 manuscript pages in quarto bound in boards. It contains Brissot’s essay on the Pennsylvania Constitution of 1776, together with the Constitution in French. The writer compared this manuscript copy of the essay with the published work at the Ridgeway Branch of the Library Company of Philadelphia and found only a few minor errors. The manuscript volume also contains an Italian translation of the Constitution as well as of the essay—Riflessione Sopra dal Codice [sic] de Pensilvania. On leaf 1 is the stamp of a previous owner: CARLO MARSTALLER. The published essay is in Brissot’s Bibliothèque Philosophique Du Législateur, Du Politique, Du Jurisconsulte, etc. (10 vols., Berlin and Paris, 1782–1785), III, 233–258.

REFLECTIONS
On the Constitution of Pennsylvania*

It is perhaps surprising to find the Constitution of Pennsylvania in a work which probably should contain only material relating to criminal legislation. This code seems indeed only to deal with the constitutional powers of the new government which it establishes, and with the exception of two or three articles, it contains only some vague provisions on penal legislation. But there will be no astonishment if one considers that the perfection of the criminal code depends upon the internal constitution of a state; that wherever the latter is good, the former becomes almost unnecessary. In other words, a good constitution has for its goal the happiness of all the individuals; and wherever the individuals are happy there are few or no crimes, and consequently there is little need for penal laws. As I said in my Theory of Criminal Laws, and it is a truth confirmed by

* Brissot’s notes, which are to be found at the end of the original essay, appear in the text so there may be no confusion with those of the present writer.

experience—to make people happy is a sure method of preventing crimes. It is not as difficult as one may think to achieve this goal. The individual demands only an assured subsistence, a decent situation, with security and with freedom. Where these advantages are enjoyed there is little to be gained by crime; one becomes a criminal only because necessity forces one to become such. It is indeed true that to establish a good political constitution is to simplify the penal code, to reduce greatly the categories of crimes and to remove the knife from the hand of the executioner.²

I regard the Constitution of Pennsylvania as the model of an excellent government, under which, when peace has restored public tranquillity, there will be very little crime.

This Constitution follows naturally the instructions published by the Empress of Russia for making a new code of laws.³ In it is to be found the miracle which she was looking for; in it is the means which she was seeking to banish crime from the face of the earth: it is to give to man his rights, to restore everything to its natural order.

I do not pretend, however, that one must, in imitating the Americans, establish a democracy at St. Petersburg or in any other monarchy. Not because this type of government was impracticable in great states, as the Empress says, but because where an old and habitual order of things exists, it should be allowed to continue and be improved if possible.

What I ask is that in order to establish a good constitution in all countries, even in monarchies, one begin with the principle adopted by the Americans—the principle of equality. They extend it to politics; I wish it only for the civil service⁴: that in democracies all citizens should be politically equal, which is the essence of this type

² His fundamental idea was that "crime was in large measure a disease, the result of ignorance, oppression, and poverty. To imagine, therefore, that it could be lessened by severe and cruel punishment was sheer folly." Eloise Ellery, Brissot de Warville: A Study in the History of the French Revolution (Boston and New York, 1915), 45.

³ Catherine II summoned a congress of deputies and representatives of all classes, except the serfs, to meet in Moscow in July, 1767, to consider reforms. For this meeting she prepared a document known as the Nakaz, or "Instructions of Her Imperial Majesty Catherine the Second for the Commission Charged with preparing a project of a new code of laws." This included selections from the works of western writers, such as Beccaria and Montesquieu, and dealt largely with the reform of laws and the judiciary.

⁴ During the discussions on the French constitution Brissot changed his ideas on this point and demanded political equality as well as civil equality. See Ellery, op. cit., 133.
of government; but in monarchies they must be equal civilly, that is to say, all must be equal under the law, with exceptions for no one.

