When the Pennsylvania convention adopted the first constitution for the state on September 28, 1776, it did not merely ratify the version that it proposed for public consideration on September 5. The final frame of government differed from the proposal referred to the people in many significant ways, with two-thirds of the sections substantially modified by the substitution of key words or even entirely new sections. The public had less than a month to reflect on the proposed frame of government, but there was time for criticisms and suggestions to be directed to the convention, which did respond, either positively or negatively, to every criticism published by September 28. The existence of two

1 Only fifteen of the forty-nine sections of the proposed constitution were retained, with slight modifications in capitalization and nomenclature. The original proposal was printed as *The Proposed Plan or Frame of Government for the Commonwealth or State of Pennsylvania* (Philadelphia, 1776). The final constitution had forty-seven sections and was printed by John Dunlap: *The Constitution Of The Common-wealth Of Pennsylvania, As Established By The General Convention Elected For That Purpose . . .* (Philadelphia, 1776).

2 As with all of the early state constitutions, it is impossible to reconstruct the debates in the Pennsylvania convention or to trace the progress of specific ideas. The minutes of the convention, revised for publication by Timothy Matlack, James Cannon, David Rittenhouse and John Bull, the principal supporters of the adopted constitution, give information on only a few items in the debates and only two constitutional changes are noted. *Minutes of the Proceedings of the Convention of the State of Pennsylvania . . .* (Philadelphia, 1776).
versions of the 1776 constitution, before and after popular con-
sideration, reveals considerably more of what occurred in the Penn-
sylvania convention in September, 1776, than can be obtained from
all other sources.³

Pennsylvania was the first state to provide for any public ex-
pression on the merits of a proposed constitution, although the
procedure was far less than a popular ratification. Before the con-
vention met, several writers proposed that the convention allow for
public consideration of the proposed constitution before its final
adoption. The day after the Continental Congress gave final passage
to its May 15 resolution calling on the states to take up government,
a catechism about constitution-making appeared in a Philadelphia
newspaper. Only the people could form a constitution, the writer
affirmed. He believed that the convention that wrote the constitu-
tion should publish its plan for consideration and adjourn for six
or nine months. On reassembling, the same men, plus an equal
number of new members, should discuss proposals for alterations
and reach a final agreement.⁴ In early July a pamphlet signed
“Demophilus” advocated that the convention publish its proposed
constitution, then adjourn for a short time in order to let the people
give their reactions. This influential pamphlet also advised a distinct
separation between a convention and a legislature, so that “every
article of the constitution . . . by which even the supreme power of
the state shall be governed, be formed by a convention of the
delegates of the people, appointed for that express purpose: which
constitution shall neither be added to, diminished from, nor altered
in any respect by any power besides the power which first framed
it.”⁵ And a newspaper writer on July 16 proposed what would
amount to a ratification election. He thought that it would be most
proper for the present convention to print its proposed constitution,
then dissolve itself and allow the people to choose a new convention

³ The standard account of the entire process of writing the Pennsylvania constitution is
does not compare the proposed constitution with the final version, nor do later writers, such
as David Hawke, In the Midst of a Revolution (Philadelphia, 1961), or Gordon S. Wood,
⁴ Pennsylvania Evening Post, May 16.
⁵ The Genuine Principles of the Ancient Saxon, or English Constitution (Philadelphia, 1776),
34, 8. This was printed after July 4.
to make any alterations necessary, and to confirm the constitution. These were unique proposals for involving the people in the formation of their government, since proposals for popular confirmation had not yet been advanced elsewhere and none of the four state constitutions written by this time provided for any form of popular ratification. While the Pennsylvania convention did not fully endorse any of these plans, it did decide to publish its proposed frame of government and allow the public to respond.

The convention first met in Philadelphia on July 15 and soon elected its one luminary, Benjamin Franklin, as president, and selected a twelve-man committee to draft a declaration of rights. This committee had one member from the city of Philadelphia and one from each of the eleven counties. Owen Biddle represented the city and John Bull the surrounding county; George Ross, James Smith, and Jonathan Hoge were possibly the most noted names among the rest of the committee. On July 24 the same committee was assigned the task of writing the frame of government, but the next day when it presented its first draft of a declaration of rights, the draft was read and laid on the table, and the convention immediately appointed six new members to the committee. County equality was ignored in the new appointments, with three of the new members from the city. The expanded committee now included Timothy Matlack, James Cannon, and David Rittenhouse from the city and Robert Whitehill, James Potter, and Bartram Galbreath from the interior counties. These new members became the chief architects of the constitution, and subsequently were among its most ardent defenders.

6 Pennsylvania Evening Post, July 16. Despite the wealth of material given by Selsam, he does not cite any of these three calls for public consideration, although "Demophilus" is quoted on constitutional conventions. Selsam, 175. Elisha P. Douglass, Rebels and Democrats (Chapel Hill, 1955), 260, concluded that "apparently the question of popular ratification of the constitution was never even raised."

7 Ross was from Lancaster County, Smith from York, and Hoge from Cumberland. Other members were the Rev. William Vanhorn of Bucks County, John Jacobs of Chester, Jacob Morgan of Berks, Jacob Stroud of Northampton, Thomas Smith of Bedford, Robert Martin of Northumberland, and John Moore of Westmoreland.

