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*Freedom of Association in the
Early Republic: The Republican
Party, the Whiskey Rebellion, and
the Philadelphia and New York
Cordwainers' Cases*

BETWEEN 1794 AND 1810, REPUBLICAN PARTY LEADERS in Pennsylvania and New York articulated a new conception of civil society based on voluntary associations and the existence of multiple, competing, interests. They used law to limit action taken by "self-constituted" societies in order to maintain free political and economic exchange in civil society and in the market. By studying two disparate sets of events, the relationship between the democratic societies and the Whiskey Rebellion in the 1790s, and the cordwainers' cases of 1806 and 1809–1810, this essay examines how Republicans in Pennsylvania and New York transformed inherited traditions of voluntary association and collective action held by both ordinary people and elite Federalists.

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The freedom of association was not protected either by the new state constitutions or the federal Constitution drafted following the American Revolution. The new constitutions did protect the freedom of assembly, but it was not clear what role this right should play in the new republic. The freedom of assembly was a communal right. It encompassed the right of a community to petition leaders for redress of grievances. By definition, when people assembled, they did so as a community in order to represent their collective will.¹ However, unlike in a monarchical society, in a republic the people elected their own leaders. It followed that the new governments acted in the people's name. If democratic politics functioned properly, a community's interests, and its grievances, would be represented by its elected officials. Ideally, therefore, people need never assemble again. When people did assemble, as they did in the 1790s in western Pennsylvania, they implied one of two things: either the system was not working properly or those assembling promoted interests distinct from the people's. In republican theory, the freedom of assembly did not provide a foundation for groups of individuals voluntarily associating to promote their specific interests.

Civil society, defined as the realm of autonomous voluntary associations situated between the private life of the household and the institutions of the state, requires the freedom of association. It is a space in which individuals can publicly associate to pursue their group interests. In modern democracies, civil society is considered a bulwark against the arbitrary exercise of state power. Citizens can organize to promote a political or social cause, and, through deliberation and publication, subject the state to their scrutiny.² The early republic's Federalist leaders did not embrace the freedom of association, but not because they had no conception of civil society. Over the course of the eighteenth century, elites throughout

¹ Betty A. Barnes, "The Origins and Development of Freedom of Assembly" (Ph.D. diss., University of Houston, 1990); Don L. Smith, "The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations" (Ph.D. diss., Texas Tech University, 1971).

² Michael Walzer has defined civil society as "the space of uncoerced human association and also the set of relational networks . . . that fill this space." Michael Walzer, "The Idea of Civil Society," *Dissent* 38 (1991): 293-304.

For a history of the idea of civil society, see John Keane, "Despotism and Democracy: The Origins of the Distinction between Civil Society and the State, 1750-1850," in *Civil Society and the State: New European Perspectives*, ed. Keane (London, 1988), 35-71; Adam B. Seligman, *The Idea of Civil Society* (New York, 1992); Marvin B. Becker, *The Emergence of Civil Society in the Eighteenth Century: A Privileged Moment in the History of England, Scotland, and France* (Bloomington, Ind., 1994); John Ehrenberg, *Civil Society: The Critical History of an Idea* (New York, 1999).

the Anglo-American world had formed clubs for social purposes and learned to think of associational life as a realm of human experience distinct from that of the state.³ Following the American Revolution, however, Federalist leaders believed that associations in civil society should reinforce the people's interests and values. As John L. Brooke has argued, Federalists aimed to create a "consensual public sphere" composed of associations and institutions that existed in harmony with the republic's new governments. They believed that in a republic there was only one interest, the people's. Voluntary associations that served the common good were to be encouraged, including churches, charities, literary societies, and libraries. Associations that challenged the common good, however, were not to be tolerated.⁴ Leading members of the oppositional Republican Party confronted these limits in the 1790s as they organized themselves into "democratic societies." In order to carve out a space for their associations, Republicans had to prove that voluntary political associations did not threaten political stability. To do so, Republicans articulated new limits on what people could do in civil society, limits intended to make political associations safe for democracy.

As Republican Party leaders came to accept the existence of a pluralistic society, both in the "public sphere" of civil society and in the market, they also articulated new limits on legitimate activity within both realms. Historians have made much use of Jürgen Habermas's concept of the "bourgeois public sphere."⁵ As employed by Habermas, the public sphere was the product of deliberations over the common good that took place in the coffeehouses, salons, and clubs of eighteenth-century civil society.⁶ Historians have expanded the boundaries of Habermas's public sphere to include ordinary people engaged in street politics. By examining public

³ Peter Clark, *British Clubs and Societies, 1580–1800: The Origins of an Associational World* (Oxford, 2000); David S. Shields, "Anglo-American Clubs: Their Wit, Their Heterodoxy, Their Sedition," *William and Mary Quarterly*, 3d ser., 51 (1994): 293–304, and *Civil Tongues and Polite Letters in British America* (Chapel Hill, 1997), 175–208; Becker, *Emergence of Civil Society*. For the European perspective, see James Van Horn Melton, *The Rise of the Public in Enlightenment Europe* (Cambridge, 2001).

⁴ John L. Brooke, "Ancient Lodges and Self-Created Societies: Voluntary Association and the Public Sphere in the Early Republic," in *Launching the "Extended Republic": The Federalist Era*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville, Va., 1996), 273–377.

⁵ For a good review of this literature see John L. Brooke, "Reason and Passion in the Public Sphere: Habermas and the Cultural Historians," *Journal of Interdisciplinary History* 29 (1998): 43–67.

⁶ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, Mass., 1989).

rites such as parades and celebrations, and their manifestation in print culture, historians have helped us to understand how ordinary people interpreted and participated in political life.⁷ Republican elites, however, were less willing to embrace this expanded public sphere, and actively sought to mold it in their image.⁸ The public sphere must be understood as more than a theoretical tool of analysis. It was also the self-conscious creation of lawmakers. By ignoring the state, recent books on public festivals and rituals have overlooked the efforts of political leaders to use the law and the language of legality to reorient civil society from an extension of the republican state to a space that could accommodate multiple interests while setting legal limits on actions within it. The public sphere is more than the textual representation of political authority and debate, or the actions of groups in public spaces; it is also the legally bounded sphere of association and collective action.⁹

Recently, historians have employed the framework of the public sphere to explain the intense debates between Republicans and Federalists over the legitimacy of political associations. When Republicans organized themselves into democratic societies in the 1790s, Federalists condemned the clubs as factional interests that would subvert the common good. In turn, Republicans were forced to defend themselves.¹⁰ Partisan conflict is

⁷ See David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776–1820* (Chapel Hill, 1997); Simon P. Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* (Philadelphia, 1997). See also Rosemarie Zagari's review of Waldstreicher and Newman, *Reviews in American History* 26 (1998): 504–9. For an exceptional study of the public sphere, including its relationship to state and municipal governments, see Mary P. Ryan, *Civic Wars: Democracy and Public Life in the American City during the Nineteenth Century* (Berkeley, Calif., 1997).

For historians who emphasize the role of print culture in defining the content and dynamics of the public sphere, in addition to Waldstreicher, see Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America* (Cambridge, Mass., 1990); Christopher Grasso, *A Speaking Aristocracy: Transforming Public Discourse in Eighteenth-Century Connecticut* (Chapel Hill, 1999).

⁸ I build on the critiques of Habermas's public sphere collected in Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge, Mass., 1992).

⁹ The importance of the state in defining the public sphere is discussed in Michael Schudson, "The 'Public Sphere' and Its Problems: Bringing the State (Back) In," *Notre Dame Journal of Law, Ethics and Public Policy* 8 (1994): 529–46.

¹⁰ Albrecht Koschnik, "The Democratic Societies of Philadelphia and the Limits of the American Public Sphere, circa 1793–1795," *William and Mary Quarterly*, 3d ser., 58 (2001): 615–36; Brooke, "Ancient Lodges and Self-Created Societies"; Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York, 1993), 451–88.

The classic work on the emergence of political parties is Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780–1840* (Berkeley, Calif., 1969).

only half the story, however. In defining the rights of associations, Republican leaders also sought to limit older forms of collective action valued by farmers and laborers. By studying how Republican leaders criticized the activities of the whiskey rebels and journeymen cordwainers, I argue that Republicans believed that the freedom of association required imposing new legal boundaries on the actions of ordinary people. Republicans envisioned civil society and the market as regulated spheres of political and economic activity, and denounced not only their Federalist opponents but also the whiskey rebels and the journeymen cordwainers. In doing so, they redefined traditional notions of collective action, whether it be the "crowd" tradition employed by farmers in the west or the right of artisans to determine collectively their wages in Philadelphia and New York. Republicans feared monopolies of power exercised from either above or from below.