Rousseau says that if one seeks to find precisely what constitutes the greatest happiness of all, which ought to be the purpose of all good legislation, one will find that it is reduced to two principle objects, liberty and equality: liberty, because all individual dependence is so much strength taken away from the body of the state; equality, because liberty cannot exist without it. In regard to equality, it must not be understood by this word that the degrees of power & wealth should be absolutely the same: but power should be beneath all violence, and should be exercised only in virtue of the laws. *Contrat social*, chap. ii.

This principle can be adopted with security in all kinds of governments, and there are many other principles equally good, equally practicable, which this code offers.

The Revolution which has broken the chains of the Americans will mark without doubt an epoch in the annals of humanity. They have given to oppressive despotism a terrible and memorable lesson. Tyrants will learn from the plains of Saratoga that all power is useless against a people who, in order to be free, know how to face death. They will learn that men must be ruled by reason, and not by force; that the abuse of power embitters and angers the slave, and that he will end by breaking his chains.

It is indeed an admirable spectacle to see men without arms, without ammunition, without training, without aid, without a leader struggle against well-disciplined and well-provisioned armies, led by experienced officers. But what is even more astonishing is that in the midst of battles, surrounded by horrors, the American people dreamed of forming a good code of laws, while in other governments, asleep for ages in peace, they do not dare remedy a single abuse. Such is the energy of liberty: it conquers all, it reaches everywhere; and the hand which wins battles repairs and upholds with the same courage the temple of justice.

People prejudiced against democracy, which they describe falsely as a sea always agitated by dangerous storms, imagine perhaps that this code of Pennsylvania breathes only disorder, indignation, and the rage of a furious animal mistreated for a long time. They are wrong: there is neither anger nor rage in it; there is throughout the language of reason. A master is abused by his managers, his agents: he examines their accounts, he finds errors and trickery in them; he
hears their language, which is insulting to him. He coldly discharges these employees, deprives them of all their powers. That is the picture of America freeing herself from the yoke of England. See with what simplicity she expressed her grievances against the King of Great Britain:

"The inhabitants of this commonwealth have in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain; and the said king has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, . . . [sic] whereby all allegiance and fealty to the said king and his successors, are dissolved and at an end, &c. &c."5

Is not this the language of moderation, of reason? Gather together Lycurgus, Solon, Socrates, Montesquieu: would they have written otherwise? Would they have created a different code?

It rests on a principle which has neither been respected nor even known in any other constitution, I refer to the welfare of the individual.

The object of the institution and maintenance of all government, says the code, ought to be to assure the existence of the political body of the state, to protect it and to give to the individuals who compose it, the right to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man. Grotius denied that all human power was established in favor of those who are governed. This was also the sentiment of Hobbes. They believed that the natural rights of mankind belonged to a small group of men. What an atrocity!

The ancients thought only of national glory; the moderns have thought only of the glory and happiness of their leaders. Here for the first time people are concerned in a constitution with the happiness of the individual. There is no doubt that this trait which characterizes our century is the fruit of the propagation of philosophical wisdom: this Constitution bears everywhere its imprint.

It is easy to see that its framers have drawn many of their articles from the principles of the Social Contract.

5 This is from the preamble to the Constitution of Pennsylvania of 1776.
Here also for the first time are people engaged in drafting their laws from their own experience, instead of borrowing them from foreign nations. The Greeks copied the Egyptians, the Romans copied the Greeks, the whole world copied Rome; and when Rome had been destroyed, when her empire centering in Constantinople had been wiped out and destroyed by the barbarians, from her ashes has come the law which still governs almost all of Europe. Servile imitation, absurd adoption, which ignorance dared even to praise! Pennsylvania has been wiser than our forefathers. Her leaders have studied her climate, her life, the habits of her citizens, their manners, their opinions, and have made their laws conform to all these conditions. Is not this the course which nature dictates? Does not such a constitution promise longer and happier days than those constitutions based on foreign systems, hence unsteady, weakened in all their parts?

