The council of censors in Pennsylvania.

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THE COUNCIL OF CENSORS
IN PENNSYLVANIA

by
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CHAPTER I

INTRODUCTION TO THE COUNCIL OF CENSORS

The provision for a Council of Censors in Article XLVII of the Pennsylvania Constitution of 1776 represented a culmination of fears and apprehension about government during the Revolutionary years. The framers of the Pennsylvania Constitution looked to the Council of Censors as a defense against change in the governmental structure. Citizens in the new nation that had overthrown British colonial governments undoubtedly felt hostile toward, or at least distrustful of, many aspects of government.

At first, the existence of such extensive fear and distrust seemed peculiar. At the time, there was no concentration of wealth in the hands of a few, nor did there seem to be the possibility of anyone accumulating enough wealth to corrupt the entire system. People generally considered one another equal in their rights to liberty, property, safety, and religion, although they did recognize the inequality of men in their "original talents" and
capabilities. ¹

The general attitude of Americans at this time favored republican equality. In addition to a political revolution, a basic social revolution had also occurred which challenged authority and superiority. ² Many undoubtedly drifted away from the idealistic and time-honored respect for order, simplicity, and selflessness in favor of individualism and some disorder.

The attitudes of Pennsylvanians, as well as other Americans, toward governmental authority developed substantially from their experiences under English rule. Even though they had cast off English rule prior to drafting their first constitution in 1776, the corruption and foul play of George III remained vivid in their minds. The majority of political activists, and even those who took a lesser interest in government, developed their attitudes from their knowledge of England's past. Their comprehension of constitutionalism and politics stemmed mainly from English opposition groups which had equated government with power, and which saw in the executive


branch the possibility of conspiracies against constitutional liberties. Colonials shared those fears because, while the executive's power in England had legally decreased, the executive's legal powers in the colonies had increased.

Power in England eluded legalities, however, since corruption provided a means to maintain power. Such corruption angered citizens of both England and America: "Corruption, especially in the form of manipulation and bribery of the Commons by the gift of places, pensions, and sinecures, was as universal a cry in the colonies as it was in England."  

John Dickinson felt strongly that corruption in the English executive branch scared all Americans. Americans did indeed feel the pains of English corruption and abuse in government, as indicated in some of John Dickinson's comments regarding trade regulation:

The power of regulation appears to us to have been pure in its principle, simple in its operation, and salutary in its effects. But for some time past we have observed, with pain, that it hath been turned to other purposes, than it was originally designed for,

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4 Ibid., p. 56.
and retaining its title, hath become an engine of intolerable oppressions and grievous taxations.⁵

Americans concluded that George III was absolute. Although on the surface he had maintained the ancient forms, he had destroyed the spirit of the English constitution and of the separation of powers.⁶ By utilizing his power of granting places, pensions and honors the King had obtained parliamentary sanction for his policies.

While some English circles might have accepted corruption in government, it disgusted American political leaders. They knew of George's manipulations of the electoral process to achieve his own ends. It seemed as though the constitution were being literally destroyed by the very means devised "to secure and protect the people [which] had become the engines of destruction." Nothing angered radicals and independent-minded men more than the attempt by a frustrated ministry to carry out the Crown's supposed responsibilities for governing the realm with the necessary but often little understood cooperation of a balky Parliament—a cooperation that was possible only through ministerial management and influencing of the House of Commons.⁷

⁵Political Writings of John Dickinson, I:415.


⁷Ibid., p. 33.
It appeared to those who clung to the original principles of the constitution and to the tradition of separation of powers, that the crown was "bribing its way into tyranny." However, the king could not be blamed for all of the American distrust of power and disillusionment with government. One must not underestimate the extreme differences in attitude and personality between Americans and Englishmen. Englishmen viewed themselves as the governors and those wielding the power in the pre-1776 period, while Americans saw themselves as the governed, suffering the misuse of power by the English government. After 1776, prior English attitudes and activities provided the basis for American philosophies on law enforcement. Such philosophies took shape primarily in large urban areas such as Philadelphia, but spread through the states.

Unfortunately, Americans were not immune from corruption, and they soon found themselves in the midst of

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8Ibid.

9Allan Nevins, The American States During and After the Revolution, 1775-1789 (New York, 1924), p. 24. A more detailed description and account of the differences in attitude and personalities that existed between Americans and Englishmen may be found in Chapter 1 of the Nevins volume.

10Ibid., p. 260.
governmental and constitutional problems.\textsuperscript{11} They feared the possibility of corruption in their own government, resulting in an inadequate and weak legislature and a powerful executive, and the transformation of the separation of powers into mere empty forms.

Americans had looked toward increasing autonomy in their own governments since the mid-eighteenth century, largely as a consequence of the mistakes which they had seen. A more equitable and beneficial government emerged as their high goal in 1776. The Pennsylvania State Constitution, as well as other state constitutions drafted in 1776, reflected their awareness of the need to avoid past mistakes. Those constitutions often complicated the process of constitutional change so as to separate powers and to reduce the possibility of corruption. The Pennsylvania Constitution of 1776 developed one of the most strict amendment provisions in its forty-seventh article, which provided for a Council of Censors to meet septennially. Only the Council could examine the constitution to determine whether defects had appeared or officials had not governed properly, and it alone had the power to suggest

\begin{flushright}
\textsuperscript{11}Wood, \textit{Creation}, p. 417.
\end{flushright}
amendments.  

The provision for a Council of Censors did not receive unquestioned approval as a panacea to rectify all possible constitutional ills, but some of the framers of the constitution undoubtedly felt that this limited method of amendment might prevent quick corruption of the document.

Surprisingly little American comment appeared about the Council of Censors at that time. Many Pennsylvanians viewed it as "eccentric, impractical, and inadequate" for keeping Pennsylvania government on a balanced path, but others noted the experimental nature of the entire constitution, including Article XLVII.  

In later years, comments did appear in the Federalist regarding the Council of Censors, denouncing its apparent use of passion, rather than reason, and also questioning the

merek demarkation on parchment of the Constitutional limits of the several departments. [It] is not a sufficient guard against those encroachments which lead to a tyrannical concentration


of all the powers of government in the same hands.  

Although a number of newspapers carried articles related to the proceedings of the Council of Censors, they carried very little editorial comment, and no substantial British comment appeared on the Council of Censors. The bulk of any foreign comment came from the French, who apparently took a deeper interest in new American institutions than did the British or even some Americans. French commentators divided on the worth of the Pennsylvania Council of Censors. One school of thought viewed it in its most idealistic form, as demonstrated by Brissot de Warville: "An excellent institution, quite proper to up-root abuses [corruption, election manipulation, etc., as the Americans had seen with George III] which might slip into the Constitution and thus prevent its ruin!"  


The second French school of thought viewed the Council of Censors as a possible center of corruption, as exemplified by the Abbé de Mably: "I fear that a council which assembles only every seven years to repair the wrongs done to the Constitution... would be of all councils the most useless; it will be carried away itself by the torrent of public morals."\textsuperscript{16} This writer, and others who saw the Pennsylvania Constitution of 1776 as an assembly of "magnificent promises," apparently recognized clearly the implications of the restrictive nature of the Constitution. Unfortunately, Abbe de Mably and his cohorts proved correct in their assessment of the Censors and the role of the restrictive constitution in limiting that agency.

The provision for the Council of Censors probably evolved from widespread fears in 1776 that the amending process, if too easy, would result in rapid and unnecessary changes. Therefore, only the Council of Censors could propose constitutional amendments. The majority of Pennsylvania citizens, especially the frontier segments, distrusted the power previously held by the eastern aristocracy, many of whom had been under English influence.

\textsuperscript{16}Ibid., pp. 317-319, as quoted from Abbé de Mably, Observations sur le Gouvernement et les Loix des Etats-Unis (Paris, 1784), pp. 93-94.
However, the constitution's framers went even further than the frontiersmen by viewing themselves as the "true representatives of the people—the sovereign power in the state." Of course, Pennsylvanians—as well as other Americans—had justification for their widespread fears regarding political power. The King's attacks on the failing English constitution had developed in them a distrust of power.

The framers consequently devised an anti-activist constitution, which the influential classes could not easily change if they later gained control. Article XLVII of the Pennsylvania Constitution of 1776 was vital to the anti-activist tone of that document.