8 Whitehill was from Cumberland County, Potter from Northumberland, and Galbreath from Lancaster. Rittenhouse was chairman of the committee of the whole when the convention debated the constitution. See Selsam, 149-151, 185-187, for the various claims for authorship of the constitution.
After the upheaval of July 25 restructured the drafting committee, the convention required three more weeks to prepare a declaration of rights. One committee report was printed for consideration by the convention. Half of the sections in this draft were identical to the final declaration. Most of the differences in the other sections represent a rephrasing of essentially the same ideas, but some changes went beyond that, and one of the committee’s proposals was rejected entirely. An important modification was made in the committee’s declaration, “Nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his peculiar mode of religious worship . . .,” which was amended to modify “any man” by adding “who acknowledges the being of a God.”

At the end of another section, declaring the public’s right “to reduce their public officers to a private station, and supply the vacancies by certain and regular Elections,” the committee had added a disclaimer, italicized, lest anyone suppose that this endorsed rotation by periodic exclusion from office: “But that the having served in any Office, ought not in all Cases to disqualify the Person from being re-elected.” This qualification was eliminated from the final declaration of rights, and the frame of government did, in fact, provide for rotation.

The final section of the committee’s draft proved to be the most controversial, for it clearly showed a leveling sentiment within the committee: “That an enormous Proportion of Property vested in a few Individuals is dangerous to the Rights, and destructive of the Common Happiness, of Mankind; and therefore every free state hath a Right by its Laws to discourage the Possession of such Property.” Another section of the draft emphasized the rights of “acquiring, possessing and protecting property,” so this statement would only have aimed to outlaw enormous accumulations. But the

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9 An Essay of a Declaration of Rights, Brought in by the Committee appointed for the Purpose, and now under the Consideration of the Convention of the State of Pennsylvania [Philadelphia, 1776]. This report is undated, but appears to be the report of the expanded committee since it closely resembles the final document.

10 Section 2. The numbering of sections was the same in all printed versions.

11 Section 6.

12 Section 16. Cannon had earlier written “great and overgrown rich men will be improper to be trusted.” Quoted in David F. Hawke, Benjamin Rush, Revolutionary Gadfly (Indianapolis, 1971), 161.
convention decided to bury the whole idea, and substituted an entirely different subject for the last section: "That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance." The declaration was completed and given final approval by the convention on August 16. It appeared in the Pennsylvania Evening Post on August 20, although it was not formally submitted for public consideration.

The eighteen-man committee spent considerable time in drafting the frame of government, and often went before the convention in committee of the whole in order to obtain the decision of all the delegates on major provisions. After lengthy debate, the convention reached a crucial determination on August 2 when it endorsed a unicameral legislature, "under proper restrictions." It was another month before the constitution was ready to submit to the people. Finally, on September 5, the convention directed Rittenhouse and the Rev. William Vanhorn to have 400 copies of the draft printed and distributed for public consideration. The proposed constitution was printed as a pamphlet by John Dunlap, the publisher of the Pennsylvania Packet. It appeared in the sympathetic Pennsylvania Evening Post on September 10, but it was not printed by the more neutral Pennsylvania Gazette until September 18.

The convention did not adjourn, but continued to legislate for the revolutionary state while it revised its own proposal for a constitution. There were few comments in the newspapers until the

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13 Section 16. The version printed in the Pennsylvania Evening Post on August 20 was exactly the same as the version incorporated with the frame of government as the final constitution on September 28.

14 The Pennsylvania declaration of rights bore a strong resemblance to the previously published Virginia declaration. In one particular the two states took explicitly opposing stands: with a land dispute in progress on their western frontier, Virginia prohibited the establishment of any other government within its limits, while Pennsylvania affirmed the right of anyone to emigrate to "form a new state in vacant countries. . . ." Section 15. See Selsam, 178-179.

15 The first reading was completed before August 19. John Ralston to Christian Ralston, Aug. 19, 1776, McCormick Collection, State Historical Society of Wisconsin.

16 Minutes, September 5.

17 "Demophilus" stated that he had read the copy printed by Dunlap. Pennsylvania Packet, September 17. The proposed constitution did not appear in the Packet.
last week of September, but the proposed constitution was now public knowledge, and this, in itself, would alter the nature of the convention's deliberations. The convention debated and changed significant parts of all the major provisions in the constitution—those relating to the Assembly and the legislative process, the Council, election qualifications and procedures, civil rights, the judiciary, the oaths and the revision process.

The Pennsylvania constitution provided for a government with one legislative assembly, elected annually by all adult male taxpayers, and given the sole power of approving and enacting legislation. This provision for a unicameral legislature was its most distinctive feature. The supporters of unicameralism had won that fight on August 2 and refused to have the issue reconsidered. On September 16, eleven days after the constitution was submitted for public consideration, when George Ross and George Clymer moved in the convention to amend the section establishing a unicameral legislature, the majority decided that "further debate on the second section is precluded, because it was fully debated and decided before." Thus the rationale of public consideration was summarily rejected on this issue, and the only important consideration that remained on that matter was whether the supporters of unicameralism still had the votes to maintain their position.