It must be admitted that the Americans were in a favorable situation, such as history offers few examples. Tired of subjection, they rejected even the laws of their former masters; they were resolved to reform everything, and they were able to back their reform by force. Among other nations, where the code of government is perhaps unshakable, a general reform will never be tried; for it is believed this would disturb or even destroy the whole machine of government. In America, the upheaval was general; to profit from this it was necessary to sacrifice all of the bad parts; it was necessary to examine everything in order to cure everything. A partial reform would have permitted a thousand sources of disorder to remain.

Nevertheless, we have seen countries in the same situation as America which did not make so worthy a use of their recovered freedom. Witness England at the death of Charles the First. That was a violent effort to achieve liberty; it ended by substituting for some years a tyrant protector for a true king.

This, doubtlessly, would have been done at this period of the monarchy in England if the true friends of liberty, instead of being only soldiers, had been legislators; if they had erected on the debris of the royal pretentions a republican constitution; if Cromwell, re-

6 Brissot seems to confuse laws with a constitution. The Americans drew most heavily upon both English and French political thinkers, but their own colonial experience was not neglected.
nouncing his ambition, had been the Brutus of Great Britain instead of being her Caesar.

The great revolutions which avenge humanity by terrifying their oppressors are almost always fruitless. I know of two causes for this. First, such revolutions are almost always directed by Cromwells. When they are not, the harm is even greater; the people, after having broken their chains, remain motionless, confused by their own audacity. They fear to take one more step, they remain inactive, and the group overthrown, profiting by the people's bewilderment, succeeds in enchaining them anew.

It might well be otherwise if the people, using their power legitimately, had searched immediately into the ruins of their constitution, had removed the abuses from it and restored it to its true principles. For such a strenuous operation to succeed there must be a constitution prepared for the occasion and legislators well versed in politics; there must be mature leaders: this is all that favored America at the moment of her revolution, and it is what England lacked a century ago.

No doubt unfortunate Geneva would not have succumbed to the efforts of her aristocrats if, after the uprising of 1782, she had followed the example of the Americans. The refusal to grant a constitution had sent the citizens to arms: after having overcome the obstacles the people should have drawn up a code immediately and shown it to the neighboring nations. If the constitution had been as wise as that of Pennsylvania could one have said that it was the work of a tumultuous democracy? Would one have thought of upsetting it? Moreover, in insurrections which tyranny makes necessary, it is less important to make them than it is to know how to profit from them. Only might is needed to make successful revolutions, but wise leaders are necessary to bring them to a happy end.

7 Brissot witnessed the attempt of the people of Geneva to establish a democracy in 1782. He had been in the city less than forty-eight hours when he prepared an address to its intrepid inhabitants to encourage them to a vigorous defense.” Ellery, op. cit., 22. France, Sardinia, and several Swiss cantons intervened and helped restore the aristocracy.

8 Brissot wrote in the preface of his Nouveau Voyage, I, xii, that an account of his journey to America might seem out of place since “we also have acquired our liberty, but to acquire liberty is only the first step; we must learn from the Americans the secret of preserving it.” Quoted in Ellery, op. cit., 90.
The code of Pennsylvania will prove that America had philosophers and statesmen when she threw off the yoke of Great Britain. The examination of its ideas shows that all of them are profound and are the result of much thought, all are well coordinated. The style is simple, clear and intelligible. Compare it with a European ordinance or declaration and you will see that America is much further advanced in political philosophy than we are.

I shall not give a complete analysis of this code, but shall limit myself to certain remarks on the various parts: placed in the notes, they would be perhaps less striking.