Although Article XLVII seemed to strengthen the Constitution, a closer perusal indicated otherwise. It listed three major duties for the Censors during their tenure of "one year, from the date of their election, and no longer," and these indicated their importance to the preservation of the freedom of the commonwealth. First,

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they had to "enquire whether the constitution has been preserved inviolate in every part."\textsuperscript{19} Considering the length of the Pennsylvania Constitution of 1776, such an inquiry represented a vast amount of work, especially since there could be no preliminary preparation, because new Censors were elected for each septennial session. In addition, the constitution failed to enumerate which violations needed primary investigation. If the Censors investigated every minor and major infraction of the constitution, one year was surely inadequate. In retrospect, the impossible tasks placed on the Council of Censors demonstrated the restrictive, anti-activist tone of the constitution.

The second major function of the Council of Censors was to inquire "whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution."\textsuperscript{20} Again, to assess the performance of the legislative and executive branches only every seven years would be nearly impossible, especially when

\textsuperscript{19} Article XLVII (see Appendix I).

\textsuperscript{20} Ibid.
the Censors had other responsibilities.

The last principal duty of the Council of Censors was to "enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed." As before, the lack of any preliminary or yearly investigation by the Censors themselves multiplied the difficulty of the task. In all of their functions, they had to start from the beginning, with no investigative resources at their disposal. However, the Censors probably undertook their duties with enthusiasm, initially at least, viewing them as essential to the preservation of freedom.

The magnitude of the Censors' task increased even more due to the structural arrangements laid out in Article XLVII. In October 1783, and in October of every seventh year thereafter, elections were to be held for Censors. Two men would be elected from each of the twelve counties, as well as two men from the City of Philadelphia. They

21 Ibid.

22 In 1783, the twelve counties in Pennsylvania were: Bucks, Chester, Berks, Lancaster, York, Cumberland, Northampton, Bedford, Northumberland, Westmoreland, Washington, and Philadelphia (County).
used the committee system to try to accomplish their tasks. The constitution had not provided for payment or employment of clerks or assistants. However, Censors could request state funds to defray their "expenses" as a body. Censors also received compensation for their own labors. On November 5, 1783, the General Assembly requested of the Supreme Executive Council that "the pay for each of the Censors...be the same as is allowed to a member of the Supreme Executive Council." This amounted to £17, 6s per day, plus travel expenses.

In carrying out their tasks, the Censors had the powers to "send for persons, papers, and records," and the "authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing of such laws as appear to them to have been enacted contrary to the principles of the constitution." They might have held some potential power. On paper, at least, they represented a legal check on the executive and legislative

23 Minutes of the Supreme Executive Council, XIII, 770. It is not clear just what "expenses" the Censors did incur. Nothing is evident from their own journal, and even the Minutes of the Supreme Executive Council, which had to arrange and approve the withdrawal, give no indication of the purpose for which the money was needed. The sum generally requested by the Censors was £100.

24 The Pennsylvania Gazette, Nov. 5, 1783; March 31, 1784.

25 Article XLVII (see Appendix I).
branches, but while no one in Pennsylvania had any authority to veto or dissent against their actions, they themselves had no authority to enforce any of their decisions.

Yet, it is necessary to go beyond mere legal power. The source of their potential power lay in their possible use of public relations. The role of the press cannot be underestimated in late eighteenth-century politics. The press represents a vital link in the knowledge of what the "average colonist" thought and understood regarding American theories of liberty. A high degree of literacy existed, and newspapers circulated widely, indicating an obvious influence on the development of political thinking. 26 Decades before the revolution, newspapers had emphasized the relationship of loyalty and a good constitution:

The true object of loyalty is a good legal constitution, which as it condemns every instance of oppression and lawless power, derives a certain remedy to the sufferer by allowing him to remonstrate his grievances and pointing out methods of relief when the gentler arts of persuasion have lost their efficacy. 27


27(Boston) Independent Advertiser, August 8, 1748 (#32), as quoted in Leder, Liberty and Authority, p. 31.
During the decade of the Revolution, America had become a "nation of newspaper readers." The growth of the press and its influence undoubtedly stimulated political democratization. The Revolution itself increased the importance and influence of the press by freeing it from governmental scrutiny. Further indication of the importance of the press appears in one of the Federalist essays. In it, the author points out the parallel between freedom of the press and free-spirited public opinion. Although many of the ideas expounded dated from two decades prior to the revolution, the press probably provided the Censors with a potential power greater than any legal authority.

The Censors had one further "power." They could:

call a convention, to meet within two years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution, which may be defective, explaining such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed,

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28Wood, Glory, p. 253. A perusal of Extracts From the Diary of Christopher Marshall (ed. William Duane) indicates the importance of the press in the Revolutionary and post-Revolutionary era. In it, one finds countless references to "accounts published. . . ."


and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people.  

This section of Article XLVII again demonstrated the anti-activist nature of the constitution. The framers of the constitution must have understood the limited powers of the Council of Censors. Even if they called a convention, they could not present their views, since their term expired one to two years before the convention met. Their only hope of defending their views lay in their running for election to the convention.

In retrospect, the Council of Censors faced an impossible political task. However, not all eighteenth-century writers understood the full impact of the restrictive nature of the Pennsylvania Constitution of 1776. This was exemplified by the French comments noted earlier, and by Michel-Rene Hilliard D'Auberteuil, another Frenchman, who said of the Council of Censors:

.Does it not have altogether too much power, and does not the reciprocal balance of the executive body and the legislative body, the respective censure of the members of those two bodies, the

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31Article XLVII (see Appendix I).
publicity of its acts, and the liberty of the press suffice? The laws for encouragement of virtue for protecting the morals are laudible, but they might degenerate into a strong inquisition. 32

Yet, not only some of the French proved politically naive on the possible lack of ultimate achievements of the Council of Censors, but also Thomas Paine himself once suggested that a similar body, presumably with similar "authority," might prove beneficial if applied on the national level. 33


The impossible task faced by the Council of Censors grew in large part from the restrictive, anti-activist nature of the Pennsylvania Constitution of 1776. That document reflected the negative attitude of its framers toward the pre-revolutionary government which they believed had provided little, if any, representation of a beneficial nature. The desire for a republican-type of government of their own brought about the necessity of rebellion in 1775.\footnote{Wood, Creation, pp. 107-108.} A brief discussion of the restrictive nature of the 1776 constitution will be beneficial.

Overcompensation in drafting the constitution resulted from this negative attitude, producing a document that exhibited anti-activist and restrictive tones. In retrospect, one might wonder whether such a constitution
represented more freedom and liberty than the King's government had afforded prior to 1776. The framers of the new government undoubtedly viewed matters differently. To them, their efforts probably culminated in devising an instrument which would protect the interests of Pennsylvanians from arbitrary abuses which they had suffered under the King. Unfortunately, this political thinking showed some lack of ultimate direction based on an understanding of fundamental principles which would meet their desires of and future needs for growth of freedom. Rather, the framers seemed more preoccupied only with immediate concerns.²

Confident that they had fulfilled their duties with sufficient responsibility, the framers failed to obtain formal approval of the constitution by the people or representatives other than those constructing the document. By no means were these men naive enough to believe that the people would receive it with joy or with unanimity.³ They must have feared some discontent; nevertheless, they acted as they viewed themselves—guardians of the people.

²William S. Hanna, Benjamin Franklin and Pennsylvania Politics (Stanford, Calif., 1964), p. IX.
More than just a result of this guardianship attitude, however, the Pennsylvania Constitution of 1776 developed as a tool which would insure the dominance of the leaders who had devised it, or at least of those in sympathy with their political theories. After all, that same group of "Radicals" had recently emerged victorious in their struggle with old Whig elements in the state, who might have been content to continue to exist with the previous government.\(^4\) The constitution thus derived was actually obstructionist or restrictive in nature. The motivation for the inclusion of such restrictions stemmed from what Allan Nevins had labelled "the very keynote of the American Revolution." Constitutional framers undoubtedly felt they had fulfilled the "supreme function of the state" by protecting life, liberty, and property, the natural rights of all men.\(^5\) Nonetheless, their zeal in protecting such rights destroyed any effort to create a flexible document.

Typical of the restrictive ideas were: the test oath

\(^4\)David L. Jacobsen, *John Dickinson and the Revolution in Pennsylvania: 1764-1776* (Berkeley, Calif., 1965), pp. 120-121. The term "Radicals" here refers to a political following also known as "Constitutionalists," as opposed to the "Republicans" ("Whigs"). These two political alignments will be further discussed in succeeding chapters.

for all voters, in essence assuring that such voters did not oppose dominant ideas; the relatively subordinate, unwieldy, and limited plural executive, resulting in a lack of enforcing authority; the single, centralized Assembly; and the weak, if not powerless, Council of Censors. Aside from the lack of power enjoyed by the executive branch, it remained further restricted by the three-year limit on tenure in office. Re-election of the same person could occur only after a four-year lapse.\(^6\) No such regulations hampered the legislators in the Assembly.