While they were not forced to retreat from the principle of unicameralism, they did make changes in the restrictions placed on the General Assembly. On September 18 a committee of Matlack, John Jacobs, and John Hubley reported a revision in the method for Assembly consideration of bills. The section on the legislative process was entirely rewritten, including a requirement that all bills have preambles, "for the more perfect satisfaction of the public," and the section itself received a short preamble declaring its purpose to be, "To the end that Laws before they are enacted may be

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18 The convention did not announce its intentions concerning public consideration. The Pennsylvania Gazette printed no comments about the constitution during September, but other papers carried comments, as is noted below.

19 Supporters of unicameralism also frustrated a move for a roll-call vote on this issue, although as a critic noted the convention's constitution would allow just two assemblymen to demand a legislative roll call. Minutes, September 16; Pennsylvania Packet, October 22. The proposed constitution usually referred to "the House of Representatives," which was often changed to "the general assembly," but the switch was not made consistently.
more maturely considered, and the inconvenience of hasty determinations as much as possible prevented. . . .” This effort to counter the emerging criticism of the one-house legislature flies in the face of the fact that the new provisions made hasty decisions more likely. The final version, in fact, eliminated a requirement that bills be read three times on three different days, then delayed a week before referral to the next session, unless it was then passed as an emergency measure. The original version thus required a minimum ten-day delay, even if the bill were to meet an emergency; under the final plan an emergency bill could be passed the same day it was introduced. This removed any objection that the constitution would prevent the legislature from taking swift action when needed, but it also removed an important brake on precipitate action by an unchecked one-house legislature.

There were still other changes in the legislative process. One change rejected the thought of limiting the size of the Assembly: the original version did not specify the maximum number of representatives, but a blank left in the draft, to be filled in later, indicated an intention to set a definite number. A change in the quorum requirement, in the event that some counties did not send representatives, would require a majority of the cities and counties to be represented as well as two-thirds of the members from the counties that were in attendance. Another change from the September 5 proposal would allow any member to enter in the journal the reasons for his vote on a roll call, a privilege only allowed Council members in the first proposal. The restriction on the power to expel, “but not a second time in the same sessions, if the member expelled is re-elected by the same constituents,” became more succinctly, and more permissively, “but not a second time for the same cause.”

The provision for a unicameral legislature escaped fundamental change, but the provisions for an Executive Council were thoroughly revamped. As originally put forward the Council would have consisted of nine men chosen by the Assembly without geographical or

20 Section 15 of both versions. I have attempted here, as throughout in this paper, only to include those provisions that were changed during September.
21 Section 7.
22 Section 12.
23 Sections 14 and 19 of the original version.
24 Section 9, both versions.
other restriction. The councilmen could not be from the Assembly when elected, but they could be re-elected indefinitely. Only the president of the Council (to be selected from among the councillors by joint ballot of the Assembly and Council) could not hold office continuously. He was limited to not more than three years in sequence, although he apparently would be able to serve two years then sit out a year, and continue that pattern indefinitely. And he could remain on the Council during his off year. If this proposal had been adopted, the form of the executive in Pennsylvania would not have differed as greatly from that adopted in the other new states, although, as elsewhere, the executive would have considerably less power than was held by the colonial executive, particularly in the absence of a veto power.  

By the end of September the Council emerged in an entirely different form. Representation was to be by counties, with one councillor elected by the freemen in each county and one from the city of Philadelphia. Philadelphians would now be perpetually out-numbered. Councilmen could now serve a maximum of three years in seven; furthermore, once elected to a three-year term they could normally expect not to be elected again from their county until the end of another six years. Council positions would now be more widely distributed, and to make plain its intention the convention entered its argument in the constitution:

By this mode of election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the Council a number of persons acquainted with the proceedings of the foregoing years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented.  

Possibly as a final touch, the elections were staggered in the various parts of the state so that the western counties were initially assigned the one-year terms in the Council, while the eastern counties would not have their second Council elections until the fall of 1779. The number for a quorum had been left blank in the original proposal, but was set at five in the final version, despite the fact that the

25 Section 18 of original version.
26 Section 19 of final constitution.
Council would now constantly expand as new counties were created. Only a few changes were made in September in enumerating the powers of the Council: it was explicitly allowed to grant licenses and it would be allowed to take advice from the supreme court justices when hearing cases of impeachment.27

The Executive Council as finally established became a distinctive feature of the Pennsylvania constitution. However, the provision for rotation, or periodic exclusion from office, of those in executive power was not unique with that state. In fact, the majority of the first state constitutions provided for executive rotation, with Pennsylvania joining all of the states to the south of it in favoring the principle. Pennsylvania was, however, the only state to require legislators to be periodically excluded from office. Both of the September versions of the frame of government stated that assemblymen could not serve "more than four years in seven," although the earlier version had also added, with extreme caution, "Nor shall any one person serve more than four years successively."28

Election qualifications and procedures caused more difficulties for the framers of the constitution. The September 5 proposal revealed a fundamental change from colonial laws in the qualifications required of voters, opening the suffrage to "every freeman" at least twenty-one years of age who had paid "public taxes" and had lived in the state one year. This provision alone was unusual enough in the minds of some for them to label the constitution the work of "Cannon and his leveling party."29 Criticism of this provision was

27 On the day it adopted the constitution, the convention issued a special proclamation to call public attention to the change and to alert all freemen to vote for members of the Council. Minutes, September 28. Pennsylvania Evening Post, October 1.