The draft of this constitution was printed and published six months before it had been approved by the general assembly. Its framers sought, in submitting it to the judgment of the citizens, to collect their opinions, to compare them, and to choose those which obtained the greatest support. This is a sure method of making excellent laws, for it is rarely that people deceive themselves about their own welfare, especially when they are already enlightened by instruction. This is a much surer method than those of the ancient republics, for how could a law proposed in a tumultuous assembly be discussed wisely and with order, especially when the greater part of the people allow themselves to be carried away by the eloquence of some corrupt orators? Finally, this is a method which has the advantage of preventing the corruption or the folly of the representatives of the people, since it prescribes for the representatives the path they must follow. This method appears so proper to maintain the principles of the constitution, to prevent them from being attacked, that it is adopted in the code in the form of a rule. One article even permits every citizen to examine and discuss the proposed laws, to expose freely his views before the law is enacted. Is not this the surest way to force the officials to be just; to compel the legislators to be republican? Perpetually watched by the public, the legislators are more virtuous, more enlightened; this result is shown in the code itself. The Constitution was so well drawn that

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9 At most only eighteen days elapsed between the time the Constitution first appeared in print (September 10) and its adoption (September 28). See J. Paul Selsam, The Pennsylvania Constitution of 1776: A Study in Revolutionary Democracy (Philadelphia, 1936), 162-163. See also note 11.

10 Constitution of Pennsylvania, Section 15.
the people made few changes, so thoroughly had its authors been imbued with the republican spirit!

The most essential principle of this spirit appears in the preamble of this new Constitution, for it states that the object of government is the happiness of the individual and of society; that whenever this object is not fulfilled the people have the right to change it by common consent, and to take such measures as appear necessary to them to achieve their safety and happiness. They strive to develop elsewhere this principle inherent in the nature of things. All men, it is stated, are born free

Man is born free, said Rousseau, but everywhere he is in chains.

and independent; they have certain natural, essential and inalienable rights . . . Government is or ought to be established for the common good, for the protection and safety of the people, and not for the profit or the particular interest of a single man, family or set of men who are a part only of that community."

To find a form of association which defends and protects with the entire communal force the person and property of each member, and by which one unites himself to all, yet submits only to himself, and remains as free as before, such is the fundamental problem of which the Social Contract furnishes the solution.

These are the sacred principles which should have served as the basis for every government, which should have been respected even in countries where many are subject to the power of one; for the form of government cannot change this natural principle. All society has for its end the welfare of all, and not the welfare of an individual; nevertheless, since the fatal invention of arms, blood has flowed in every country of the world only to satisfy the passions of some individuals; laws have only supported their pretensions.

In order to avoid forever the bloody quarrels which spring from this error perpetuated by despotism, the Americans restore their

11 Obviously the people had little opportunity to study the Constitution and propose changes, for the time was too short and communication too difficult. Thomas Paine was as exuberant on this point as Brissot, for he wrote that "as the general opinion of the people in approbation of it was then known, the Constitution was signed, sealed, and proclaimed on the authority of the people." Thomas Paine, Writings, D.E.Wheeler, ed. (10 vols., New York, 1908), IV, 267-268. See also note 9.

12 Constitution of Pennsylvania, Declaration of Rights, Section 5.
society to its primitive state; they declare that the people alone have the essential and exclusive right to govern themselves and to regulate their internal affairs; that all power springs from them; that they have the right to elect their officials; that each member can demand of society that he be protected in the enjoyment of his life, liberty and property, etc. They establish, moreover, for the basis of their Constitution, the perfect equality of all citizens in elections, the greatest respect for private property, the right of all free men to obey only those laws which they have consented to, the right to leave the state in which they live when they can find greater happiness elsewhere.

Firmly persuaded that this happiness is founded on good criminal laws, they state in a single article the principles upon which they must be based; they draw them always from the right inherent in man, the right, when he is accused, to be able to furnish evidence in his favor. They desire that the preparation of the case be prompt and public, that it be made by an impartial jury of the country, without the unanimous consent of which he cannot be found guilty. . . .