The provisions for rotation of elective office and for the Test Oath were most demonstrative of the anti-activist nature of the constitution. The main objective of the Radicals in mandating rotation of offices, coupled with the ban on multiple office-holding, emerged as the prevention of the formation of a new and "inconvenient aristocracy." The Test Oath provided that voters should swear their allegiance to the new government, thereby affirming that they remained content with the government and would not seek changes in the system. The oath read:

I do swear (or affirm) that I will be faithful and true 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.  

Opposition to this test oath, more than any other factor alone, brought about the severe conflicts between Radicals and Whigs that later hampered the Council of Censors. Whig supporters clearly saw that provision only as a means to prevent their constructive participation within the new frame of government.

The culmination of this obstructionist, anti-activist frame of government occurred with the writing of Article Forty-Seven, establishing a Council of Censors. Provisions allowing only the Censors to propose constitutional amendments was intended to preserve the constitution as originally drafted by its framers. The election of Censors once every seven years, with the authority to enquire, investigate, and possibly to call for constitutional conventions within two years after their one-year term, was to assure the Radicals of no changes for a minimum of eight years. Most likely, as perhaps realized by some of the

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framers, changes would not occur even then, due to a severe lack of continuity, since the Censors who proposed articles for amendment might not be chosen as representatives to the ensuing constitutional convention. Although constitutional amendment was extraordinarily difficult, it was not impossible. Article Forty-Seven provided that proposed amendments be published six months prior to election of constitutional convention delegates in order that citizens could convey their wishes to those delegates. However, the system proved awkward at best, probably by original design.

This awkwardness did not evolve as part of some sinister plot to prevent necessary changes. It more likely developed from widespread fears that the amending process, if too easy, might unfortunately result in changes of little real consequence or need. Facing the reality that constitutional changes might someday be necessary, the authors of the Pennsylvania Constitution of 1776 provided a means to investigate and initiate change through the Council of Censors. In theory, at least, the convening of a Council of Censors every seven years could have occurred expressly for the purpose of reviewing and revising the

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8Article XLVII (see Appendix I). Selsam, Pennsylvania Constitution, p. 200. Hawke, Revolution, p. 188.
constitution. Such a council might have the benefit of experience and could prevent the accumulation of errors.\(^9\)

A strong distinction between the fundamental law of the constitution and mere statutory law existed throughout America within the same cautious framework as fears of easy amending processes. Therefore, several of the states developed their own devices to put their constitutions beyond the reach of mere legislative acts.\(^10\) For Pennsylvania, that device embodied itself in the Council of Censors. Apparently, the desire to protect the natural rights of men, and the resulting obstructionist point of view had spread through the states, due to the sad governmental experiences in the pre-revolutionary years.

Although in some areas of New England, New York City, and isolated regions of the South many expressed the opinion that only the people-at-large could amend constitutions, the majority of the provisions for legislative changes indicated a different point of view. Pennsylvania had perhaps the most complicated procedure for constitutional change, but other states developed procedures nearly


as restrictive. The Delaware Constitution, for example, specified certain articles as being immune from change, and required the consent of five-sevenths of the Assembly and of the Legislative Council for other alterations. The Maryland Constitution required the acts of two successive, separately elected legislatures to accomplish constitutional amendment. Although change was inevitable, it was obviously something the founding fathers wished to avoid. It undoubtedly represented a possible retrogression to a time or condition of government when changes occurred to suit individual whims. In addition, the authority of the constitutional conventions ultimately required for changes to the Pennsylvania constitution caused a feeling of insecurity on the part of the people. Wood has stated that

in the context of eighteenth-century thought the idea of a legal body [constitutional convention] existing outside of the representative legislature and making law which the legislature could not make was such a radical innovation in politics.  

One may safely suppose that ordinary people did not

\[11\text{Wood, Creation, pp. 308-309. Further details and examples of restrictive, obstructionist provisions for amendment to other state constitutions are outlined throughout these pages.}\]

\[12\text{Wood, Creation, p. 309.}\]
understand many of the strange, obstructionist innovations, such as the provision for the Council of Censors in state constitutions. Furthermore, those same ordinary people probably did not desire such complications. Yet, their main concern still lay in the elimination of kingly, parliamentary, and proprietary powers under which they had "suffered." While much of this suffering resulted from military conflict, it had, nevertheless, represented what they remembered as "government."

Quite possibly, these people distrusted even the educated men who drew up the first state constitution. Ironically, at least one of the educated men involved in drafting the Pennsylvania Constitution of 1776 did distrust educated men himself. James Cannon, a mathematics professor at the College of Philadelphia, saw "all learning as an artificial restraint on the human understanding." He viewed professionals and educated men as having no part in a democratic government. Oddly enough, Cannon, the "fanatical schoolmaster," has received the bulk of the credit for the development of the idea to create a Council of Censors, and for Article XLVII of the Pennsylvania

\[13\] Konkle, George Bryan, p. 131.
Constitution of 1776 in general.\textsuperscript{14}

Even though the Pennsylvania Constitution of 1776 limited political activity and made change difficult, to be initiated only by a Council of Censors, comments from the French essayist Déméunier indicate an underlying distrust on the part of Pennsylvanians at the time:

Pennsylvania has reserved the power to establish at certain periods the censors who desire to maintain the constitution and to execute the laws. The most enlightened citizens of America make light of this institution which the ancient republics regarded so highly. They are persuaded that the censors will disturb the state and the administration; and that if they were useful for the peoples of antiquity, the circumstances are no longer the same, and that the liberty of the press is the only censure which it is proper to establish today in republics.\textsuperscript{15}

Initially, and idealistically perhaps, the framers of the constitution may have set out to prepare a document that would remove the abuses they had seen under former Crown rule. At the outset, the restrictive, anti-activist

\begin{itemize}
\item \textsuperscript{14}Ibid., p. 121. In addition to Cannon and his leadership of the movement to develop the Council of Censors, Justice George Bryan has also been linked to Article XLVII. For more information on these theories, see Frederic A. Godcharles, \textit{Daily Stories of Pennsylvania} (Milton, Pa., 1924), p. 794, and Selsam, \textit{Pennsylvania Constitution}, p. 201.
\end{itemize}
nature of the Pennsylvania Constitution of 1776 developed as a means of preventing the ruin of the constitution and new government by such abuses. This obstructive nature formed the boundary line between the Radicals (Constitutionalists) and the Whigs (Anti-constitutionalists). By the time of the first Council of Censors in 1783, the original purposes of such restrictions, if positive in the first place, had been subordinated to the issues of preserving that constitution without change. To that end, supporters of the Constitution of 1776 could use that document to their advantage, since the Censors thereby had no direct ability to change the Constitution and the Radicals had no desire.\textsuperscript{16}

\textsuperscript{16}An interesting essay on this lack of desire appears in \textit{The Federalist}, No. 50, pp. 344-346, ed. Jacob E. Cooke.
CHAPTER III

THE CENSORS' WINTER SESSION

Constitutional restrictions represented only one of the major deterrents to positive action on the part of the Council of Censors. In addition to that problem, partisan politics plagued the Censors during their sessions both in the winter of 1783 and in the summer of 1784.

Partisan politics in Pennsylvania originated with the Constitution of 1776. Most states either did not have such politically active inhabitants, or did not grant sufficient power to the people to permit them to challenge constitutional guidelines. However, as Jackson Turner Main indicated, in Pennsylvania "the constitution was so democratic that it antagonized powerful elements in society." The constitution itself then was responsible for the alignment of two major political parties by the
time the first Council of Censors met in 1783. These two divisions called themselves "Republicans" (or "Anti-Constitutionalists") and "Constitutionalists" ("Radicals"). The two sessions exhibited numerous instances in which the main criterion for voting seemed simply to be partisan alignment.

As specified in Article Forty-Seven of the Pennsylvania Constitution of 1776, the necessary election for Censors took place throughout the state on the "second Tuesday in October," seven years after that document had become the law of the state. At the time of that election (October 14, 1783), Pennsylvania consisted of twelve counties. As outlined in Article Forty-Seven, two elected Censors represented each of these counties, as well as two from the City of Philadelphia.  