28 Rotation does not appear initially to have been a source of division in Pennsylvania, or at least not open opposition. Supporters of the constitution pointed to rotation as one of the checks placed on the unicameral legislature, while opponents replied that a lot of mischief could be done in four years. A gathering of opponents in November, attempting to rally support for the immediate revision of the constitution, pledged that rotation was among five constitutional provisions they did not seek to repeal. The others were liberty of conscience, jury trials, freedom of the press, and annual elections. Pennsylvania Packet, October 22. It should be noted, however, that all of those who have been claimed as principal authors of the constitution had the foresight to secure positions not subject to rotation. It might also be noted that only states north of Pennsylvania developed strong gubernatorial dynasties in the late eighteenth century.

initially muted, but by the next month it was openly attacked, with
probably the bluntest argument coming from a critic who tried to
persuade the propertied freeholding class that they needed to look
to the future:

while the rights of election ... are lodged in those who possess the general
property, landed and personal within this state, it will ever be their
INTEREST to keep things quiet, and to have officers go on with regularity;
and if the other class grows turbulent, the whole force and dignity of
government can be exerted to keep them in order. The time must come in
this state, as it happened in all states, as their people and manufactures
increase, when the numbers of those without property will bear a greater
proportion to those who have property, than they do at present.\footnote{30}

But on the other side were those who were more concerned with the
pernicious influence of deference. As one correspondent saw it,

it is plain, that in those colonies where the government has, from the
beginning, been in the hands of a very few rich men, the ideas of govern-
ment both in the minds of those rich men, and of the common people, are
rather aristocratical than popular. The rich, having been used to govern,
seem to think it is their right; and the poorer commonalty, having hitherto
had little or no hand in government, seem to think it does not belong to
them to have any.\footnote{31}

Although the final constitution retained the initial proposal to
extend the vote for representatives to adult taxpayers, in September
the convention did pull back a little from its first suffrage proposal.
Whereas in the first version freemen could vote for justices of the
peace, in the final version this right was restricted to freeholders.\footnote{32}
In a section extending rights to aliens, the word “freeman” was
changed to “subject.”\footnote{33} The suffrage for representatives was ex-
tended, in the final version, to the adult sons of freeholders (though
not the sons of mere freemen), even if they had not paid taxes.\footnote{34}

\footnote{30} *Pennsylvania Evening Post*, October 24.
\footnote{31} The writer was from New Jersey, but his letter was printed in Philadelphia while the
\footnote{32} Section 30. The president in council commissioned one or more of those elected by the
freeholders in each district.
\footnote{33} Section 44 of the original version. However, this change in wording does not seem sig-
nificant, since the rights extended by the section remained unchanged.
\footnote{34} Section 6. These sons of freeholders were not specifically authorized to vote for coun-
cillors or other officials.
Thus it is clear that the convention did attempt to make distinct classifications of voters, but it is also apparent that the results would make the keeping of poll lists more complex if rigidly adhered to.

The public had little to consider concerning election procedures and apportionment. In fact, next to nothing. In place of what became two lengthy sections of the constitution, readers were merely informed:

[Not drawn up in form; but after considerable debate, it was on motion Resolved, That the Freemen of the Counties may vote in Districts; And also, that at those District Elections, they shall vote for all the Members for the Assembly in one general ticket out of the County at large.]

The last resolution, about county tickets, was criticized in a newspaper article on September 17 and was not included in the final constitution, which carefully avoided answering the question of whether each district would elect its own representative or whether a general ticket would be used for the whole county. The final constitution also provided for legislative apportionment “in proportion to the number of taxable inhabitants” and went on to explain the principle as necessary to “make the voice of a majority of the people the law of the land,” which came as close as any eighteenth-century American constitution to recognizing the principle of one-man, one-vote. Reapportionments were to be made every seven years on the basis of a septennial census. But since there had not yet been an accurate enumeration of the populace, each county would be given an equal number of representatives in the first three general assemblies. None of these arrangements had been submitted for public consideration in early September, but they did not become bases of opposition in the ensuing debates about the constitution. Minor changes included shifting the election day from the first Monday to the second Tuesday in October and downgrading the status of the city of Philadelphia from the customary formulation in the first version of “in the city of Philadelphia

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35 Section 17 of original version.
36 "Demophilus" objected to county tickets and felt counties should be districted instead. Pennsylvania Packet, September 17.
37 Section 17 of final constitution, which also prohibited multiple voting, section 18.
and in each county" to "in each city and county" of the final version.38

The civil rights of Pennsylvanians were possibly strengthened by the explicit recognition of the declaration of rights as part of the constitution. But some church leaders were uneasy about the lack of any guarantee for the existing privileges of churches and schools that had been incorporated by the colonial government. A group of ministers led by the Rev. Henry Melchior Muhlenberg petitioned the convention for specific consideration. The convention added a lengthy provision drafted by Muhlenberg that all existing religious and charitable organizations would be protected in their privileges and estates.39 The power to grant charters of incorporation was also added to the list of legislative powers.40