You innocent ones, who today languish in irons, broken under the yoke of the barbarous European procedures, would not have to

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13 This was one of the cardinal principles of many of the eighteenth century thinkers, particularly Rousseau. Brissot "was an indefatigable reader of Rousseau, especially of his Confessions, which he had read at least six times, and he was always quoting from his writings." Ellery, op. cit., 43.
14 Constitution of Pennsylvania, Declaration of Rights, Section 3.
15 Ibid., Section 4.
16 Ibid., Section 8.
17 Ibid., Section 7. "The essentially democratic feature of the Constitution was the complete abolition of all property or financial qualifications, not only for the electorate, but also for the elected." Selsam, op. cit., 188.
18 Constitution of Pennsylvania, Declaration of Rights, Section 8.
19 Ibid., Section 15.
20 Ibid., Section 9.
21 Brissot is not very clear here. He uses the word instruction which cannot be interpreted as trial, yet employs the words prompte & publique, referring to trial in the Constitution, to go with it. Article 9 reads: "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; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers." For assistance with this and several other points I am indebted to Dr. Cortland Eyer of the French Department, The Pennsylvania State College.
grieve over the loss of your liberty if these wise principles were in use in your tribunals, if, as in Pennsylvania, a European could be deprived of his liberty only by virtue of just laws, or by a judgment of his peers; you would not be forced ridiculously to testify against yourselves; your civil liberty would always be respected, always intact under the protection of the law. Let us cherish then the asylum where this liberty still reposes, where political liberty, granted to each citizen, serves only to confirm it.

What precautions are taken to defend this political liberty, only the name of which is now known in Europe! To defend it the people reserve to themselves the right to assemble,22 accordingly one has always seen tyrants who wished to destroy a republic begin by abolishing the assemblies of free men. I could furnish a hundred examples of this.

to speak, to write and to publish their sentiments,23 to bear arms, to disband the standing army in time of peace, to subordinate always the military to the civil authority.24

These two last precautions have saved what remains of liberty in England. One of their constitutional principles is that a permanent army without the consent of Parliament is contrary to law. Join to this fundamental maxim, that the sword of the soldier can never be drawn against the citizenry in a riot or revolt without the authority of the civil magistrate, and you will see that it is not astonishing still to find some free men in England.25

From what period in every other country can we date the enslavement of the citizens? From the moment when the rulers were able to maintain large armies in times of peace, and when the military was freed from the civil authority.

At the same time the rulers ended by force the right of representation which the people had in their natural state, and their unhappiness reached a climax. The Americans have wisely prevented this

22 Constitution of Pennsylvania, Declaration of Rights, Section 16.
23 Ibid., Section 12.
24 Ibid., Section 13.
25 Brissot spent about two years in England and had one very unfortunate experience there. Within a few days after the birth of his child, and while his wife was still very ill, he was thrown into an English prison for debt by a French backer of one of his literary projects. Brissot returned to France in July, 1784. Ellery, op. cit., 27. In view of this sad experience it is surprising that he failed to comment on the provision prohibiting imprisonment for debt in the Pennsylvania Constitution. See the Constitution of Pennsylvania, Section 28.
blow to their liberty. One article of their Constitution assures them forever the right to consult together for the common good, to apply to the legislature, by way of petition or remonstrance, for the redress of grievances which they believe have been committed against them.\textsuperscript{26}

The form of the government of Pennsylvania is fixed by Chapter II. There they establish in a precise manner the limits of the legislative and executive powers. There they exclude forever the authority of a single person. There they confine the power to make the laws to a general assembly of the representatives of the state, and give the right to enforce the laws to a removable council.\textsuperscript{27}

When one understands the human spirit, it is evident how difficult it is to bring governments to a certain degree of perfection. It is men who govern, and it would be necessary for these governors to be more than men, they would have to be angels. Whatever they do, although nature joins with education to make the leaders well-disposed, they will always be, like the rest of their kind, dominated by passions or confused by errors. Incapable of grasping all the details, they will see superficially and will see badly, or they will see through the eyes of strangers, which is worse still. Wherever one turns there is no consolation; everywhere poor humanity is condemned to grieve. Imagine a king without advisers and he will make a multitude of mistakes; give him a council and he will let it commit them. The evil in all that is that the rulers do not consult the governed, those who necessarily have an interest in being well-governed. They alone can enlighten the rulers about their common interests—an unalterable reason why the voice of the people should be listened to, why it should always be represented near the executive power.