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The term "party" used here and throughout this thesis does not imply the modern definition of an organized political grouping. "Parties" in this era did not exhibit the organization of today's political parties. Rather, the term represents a designation for a vast number of men adhering to a common idea.

2Article XLVII. (See Appendix L)

The twelve counties at that time included: Bedford, Berks, Bucks, Chester, Cumberland, Lancaster, Northampton, Northumberland, Philadelphia, Washington, Westmoreland, and York.
The final tally for the initial session of the Council of Censors showed thirteen Republicans (Anti-Constitutionalists) pitted against thirteen Radicals (Constitutionalists). The Republicans, however, did manage to gain dominance through the election of Frederick Muhlenberg as the first President of the body, as well as the election of Arthur St. Clair as President pro tempore, although both of these positions were temporary and changed through the Censors' term. 3

Preparations for the Censors' meetings were made following the elections. On November 5, 1783, the General Assembly in Philadelphia requested the Supreme Executive Council to "provide a convenient apartment in this city

3The session opened with the following representative censors present: from the City of Philadelphia, Samuel Miles and Thomas FitzSimons, both Republicans; from Philadelphia County, Frederick Muhlenberg (elected president of the body) and Arthur St. Clair, both Republicans; from Bucks County, Joseph Hart and Samuel Smith, both Constitutionalists; from Chester County, Anthony Wayne and James Moore, both Republicans; from Lancaster County, Stephen Chambers, a Republican, and John Whitehill, a Constitutionalist; from York County, Thomas Hartley and Richard McAllister, both Republicans; from Cumberland County, William Irvine, a Republican, and James McLene, a Constitutionalist; from Berks County, James Read and Baltzer Gehr, both Constitutionalists; from Northampton County, John Arndt, a Republican, and Simon Driesbach, a Constitutionalist; from Bedford County, David Espy and Samuel Davidson, both Republicans; from Northumberland County, William Montgomery and Samuel Hunter, both Constitutionalists; from Westmoreland County, John Smiley and William Findley, both Constitutionalists; and from Washington County, James Edgar and John McDowell, both Constitutionalists. Brunhouse, Counter-Revolution, p. 278.
[Philadelphia] for the Council of Censors to meet in; and that the pay for each of the Censors to be the same as is allowed to a member of the Supreme Executive Council" [£17, 6s per day]. Censors could also request withdrawal of funds to defray expenses they might incur.

In order to carry out the four principal duties outlined in Article Forty-Seven of the constitution (see Appendix I), the Censors had the power to "send for persons, papers, and records," and could pass public censures, order impeachments, and recommend to the legislature the repeal of any laws, thought by them to have been enacted contrary to the principles of the constitution. Although on the surface, this seemed to grant them a great deal of power, one must remember the restrictions of the constitution in general, as reviewed earlier.

The first session of the Council of Censors opened on November 13, 1783. The recent signing of the peace treaty in France (September 3, 1783) ending the American Revolution intensified partisanship in Pennsylvania. Several of the Censors had been active in previous partisan alignments in the state and simply continued their activity

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5. Article XLVII. (See Appendix I)
over the question of retaining the constitution as it had been written.  

Although the initial seating of the Censors showed thirteen Republicans and thirteen Radicals, James McLene, William Montgomery, and Samuel Hunter did not appear after the first meeting, thereby leaving an effective membership of thirteen Republicans and only ten Constitutionalists. There existed a major correspondence between party affiliations and geographic location. For instance, in each county except Lancaster, Cumberland, and Northampton, both Censors represented the same party affiliation. Furthermore, the western counties (e.g. Washington and Westmoreland), heavily dominated by Scotch-Irish, leaned toward the Constitutionalist way of thinking, possibly due to their distrust of governmental power.

The Council of Censors usually met only in the morning, from about ten o'clock until noon, Monday through Saturday. Business did not flow easily for the Censors. Several meetings adjourned early because committee reports were not ready.  

\footnote{Cooke, The Federalist, No. 50, pp. 343-346.}  

\footnote{Journal of the Council of Censors, November 26, 1783.}
the Censors often suffered during their winter sessions because the Assembly simply refused to forward requested papers, minutes, and other documents. When the Assembly did not refuse outright, it often simply ignored the Censors' requests.

Although such reluctance commonly occurred, the most serious case centered about the so-called "Wyoming Controversy," involving land at the northern end of the Susquehanna River, claimed before the Revolutionary War by citizens of both Pennsylvania and Connecticut. In 1778, Congress had sent troops to defend this Wyoming region. Later, the "Trenton Decree" granted Pennsylvania jurisdiction over the area, and so the Connecticut settlers petitioned the Pennsylvania Assembly to legitimize their holdings. By that time, the Pennsylvania claimants, supported by the Republicans, had two companies of state rangers sent to that frontier. The Republicans then worked with the Supreme Executive Council to demand that the Connecticut settlers pull out—a demand backed by the presence of troops. Upon hearing of the incident, the Council of Censors in November 1783 demanded from the Assembly all papers and reports relating to the Wyoming Controversy. The Assembly kept the Censors waiting until
August 1784 for their answer: an uncompromising "No!"\textsuperscript{8}

The Wyoming incident represented an early crisis in the Council of Censors. It also clearly exposed the two major problems that affected the body: lack of authority and partisan politics. The lack of authority stemmed from the restrictions imposed by the Pennsylvania Constitution of 1776, as discussed in Chapter II. In spite of the Censors' supposed power, they could not force the Assembly to do anything against its will, for they had no enforcing authority. By the time the Assembly responded in 1784, the Constitutionalists dominated the Censors, but the Republicans still held the majority in the Assembly. Party strife had developed in the earliest days of the constitution, and there is little doubt that the intense political differences certainly helped motivate the lack of cooperation in 1784.\textsuperscript{9}

\textsuperscript{8}Brunhouse, \textit{Counter-Revolution}, pp. 128-130.


The Council of Censors finally did acquire some of the papers that they wanted, much to the dismay of the Assembly. One William Bradford, Jr., of Wyoming, forwarded some papers, mostly depositions of settlers, relating to the controversy, to the Censors on September 8, 1784 (Pennsylvania Archives, Series I, Vol. X, p. 655). However, they did not reach Philadelphia in time to be of any value.
Partisanship did dominate the Council of Censors, as evidenced in the investigation of one of the Council's most important objectives: determining whether or not the Pennsylvania Constitution of 1776 required amendment. Discussion of this topic suffered a delay of several weeks. General discussion regarding the articles did not begin until late December 1783, and only in January 1784 did it culminate in a committee to investigate the articles and to list those in need of amendment. The committee consisted of Arthur St. Clair, Thomas FitzSimons, Samuel Miles, Thomas Hartley, and John Arndt.\textsuperscript{10}

Considering the depths of political partisanship, as well as the Republican majority in the Council of Censors, it is interesting, but not too surprising, to note that all five men came from the Republican camp. Only the Council President, Frederick Muhlenberg, a Republican, had the authority to appoint committees.

The changes proposed by the committee would have turned the Constitution of 1776 upside down, rather than simply alter it, although in some instances sound reasoning cannot be denied. The committee first proposed the establishment of a bicameral legislature with the lower

\textsuperscript{10}Harry Marlin Tinkcom, \textit{The Republicans and Federalists in Pennsylvania: 1790-1801} (Harrisburg, Pa., 1950), p. 5.
house essentially as it was, but with the addition of a new upper house, the Legislative Council. They felt that a single legislative house did not provide an adequate check on possible tyrannical factions within the legislature itself, and because uncontrolled power, a possibility with only one house, could allow the house to usurp the power of the executive and judiciary. In the most extreme case, revolution would have emerged as the only alternative. A deeper, more fundamental reasoning exhibits itself, however, when one considers the results of some of Allan Nevins' research in this area. It had been seven years since the implementation of the constitution, and "a series of wartime shocks taught the States that their legislatures were much too strong, their executive departments too weak."\(^{11}\)

In analyzing Article III, dealing with the executive branch, the committee felt that supreme executive power should not be vested in a council for several reasons: 1) it meant constant expense; 2) a large body, though wise, could not make quick, emergency decisions with agreement; 3) no individual could be held accountable for actions; 4) a prevailing faction in the assembly might elect, as

president, someone who would submit to their wishes. The committee proposed a "Governor." They wanted to give the government power, and that required some ability to control power. A single executive could provide that ability.