The September 5 constitution stated that, until they were amended by the legislature, "the Laws shall remain in full force as they now stand, except such as declare any allegiance to the King of Great-Britain, or vest any authority in the Proprietors or late Governor of this State, or which are, in any wise repugnant to, or inconsistent with this Constitution."41 This provision, similar to ones in the already adopted South Carolina and New Jersey constitutions, was dropped from the final document, as was the only other reference to the proprietary in another part of the proposed constitution.42

The section on freedom of the press was reduced to one sentence: "The printing presses shall be free to every person who undertakes to examine the Proceedings of the Legislature, or any part of Government." This section had originally continued: "and the House of Representatives shall not pass any Act to restrain it: Nor shall any Printer be restrained from printing any Remarks, Strictures or Observations on the Proceedings of the General Assembly,

38 Sections 7, 12, 26, and 47.
39 Benjamin Franklin promised to submit it to the convention, and the convention only made four small changes in the proposal submitted by Muhlenberg. Letter of Henry Melchior Muhlenberg, Oct. 2, 1776, Pennsylvania Magazine of History and Biography (PMHB), XXII (1898), 130. This is one of the two changes mentioned in the minutes and is in Selsam, 216–218.
40 Section 9.
41 Section 39 of original version.
42 Section 34 of original version.
or any Branch of Government, or any public proceeding whatever; or on the conduct of any public Officer, so far as relates to the execution of his office; provided it does not extend to the informing an Enemy in actual war, concerning our strength, weakness, disposition, or any other thing which may serve the Enemy, and injure the State.”

Dropping the last part of this section probably had little practical effect, since the part remaining was still an absolute grant—and no patriot would suppose that freedom of the press could be extended to informing the enemy, even though the convention had deliberately deleted this qualification from the final constitution.

Members of the convention seem to have been particularly interested in penal reform when they drew up a section declaring: “Houses ought to be erected for punishing by hard labour, those who are guilty of crimes not capital, wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons.”

Evidently this met with a querulous response, since in the final version a justification, “To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary,” and a final provision that “all persons at proper times shall be admitted to see the prisoners at their labour” were added, as well as a change of the word “guilty” to “convicted.”

Debtors were to be freed from prison when they had turned over all of their property to their creditors. In the original version, an exception was made in cases of “intended fraud.” Some time in September the convention decided that “intended” was superfluous.

When it declared that fines should be moderate, the proposed constitution exempted “mens [sic] tenements, apparel, bedding, and the necessary tools of their trade or calling,” but this homely description was dropped from the final document.

Possibly the most embarrassing section of the proposed constitution was the one that stated:

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43 Section 36 of original version.
44 Section 40 of original version. No comments appeared in the newspapers.
45 Many, although not all, of the wordy explanations so characteristic of the Pennsylvania constitution were added during September, particularly sections 15, 17, 19, and 39.
46 Section 28. The phrase “bona fide” was also inserted.
No man, or set of men of any denomination or profession, are intitled to particular privileges or exemptions from punishment for offences; therefore the words "without Benefit of Clergy," where the punishment is death, ought to be hereafter disused in Legislation, and the punishments inflicted that shall be directed by Law.47

The sentiment seems to be that punishments should be democratically administered without favor to some "denomination or profession." But this would hardly be achieved by proscribing the phrase "without benefit of clergy"; in fact, the result of that action would have been exactly the opposite of the declared intention. The entire section was wisely deleted.

Sections dealing with the judicial process were generally the most poorly drafted.48 The question of whether the Council had power to reprieve cases of treason and murder met contradictory answers in the same sentence of the September 5 proposal.49 There was no provision granting the courts any powers at all, except for chancery cases, and "compelling the performance of trusts and agreements" and the "discovery of frauds" were originally defined only as chancery powers. The final version removed these difficulties.50 Some changes were less obviously the result of attempting to correct oversights, although the insertion of "for misbehaviour" into the clause granting the General Assembly the power to remove judges may also have been merely to clarify the convention's original intention.51 But it would have been quite a different power without those two words. Orphans' courts were constitutionally established in the final version, and chancery powers were extended to all courts of common pleas.52 And in the final constitution an officeholder could not avoid impeachment by resigning.53

47 Section 41 of the original version.
48 Most members lacked legislative or political experience, and critics ridiculed the typographical and grammatical mistakes, not all of which were corrected by September 28. Pennsylvania Packet, October 8.
49 Section 19 of the original version.
50 Section 24.
51 Section 23. Supreme court judges were appointed by the executive council for seven-year terms, renewable, in both versions.
52 Sections 24 and 26.
53 It was already clear that he could be impeached either before or after removal from office. Section 22 of the final version.
The office of justice of the peace underwent the greatest revision in the judicial branch. These local justices would be elected by freeholders rather than by freemen as proposed in the September 5 version. In the final constitution, more than one could be chosen in each ward, township, or district. And the legislature was empowered to make other arrangements for any such unit where the majority of freeholders wanted a different method for choosing their local justices.\(^{54}\)

Requiring oaths of officials, legislators, and even voters was one of the most controversial actions taken by the 1776 Pennsylvania convention. Most critics complained about the oaths, at first because they were too liberal but later because they were too restrictive. The complaints began early in September and continued for years. But in order to understand the controversy one needs to know the changes in the oaths that were made by the convention in September.