Since rulers tend to weaken the constitution in spite of themselves, it is necessary then to erect a barrier to their passions and their prejudices; and such has been the origin of the Tribunes in Rome, of the Parliament in England, of both the legislative and executive powers in America. These bodies balance the authority of the government, not preventing it from doing good, but stopping it when it

\textsuperscript{26} Constitution of Pennsylvania, Declaration of Rights, Section 16.

\textsuperscript{27} The Supreme Executive Council was composed of one representative from the city of Philadelphia and one from each of the counties, to be chosen for a three-year term. One-third of that number were to retire annually. See Constitution of Pennsylvania, Sections 3 and 19.
wishes to do harm. These powers mutually watch over each other. Good is accomplished in fact by mutual distrust; but what difference does it make? good always results.

Despotism, which always ends by swallowing up everything in itself, is found not only in monarchies, but also even creeps into republics. The Americans fearing that, have granted many rights to the people, and have made the executive and the legislative power check each other. That is the reason for the rules that no one can be a member of the House of Representatives more than four years in seven, that the General Assembly cannot change anything in the present Constitution, that the members cannot hold any other public office, that they can be prosecuted for extortion or other crimes, that they can be removed by their constituents, that the record of their sessions shall be published and that their sessions shall be public. And a thousand other precautions to prevent the corruption of its members, which would hasten inevitably the ruin of the Constitution.

One of the best ways to prevent this corruption is the ever-present liability to removal of the members of the General Assembly.

One of the causes which ruined Geneva and made her democracy degenerate into a veritable aristocracy, is the kind of permanence which prevails in her councils, and especially in the small one. Nothing is more dangerous than the obligation one has to reelect almost all the members for fear of dishonoring them. One does not fear this dishonor in America since the law upholds reelections and permits them only after a three or four year interval.

28 Constitution of Pennsylvania, Section 8.
29 Ibid., Section 9. The General Assembly “shall have no power to add to, alter, abolish, or infringe any part of this Constitution.”
30 Ibid., Section 7. Brissot does not state this provision correctly for he says that “les membres ne pourront être chargés d’autres emplois,” while this section stipulates “any other office, except in the militia.”
31 See Constitution of Pennsylvania, Sections 9 and 22.
32 Members of the General Assembly could be removed both by their constituents and their colleagues. Section 6 of the Declaration of Rights of the Constitution declares: “That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and to supply the vacancies by certain and regular elections.” Section 9 of the Constitution of Pennsylvania declares that the Assembly “may expel a member.”
33 Ibid., Section 14.
34 Ibid., Section 13.
Wherever offices are permanent a dull despotism is imperceptibly established, against which the man of highest character is scarcely a guarantee. Examine the constitution of certain tribunals of Europe where the members are perpetual; you will find there the proof of what I assert in that spirit of the body which struggles perpetually to extinguish the rights of the citizens under the privileges of the assembly. There the magistrate is hard, haughty, opinionated; he can be unjust with impunity. Happy indeed is the society where he is only ignorant!