There are good reasons for using law as a framework to understand changes in the public sphere during this period. The state determines the range of legitimate behavior. As Christopher L. Tomlins has argued, laws provide for "the creation of a new context for action," in which possible avenues for action are outlined, producing new options and eliminating others.¹¹ Of course, lawmakers do not act in isolation, but respond to political, social, and economic tensions often not of their own making. Yet in the debate over the rights and limits of voluntary associations in the 1790s and early 1800s, Republicans employed the law both to legitimate their own associations and to set limits on action taken by the people at large. Republican leaders acted as agents, manipulating law and the language of legality to reconstitute civil society in Pennsylvania and New York.

This essay begins by examining the rise of democratic societies in Pennsylvania and their connection to the Whiskey Rebellion in the western part of that state between 1792 and 1794. The immediate cause of the rebellion was the Washington administration's effort to enforce an extremely unpopular federal excise on whiskey. In July 1794, Secretary of the Treasury Alexander Hamilton sent United States Marshal David Lenox to serve processes demanding that recalcitrant farmers appear in the federal court in Philadelphia. Angered by the requirement that citizens travel to distant Philadelphia, farmers in Allegheny County confronted

¹¹ Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge, 1993), 32.

Lenox and his partner, the excise tax collector Colonel John Neville. On the evening of July 17, a crowd consisting of members of Washington County's Mingo Creek militia surrounded Neville's home. That same evening, a mob captured Lenox and demanded the surrender of the processes. When word of these incidents reached Philadelphia, the Washington administration concluded that force was necessary to maintain the rule of law and the sovereignty of the federal government.¹²

Washington and Hamilton immediately connected the outbreak of violence in the summer of 1794 to the emergence of Republican "democratic societies" across Pennsylvania. These societies were the mouthpieces of state leaders hostile to Washington's Federalist policies, and expressed many of the opinions that guided the whiskey rebels. To Washington and his allies, there was an obvious link between the seditious rhetoric of the societies and the rebellion. In a letter to John Jay, Washington wrote: "That they [the societies] have been the fomenters of the western disturbances admits of no doubt in the mind of anyone who will examine their conduct."¹³ Most members of the societies, however, disagreed. They claimed that voluntary associations were not only a legal but a legitimate way to voice political opinions and to educate voters. They insisted that their activities were limited to the expression of opinion. Following the rebellion, Republican leaders such as Governor Thomas Mifflin, his secretary Alexander James Dallas, state chief justice Thomas McKean, and westerners Albert Gallatin, Hugh Henry Brackenridge, and William Findley all vocally opposed the actions of the rebels. Republicans contrasted the peaceful activities of their legitimate associations to the illegitimate violence of the rebels. They argued that voluntary association and expression were fundamental rights in a republican society and were necessary to prevent the (Federalist) government from monopolizing the public sphere.

The whiskey rebels disagreed with both Republican and Federalist viewpoints. Collective mob action had long been part of the Anglo-American tradition. Before the Revolution, mob action was the only

¹² See Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York, 1986).

¹³ W. C. Ford, ed., *The Writings of George Washington* (New York, 1889-1903), 12:486; quoted in William Miller, "The Democratic Societies and the Whiskey Rebellion," *Pennsylvania Magazine of History and Biography* 62 (1938): 324-49. See also Marco M. Sioli, "The Democratic Republican Societies at the End of the Eighteenth Century: The Western Pennsylvania Experience," *Pennsylvania History* 60 (1993): 288-304.

means for ordinary persons to protest local, colonial, or imperial policies. Like the freedom of assembly, mobbing theoretically expressed the collective will of the ordinary members of a community. Since the imposition of the whiskey excise, the farmers had been acting out a long-standing ritual of resistance, which included tarring-and-feathering and cropping hair. During the revolutionary era, crowd action had been considered an effective and legitimate tool for resisting British rule.¹⁴ According to Republican and Federalist leaders, however, the new republican governments, with their elected representatives, by definition embodied the popular will. While they disagreed over the role of voluntary associations and political expression, they agreed that crowd action was no longer legitimate.¹⁵ Despite this agreement, they directed their critique of the rebels to different ends. To Federalists, the rebels exemplified the danger of permitting organized opposition at any level. Republicans, however,

¹⁴ Historians have demonstrated that eighteenth-century mobs in England and British North America were usually expressions of communal discontent over particular policies or actions. Mobs provided a way for ordinary people to impose their collective will on political leaders over whom they otherwise had little control. A useful discussion of the historiography can be found in Suzanne Desan, "Crowds, Community, and Ritual in the Work of E. P. Thompson and Natalie Davis," in *The New Cultural History*, ed. Lynn Hunt (Berkeley, Calif., 1989), 47–71.

For the United States, see Gordon S. Wood, "A Note on Mobs in the American Revolution," *William and Mary Quarterly*, 3d ser., 23 (1966): 635–42; Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," *William and Mary Quarterly*, 3d ser., 27 (1970): 3–35, and *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765–1776* (New York, 1972); Dirk Hoerder, *Crowd Action in Revolutionary Massachusetts, 1765–1780* (New York, 1977); William Pencak, *War, Politics and Revolution in Provincial Massachusetts* (Boston, 1981), 185–212, and Pencak, Matthew Dennis, and Simon P. Newman, eds., *Riot and Revelry in Early America* (University Park, Pa., 2002); Paul A. Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763–1834* (Chapel Hill, 1987), 3–65, and *Rioting in America* (Bloomington, Ind., 1996), 12–51; Alfred F. Young, "English Plebeian Culture and Eighteenth-Century American Radicalism," in *The Origins of Anglo-American Radicalism*, ed. Margaret Jacob and James Jacob (London, 1984), 185–212. Young examines various traditional rituals and explores their English origins and emergence in the colonies.

For England, see E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," in *Customs in Common: Studies in Traditional Popular Culture* (New York, 1993), 185–258; Tim Harris, *London Crowds in the Reign of Charles II: Propaganda and Politics from the Restoration until the Exclusion Crisis* (Cambridge, 1987).

¹⁵ Following American independence, the mobbing tradition lost its legitimacy. Republicanism extended voting rights to the entire political nation (limited as it was by gender, race, and property), and thus, political leaders argued, all citizens should express their grievances by voting rather than rioting. As a result, political leaders viewed postrevolutionary mobs as threats to constitutional government rather than extraconstitutional expressions of communal will. The participants in mob activity disagreed, assuming they were defending established principles of justice. See Gilje, *Road to Mobocracy*; Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760–1820* (Chapel Hill, 1990); Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839–1865* (Chapel Hill, 2001).

believed that the rebellion was no worse than the Federalists' effort to silence democratic societies; in both cases, the use of force (including the force of law) prevented the free expression of political views, and thus the true expression of the people's will. Republicans focused on preventing arbitrary control over opinion and action, whether imposed by constituted authorities or crowds.

The second series of events examined in this essay are the Philadelphia and New York cordwainers' cases of 1806 and 1809–1810.¹⁶ In the autumns of 1805 and 1809, journeymen cordwainers' societies struck to raise wages and to alter work conditions. Both times they were taken to court and Republican judges or attorneys sided against them. And in both cases the journeymen lost. Labor historians have concluded that the journeymen's losses reflect the Republican elites' embrace of liberal capitalism, especially with its emphasis on the free individual in market relations. At the same time, as Sean Wilentz and Christopher L. Tomlins note, Republicans continued to appeal to the ideal of social harmony and the dangers posed to society by organized private interests.¹⁷ By placing the cordwainers' struggles in the context of the freedom of association, the Republican response takes on a new dimension. Republicans defended, and even celebrated, the cordwainers' right to form associations to pursue their own interests; at the same time, Republicans protected the public good from encroachments by any particular interest by enforcing legal limits on collective action. As Republicans had denounced Federalist efforts to crush opposition in 1794 (and in 1798 during debates over the Sedition Act), so they opposed the efforts of journeymen cordwainers to monopolize the wage market. In both cases, Republicans employed courts and the language of law to limit the scope of legitimate action. Republicans argued that the freedom to associate was different from the freedom to compel. By seeking to alter their work conditions by force, the journeymen had gone beyond what associations could properly do. If the

¹⁶ *Commonwealth v. Pullis* (Pennsylvania, 1806); *People v. Melvin* (New York, 1809). The transcripts for both trials are reprinted in John R. Commons et al., eds., *A Documentary History of American Industrial Society* (Cleveland, 1910–1911), 3:59–248, 251–385 (hereafter cited as Commons, *Documentary History*).

¹⁷ Ronald Schultz, *The Republic of Labor: Philadelphia Artisans and the Politics of Class, 1720–1830* (New York, 1993), 160–63, 175–79; Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 128–79; Richard J. Twomey, "Jacobins and Jeffersonians: Anglo-American Radical Ideology, 1790–1810," in *Origins of Anglo-American Radicalism*, ed. Jacob and Jacob, 284–300. Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788–1850* (New York, 1984), 97–101.

cordwainers were allowed to monopolize the wage market, the market would no longer be free, just as the actions of both the Federalists and the rebels in the 1790s threatened the emerging public sphere.