The convention's original proposal prescribed the form of the voters' oath and the oaths for representatives. It also required "all officers" to "take an oath or affirmation to endeavor to preserve this constitution inviolate," along with "the oath or affirmation pertaining to the office," but the forms for these oaths were not given.\(^{55}\) The voters' oath, to be required before voting at the first general election and, if required, at subsequent general elections, was mentioned in an early section of the constitution,\(^ {56}\) and the form of the oath was stated in a later section:

I ______ do swear (or affirm) that I will bear true allegiance to the Common-Wealth of Pennsylvania, and will, according to my abilities, preserve the freedom thereof: And that I will also, to the best of my judgment, vote only for such persons, as I do deem of fidelity and knowledge, worthy and capable of executing the trust reposed in them.\(^ {57}\)

The forms for the legislators' oaths were stated in another section:

I ______ do swear (or affirm) that, as a Member of this Assembly, I will not propose, or assent to, any Bill, Vote, or Resolution, which shall appear to me injurious to the people, nor do or consent to any act or thing what-

\(^{54}\) Section 30.

\(^{55}\) Section 42 of the original version.

\(^{56}\) Section 6.

\(^{57}\) Section 33.
ever, that shall have a tendency to lessen or abridge their Rights and Privileges as declared in the Constitution of this State; but will, in all things, conduct myself as a faithful honest Representative and Guardian of the People, and according to the best of my judgment and abilities.

And each Member, before he takes his Seat, shall make and subscribe the following Declaration, viz:

I do believe in one God the Creator and Governor of the Universe.58

The first newspaper comment on the oaths, by “Sat Verbum” on September 12, was favorable; he praised the oath proposed for representatives.59 A few days later “Demophilus” wanted an additional clause “that the candidate for office should declare his belief in the retributive justice of the Supreme Governor of the universe; for otherwise we can have no religious hold upon him.” But he made clear that he was strongly opposed to the addition of any test requiring assent to any particular belief about “the sublime mysteries of the Christian faith.” He reasoned that those mysteries were “above the reach of human reason” and “we have no evidence that the time is yet come when the Saints alone . . . shall rule the world. . . .”60 This mild criticism of the religious oaths was soon replaced by denunciation, such as that by “R,” who wanted the oath to require a belief in the “Old and New Testaments,” else “Jews and Turks may become in time not only our greatest landholders, but principal officers . . . ,”61 and by “A Follower of Christ,” who did not object to non-Christians being voters but who did object that Christianity was not mentioned in the oath for officeholders.62

On September 25 the convention appointed Cannon, Jacobs, and Rittenhouse to write “the oaths of allegiance and office to be inserted” in the final document. This meant revising the oaths that were already there as well as writing new oaths for officeholders. The legislators’ oath was amended to take the newspaper criticisms into account. The religious declaration was expanded to become: “I DO believe in one God, the Creator and Governor of the Universe, the rewarder of the good and the punisher of the wicked.

58 Section 10.
59 Pennsylvania Evening Post, September 12.
60 Pennsylvania Packet, September 17.
61 Pennsylvania Evening Post, September 24.
62 Ibid., September 26.
And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine Inspiration.”

And this was followed by a prohibition that “no further or other religious test shall ever here-after be required of any Civil Officer or Magistrate in this State.”

The voters’ oath was entirely omitted from the constitution. The form of the oaths for officials, however, was now prescribed, and it was made clear that the oaths applied to all officers, “whether judicial, executive, or military.” The officials’ oath of allegiance would be: “I ______ do swear (or affirm) That I will be true and faithful to the Commonwealth of Pennsylvania; And that I will not directly or indirectly do any act or thing prejudicial or injurious to the Constitution or Government thereof as established by the Convention.” All officials would also take a prescribed oath of office: “I ______ do swear (or affirm) That I will faithfully execute the office of ______ for the ______ of ______ and will do equal right and justice to all men to the best of my judgment and abilities, according to Law.”

Thus the convention attempted to appease the religious critics, not only by assuring them their charters and property were safe, but also by changing the oath required of representatives. Instead of the simple declaration of belief in one God, the final version required a belief in God as “the rewarder of the good and punisher of the wicked,” and an acknowledgment of the Old and New Testaments, thus excluding non-Christians. However, no other religious test was ever to be required of any public official. But the addition of the clause about the Old and New Testaments set up an inconsistency with the declaration of rights, which provided that no one who believed in God could be deprived of any civil right.

The only newspaper criticism of the oaths before the final adoption of the constitution had been from the religious critics. The legislators’ oaths were not changed, other than the changes made to satisfy those critics. The voters’ oath was deleted. And the oaths inserted for government officers were roughly comparable to the

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63 Section 10.
64 Section 40 of final version.
65 Selsam (p. 218) ascribes the criticism of “A Follower of Christ” to the final constitution, but the convention changed the oaths to meet his objections before it passed the constitution two days later.
presidential oath to "preserve, protect and defend the Constitution" required by the federal convention eleven years later.\textsuperscript{66}

The convention's action on oaths that aroused indignation was not written into the constitution. Instead, an ordinance was passed to require every voter at the first election to take the same oath of allegiance as that prescribed for officials. The original voters' oath was innocuous enough, but the final version, approved as an ordinance on September 26, required adherence to the convention's constitution. It was a blatant attempt to silence criticism by disfranchising the critics.