The committee of five also felt that judges of the Supreme Court should have fixed salaries and tenure for the duration of their "good behavior," as opposed to the then current system of commissioning justices every seven years because: 1) lives, property and liberty depended on the independence of the judges; 2) judges who refused to obey unconstitutional laws passed by the Assembly could be removed under the seven-year commission plan; 3) the seven-year program made some judges biased toward the assembly's wishes, as they looked forward to favorable reconsideration at the end of their seven years. This creation of judicial independence also would have provided more of the power for government which the original constitution had restricted or lacked completely.

Above and beyond the basic changes in the legislative, judicial, and executive branches, the committee proposed the abolition of rotation of "sundry offices." Detrimental features of the office rotation included the hope for reappointment, the elimination of men of talent, and the deprivation of the people's right to elect their own officials.
The committee also proposed the addition to the constitution of a "no ex post facto" clause, but suggested eliminating part of Article V (regarding training for the militia) which directed that major officers be elected by the people. Also, instead of a one-year residency for foreigners to gain citizenship, the committee proposed two years.

The committee suggested as an addition to Article XIII, which dealt with the doors of the house being open, that the results of open ballots be published weekly. Reasons for assent could be published, but not reasons for dissent, under the pretense that such activity would "tend to foment party disputes." Jackson Turner Main's research implied that such a statement must have evolved only as a political ploy. Partisanship in the state ran too deep for many years even after the meetings of the Council of Censors to suppose that the announced explanation would be acceptable. ¹² Considering the extreme nature of the political alignments, in both directions, a more probable explanation is that the inability to publish dissenting reasons reduced the possibility that good arguments might

persuade some of the majority to shift alignments. After all, at the time this Republican committee proposed the alterations and amendments, their party held the majority in the Assembly, as well as in the Council of Censors.

The proposed Article XVII provided for representation in the house based on taxables in a district. This committee set the ratios of one representative in Assembly per 1,250 taxables, and one in the Legislative Council [if formed] per 2,500 taxables, with the number of representatives in the Assembly never to exceed one hundred, and the number in the Legislative Council not to exceed fifty.

The Legislative Council proposed by the committee would have provided the following initial representation: two from the City of Philadelphia, three from Philadelphia County, two from Bucks County, and three from Chester County, all to serve three years; four from Lancaster County, three from York County, three from Cumberland County, and two from Berks County, all to serve two years; two from Northampton County, one from Bedford County, one from Northumberland County, one from Westmoreland County, and one from Washington County, all to serve only one-year terms. Although the Republicans maintained that the representation and tenure schedules were arrived at arbitrarily, obvious Radical strongholds (e.g. Washington and
Westmoreland Counties) would have their effectiveness restricted by their members' limited initial tenure in office. However, at the end of various expiration dates, all counties would elect new representatives, all to serve three years until the next election.

The final change proposed by the committee to investigate possible amendments to the constitution involved the elimination of Article XLVII, thereby abolishing the Council of Censors. Speculation leads to the assumption that the Republicans, at least, had recognized the restrictions of the constitution, including the awkward method for amendment embodied in the Council of Censors. By recommending amendments that would have provided more power in government, the Council of Censors could have been eliminated along with all other anti-activist restrictions.

The political struggles that helped undermine any positive contributions the Council of Censors might have attempted to make, had it had the needed authority, surfaced clearly in the balloting results regarding proposed amendments. The committee had proposed fourteen major amendments, as well as numerous minor changes to the Pennsylvania Constitution of 1776. Ballots were taken

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after an explanation of each proposed change. In every case, the voting produced the same results. The votes in favor of the changes always came from the same twelve Republicans (Anti-Constitutionalists), and the votes against amendments always came from the same nine Constitutionals. James Read, a Constitutionalist, and Samuel Davidson, a Republican, both abstained on all official ballots.¹⁴

Such partisan division probably helped to prompt Thomas FitzSimons to move on January 21, 1784, that no decision be made on the calling of a convention, following the reading of the changes. Previous ballots on the question of calling a convention had produced the same results as outlined above. Even though the Censors knew they would not have to commit themselves to a convention vote, the ballot remained the same, except that James Read, a Constitutionalist, voted for the first time, now siding with the Republicans, possibly because he did not have to justify his position to Constitutionalist cohorts in that unofficial ballot. Unquestionably, in many instances, emotion played a greater part in the Council of Censors than did reason. Political overtones also exhibited themselves in the Censors' procedure of allowing

¹⁴Ibid. Main, Political Parties, pp. 180-181.
arguments, both for and against proposals, to be presented only after a final ballot had been taken. The provision had little reason to it, but neither side objected.\textsuperscript{15}

The examination of defects in the constitution represented the initial step to a constitutional convention for the adoption of amendments. Republicans, having presented their case, pressed hard for a convention; however, while they mustered a simple majority, they lacked the two-thirds majority necessary to call a convention. Realizing this, they took advantage of the majority they held to adjourn the Censors until June 1, 1784, hoping that they could encourage citizens to persuade the recalcitrant Radical Censors to reconsider.\textsuperscript{16}

During the investigation regarding the articles of the constitution, a different politically oriented problem arose, one involving the general election that had occurred in the City of Philadelphia on October 14, 1783. The intercession of the Censors came about upon their receipt of a "Petition of the Subscribers, Freemen, and Electors of the City of Philadelphia" contesting the election.\textsuperscript{17}


\textsuperscript{16}Journal of the Council of Censors, Jan. 24, 1784.

\textsuperscript{17}Ibid., Dec. 30, 1783.
The election problem fell outside the jurisdiction of the Council of Censors, but it tended to extend its authority to practically any item mentioned in the constitution. A contested election was a case for the courts, but the Censors quickly accepted the responsibility upon receiving the petition. Action by the Censors began on January 3, 1784, and proceeded rather thoroughly. The heart of the controversy centered around a partisan accusation—the Republicans claimed that the Radicals (in the minority at that time) had inspired the petition and had contested the election in the first place.

The Radicals maintained that a large number of state militia had appeared at the Philadelphia polls on the day of the election, with one Captain Jones standing by the balloting window. They further asserted that many of the militiamen—supposedly present only to cast their ballots—had been brought into Philadelphia in order to swing the election to the Republicans, and were not, in fact, believed to have been citizens of that city. Radicals claimed that these soldiers had received prepared ballots, which Captain Jones inspected before the soldiers deposited them.18

18Ibid., Jan. 3, 1784.
Both Radicals and Republicans on the Council of Censors did agree that of the 1,630 votes cast in the Philadelphia election, 230 had not come from recorded taxables. While Radicals maintained these represented soldiers' votes, Republicans suggested that those votes could have been cast by sons of freeholders, who had just turned twenty-one, a perfectly legal process. In the investigation that followed, sixteen witnesses testified before the Censors. Those witnesses included voters, ward inspectors, judges of the election, and James Read, a Constitutionalist member of the Council of Censors.\textsuperscript{19} Except for Read, the political affiliation of the witnesses is unknown; therefore, no accurate conclusions regarding political motivation in the selection of witnesses can be drawn.

The balloting results on this issue suggest the partisanship nature of the dispute, in that balloting produced the same results that had been obtained when voting on the proposed amendments to the constitution.\textsuperscript{20} The same twelve Republicans who had voted to approve the proposed amendments voted in favor of upholding the election. Those who

\textsuperscript{19}Ibid.

\textsuperscript{20}The Pennsylvania Gazette, Jan. 7, 1784.
had voted against the amendments voted to void the election. James Read had abstained, because of his participation as a witness; thus the ballot stood at thirteen to nine. The Republicans, therefore, obtained a majority, and upheld the election.

While no hard evidence substantiated the Republican charges that Radicals had inspired the petition, the balloting does indicate the strong partisan nature and stand of the Council of Censors itself. When the Censors had completed their investigation of the Philadelphia election early in January 1784, they received two other claims of contested elections, one from Northumberland County, and one from Chester County. The disputes centered around exactly the same issues, although in Northumberland County the two Censors came from the Constitutionalist Party, but Republicans had gained the majority in the remainder of the general election. Dogmatic partisanship strife and strength surfaced again in both cases, as the balloting and final results paralleled those of the Philadelphia election dispute. In the end, since Republicans still held the majority, both elections stood.

The arguments, balloting, and final results indicate

\[\text{\textsuperscript{21}}\text{Brunhouse, Counter-Revolution, p. 145.}\]
the political ties that helped to hamper any progress the Censors could have made. Equally important, however, is the fact that had the Constitutionalists gained a majority in these ballots, the Council of Censors did not possess authority to declare any of the elections void.