Like the whiskey rebels before them, the cordwainers interpreted their actions differently than party leaders. Urban artisans had their own traditions. Masters had long exercised the right to set wages and to determine prices for their trade. Following independence, journeymen challenged the authority of masters, but did not reject the right to collectively set wages. Instead, they claimed this right for themselves.¹⁸ They did not accept the limits Republicans imposed, arguing that the right to determine their wages was an ancient one that could not be taken away. The Republican response took place during a period of transition in which traditional antimonopolism was giving way to a liberal contractual approach to employment relations. Nonetheless, Republicans focused on the issue of monopoly. They believed the state had the obligation to check the power of associations in order to keep the public sphere and the market free. In the two case studies presented below, Republicans defended the freedom of association while limiting the ability of minority groups to impose their will on others. Pluralism, they believed, required new limits on collective action. Using law, Republicans created an expanded but circumscribed space for associations.

The Whiskey Rebellion and the Democratic Societies (1794)

Ever since President Washington labeled the Whiskey Rebellion the "first ripe fruit" of the democratic societies, historians have closely linked the rebellion and the societies. First, historians debated whether the societies were indeed responsible for the rebellion. In addition, historians questioned why Washington and other Federalists considered the two intimately connected.¹⁹ A third dynamic, however, has scarcely been

¹⁸ Robert J. Steinfeld, "The Philadelphia Cordwainers' Case of 1806: The Struggle over Alternative Legal Constructions of a Free Market in Labor," in *Labor Law in America: Historical and Critical Essays*, ed. Christopher L. Tomlins and Andrew J. King (Baltimore, 1992), 20–43.

¹⁹ See Thomas P. Slaughter, "The Friends of Liberty, the Friends of Order, and the Whiskey Rebellion: A Historiographical Essay," in *The Whiskey Rebellion: Past and Present Perspectives*, ed. Steven R. Boyd (Westport, Conn., 1985), 9–30. The number of articles and books written about the democratic societies, the Whiskey Rebellion, and both, is large. See Jeffrey A. Davis, "Guarding the Republican Interest: The Western Pennsylvania Democratic Societies and the Excise Tax," *Pennsylvania History* 67 (2000): 43–62; Elkins and McKittrick, *Age of Federalism*, 451–88; Eugene

explored: the relationship between the policies and actions of Pennsylvania's Republicans and the whiskey rebels. To phrase the issue this way alters our perspective of the emergence of political opposition. When the focus was simply on Federalists and Republicans, Republicans rightly appeared to fight for the rights of association and speech against an administration hostile to opposition. Yet, Republicans did more than that. They also concluded that their efforts to organize civil society around voluntary associations and free expression necessitated new legal limits on collective action.

As early as 1792, Pennsylvania's Republicans, under Governor Thomas Mifflin, condemned farmers' efforts to resist the tax through physical violence. Like President Washington, Governor Mifflin critiqued "certain irregular and refractory proceedings" and promised "to promote a due obedience to the constitutional laws of the Union." In a circular letter to Pennsylvania's judges, Mifflin asked them to "inculcate the indispensable duty of obedience to the laws of the Union," and to actively prosecute any violators thereof.²⁰ In November that same year, chief justice and future Republican governor Thomas McKean explained to a jury that no "violent and unwarrantable proceedings" would be tolerated. People could and should "represent [their] case to the proper legislature," but they could not actively resist the laws. McKean warned that any persons known to participate in illegal behavior would be prosecuted. Like Mifflin, McKean emphasized obedience and compliance to his constituents.²¹ Mifflin and McKean, however, departed from Washington in one important aspect. While Washington condemned all public meetings to debate the excise and draft petitions for Congress, Mifflin and McKean emphasized solely the illegality of using physical force against federal officials.

When the Republicans organized themselves into democratic societies in 1793–1794, Federalists could neither accept nor understand their claims to legitimacy. As historians John L. Brooke and Albrecht Koschnik have suggested, the establishment of political associations

P. Link, *Democratic-Republican Societies, 1790–1800* (1942; reprint New York, 1973); Miller, "Democratic Societies and the Whiskey Rebellion"; Sioli, "Democratic Republican Societies at the End of the Eighteenth Century"; Slaughter, *Whiskey Rebellion*.

²⁰ Thomas Mifflin to George Washington, 5 Oct. 1792, in *Pennsylvania Archives*, 2d ser., vol. 4, ed. John B. Linn and William H. Egle (Harrisburg, 1890), 33–34 (hereafter cited as *Pennsylvania Archives*); see also Thomas Mifflin to the Judges of the Supreme Court, 5 Oct. 1792, *Ibid.*, 34–35.

²¹ "Charge of Chief Justice Thomas McKean and Reply of the Grand Jury," 8 Nov. 1792, *Pennsylvania Archives*, 41–43.

hostile to government policies prompted a crisis over the definition of public life. Using the framework of the public sphere, both Brooke and Koschnik note that Federalists were committed to a hierarchical and "unitary" sphere in which public institutions and activities reinforced the values of political and social leaders. By carefully controlling the content of the public sphere, Federalists hoped to mold ordinary Americans into obedient republican citizens. Republicans challenged this unity by organizing their own public events, forming voluntary associations, and circulating petitions criticizing Federalist policies. Republican leaders, searching for the proper means to resist Federalists, argued that the people retained their right and obligation to watch over and critique the government between elections, and that the best means to educate voters was through public events and voluntary association.²²

Republican leaders, however, did not abandon the belief that society was composed of a single interest. According to the Democratic Society of Pennsylvania, "the *People of Pennsylvania* form but one indivisible community, whose political rights and interests . . . must in degree and duration be forever the same." They noted that the Constitution protected the "the people's" right to assemble to protect their rights.²³ Because the democratic societies claimed to represent "the people," Federalists believed that they threatened to subvert the federal government by creating, in the words of Koschnik, "a parallel political structure."²⁴ The societies reminded Federalist leaders of the various committees of correspondence and congresses of the Revolution. Naturally, Federalists could not accept the emergence of competing sovereign bodies within a regime governed by the people's representatives. According to one writer, "undoubtedly the people is sovereign, but this sovereignty is in the whole people, and not in any separate part, and cannot be exercised but by the Representatives of the whole nation."²⁵ Alexander Hamilton described the Federalist perspective more forcefully: "It is not easy to understand what is meant by

²² Brooke, "Ancient Lodges and Self-Created Societies"; Koschnik, "Democratic Societies of Philadelphia." See also David Waldstreicher, "The Constitution of Federal Feeling," in *In the Midst of Perpetual Fetes*, 53–107.

²³ "Principles, Articles, Regulations . . .," in *The Democratic-Republican Societies, 1790–1800: A Documentary Sourcebook of Constitutions, Declarations, Addresses, Resolutions, and Toasts*, ed. Philip S. Foner (Westport, Conn., 1976), 65.

²⁴ Koschnik, "Democratic Societies of Philadelphia," 630.

²⁵ "A Friend to Representative Government," *United States Gazette*, 4 Apr. 1794; quoted in *Ibid.*, 627.

the terms 'constitutional resistance.' The Theory of every constitution pre-supposes as a *first principle* that the *Laws are to be obeyed*. There can therefore be no such thing as a 'constitutional resistance' to Laws constitutionally enacted."²⁶ The quandary for Republicans and Federalists alike was that they both claimed to speak on behalf of the people, leaving little room for legitimate disagreement and political debate in the public sphere.

While the societies were speaking for "the people," the people out west took matters into their own hands. In July 1794, United States Marshal David Lenox went west to serve court notices to various farmers refusing to pay their taxes. In mid-July, a group of armed men confronted Lenox and his guide, the extremely unpopular excise collector Colonel John Neville. The next day, a mob surrounded Neville's Allegheny County home. Neville fired into the crowd and mortally wounded Oliver Miller. On the evening of July 17, the mob returned to avenge Miller's death. About five hundred to seven hundred people were present. Expecting the mob's return, a small contingency from Fort Pitt arrived to protect Neville's home, and smuggled Neville and his family out of the house. Outnumbered, the soldiers finally surrendered, while the mob burned the buildings surrounding Neville's home to the ground. Later that evening, the crowd captured Lenox and demanded his processes. The crowd also demanded that Lenox never again serve writs and that he refuse to enforce those already served. Threatened by the crowd with knives and guns, Lenox escaped with the help of the militia officers. At a meeting on July 23 at the Mingo Creek meeting house, western political leaders Hugh Henry Brackenridge, William Findley, and Albert Gallatin came out to calm the crowd. According to historian Thomas Slaughter, they had little control over the meeting.²⁷ As early as 1792, Findley had warned Governor Mifflin that "if those who are reputed to have the greatest influence in that country were to advocate the Law, instead of procuring a willing acquiescence, it would rather promote their determination against it."²⁸ Findley's prophecy, it appeared, had come true; Gallatin, Brackenridge, and he were powerless against the farmers.