The convention's refusal to reconsider the unicameral structure for the legislature caused a number of critical articles to appear in the newspapers the last week in September. The real assault on the basic structure of the proposed constitution did not emerge until September 24 when "K" denounced the unicameral house.\textsuperscript{67} He claimed it did not have enough restraints placed on it. "K" made no specific suggestions for changes, but he proposed that the first legislature should make the alterations that were needed. This would violate the unchallenged constitutional principle of separating law-making and constitution-making powers, as stated by several writers before the convention began.

The next day "Demophilus" also attacked unicameralism. He put the matter simply and directly: the people of the country were "common farmers," unread in history, laws, and politics, who were honest and inclined to decide a matter on whether it appeared to be "right" to them. They might elect and comprise the Assembly, but they needed a legislative council of educated and well-read men to correct their errors.\textsuperscript{68}

"C" defended the constitution against the charge of "K" that the Assembly would not be under enough restraints. He listed such restraints as the requirement for public sessions, annual election, rotation, the prohibition from holding other offices, and the delay in enacting laws, all of which made control by another house unnecessary. He asked for a fair trial for the plan, and noted that the "plan provides for a change in the safest manner possible, and is

\textsuperscript{66} Article II, section 1.
\textsuperscript{67} Pennsylvania Packet, September 24.
\textsuperscript{68} Pennsylvania Journal, September 25.
another check on every power of government, but 'K' seems afraid to try the experiment, lest peradventure it should support itself too well.\textsuperscript{69}

On September 24 Benjamin Rush, destined to be one of the most persistent critics of the constitution, wrote Anthony Wayne that “many people” thought it was “too much upon the democratical order.” More restraints were needed.

Had the governor and council in the new constitution of Pennsylvania possessed a negative upon the proceedings of the assembly, the government would have derived safety, wisdom, and dignity from it. But we hope the council of censors will remedy this defect at the expiration of seven years.\textsuperscript{70}

The convention had recently appointed Rush to Congress, and, though disappointed with the new constitution, he at least seemed willing to let the experiment begin.

None of the state constitutions written before September, 1776, provided for any method of revision. The idea of a council of censors, a provision that Rush seemed to like in 1776, had been suggested by Pennsylvanians as early as May and was advocated by a number of the newspaper writers who influenced the shaping of Pennsylvania’s first constitution. The same writer who set forth a catechism on constitution-making on May 16 strongly emphasized the inviolability of any properly adopted constitution: “N.B. This frame of government, when agreed upon, should be entitled the Social Compact of the People... and should be unalterable in every point, except by a delegation of the same kind of that which originally framed it, appointed for that purpose.” Warning against the growth of an aristocracy, he urged the exclusion of any convention member “from ever holding any office under it.”\textsuperscript{71}

In the same catechism appeared the complete plan for a council of censors. This seems to have been the first one printed. The details were not exactly those of the final version, but the purposes were the same. The “committee of inquiry” here proposed would be

\textsuperscript{69} Pennsylvania Evening Post, September 26.

\textsuperscript{70} Benjamin Rush to Anthony Wayne, Sept. 24, 1776, Wayne Papers. It was apparently John Adams who converted Rush to opposition to the constitution. Hawke, Rush, 183.

\textsuperscript{71} Pennsylvania Evening Post, May 16.
elected every three years to sit for six months, and its "authority should extend to the examination of all laws passed within that space of time, to see if any infringed the Social Compact, to inquire into the application of the public money, and the conduct of all officers whether legislative, executive, or judicial; particularly to see that no branch of the legislature exceed the bounds prescribed for it. . . ." Any delinquent could be declared ineligible for any public office, a powerful weapon to enforce its decisions. The committee would also be able to recommend any alterations in the constitution "which, by experience, should be found defective or dangerous; which alteration or amendment should be made by a body of men delegated for the purpose, in the same manner as the Original Compact."\footnote{Neither Selsam, Pennsylvania Constitution, nor Lewis H. Meader, "The Council of Censors," PMHB, XXII (1898), 265-300, cite this.}

Another writer emphasized the necessity of preserving the constitution against encroachments by the legislature. He then attributed to Lord Camden the wish that "the maxim of Machiavel was followed, that of examining a constitution, at certain periods, according to its first principle; this would correct abuses, and supply defects." The writer suggested how this could be done: "at the expiration of every seven or any other number of years a Provincial Jury shall be elected to enquire if any inroads have been made in the constitution, and to have power to remove them; but not to make alterations, unless a clear majority of all the inhabitants so direct." His provincial jury could not only judge, but it would be empowered to "remove" unconstitutional laws.\footnote{Four Letters on Interesting Subjects (Philadelphia, 1776), 24. Also David Hawke cites a Cannon broadside of June 26 which apparently advanced the idea of a council of censors. Hawke, Rush, 195-196.}

In another pamphlet written for the Pennsylvania convention, "Demophilus" was concerned that the difference between statutory and constitutional law be recognized, and that the legislature should not be able to violate the constitution, for "if the legislature can alter the constitution, they can give themselves what bounds they please." He suggested that the convention provide for the meeting of a future convention to make any needed alterations after the need for changes had been "candidly advertised" to the public; in
no case should the legislature attempt to alter the constitution or deviate from its meaning. In concluding, he suggested that this convention could meet decennially “to examine the state of the constitution, and conduct of its government,” which would keep the government in “the hands of THE PEOPLE.”