One further problem plagued the Council of Censors throughout the duration of its existence—committee work did not necessarily flow smoothly. While the committee to investigate possible amendments to the constitution reported its findings, its counterpart to investigate whether or not the constitution had been "preserved inviolate" did not issue any report in the winter session. That committee organized on November 19, 1783, and consisted of Thomas FitzSimons, Anthony Wayne, William Irvine [all Republicans], John Smiley, and James Read [both Constitutionalists].

Anthony Wayne and William Irvine had been closely associated in the military during the Revolution. Examples of their correspondence as Censors demonstrate both the partisan politics that affected the work of the Censors, and a possible prevailing attitude that might have caused serious committee delays. On December 9, 1783, Wayne, incarcerated at Easton for disorderly conduct, wrote to

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22 The Pennsylvania Gazette, Jan. 7, 1784. Also, see Appendix I.
Irvine:

Are you good at procrastination? Remember that you are now a Censor, so that the summary way of doing business to which some of us have been in the exercise of for near eight years will not do so well in our present station! I mean by this to show you the necessity of not being in too great a hurry to report on the City Election. I expect that many false insinuations will be made... and that I shall have my share of them.

Irvine's reply clearly indicates the strong partisan ties that dominated the work undertaken by the Council of Censors:

The enclosed [summary of activities] will show you that there is occasion for your presence, but there are a variety of matters yet more urgent. I hope you are well recovered. We cannot now venture a single question in the absence of even one member... I hope this is a sufficient hint to you.

William Hartley informed his friend, Jasper Yeates, an attorney in Bush Hill, on January 13, 1784, that tomorrow morning we shall bring in our report on the alterations of the Constitution which we hope will be

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 Those anticipated results did not come about. The Republicans then took advantage of their majority, which was sufficient to adjourn the Censors, and did so a few weeks later on January 24. The committee to investigate whether the constitution had been preserved inviolate helped to precipitate this action by its report that it had not had sufficient time; hence, no report was forthcoming.25

At the end of this first session, then, the Council of Censors could point to no real results. It had made investigations, both within and outside its jurisdiction, but it had only fulfilled part of its responsibility as outlined in Article Forty-Seven. If the individual Censors had not realized it previously, their eyes must have been opened to the fact that the Council of Censors had no enforcing authority whatsoever, as exemplified by its difficulties with the Assembly. Furthermore, their actions on the elections or similar issues meant almost nothing, since no one in the state was required to abide by their decisions, whether positive or negative and they did not possess authority to pass such judgment officially. The restrictive constitution had posed such limitations upon

them. Finally, the lack of accomplishment and, in some cases, of action at all in the winter session stemmed from the strong partisan politics that existed within the state, and especially within the Council of Censors in 1783-1784.
SUMMER 1784--POLITICAL REVERSAL

During the four months between adjourning on January 24, 1784, and reconvening on June 1, 1784, the Republican Censors had hoped to influence private citizens to persuade the Constitutionalist members to vote for a constitutional convention. Perhaps in response to this, several private citizens submitted lengthy articles to The Pennsylvania Gazette, calling for their fellow citizens to seriously consider the question of the proposed amendments. Although one might suppose the articles emerged due to some covert urging by Republican Censors, those articles do appear to be of a non-partisan nature, imploring serious consideration rather than exhibiting sympathy for either party. However, at the same time, lengthy articles also appeared in the same newspaper by "One of the Majority" or "One of the Minority" of the Council of Censors. In contrast to the articles by private citizens, these discourses illuminated for the reader the
faults of the opposing group.¹

Upon reconvening on June 1, 1784, some changes had taken place in the membership of the Council of Censors and, hence, in the partisan balance of that body. Samuel Miles, a Republican from the City of Philadelphia had resigned.² A new election brought in George Bryan, "high priest of the Radicals," to take his place. Also, James McLene, a Constitutionalist from Cumberland County who had not come to the winter session except for the very first meeting, now appeared and remained. Furthermore, Samuel Davidson, a Bedford County Republican, did not remain in June; neither did William Irvine, a Republican from Cumberland County. Finally, James Potter, a Constitutionalist, was elected from Northumberland County to replace Samuel Hunter, who did not attend any winter meetings after the first one. William Montgomery, the other Constitutionalist representative from Northumberland County who also had not attended the winter session, arrived in

¹For examples, see The Pennsylvania Gazette, Feb. 25, 1784, March 31, 1784.

²Miles probably resigned because the Comptroller General of Pennsylvania, John Nicholson, had discovered irregularities in Miles' handling of state monies, although he was later acquitted by the Assembly. Brunhouse, Counter-Revolution, p. 161.
June and remained.  

The Council of Censors now consisted of fourteen Constitutionals and only ten Republicans. Then, when Stephen Chambers, a Lancaster County Republican, left after the first meeting on June 1, 1784, the Republicans had only nine members. Joseph Hart, a Constitutionalist from Bucks County, became President pro tempore for the summer session, wielding as much influence as Frederick Muhlenberg had for the Republicans in the winter. In adding George Bryan to the Council, the Constitutionals gained more power, for he was at that time a judge of the Supreme Court. Although it was illegal in Pennsylvania to hold two public offices at once, Bryan possessed sufficient power to allow him to do so in spite of repeated protests submitted to The Pennsylvania Gazette by "A Citizen of Pennsylvania." Nevertheless, these personnel changes did not alter the results of the summer meetings of the Censors, which simply repeated what had taken place in the winter. They accomplished nothing substantial.

During the four-month lapse, the committee to


4The Pennsylvania Gazette, Sept. 1, 1784, Sept. 8, 1784-Sept. 29, 1784.
investigate whether the constitution had been preserved inviolate was supposed to have continued its work so that it could issue a report upon reconvening. However, little in the way of constructive work took place during that time. In June the committee still claimed it had not had enough time to complete its investigation. A committee appointed on June 24, 1784, to investigate the manner in which public taxes had been levied and collected, as required by Article Forty-Seven, suffered the same fate. Neither of these two committees ever issued any reports.\textsuperscript{5}

The Censors' lack of positive accomplishment in the summer resulted largely from the same problems that had plagued their winter session, except that the Radicals held the majority in the summer. All committee reports lagged behind schedule and, as noted above, new committees consisting of all Constitutionalists produced no better results than had the Republicans. Furthermore, the Assembly, still dominated by Republicans and realizing the Republican majority had been lost in the Council of Censors, grew even more adamant toward that body of men. What little discussion did occur still centered around proposed amendments to the Constitution of 1776; however, 

\textsuperscript{5} Journal of the Council of Censors, June 7, 1784, June 24, 1784. Article XLVII (see Appendix I).
because the majority had been reversed, those opposed to changes now won the balloting on each proposal.

The Council of Censors, while sketchily and unclearly outlined in Article Forty-Seven of the Pennsylvania Constitution of 1776, actually developed its own internal structure, for nothing really restricted it. That structure lent itself to a very loose interpretation, and the Censors took full advantage of it.

Although this group of men were bound by their very election to uphold the laws, they actually sanctioned illegalities. The most blatant of these occurred with the acceptance of the election of George Bryan as a Censor. However, the rationale was clear. The Radicals held the majority and, by adding Bryan who was simultaneously a Pennsylvania Supreme Court justice, they received greater support for their "cause" against the Republicans.  

Another case of outright disobedience to the same law

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6 See "Rules and Regulations of the Council of Censors" (Appendix II).

7 HSP, Bryan Papers, 1784, Folder 4. Since the Pennsylvania Supreme Court records consist only of the cases heard, it is difficult to determine whether other members of the Supreme Court raised any objections to Bryan's actions. However, in view of the fact that Bryan continued to sit as a Supreme Court Justice, it is reasonable to conclude that his dual role was at least accepted, if not actually sanctioned, by the Court.
occurred. John McDowell, a Constitutionalist from Washington County, continued throughout the sessions of the Censors to hold a position on the Supreme Executive Council. Since the Constitutionals did have the majority in the Council of Censors, and since neither the Assembly nor the Supreme Executive Council had the authority to check the Censors, McDowell's election remained valid, just as Bryan's had. Both of these instances clearly indicated the priority given to partisan politics within the Council of Censors' summer session, just as it had in the winter session.