The events of July worried the members of the Democratic Society of

²⁶ Alexander Hamilton to George Washington, 12 Sept. 1794, *Pennsylvania Archives*, 291. Emphasis in original.

²⁷ Slaughter, *Whiskey Rebellion*, 178–84.

²⁸ William Findley to Thomas Mifflin, 21 Nov. 1792, *Pennsylvania Archives*, 48–51.

Pennsylvania. Wishing to distance political associations from violent resistance and rebellion, they passed a resolution on July 31, which was published in early August.²⁹ The resolution exhibited a discernible shift in the society's relationship with ordinary citizens. The resolution began by admitting that, "in a Democracy, a majority ought in all cases to govern." The society was against the "oppressive" excises, but also condemned "every opposition to them, not warranted by that frame of government." Finally, the society promised to "make legal opposition to every measure which shall endanger the freedom of our country." In this statement, the society made several important moves. First, it distinguished itself from "the people" at large and acknowledged that the society spoke only for its members, not the rebels nor the majority. Second, it insisted that all citizens retained the right to conduct peaceful "legal opposition" to the majority's laws.³⁰ The Democratic Society positioned itself between the actions of the mob and of the Federalists.

On August 1, 1794, seven thousand armed men gathered at Braddock's Field in Washington County. The purpose of the gathering was to march on Pittsburgh, which the farmers perceived to be hostile to their interests. Most of the men who gathered were propertyless farmers, and about one-third owned stills subject to the excise. They embodied a set of woes about the political and economic challenges of poor frontier life, from threats of Indian violence to the unresponsiveness of state and federal governments to the needs of western citizens. While no violence came from the August 1 assembly, an agreement was reached that town delegates meet on August 14. This meeting, composed of about 250 persons, was more moderate. Men like Gallatin appeared to hold sway. Delegates agreed to meet with federal officials, and Gallatin believed that the gathering marked the end of violence and precluded the need for federal intervention. President Washington, however, felt otherwise, and assembled an army of about twelve thousand men to march west to round up excise violators and to enforce federal law.³¹

Pennsylvania's Republicans were also determined to prosecute the violent demonstrators. The stakes had been raised since 1792, however. The legitimacy of political associations could be proved only through a

²⁹ "Manuscript Minutes, July 31, 1794," in *Democratic-Republican Societies*, ed. Foner, 88-89, 415 n. 6.

³⁰ The German Republican Society responded in kind. See *Ibid.*, 59.

³¹ Slaughter, *Whiskey Rebellion*, 181-89.

committed effort to enforce the nation's laws. Republicans knew that Washington and other Federalists were unable or unwilling to differentiate between lawful and unlawful forms of resistance to federal policy. In 1794, Federalist references to "unlawful combinations" implicated much more than a few dispersed committees and meetings as they had in 1792: the formation of an oppositional party was thrown into the mix.

On August 2, 1794, federal and state officials met to discuss the insurrection. Representing the federal government were President Washington, Edmund Randolph, Henry Knox, William Bradford, and Alexander Hamilton. From Pennsylvania came Governor Mifflin, Alexander J. Dallas, Thomas McKean, and Federalist attorney general Jared Ingersoll.³² While Hamilton sought to call out the federal militia and crush the rebellion, McKean argued that the state judiciary should enforce the law, a position seconded by Dallas. As in 1792, Pennsylvania's Republicans intended to employ the courts and law to promote obedience. In 1794, however, they also sought to protect their nascent efforts to organize and legitimize voluntary political associations.

Unfortunately for the Republicans, Supreme Court justice and Pennsylvania Federalist James Wilson disputed the state judiciary's ability to enforce the peace. In a letter to Washington, Wilson noted that there were "combinations too powerful to be suppressed by the ordinary course of judicial proceedings," and that the president should consider further action.³³ On August 7, Washington proclaimed that he was calling out the militia. That same day, United States secretary of state Randolph sent a letter to Mifflin. The purpose of calling out the militia, he pointed out, was two-fold: first, to execute the laws of the nation and, second, to eliminate the combinations. Randolph asked, "Would the mere *dispersion* of Insurgents and their retiring to their respective homes do this?" Would not combinations "continue in full vigour, ready at any moment to break out into new acts of resistance to the laws?"³⁴ Randolph indicated that Washington's decision to use force was intended not only to put down the rioters, but to eliminate organized opposition altogether.

³² See "Conference Concerning the Insurrection in Western Pennsylvania," in *The Papers of Alexander Hamilton*, ed. Harold C. Syrett et al. (New York, 1961–1987), 17:9–14.

³³ James Wilson to George Washington, 4 Aug. 1794, *Pennsylvania Archives*, 82–83.

³⁴ Edmund Randolph to Thomas Mifflin, 30 Aug. 1794, *Pennsylvania Archives*, 220–29. Emphasis in original.

In a speech before Congress, Washington posited a connection between the societies and violence: "From a belief, that, by a more formal concert, their [the excise taxes] operation might be defeated, certain self-created societies assumed the tone of condemnation."³⁵ In response, Republicans articulated their conception of civil society, in which voluntary associations would ensure that the voice of the people was heard while remaining within the bounds of legality. In the House, for example, Representative William Giles of Virginia suggested one should make no distinction between the democratic societies and other voluntary associations: "the Baptists and Methodists, for example, might be termed self-created societies." He added that the (Federalist-dominated) Society of the Cincinnati was also self-created.³⁶ Giles implied that Federalist efforts to link voluntary associations with rebellion could lead to the arbitrary use of power. After all, no person would suggest that government could establish a single religion in Pennsylvania. And such a government-enforced monopoly on religion was akin to one in the realm of political debate and opinion.

Although Pennsylvania's Republicans defended the right of voluntary political associations to debate and to express opinions in the public sphere, they emphasized that any actions that threatened this freedom were intolerable. To Republican leaders, the resistance of the farmers was no less arbitrary than the actions of the Federalists. Governor Mifflin condemned the "various cruel and aggravated acts of riot and arson," and promised that justice would be served, explaining that every citizen must understand "how unworthy it is thus riotously to oppose the Constitution."³⁷ As early as March 1794, Mifflin queried western judges about any prosecutions concerning resistance to the excise. He reminded them that they could influence opinion in the public sphere and that they must use their positions to encourage obedience to the laws.³⁸ In this letter, Mifflin articulated the Republican conception of civil society:

³⁵ Thomas Hart Benton, *Abridgement of the Debates of Congress, From 1789 to 1856* (New York, 1857-1861), 1:520-22, 531-42.

³⁶ *Ibid.*, 533-34.

³⁷ "Proclamation of Governor Mifflin," 7 Aug. 1794, *Pennsylvania Archives*, 127-29; see also Mifflin's "Message to the Assembly," 2 Sept. 1794, *Ibid.*, 247-58.

³⁸ Governor Mifflin wrote: "The station that you fill affords you a favorable opportunity to inculcate and promote those principles of order and harmony on which our social happiness depends." Thomas Mifflin to the Judges of the Supreme Court, 21 Mar. 1794, *Pennsylvania Archives*, 57-58.

let it be deeply impressed on the minds of our Fellow-Citizens that, on the one hand, every irregular and illegal opposition to existing laws will not only embarrass the operations of Government, but eventually undermine the only real security for the liberty and property of individuals. And that, on the other hand, to neglect the natural and safe resource of a free people for the purpose of protecting themselves and of repelling the injuries offered to their rights, is virtually to invite the use of those artificial expedients which have been fatal, and must ever be dangerous to Republican Freedom and Independence. . . . As Freemen, let us always remonstrate against actual wrongs, but as Citizens let us always obey existing Laws.

Several aspects of the Republican position are revealed in this letter. First, Mifflin stressed that laws must be obeyed, and that all recourse to violence was beyond the limits of legality. Second, Mifflin maintained that citizens can and must organize and remonstrate to protect their rights. Finally, Mifflin noted that force, that "artificial expedient," might be necessary if citizens did not respect legal limits.³⁹ Mifflin made it clear that Pennsylvania's Republicans, while opposed to the excise and committed to protecting voluntary associations and political opposition, would not tolerate any nonpeaceful action. Following the incidents of July, Dallas sent a circular to the state's judges requesting them to hold accountable all persons involved with the violence at Neville's home.⁴⁰

The democratic societies also responded to Washington's speech. Since Dallas, McKean, Gallatin, and other leading Republicans were members of societies, it is not surprising that they echoed the sentiments of the Mifflin administration. They insisted that the societies were lawful and necessary voluntary associations, while reminding Washington and the rebels that the law should be enforced. According to the Democratic Society of Pennsylvania, "The Society know the extent of their rights, and feel the obligation which their duty imposes. They never have, as has been weakly advanced, attempted to usurp the powers of Government; they never did attempt to substitute their wishes for law. . . . They felt themselves, as a portion of the people, bound by the acts of the legal

³⁹ Ibid., 58.