The day the constitutional convention organized itself, on July 16, another lengthy plan appeared in a city newspaper, which among other items had suggestions for adopting and changing the constitution. This plan advocated two conventions—one to write the constitution, the other to confirm it. In this view, alteration of the “charter” thus adopted should only be made by two-thirds of the people in a ballot vote.

The convention provided for a committee of inquiry or provincial jury in its proposal of September 5, but named it a council of censors. Two censors would be chosen in each county in October, 1783, and every seven years thereafter. The council would require a majority to do business. It would inquire whether the constitution had been preserved inviolate, “whether the legislative and executive branches of government have performed their duty . . . or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution,” but they could only recommend the repeal of unconstitutional laws. They might call a convention, by majority vote, to meet within two years after their sitting for the purpose of amending the constitution, but the amendments to be proposed to the convention would have to be published at least six months before the people elected delegates to the convention. Since this was the only method of revision provided in the constitution, adherence to it would mean that another revision could not be made before 1784.

There was no newspaper comment in September about the council of censors, which was retained as proposed, except that the convention ended by making it more difficult for the censors to call a constitutional convention. The quorum for the regular business of the censors would still be a simple majority, but a two-thirds vote

76 Section 49 of original version.
would be required in order to call a convention. The authors of the constitution had occasion within a few years to look back with satisfaction at this crucial change from their first proposal.  

On September 28, twenty-three days after approving the draft for public consideration, the convention adopted the constitution, just as hostility began to emerge. On that day “F” complained of the expense of the convention, and objected that it seemed to be doing everything but what it was supposed to do. He particularly objected to convention ordinances that were clearly legislative actions, and even “the wildest enthusiast for popular government will not be bold enough to prove that the convention is a legislative body. . . .” The increasing attacks on the constitution and the convention goaded the convention into promulgating its constitution immediately, and on the last day it approved an address written by Cannon, Matlack, and Rittenhouse to justify its actions in adopting ordinances.  

The convention had modified the constitution to take into account nearly all of the objections published before September 28, with the exception that the convention remained adamant on unicameralism. The framers themselves had been frustrated in securing all that they wanted in the constitution. The leveling sentiment was strong in the convention, but it did not have control and was often forced to compromise. But the framers felt enough compromises had now been made. As their handiwork came in for more criticism, they took steps to make change even more difficult. An ultimately crucial move was to increase the vote required in the council of censors in order to call another convention. And when legislative revision was proposed by “K” on September 24, the convention moved to protect its work by oaths requiring allegiance to the convention’s product, and thus constitutional revision that could only be initiated by the censors.

77 The two-thirds requirement blocked the move to call a constitutional convention in 1784. Robert L. Brunhouse, The Counter-Revolution in Pennsylvania, 1776-1790 (Harrisburg, 1942), 156-163. The September 5 proposal had not stated who would elect the censors; the final version specified that voting would be by the freemen. Section 47.  
78 Pennsylvania Evening Post, September 28.  
79 Minutes, September 28.  
80 Pennsylvania Journal, October 2; Pennsylvania Packet, October 8, 15, 22; Pennsylvania Gazette, October 23.
The deluge of criticism was yet to come. Both critics and supporters appealed to what they hoped was public understanding of basic constitutional principles. Critics argued that the convention should not enact legislative law. Supporters held that the legislature should not enact constitutional law. Each side argued from self-interest, but each cited concepts that it believed were widely supported. Each side seemed stung by opponents’ criticisms when stated as violations of constitutional principles.

The convention’s tactics enabled its constitution to prevail until 1790, but only at a tremendous cost for domestic tranquillity in America’s key state. The convention had refused to accept suggestions that it let the people have a chance to make a final judgment on the constitution by electing a second convention, and it not only suddenly declared the constitution adopted, but it tried to prevent alterations. Critics noted that under the new constitution ordinary laws could not be enacted without an adjournment. Pennsylvania Journal, October 2.

And yet in the eyes of supporters the tactics were justified. In defeating the critics’ move to let the first legislature amend the constitution, those tactics helped establish a valuable precedent to preserve the distinction between constitutional and statutory law.

There had been little time for public consideration of the constitution during September, 1776; the populace had just begun to question the basic features of the proposal before it when it was suddenly proclaimed in effect. The results of public consideration were both more successful and less successful than usually understood; more successful in that criticisms did succeed in modifying the form of government, and less successful in that the convention did not merely rush its proposal into effect, but actually made changes in the proposal that would frustrate further efforts to change it.

**California State University, Northridge**

**John N. Shaeffer**

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81 Critics noted that under the new constitution ordinary laws could not be enacted without an adjournment. Pennsylvania Journal, October 2.

82 One writer saw the irony of the situation and compared the convention’s dilemma to that of Oliver Cromwell. Pennsylvania Packet, October 22.