Although in Bryan's case no determination can be made regarding the reaction of other Supreme Court justices to his holding two offices concurrently, some evidence does exist to indicate the reaction of the Supreme Executive Council to McDowell's infraction of the same law. On July 3, 1784, the Supreme Executive Council requested the State Treasurer to pay the members of the Council of Censors. Among these was John McDowell: ". . . in favor of the Honorable John McDowell, Esq., for the sum of 34 pounds 2 shillings and 6 pence specie. . . the said sums being in full payment for their attendance. . . as members

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of the Council of Censors till the third of July, 1784."
McDowell again received Censor's pay on September 25, 1784, upon the completion of the Council of Censors session. Also, on September 30, 1784, along with all other members of the Supreme Executive Council, "an order was drawn on the Treasurer in favor of the Honorable John McDowell, Esquire, for nineteen pounds five shillings specie, in full for his attendance as Councillor until this day, inclusively." A perusal of the minutes of other sessions of the Supreme Executive Council during the summer of 1784 shows that McDowell attended regular Supreme Executive Council sessions, in addition to Censor sessions. At no time does the record indicate he was criticized by other Supreme Executive Council members. The fact that he actually received his regular pay indicates that the Supreme Executive Council could not have objected very strenuously, if at all.

The Censors suffered from another complicating problem during the summer which had also occurred during their sessions a few months earlier. They did not confine their activities to their stated duties, however sketchily defined in Article Forty-Seven. Rather, they rambled in

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and out of their own jurisdiction, also detracting from their accomplishments. Here again, their loose structure permitted them to do such things. Their judicial involvements consistently demonstrated the partisan nature of the organization, for most of the cases they reviewed resulted from political controversies and contests involving Radicals and Republicans.

The Philadelphia election case (described in Chapter III) represented one such incident during the winter. Another surfaced during the summer session. The old College of Philadelphia had been converted in 1799 into the University of Pennsylvania. Radicals in control of the Assembly at the time had backed the move to dispossess the trustees of the College of Philadelphia. Dr. William Smith, ousted provost of the College of Philadelphia, urged the Assembly to investigate his claim for reinstatement. However, the Assembly did not act until March 1784, when it finally decided to do nothing further until the reconvening of the Council of Censors. Because the issue could create intense political battles within the Assembly, its leaders, all Republicans, decided to let the expected Republican majority in the Council of Censors use its power to reinstate the trustees. Upon realizing that the Republicans in the Council of Censors no longer held the
majority, the Assembly leaders felt compelled to appoint their own committee to investigate the matter in July 1784. However, since the issue dealt with essentially a private matter because the college was not state-controlled, the Assembly could not dictate a solution.\(^{10}\)

The Censors took up the issue on August 27, 1784. At that time, the Radicals succeeded in preventing restoration of the old College of Philadelphia by pointing out that of twenty-one trustees, fourteen had either died or had been attainted for treason. Eleven was the minimum number required to sustain the charter. Therefore, the University of Pennsylvania became the successor to the old College of Philadelphia. In the typical partisan alignment of the Council of Censors, all the Constitution-alists had supported the University of Pennsylvania, while all nine Republicans favored restoration of the old College of Philadelphia under its remaining trustees.\(^{11}\)

Investigation of proposed amendments to the Pennsylvania Constitution of 1776 remained a key issue even in the summer session. The Censors continued to discuss those matters periodically, but without any progress. The

\(^{10}\) Brunhouse, Counter-Revolution, pp. 153-154.

Republicans, in the minority during the summer, certainly held no hope of gaining the two-thirds majority necessary to call a convention. Finally, on August 31, 1784, the Council of Censors passed the following resolution:

. . . That this council will, on Wednesday, the fifteenth day of September next, resolve itself into a committee of the whole, to consider whether it is proper or necessary to call a Convention to amend, explain, or alter the Constitution.\footnote{Journal of the Council of Censors, Aug. 31, 1784. Providence Gazette and Country Journal, Sept. 1, 1784. New Jersey Gazette, Sept. 1, 1784.}

They later postponed the date until September 17, but the results remained the same: fourteen Constitutionalists voted against the convention, and nine Republicans voted for it. Therefore, the measure never gained the support of a majority, let alone the necessary two-thirds.\footnote{Journal of the Council of Censors, Sept. 17, 1784.} The complete reversal of the earlier attitude toward a constitutional convention and the proposed amendments clearly emphasized again the rule by partisan politics, as had happened in the earlier Council of Censors session. Political partisanship dominated the body, since no reasons were given for assent or dissent.

As the final meeting opened on September 24, 1784,
the vital question appeared again: "Should a convention be called?" Again, as in previous meetings, the entire Radical majority voted not to call the convention, while the entire Republican minority favored such a convention. Although too late, points of argument for both sides finally surfaced that day. The Radicals claimed that, in checking with the voters, the majority did not favor calling a convention. In support of this stand, George Bryan presented a remonstrance signed by 433 persons against calling a convention. Radicals offered no other proof, and the origin of the 433 signatures was not revealed.

The Radicals in the Council of Censors had earlier heaped great blame on the Republican-dominated Assembly for failures which had previously occurred in the state government. Now, the Republican committee that had investigated the need for amendment cited Radical Censors' violations of the constitution. The Radicals, realizing their predicament created by these charges, quickly justified their decision not to call a convention in two ways: 1) the Pennsylvania Constitution of 1776 had operated during seven years if war, and it deserved a trial through

\[\text{\cite{Ibid., Sept. 24, 1784.}}\]

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seven years of peace (until the next scheduled Council of Censors); 2) the faults lay not in the frame of government, but rather with the Republican leaders elected by the people.\textsuperscript{15}

During the last few weeks, the Censors extended their powers to include practically anything the people would bring to them. They discussed land cases and the validity of civil and criminal cases already decided, even though they had no authority to do so. Their minutes are filled with these cases. They also declared illegal the Test Laws for foreigners desiring citizenship.\textsuperscript{16} As in previous instances, the Censors passed judgments on their own in all these areas. Not only did they lack authority to make such decisions, but they also lacked enforcing power. Unquestionably, their decisions could not replace the law, and therefore no one had to abide by them.

With the lack of any accomplishment, and in an effort to see that the constitution would remain in tact for a time at least, the Radical Censors took advantage of their majority and on September 24, 1784, adjourned the Council

\textsuperscript{15}Ibid.

\textsuperscript{16}For examples, see Ibid., Aug. 16, 1784. The Pennsylvania Gazette, Sept. 22, 1784. The Test Laws were required before a foreigner could be permitted to take an oath of allegiance, following one year's residence in the state.
of Censors, about one month before their one-year session would normally have ended. The next session of new Censors would have met in November 1790, but the new Pennsylvania Constitution of 1790 abolished that body.

The Radicals realized that for seven years the Pennsylvania Constitution of 1776 could not change, but they claimed that if the people would put their minds to it, they could live in peace, and the constitution could prove a source of "constant blessings." Therefore, the majority urged the people of Pennsylvania:

> Give it a fair and honest trial, and if after all, at the end of another seven years, it shall be found necessary or proper to cause any changes, they may be brought in and established upon a full conviction of their usefulness, with harmony and good temper, without noise, tumult, or violence.

The correspondence of Thomas Hartley to his friend Jasper Yeates demonstrated the sometimes negative view with which much of the Censors' work had been undertaken. On July 9, 1784, Hartley wrote to Yeates: "I am sorry that I cannot inform you of anything meritorious from our Body. We shall not be able to do much good; it will be well if we

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18 Ibid.
do no harm."\textsuperscript{19} The uncertainty of events emerged in Hartley's letter of July 14, 1784: "What we shall do in our Body is very uncertain, but I despair of men effecting the partial good you [Yeates] speak of. . . . The other gentlemen [Radicals] think they have the ball at their foot and I believe will amaze the world."\textsuperscript{20}

In the summer session, as well as the winter, the Council of Censors found itself hampered by restrictions imposed by the constitution, and stifled by inherent political fighting. The Censors could not force the Assembly to cooperate or abide by their rulings. Even if the constitution had granted them such power, their partisan alignments and extreme political differences would have precluded any positive accomplishment.

\textsuperscript{19}HSP, Yeates Papers (July 9, 1784), Folder 3. Of all the Censors from whom any correspondence could be found, Hartley seems to have been the most revealing and descriptive in relating problems encountered by the Council of Censors as a whole.

\textsuperscript{20}Ibid., (July 14, 1784).
CHAPTER V

CONCLUSIONS

The Censors had accomplished little in either of their two sessions. It would be unfair and incorrect to say the Council of Censors failed, since it did not really have a chance to accomplish the things expected by some of the more optimistic observers of the day.