⁴⁰ Alexander J. Dallas, "Circular to the President Judges," 25 July 1794, *Pennsylvania Archives*, 76-77; see also Judge Benjamin Jacobs to Thomas Mifflin, 10 Apr. 1794, Ibid., 61-62; Judge Alexander Addison to Thomas Mifflin, 12 May 1794, Ibid., 62-63; Thomas Mifflin to George Washington, 18 Apr. 1794, Ibid., 64.

representatives of the whole."⁴¹

While the society accepted that it was a "portion" of the population, it reminded Federalists that voluntary associations would continue to oppose certain policies: "Freedom of thought, and a free communication of opinions by speech or through the medium of the press, are the safeguards of our Liberties. Apathy as to public concerns, too frequent even in Republics, is the reason for usurpation: but [by] the communication or collision of sentiments, knowledge is increased, and truth prevails."⁴² Contradicting its earlier claim that Pennsylvanians have only one interest, the society suggested that both "communication" and, importantly, the "collision" of opinions were vital to a republic. Forced to distance themselves from the action of the people for whom they earlier claimed to speak, Republican leaders moved towards a pluralistic definition of civil society.⁴³ Moreover, the society's statement suggested that the only lawful activities for voluntary associations were those of speech and debate. Political opposition was to be carried out through education and argument, and not by direct resistance. A civil society composed of various interests required strict legal limits on the actions of any particular interest group in order to maintain freedom. Neither Federalists nor rebels could use force (whether that of the government or of the mob) to prevent free debate.

By 1794 Republicans had concluded that there was an alternative to mob activity. Public resistance to government policies was not only permissible but necessary in republican governments. As the Democratic Society of Pennsylvania noted, the need for such resistance meant that the freedoms of association and of the press were essential elements of civil society. These alternatives, however, were less well understood by western leaders in August 1792 when Albert Gallatin presided over a meeting of Fayette, Allegheny, Westmoreland, and Washington County delegates in Pittsburgh. At this meeting, the delegates published various grievances against the federal government. In their published resolutions, the delegates promoted "remonstrances to Congress, and . . . every

⁴¹ "Address to the Citizens of the United States, Dec. 18, 1794," in *Democratic-Republican Societies*, ed. Foner, 98–102.

⁴² *Ibid.*, 99.

⁴³ Other Pennsylvania democratic societies responded in kind. For the German Republican Society, see *Democratic-Republican Societies*, ed. Foner, 59. For the Washington Democratic Society, see *Ibid.*, 137–39.

other legal measure that may obstruct the operation of the Law until we are able to obtain its total repeal." The delegates further urged "the people at large" to treat tax collectors with the "contempt they deserve."⁴⁴ The petition suggested that ordinary farmers should actively resist federal policies and agents, shedding light on why Washington and Hamilton were so angered by western assemblies. Looking back on his role in these meetings three years later, Gallatin called it "my only political sin."⁴⁵ Allegheny notable Hugh Henry Brackenridge also felt the meeting of August 1792 touched the "utmost boundary of right reserved by the people."⁴⁶

In two short years western Republicans' opinions had shifted. As Republican party organization spread from Philadelphia, Gallatin and other local leaders formed democratic societies in the west. Part of a larger state and national movement, Gallatin accepted new legal and ideological limits on what people could do in the public sphere. While the August 1792 meeting of delegates was not in itself illegitimate, Gallatin and others realized the resolutions sent the wrong message to western farmers.⁴⁷ In this, they were correct.

To the ears of farmers, the resolutions reinforced their own belief that physical resistance was warranted against unjust federal policies. Unlike Republican leaders, western farmers saw little reason to abandon their position. While Republicans and Federalists both came to see mob action as a threat to constituted government and civil society, ordinary Americans had learned during the Revolution that mobs were, in the words of historian Paul Gilje, "a useful tool of resistance against government."⁴⁸ Mobs were not only useful, but legitimate. Although never technically legal, mobs were, in Pauline Maier's words, "extra-constitutional." They expressed the will of the people when political leaders overstepped

⁴⁴ "Minutes of the Meeting at Pittsburgh," 22 Aug. 1792, *Pennsylvania Archives*, 30–31.

⁴⁵ Slaughter, *Whiskey Rebellion*, 124.

⁴⁶ Hugh Henry Brackenridge, *Incidents of the Insurrection*, (1795), in *Whiskey Rebellion*, ed. Boyd, 70.

⁴⁷ For example, see Albert Gallatin's letter to Thomas Mifflin on behalf of Fayette County, 17 Sept. 1794, *Pennsylvania Archives*, 316–19.

⁴⁸ Gilje, *Rioting in America*, 51. Similar tactics were used by the Shays's rebels, the "white Indians" of Maine, and the antirent crowds in New York. See Richard D. Brown, "Shays's Rebellion and Its Aftermath: A View from Springfield, Massachusetts, 1787," *William and Mary Quarterly*, 3d ser., 40 (1983): 598–615; Taylor, *Liberty Men and Great Proprietors*; McCurdy, *Anti-Rent Era in New York Law and Politics*.

their boundaries and imposed egregious policies. During the imperial crisis, mobs had targeted stamp tax agents and other royal officers, usually with the support of patriot elites.⁴⁹ For western farmers, their situation in the 1790s was analogous to that of the 1760s and 1770s. Faced with Indian hostility, no access to the Mississippi, and a heavy and unjust excise, western Pennsylvanians came together in opposition to the Washington administration. By assembling and enforcing their will, the farmers believed that they were defending the interests of the people. For western Pennsylvanians, there was no reason why legitimate and readily available forms of collective action should not be employed.

Western Pennsylvanians' actions fit firmly into the rites and rituals of Anglo-American mob tradition. In Alexander Hamilton's notes on the events leading to the rebellion, he cited five incidents of tarring-and-feathering and another threat to do so. Moreover, in all the incidents, the participants were dressed up and/or had blackened faces.⁵⁰ Finally, as mobs usually did, the resisters targeted specific policies and harmed property but rarely individuals. When the crowd captured Lenox, they demanded his processes and threatened him, but did not harm him. Neville, on the other hand, had long refused to submit to the demands of western farmers and the more violent action of 1794 followed Neville's firing into the crowd. As a representative of the federal government, Neville's obstinacy and violence suggested the need for concerted resistance, leading up to the gathering of seven thousand men later that summer. That July, Gallatin, Brackenridge, and Findley pleaded with the farmers to act peaceably and lawfully, but to no avail.⁵¹ To Pennsylvania's western farmers, the bounds of legality included the traditional right to act in mobs.

That the rebels were in fact rebels was not the only necessary conclusion. Even Gallatin interpreted events quite differently in 1792. By 1794, however, Republican leaders had redefined the means of exercising political opposition around peaceful voluntary political associations. In their speeches and petitions, Republican leaders told farmers that the rights they held before the Revolution were now lost. Mob action against an

⁴⁹ Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America"; Hoerder, *Crowd Action in Revolutionary Massachusetts*, 78–84.

⁵⁰ Alexander Hamilton to George Washington, 5 Aug. 1794, in *Papers of Alexander Hamilton*, ed. Syrett et al., 17:24–58.

⁵¹ Slaughter, *Whiskey Rebellion*, 183–84.

unresponsive regime was to be unavailable, despite its prominent use during the movement for independence. In doing so, they imposed new legal limits to collective action on their own constituents. Despite Thomas Jefferson's off-hand remark about the utility of rebellions following Shays's uprising in Massachusetts, Pennsylvania's Republicans saw in the whiskey rebels a threat to the public sphere similar to that posed by the Federalists themselves.⁵² On both sides, Republicans perceived monopolizing forces subverting the freedom of thought and the rule of law. In 1793, Republicans assumed associations in the public sphere could speak for the people at large; by 1794, they pulled away from these claims. Instead, Republicans articulated the possibility of a realm of uncoerced voluntary political association akin to that of religion in Pennsylvania. The development of the public sphere was self-conscious; Republicans used the language of lawfulness to open some doors and to close others.

Following the rebellion, Republicans hinted at the possibility that multiple interests could organize themselves on their own behalf through voluntary association. They only hinted in this direction, however. And while the democratic societies backed off their claims to speak for the people following the Whiskey Rebellion, Republicans reasserted them between 1798 and Thomas Jefferson's election to the presidency. In his inaugural, Jefferson expressed the Republicans' belief that they alone spoke the true voice of the people: "Let us, then, fellow-citizens, unite with one heart and one mind. . . . We are all republicans, we are all federalists."⁵³ Following Republican victory in the nation and most of the states, however, it would be harder for Republicans to maintain that such harmony existed. Federalists continued to be harsh and outspoken critics. More importantly, the state Republican parties of Pennsylvania and New York fractured from within. The response of Republican leaders to these tensions during the Philadelphia and New York City cordwainers' trials provide insight into their evolving conception of the role of voluntary associations.

⁵² Thomas Jefferson to James Madison, 30 Jan. 1787, in *The Portable Thomas Jefferson*, ed. Merrill D. Peterson (New York, 1975), 415–18.