The Constitution of Philadelphia anticipates all these evils in changing perpetually the members of the governing body. To the method of elections thus combined with this continual rotation, one reads in the code, there will be more men accustomed to deal with public affairs; there will be found in the Council in each of the succeeding years a certain number of persons acquainted with what was done the year before, and because of that the business will be conducted in a more continuous and uniform manner; and this system will have the great advantage also of effectually preventing all danger of establishing in the state an aristocracy which could only be injurious.\textsuperscript{35}

Another institution which aims to prevent corruption in the governing bodies is the creation of the Censors every seven years. Their duty is to examine whether the Constitution has been preserved in all its parts, and whether the bodies charged with the executive and legislative powers have performed their duties as guardians of the people, or assumed or exercised greater powers than those given them by the Constitution. The levying of taxes, the expenditure of public funds, the prosecution of crimes against the state, and everything which is of interest to the Commonwealth is submitted to their examination. An excellent institution, quite proper to uproot abuses which might slip into the Constitution and thus prevent its ruin.\textsuperscript{36}

\textsuperscript{35} \textit{Ibid.}, Section 19. The wording of this part of the section is “the danger of Establishing an inconvenient Aristocracy will be effectually prevented.” Brissot might readily have smiled at the word “inconvenient.”

\textsuperscript{36} Constitution of Pennsylvania, Section 47. The Council of Censors was the most interesting and unique feature of the Constitution. Lewis H. Meader, in \textit{The Pennsylvania Magazine of History and Biography}, XXII (1898), 265–300, traces this idea back to the early days of Greece and Rome. This was copied by Vermont, and the New York Council of Revision was somewhat
I shall not pause on numerous other articles infinitely precious to
the friends of liberty and humanity. With what pleasure will they
read those which concern the reform of the penal code,\textsuperscript{37} public
instruction,\textsuperscript{38} laws to encourage virtue and preserve religion and
morals!\textsuperscript{39} The wise authors of this code have felt the influence of all
these branches of government on the happiness of the individuals,
and they recommend to the legislative and executive bodies that
they concern themselves with them promptly.

No country offers greater advantages than America for establish-
ing good legislation. The political constitution there is assured in
spite of the arms of England. When war ceases to devastate the
land, when commerce is re-established and the arts are in full bloom,
then the people will be permitted to concern themselves with the
reform of the civil laws and will be able to complete this august
monument, the base of which is already finished. America will be
free, returned to the natural state; it then must have a civil and penal
code founded in nature, dictated by reason and humanity. For the
Americans indeed guard themselves against consulting the incoherent
and barbarous laws of Europe—this Roman law, an eternal source
of litigation and calamities; they guard themselves against believing
in our prejudices, in our lawyers, but they listen to the philosophers;
they follow a second time the profound Locke; they read and correct
Montesquieu and Rousseau; they are especially careful against
following England too closely. They have known how to avoid the
views of its political constitution, and if they avoid likewise those of
its legislation, they will be doubly happy. Perhaps this opinion will
appear paradoxical in Europe. But in comparing the Constitution of
England with the new one of Pennsylvania, people will not hesitate,
in spite of the enthusiasts for the former, to give preference to the
latter. And in truth why would it not have been better? It has been
drawn up by men who knew all the advantages and all the vices of
the English constitution: they have profited from the former and

\textsuperscript{37} Constitution of Pennsylvania, Sections 38 and 39.
\textsuperscript{38} Ibid., Section 44.
\textsuperscript{39} Ibid., Section 45.
avoided the latter. They have seen that in England the elections of the representatives of the nation were the result of intrigue and corruption; they have remedied this abuse by depriving electors convicted of corruption of the right to vote, and debarring from office those elected by bribery.\textsuperscript{40}

In England the Parliament has been septennial since George the First; in America it is triennial.\textsuperscript{41} The supporters of liberty have often tried in England to restore the duration of Parliament to three years. They wisely saw how this reduction would diminish the influence of the Crown; but the Crown has always been able to cause motions on this subject to be defeated.

In England the members of the House of Commons may succeed themselves; in America the members are able to be re-elected only after a three-year interval.\textsuperscript{42} In England a member cannot be changed\textsuperscript{43}; in America each member can be removed by the simple wish of his constituents.\textsuperscript{44} In England the right to elect representatives is badly distributed between the cities and counties. A village which has scarcely any inhabitants names several representatives, while a considerable city names less. It follows from this that the lord names or has the power to name deputies at his pleasure.\textsuperscript{45} In America representation is in relation to the number of the people paying taxes. The number of the one increases or diminishes in proportion to the other.\textsuperscript{46}

The worst abuse in England springs from the fact that the executive power is always in the same hand; in America this power changes like the General Assembly. The source of the trouble in

\textsuperscript{40}Ibid., Section 32.

\textsuperscript{41}Brissot is in error here for the General Assembly was elected annually. \textit{Ibid.}, Section 9. England's Septennial Act passed in 1716 lengthened the possible duration of Parliament from three to seven years.

\textsuperscript{42}This is not quite accurate. Section 8 of the Constitution of Pennsylvania states: "No person shall be capable of being elected a member to serve in the house of representatives of the freemen of this commonwealth more than four years in seven."

\textsuperscript{43}John Wilkes was expelled from the House of Commons on January 19, 1764.

\textsuperscript{44}See note 32.

\textsuperscript{45}In spite of the rapid urbanization caused by the Industrial Revolution no redistricting of electoral precincts took place between 1677 and the passage of the Reform Bill of 1832. This was due, however, to the failure of Parliament to act and not to a lack of power to do so.

\textsuperscript{46}Constitution of Pennsylvania, Section 17. This section states that "representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land."
England is especially the too great power of the King. He has the right to appoint the civil and military officials; he distributes favors, he is head of the church, &c. In America the people and the militia have the right to choose their officers; the Council has other rights; but it changes, it is watched and it is under the censure of the Council of Censors.

In England the Crown has the right to approve or reject bills without discussion, to prorogue or dissolve Parliament; the result is that the Crown dissolves those which do not please it, and prorogues the Parliament at the moment of fear.\(^{47}\) In America the convenings, dissolutions and prorogations are fixed by law, and no one is able to violate this law.

Finally, in England the chambers do not have the right to prose-cute the King when he violates the constitution; they are able to attack only his ministers. Often, in truth, at the end of each reign when the record of the King is examined, when all the abuses are reviewed, then they attempt reforms, but these reforms are rarely put into effect. In America the abuses are insignificant and censure is more frequent. Every seven years the Council of Censors is chosen which examines for one year the conduct and performance of the General Assembly and of the Council.\(^{48}\)

One could continue the comparison endlessly. I do not wish, however, to leave this subject without speaking of an opinion of an authority on the English Constitution, which would seem to invalidate the truth of this comparison. He writes that the criterion of a good political constitution is unity in the executive power and division in the legislative power. If this statement were true, the result would be that the code of Pennsylvania would have a double inconvenience; for the executive power, although in a single body, is divided among several members, and the legislative power is united; this is precisely the reverse of the opinion of this writer.

This is not the place to discuss the reliability of his opinion. The reasons he gives for it are ingenious; but the distribution of power

\(^{47}\) All through this discussion on the English Government Brissot has failed to understand the changes which had taken place since 1688. The Cabinet had already assumed its modern shape and the personal rule of George III was possible only through a Parliamentary majority. That George secured this majority through bribery and corruption does not alter the fundamental principle. The royal veto had not been used since the reign of Queen Anne.

\(^{48}\) Brissot says *du congrès*, but he undoubtedly means the Executive Council.
in Pennsylvania does not appear to me less suitable to attain the end desired: which is to have good laws, to have them executed, to prevent attacks against them. This triple object appears to me perfectly fulfilled by the institution of the General Assembly, the Executive Council and the Council of Censors.

Time is needed to support and strengthen the new Constitution in order to judge it. It has undoubtedly its weak points; it contains articles which perhaps ought to be changed. Perfection is not a part of human nature. To approach it is an achievement, and no constitution comes closer to it than that of Pennsylvania.

N. B. Other constitutions for America have appeared since this one. I will speak of them successively.