⁵³ Thomas Jefferson, "First Inaugural Address," 4 Mar. 1801, in *Ibid.*, 290–95. For a discussion of why Jefferson conflated his opinions with those of "the people," see Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville, Va., 2000), 80–108.

*The Philadelphia and New York City Conspiracy Trials,
1806 and 1809–1810*

Following 1800, the Republican parties in Pennsylvania and New York were bitterly divided. In Pennsylvania, the moderate faction represented by Thomas McKean, who was now governor, was challenged by radicals such as William Duane, Michael Leib, and Simon Snyder. In fact, during the 1805 gubernatorial election, Pennsylvania's Republicans nominated Snyder, and it was only with the cooperation of the Federalists that the "quid" faction of the party, including Dallas, Moses Levy, Brackenridge, and Gallatin, re-elected Governor McKean. In New York, the contests between the various factions of the party were also heated. In 1810, Republicans teamed up with Federalists to remove their fellow partisan, DeWitt Clinton, from the mayoralty of New York City. As a result, the New York City cordwainers' trial, which began in December 1809, was adjudicated by Federalist mayor Jacob Radcliff in January. In such an environment, Republicans could not claim to speak universally for the people. Instead, they had no choice but to accept the existence of competing interests in civil society.

Republicans relied on a new conception of civil society, developed in the 1790s, in which various "self-created" associations could promote their own interests. The role of the state was not to represent the unitary voice of the people, but to regulate interests and to ensure that no particular association gained ascendancy over others. Republicans by the middle of the first decade of the nineteenth century constructed a competitive public sphere that necessitated new legal limits on certain forms of collective action. It was in this context that the cordwainers' trials reached the courts in Philadelphia in 1806 and New York City in 1809–1810.

In both cities, journeymen cordwainers had formed societies following American independence. As in other trades, the societies challenged the dominance of masters in the crafts, and questioned master-initiated changes in the workplace, such as the hiring of semiskilled labor.⁵⁴ They promoted the specific interests of the journeymen themselves; as attorney William Franklin explained in Philadelphia, the cordwainers united to advance "their mutual interests," not that of society at large. Speaking on their behalf, Franklin added that such associations were not only "inno-

⁵⁴ Wilentz, *Chants Democratic*, 56–60.

cent and legal," but "laudable and meritorious."⁵⁵ In November 1805 and October 1809, in Philadelphia and New York City respectively, the cordwainers struck to demand higher wages from masters. In New York, they also complained about masters hiring unskilled workers, and sought an end to this practice. In both cities, members of the associations decided not to work until their demands were met. Moreover, they refused to work with any "scab" workers, whether members or not.

In response, the cordwainers were brought to trial. In Philadelphia, the cordwainers faced three charges, all related to the common-law crime of conspiracy. Conspiracy covered crimes that might have been legal when done by an individual, but were illegal when done by a group. The doctrine of conspiracy was founded on the principle that when private unincorporated groups try to impose their will on others they usurp the state's authority.⁵⁶ The Philadelphia cordwainers were charged with conspiring to raise wages, preventing others from working by use of threats, and forming a voluntary association with its own "arbitrary bye laws, rules, and orders."⁵⁷ In New York, the cordwainers were charged with nine infractions, under three classes of charges. The first set addressed the society's refusal to work with any nonmembers or with any members who worked during the strike until said member paid a fine. The second set argued that the society was a conspiracy to impoverish the journeyman Edward Whittess (a scab) and the various affected masters by withholding members' labor. Finally, the masters charged that the very existence of an association to raise wages was illegal.

While the prosecuting attorney in Philadelphia and the second judge in New York City were Federalists, all the other participants were Republicans. As a result, Republicans stood not only on both sides of the aisle, but also served as judges. Regardless of position, Republicans agreed that voluntary associations were legal and beneficial to society and that legal limits on voluntary action were equally legitimate. Republicans divided over the status of the common-law crime of conspiracy and the extent to which the cordwainers had transgressed legal boundaries. In both cases, the cordwainers were found guilty and received nominal fines.

The trials have two levels of significance. The first concerns the authority of the common law in American courts; the second revolves

⁵⁵ Commons, *Documentary History*, 3:110.

⁵⁶ Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 107-79.

⁵⁷ Commons, *Documentary History*, 3:64-66.

around the role and limits of voluntary associations. The validity of the common law in Pennsylvania and New York was contested by many radical Republicans, who believed that British law had no place in postrevolutionary America. They criticized judges who, rather than relying solely on the public laws passed by the people's elected legislatures and known to all citizens, invoked complicated common-law precedents known only to an educated elite.⁵⁸ In Pennsylvania, Governor McKean vetoed six efforts by his party to simplify court procedures and to limit the usage of common-law precedents.⁵⁹ In both cities, the cordwainers' defense attorneys argued that the common-law crime of conspiracy was inapplicable in an American court, and therefore the indictments were invalid. In Philadelphia, this task fell to Caesar A. Rodney, who assisted the leading defender, William Franklin.⁶⁰ Rodney, despite his anti-common-law stance, remained a friend of McKean's and had been a member of the Democratic Society of Pennsylvania during the 1790s.⁶¹ Like Rodney, New York attorney William Sampson argued that the common law violated American principles. A Jacobin Irish émigré, Sampson earned a reputation for his learned attacks on the common law.⁶² Hoping to have the case dismissed, or "quashed," Sampson questioned the legitimacy of the common-law crime of conspiracy, and argued that conspiracy was not an indictable crime in itself, "unless the act to be done is unlawful."⁶³ Furthermore, Sampson proclaimed that since nobody

⁵⁸ Richard E. Ellis, *The Jeffersonian Crisis: Courts and Politics in the Young Republic* (New York, 1971); G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society, 1684-1809* (Newark, Del., 1994). For a discussion of the issue of the common law in relation to the cordwainers, see Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 131-44; Richard J. Twomey, *Jacobins and Jeffersonians: Anglo-American Radicalism in the United States, 1790-1820* (New York, 1989); Victoria C. Hattam, "Courts and the Question of Class: Judicial Regulation of Labor under the Common Law Doctrine of Criminal Conspiracy," in *Labor Law in America*, ed. Tomlins and King, 44-70.

⁵⁹ Elizabeth K. Henderson, "The Attack on the Judiciary in Pennsylvania, 1800-1810," *Pennsylvania Magazine of History and Biography* 61 (1937): 113-36; G. S. Rowe, *Thomas McKean: The Shaping of an American Republicanism* (Boulder, Colo., 1978).

⁶⁰ For Rodney's comments on the common law see Commons, *Documentary History*, 3:185-202.

⁶¹ Many of the key players of the Philadelphia cordwainers' trial can be tied back to the democratic societies in 1794 or Republican leadership generally. William Franklin, the lead defender, was appointed state attorney general by Governor Thomas McKean. The head judge, Recorder Moses Levy, was a prominent critic of the Sedition Act in 1798 and another McKean appointee. Levy participated with Dallas and other prominent Republicans in countering attacks on the common law and the federal Judiciary Act in 1802.

⁶² Twomey, *Jacobins and Jeffersonians*, 124-25.

⁶³ Commons, *Documentary History*, 3:295.

denied the right of cordwainers to seek higher wages, the case had nothing to stand on but conspiracy itself. In both trials, other Republicans explicitly rejected these attacks on the common law. New York's attorney general and prosecutor, Richard Riker, responded to Sampson, "In that great act wherein we justify our revolution, they [the Founders] are so far from complaining in terms of invective against the common law, that they set it forth as their best birthright."⁶⁴ In Philadelphia, Judge Moses Levy commented, "If the law is, as laid down by the opening counsel for the prosecution, and the defendants are guilty, as stated in the indictment, punishment will and ought to follow."⁶⁵ Ignoring the anti-common-law arguments of Rodney and Sampson, the courts in both cases decided to proceed and determine the merits of the case.

Historians of the early American labor conspiracy cases have generally agreed that their outcome demonstrates the acceptance of liberal capitalist values by Republican leaders. They emphasize the unwillingness of Republicans to defend the cordwainers' right to collective bargaining and Republicans' employment of the language of the free market. They also acknowledge that this was a time of transition when both journeymen and masters continued to proclaim their commitment to craft unity and the common good. Conflict undermined this ideal.⁶⁶ Although Republican lawyers did invoke liberal conceptions of labor relations, their primary concern was antimonopolism. Trying to balance their commitment to a free market premised on equality with the reality of power inequality between masters and servants, Republicans divided in their responses to the cordwainers.

To a large degree, Republicans accepted the premise of the free market in labor relations. Speaking for the cordwainers, Rodney argued, "No person is compelled to give them [the journeymen] more than their work is worth, the market will sufficiently and correctly regulate these matters."⁶⁷ In his charge to the jury in Philadelphia, Recorder Moses Levy agreed that, "The usual means by which the prices of work are regulated, are the demand for the article and the excellence of its fabric," and the same applied to wages.⁶⁸ In New York, prosecuting attorney and radical

⁶⁴ Ibid., 3:311.

⁶⁵ Ibid., 3:202.

⁶⁶ Schultz, *Republic of Labor*, 160; Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 137-44, 209; Twomey, "Jacobins and Jeffersonians"; Wilentz, *Chants Democratic*, 97-101.

⁶⁷ Commons, *Documentary History*, 3:180.

⁶⁸ Ibid., 3:228.

Republican Thomas Addis Emmet, an Irish Jacobin émigré, suggested, "Individual rights are sufficiently secured by letting every man, according to his own will, follow his own pursuits, while public welfare forbids that combinations should be entered into for private benefit."⁶⁹ From one perspective, the trials revolved around whether combinations violated the formal rights of individuals in the market.

When the trials are placed within the context of the freedom of association, however, we see Republicans struggling to agree on where to place the limits on the cordwainers' actions. With Adam Smith, Republicans attacked monopolies, whether by corporations or guilds, as a major threat to freedom.⁷⁰ In reference to the journeymen's societies, Richard Twomey has argued that Republicans "did not champion combinations, they condemned them."⁷¹ Twomey is correct. However, Republicans distinguished between combinations that employed coercion and voluntary associations that did not. In both Philadelphia and New York, Republicans adamantly defended the cordwainers' right to associate to promote their own interests, while remaining equally committed to protecting the common good from being subverted by interests. Defense attorneys praised the charitable efforts of the cordwainers' societies, and even admitted the right of the journeymen "to assemble together in a peaceable manner for *their* common good."⁷² As mentioned above, William Franklin believed that cordwainers could organize for "their mutual interests." In 1806, Judge Levy refused to acknowledge the charge that the formation of a voluntary association was illegal, effectively dropping it from the case.⁷³ Even Federalist Jared Ingersoll, closing for the prosecution in Philadelphia, admitted that trying to convince a Republican judiciary (and the jury) that voluntary associations were unlawful was useless.⁷⁴

By 1809, the charges against the journeymen in New York included actions undertaken by the societies, but not the formation of the societies

⁶⁹ Ibid., 3:329.

⁷⁰ On Adam Smith, see Emma Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* (Cambridge, Mass., 2001), 7–51, 87–115; James F. Becker, "The Corporation Spirit and Its Liberal Analysis," *Journal of the History of Ideas* 30 (1969): 69–84.

⁷¹ Twomey, *Jacobins and Jeffersonians*, 203. Twomey's analysis of the cordwainers' cases revolves around competing interpretations of the common law. See Ibid., 191–213.

⁷² Commons, *Documentary History*, 3:110. Emphasis added.

⁷³ Ibid., 3:228.

⁷⁴ Ibid., 3:207.

themselves.⁷⁵ Speaking for the cordwainers, William Sampson believed that it was "self-evident" that they could form an association to pursue their interests. Reflecting a common theme in Republican rhetoric since 1794, Sampson argued that without this right, "the parties to every association would be offenders; all our religious, benevolent, charitable, and political societies would be violations of the law."⁷⁶ From experience and principle, no Republican leader suggested that voluntary associations, whether founded by elites or journeymen cordwainers, were illegal. Republicans on both sides of the case defended the cordwainers' right to associate. The defenders even went one step further, noting that the cordwainers' society was a necessary check on the powers held by masters in the market.

In December 1808, the Pennsylvania legislature appointed a committee to report on whether the common-law crime of conspiracy was still in force. The following March, the committee reported that the continued existence of conspiracy prevented freedom of association in the market. A bill was drawn up to eradicate the crime of conspiracy, but failed to garner a majority in January 1810. The bill failed for several reasons. First, the committee was appointed following the 1806 decision. Knowing that without conspiracy the cordwainers would have been unanswerable for their crimes, perhaps moderate Republicans voted against the bill. If the bill had passed, courts would not have had the tools to prevent similar actions in the future. In a larger context, moderate Republican legislators may have seen the bill as a first strike against the common law itself.⁷⁷ Despite their disagreements over the common law, however, all factions of the Republican Party respected the freedom of association.

This was a position that Federalists still struggled to accept in 1806. According to prosecutor Joseph Hopkinson, "private confederacies" were "injurious to the public good and against the public interest."⁷⁸ By 1810, however, at least one New York Federalist acknowledged the legitimacy of such associations. Mayor Jacob Radcliff stressed that the case was not about the right of association. Rather, "the means they [the cordwainers] used were of a nature too arbitrary and coercive, and which went to

⁷⁵ Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 138–42.

⁷⁶ Commons, *Documentary History*, 3:296.

⁷⁷ Nothing seems to have come of this report, however. See Henderson, "The Attack on the Judiciary in Pennsylvania."

⁷⁸ Commons, *Documentary History*, 3:68.

deprive their fellow-citizens of rights as precious as any they contended for."⁷⁹ The mayor understood that both sides had legitimate "precious" claims, but emphasized that the cordwainers did not respect the legal boundaries on collective action.

The two most articulate, and problematic, discussions of the Republican conception of the freedom of association and the common good came from Moses Levy in 1806 and Thomas Addis Emmet in 1809. While Levy was a moderate Republican leader, Emmet was a radical. Both Levy and Emmet might be labeled "liberal" since they refused to tolerate traditional conceptions of craft regulation. On the other hand, Levy, Emmet, and other Republicans believed that only the strict enforcement of both communal and individual rights could keep civil society and the market free. As they did in 1794, Republicans stressed the legal limits of collective action. Thus, Levy's claim that the cordwainers employed "unnatural, artificial means of raising the price of work beyond its standard" reflected his fear of monopolies.⁸⁰ Levy believed that the cordwainers threatened the ability of the community to carry out its economic activities, and thus harmed the general welfare of the city. Emmet seconded this position. He asked the hypothetical question, "Suppose the bakers of this city were to combine not to bake a loaf of bread till some demands" were met? Such actions, taken solely "for private interest" would "inflict the most terrible calamities on the community."⁸¹ As both Emmet and Levy reiterated, communal and individual rights reinforced each other, and both were threatened by the private actions of the cordwainers. Republicans feared monopolies and arbitrary force whether exercised by Federalist elites or laboring Americans. New York district attorney Richard Riker explained that a laborers' conspiracy "is as dangerous as any kind of monopoly."⁸²

Just as Republicans challenged Federalist claims to monopolize opinion in 1794 and 1798, they disagreed with the cordwainers' efforts to control wages. For both Levy and Emmet, the cordwainers' primary transgression was forcing masters and nonmember journeymen to accept their demands. In both Philadelphia and New York, prosecutors proved that the cordwainers not only refused to work below certain wages, but intended

⁷⁹ *Ibid.*, 3:385.

⁸⁰ *Ibid.*, 3:228.

⁸¹ *Ibid.*, 3:328.

⁸² *Ibid.*, 3:313.

to prevent any journeymen cordwainers from doing so, infringing on both the individual rights of masters and journeymen and the communal right to noncoercion in the market. Emmet noted that any workers' society that violated the common good was reprehensible, "But when it is further considered that they are always accompanied with compulsory measures against those of the same class or trade, who would willingly pursue their occupation, . . . they are most tyrannical violations of private right, and inevitably tend to the unjust impoverishment of multitudes."⁸³ Voluntary associations that sought to impose their will upon others violated private rights that affected not individuals, but "multitudes." Republicans, already wary about corporations with monopolistic privileges, were particularly concerned when private voluntary associations acted as monopolies without any sanction from the state.⁸⁴

In both 1806 and 1810, the defense agreed with Levy and Emmet. They argued, however, that the cordwainers did not seek, and at the very least did not accomplish, control of the wage market through any extralegal means.⁸⁵ This claim was shown to be false. In Philadelphia, the prosecuting attorneys brought forth several witnesses, both journeymen who admitted being pressured to join the societies and were threatened with violence, and masters who had had their property damaged. Journeyman Anthony Bennet, for example, explained that the scab bylaw in the cordwainers' society's constitution obliged all members to refuse to work in shops where nonmembers and strike breakers were employed. Asked what was the significance of this policy, Bennet replied, "Why, that I shall not do as I like."⁸⁶ When asked further what the cordwainers would do if he violated the scab rule, Bennet exaggerated: "Kill me." Although the society's constitution was not produced, the prosecution found proof that the scab provision intended to force all journeymen to become members. During

⁸³ Ibid., 3:329.

⁸⁴ On corporations and the question of monopoly, see Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, Mass., 1948); Oscar Handlin and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy. Massachusetts 1774-1861*, rev. ed. (Cambridge, Mass., 1969); Ronald E. Seavoy, *The Origins of the American Business Corporation, 1784-1855: Broadening the Concept of Public Service during Industrialization* (Westport, Conn., 1982); Peter Dobkin Hall, "Inventing the Nonprofit Sector," in *Inventing the Nonprofit Sector and Other Essays on Philanthropy, Voluntarism, and Nonprofit Organizations* (Baltimore, 1992), 13-83; Johann N. Neem, "Politics and the Origins of the Nonprofit Corporation in Massachusetts and New Hampshire, 1780-1820," *Nonprofit and Voluntary Sector Quarterly* 32 (forthcoming, Sept. 2003).

⁸⁵ Commons, *Documentary History*, 3:152-55, 158.

⁸⁶ Ibid., 3:89.

cross-examination, Jared Ingersoll asked journeyman James Geoghan whether the society obliged all cordwainers to join. Dodging the question, Geoghan responded, "We consider all workmen who work for wages-shops as proper members for the society." When pressed, he was forced to admit that the answer to Ingersoll's question was "Yes."⁸⁷

In New York, the prosecution's case was simpler. Producing the society's constitution, the prosecution pointed out that the society's bylaws explicitly aimed at monopolizing the wage market. According to the constitution, no journeyman could work for an employer who hired non-members (Article VIII) and any newcomer to the city had to join or pay a fine (Article XI). If he refused to join, under the former clause, all members would strike.⁸⁸ For Republican leaders, these efforts to control the market were intolerable. It is little wonder that Levy found in the cordwainers' society a threat to "general and individual liberty."

For their part, Geoghan's and other cordwainers' hesitancy to admit their intent to control the wage market belied an awareness of the legal boundaries instituted by Republican leaders. However, the cordwainers knew that their efforts to regulate their craft were not unusual; journeymen and masters in various trades formed societies with similar goals and constitutions following independence. In both Philadelphia and New York, moreover, the cordwainers' defenders noted that the masters often colluded together in associations, and the cordwainers actions were no different.⁸⁹ As a result, Philadelphia's and New York's cordwainers defined the limits of proper action differently. In their address of November 1805, Philadelphia's cordwainers publicly asserted the right to determine their own wages. Referring to their masters as would-be "tyrants," the cordwainers denied the right of masters alone to set wages: "They suppose they have a right to limit us at all times, . . . they think they have a right to determine for us the value of our labor, but that we have no right to determine for ourselves what we will or will not take in exchange for our labor." Drawing from the egalitarian ideology of the

⁸⁷ Ibid., 3:119.

⁸⁸ Ibid., 3:366-67. The constitution of the New York City cordwainers is also reprinted in Howard B. Rock, ed., *The New York City Artisan, 1789-1825: A Documentary History* (Albany, N.Y., 1989), 201-3.

⁸⁹ Steinfeld, "The Philadelphia Cordwainers' Case of 1806," 33-35. On the cordwainers' accusations of masters, see Schultz, *Republic of Labor*, 160-61; Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 140-42; Wilentz, *Chants Democratic*, 38-40, 99-101. See also Gary John Kornblith, "From Artisans to Businessmen: Master Mechanics in New England, 1789-1850" (Ph.D. diss., Princeton University, 1983).

Revolution, the cordwainers celebrated and insisted on their constitutional right to "meeting peaceably together and pursuing our own happiness."⁹⁰

Historians have been inclined to view the tensions between masters and journeymen as an expression of conservative working-class resistance to changing economic relations.⁹¹ Robert J. Steinfeld, however, has offered a different interpretation that corresponds more closely to the conspiracy cases. As Steinfeld points out, journeymen artisans played an important role in the emergence of new labor relations. Following American independence, journeymen challenged the traditional hierarchical organization of artisanal enterprise and demanded more authority over their craft. Masters, certainly, also sought liberation from traditional obligations as they reorganized shops for industrial production and turned to semiskilled labor. Yet, cordwainers were not simply attempting to maintain traditional work patterns; instead, they desired better regulation of their craft on their own terms.⁹²

During the eighteenth century, masters often took it upon themselves to regulate the prices of products and the wage structures for an entire craft. In a hierarchical, deferential world, journeymen accepted the authority of masters to speak and to act on their behalf. This unity stemmed in great part from their common social status; elites regarded both masters and journeymen as members of the laboring class. Correspondingly, masters often referred to the purchasers of their labor and products as "employers," not "customers."⁹³ During the early republic years, both masters and journeymen challenged this status. "Artisan republicanism" united the crafts in their celebration of artisanal independence and equality.⁹⁴ At the same time, both masters and journeymen formed their own associations to regulate their trades. While artisans as a group claimed their place in the body politic, masters' and journeymen's associations shattered craft unity from the inside.

Cordwainers were among the most adamant in seeking control over

⁹⁰ Philadelphia *Aurora*, 28 Nov. 1805.

⁹¹ Schultz, *Republic of Labor*, 171-79; Tomlins, *Law, Labor, and Ideology in the Early American Republic*, 138; Twomey, *Jacobins and Jeffersonians*, 191-213. For a critique see Gordon S. Wood, "The Enemy is Us: Democratic Capitalism in the Early Republic," *Journal of the Early Republic* 16 (1996): 293-308.

⁹² Steinfeld, "The Philadelphia Cordwainers' Case of 1806"; Wood, "The Enemy is Us."

⁹³ Steinfeld, "The Philadelphia Cordwainers' Case of 1806"; Wood, "The Enemy is Us." See also Eric Foner, "Price Controls and Laissez-Faire: Paine and the Moral Economy of the American Crowd," in *Tom Paine and Revolutionary America* (New York, 1976), 145-82.

⁹⁴ The concept of "artisan republicanism" is explored in Wilentz, *Chants Democratic*.

their working conditions, especially as masters sought more efficient modes of production.⁹⁵ The New York cordwainers, in fact, found themselves in court again in 1811, and at least James Melvin was again involved.⁹⁶ By insisting on the right to regulate the wages of all journeymen on behalf of their trade, journeymen cordwainers helped destroy the older notions that organically linked masters and journeymen together. They did so neither to create a liberal economy nor to maintain traditional work relationships, but to regulate wages for their trade. Thus, the cordwainers could never have agreed with their Republican attorneys about the legal limits of collective action. Like the whiskey rebels, early American cordwainers gave new meanings to traditional forms and resisted Republican efforts to limit them.

In both 1806 and 1810 (and in the subsequent conspiracy cases), the cordwainers lost.⁹⁷ Republican leaders insisted that the very existence of voluntary associations required strict legal limits on their actions. No interest could be allowed arbitrary power. Republicans accepted James Madison's assertion in the tenth *Federalist* essay that although interests and disagreements can never be avoided their effects must be mitigated.⁹⁸ As a result, Republican leaders in Pennsylvania and New York resisted any effort by voluntary associations to compel others to obey their will.

Between 1790 and 1810, Republicans not only abandoned their claim to speak for the people at large but denied any person or group of persons such hubris. Instead, they defended the formation of voluntary associations and emphasized their important social, cultural, and economic value. Their critique of the whiskey rebels and the journeymen's societies stemmed from their effort to defend the freedom of association while protecting freedom in both civil society and the market. They remained concerned about arbitrary power from both above and below. Using law, Republican leaders carved a new space for voluntary associations; at the

⁹⁵ The six known labor conspiracy cases before 1820 all concerned journeymen cordwainers. See Commons, *Documentary History*, vols. 3 and 4.

⁹⁶ Sean Wilentz, "Conspiracy, Power, and the Early Labor Movement: The People v. James Melvin, et al., 1811," *Labor History* 24 (1983): 572-79.

⁹⁷ It was not until the Massachusetts case of *Commonwealth v. Hunt* (1842) that a decision was rendered in favor of journeymen's societies.

⁹⁸ Gordon S. Wood has written: "Politics in such a society could no longer be simply described as a contest between rulers and people, between institutionalized orders of the society. The political struggles would in fact be among the people themselves, among all the various groups and individuals seeking to create inequality out of their equality by gaining control of a government divested of its former identity with the society." Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969), 608.

same time, they imposed new forms of discipline onto the traditional forms of collective action employed by ordinary Americans, whether rural farmers or urban laborers. The irony for labor, of course, was that Republican efforts to prevent arbitrary power through formal doctrines enabled the rise of a laissez-faire economic philosophy. Republican leaders, having matured in the late eighteenth century, could not have anticipated these effects. What they knew, however, was that liberty was fragile, and the presence of multiple interests dangerous. The proliferation of competing organized interests necessitated strict regulation of activity within the public sphere of civil society and the market.⁹⁹ The needs of labor were incompatible with the limits Republicans imposed on collective action. The Republican foundation for the freedom of association was the absence of coercion, the very power that laborers required. In this sense, William Sampson was prophetic when he accused the cordwainers' prosecutors of an "unnatural effort to sustain monopoly on pretence of putting down monopoly."¹⁰⁰

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⁹⁹ Republicans did not distinguish between political liberties in civil society and economic relations in the market as we do today. For good discussions of the relationship between liberal economic ideas and political liberty, see Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence, Kans., 1990); Foner, "Price Controls and Laissez-Faire."

¹⁰⁰ Commons, *Documentary History*, 3:336.