The very creation of the Censors stemmed from both a deeply ingrained fear held by the constitutional framers and a popular distrust of government. In the framers' efforts to protect rights and to prevent unwanted or simple change, they devised an anti-activist constitution, with the Council of Censors as a guardian of the constitution and as the first in a complicated series of steps to constitutional amendment.

Due to the nature of the constitution and the limited actual authority granted to the Council of Censors, its only real duties were to inquire into the matters outlined in Article Forty-Seven. It had no way to enforce any
decisions, whether regarding items within or without its jurisdiction, for nowhere in the Pennsylvania Constitution of 1776 was there any reference to enforcing authority. Recommendations were all it could offer. The constitution's failure to specify any enforcement power must weigh heavily in evaluating the rather sparse results of the Council of Censors, an agency that must be considered within the total context of that obstructionist document created by the Radical Whigs. Under their leadership, the constitution reflected their sentiments against strong and active government.¹

In addition to the severe problems caused by the very nature of the constitution, the balloting results on practically all matters undertaken by the Censors indicate strong political ties and partisan maneuvering. Members of that body thought of themselves first as "Radicals" or "Republicans" and only secondarily as "Censors." Such attitudes brought them to one stalemate after another, until the only positive thing they could do on the two occasions when they met was to adjourn.

Constitutional problems and partisanship must not receive all the blame for the Censors' lack of results.

Without doubt, a good deal of foot-dragging did occur within the body. Some of the comments of Anthony Wayne and William Irvine demonstrate such attitudes. On December 9, 1783, Wayne wrote to Irvine: "Are you good at procrastination? Remember you are now a Censor." In his reply, Irvine wrote to Wayne: "I begin to fear our time and pains will be spent in vain; however we must acquit ourselves to our constituents. . . . There is a disposition. . . . for that promptitude I have been so long accustomed to. . . . but I will try to conquer it and lose the Soldier in the Statesman." 

Finally describing the apathetic attitude of the body in general, one of Irvine's letters points out: "The several committees pretend to be busy, but procrastination seems to suit all parties." From the insight gained from these pieces of correspondence, one might conclude that most, if not all, of the Censors finally realized that no action or results would ever be possible. Therefore, they simply procrastinated and proceeded much as they pleased,

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3HSP, Irvine Papers (Dec. 10, 1783), Vol. 8, p. 83.

4HSP, Wayne MSS (June 15, 1784), Vol. 19, p. 43.
making their ground rules as they went along.

As Allan Nevins observed, Pennsylvania had one of the most restrictive constitutions of all the states. The possibility of amendment was extremely limited because of the provision for a Council of Censors. Only one other state, Vermont, adopted Pennsylvania's idea of a Council of Censors when it copied Pennsylvania's constitution almost verbatim in 1777. The Vermont Council of Censors' authority and powers fell within practically the same limitations as those of Pennsylvania, in that it could only make recommendations which subsequently had to be approved by a constitutional convention. Nevertheless, the system did work in that state when the Censors met in 1786. Their proposed changes met with approval of the convention that met later. However, the success of that body as compared with the Pennsylvania Council of Censors lay in the homogeneity of the Vermont population as well as that state's comparatively mild party animosities.  

In the final analysis, the Council of Censors suffered defeat from the first day of its session. The Council could not succeed in bringing about change, even if the members had been able to agree on what changes were needed;
it could only maintain the status quo. Republicans, who had originally wanted change in the state government, finally reconciled themselves to the fact that no change could be accomplished and contented themselves with putting up a front for their constituents. The Constitutionalists, satisfied with the system, procrastinated and opposed efforts to create changes. A modus vivendi seems to have been established between the two parties and they waited until their mandatory year of service ended. Finally, with the realization that the Council of Censors was at best a poor excuse for an effort to control government, the provision for such a body was eliminated in the new state constitution of 1790.

Ironically perhaps, the creation of the Pennsylvania Constitution of 1790 can be linked at least indirectly to the Council of Censors, but more directly to the Radical majority and control of that body in the summer session. Following the Council's adjournment and the subsequent preservation of the state constitution of 1776, the Radicals in 1784 swept the election for state Assembly members. In their renewed over-confidence, the Radicals drifted into a precarious position by rather insolent behavior, even going so far as to annul the Charter of the Bank of North America. That action in particular drew strong opposition from the
state's citizenry.\(^6\)

The Radicals suffered a crushing defeat when the state ratifying convention approved the new Federal Constitution in December 1787. That federal document exhibited a sense of organization and symmetry which stood in sharp contrast to the unwieldy government provided by the Pennsylvania Constitution of 1776. Strong discontent with the state constitution led to statewide demands for a new Pennsylvania constitution more in harmony with the obviously meritorious new Federal Constitution.\(^7\)

The Radicals, led by George Bryan, one of the chief authors of the state constitution of 1776, had constantly advised concerned citizens in the state that the Council of Censors would meet again in 1790, and that no changes, including the ratification of the Federal Constitution, could take place until that time. But as Allan Nevins had observed:

> It was idle to say that Pennsylvania must wait for the Council of Censors, for the seven least populous counties could block any action by that body. Moreover sections of the Constitution of 1776 and the Declaration of Independence showed that the people had an inherent right to alter a bad


\(^7\)Ibid., p. 197.
government when and how they pleased.\textsuperscript{8}

From January 1789 through March 1789, there existed great popular pressure to change the restrictive state constitution of 1776. Such pressure resulted in the publishing of several articles in the Pennsylvania Gazette, discussing defects of the constitution. The legislature yielded to that pressure, and on March 24, 1789, completely disregarding Article Forty-Seven of the constitution of 1776, called a new Constitutional Convention by a vote of 41 to 17. The legislature apparently agreed with the petitions that citizens of the state enjoyed a right to change a faulty constitution. The convention formed a quorum in November of 1789. Therefore, the Council of Censors never became involved in the calling of the convention since their next election and meeting was not scheduled until the fall of 1790, and the strong proponents of the Pennsylvania Constitution of 1776, such as George Bryan, did not possess enough power to overrule the vote of the legislature in 1789.\textsuperscript{9}

\textsuperscript{8}Ibid. This assessment is based on a widely circulated petition in favor of a constitutional convention, as published in the Pennsylvania Gazette, March 11, 1789, as cited by Nevins.

\textsuperscript{9}Ibid.
In the end, the control that the Radical Censors felt they possessed to prevent changes to the Pennsylvania Constitution of 1776 actually worked against them. Their hard-line stand had not only caused ill feelings toward Article Forty-Seven, but it actually helped sway Pennsylvanians in their demands for a new constitutional convention, the one thing above all else that the Radical Council of Censors had wanted to avoid. The legalities written into the constitution of 1776 could not stand in the way of needed or desired changes to the entire document.
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APPENDIX I

ARTICLE XLVII OF THE PENNSYLVANIA
CONSTITUTION OF 1776

In order that the freedom of this commonwealth may be preserved inviolate for ever there shall be chosen, by ballot, by the freemen in each city and county respectively, on the second Tuesday in October, in the year one thousand seven hundred and eighty-three, and on the second Tuesday in October in every seventh year thereafter, two persons in each city and county of this state, to be called THE COUNCIL OF CENSORS, who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole elected shall agree, and whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution; they are also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed: For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall
continue to have for and during the space of one year, from the day of their election, and no longer. The said council of censors shall also have power to call a convention, to meet within two years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution, which may be defective, explaining such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

APPENDIX II

RULES AND REGULATIONS OF THE COUNCIL OF CENSORS

I. As soon as the President assumes the chair, the members shall take their seats.

II. The minutes of the preceding day shall then be read, and petitions, memorials or letters, if any have been received.

III. Every petition, memorial or letter, on which no order is moved, shall be considered of course as ordered to lie on the table, and may be taken up at any future time.

IV. When a report which has been read and laid over for consideration, is called for, it shall immediately be taken up; if two or more are called for, the Council, without entering into any debate, shall determine which shall be first read, but an order of the day, when called for by any member, shall always have preference.

V. When a motion is made and seconded, it shall be repeated by the President, or, being in writing, it shall be delivered to the President, and read aloud at the table, before it shall be debated.

VI. Every question shall be reduced to writing, if the President or any member requests it.

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1Journal of the Council of Censors, Nov. 18, 1783.
VII. When a motion is before the Council, no other motion shall be received, unless for amending it—for the previous question—or to postpone the consideration of the main question—or to commit it.

VIII. No new motion or proposition shall be admitted, under colour of amendment to the question under debate, until it is postponed or rejected.

IX. The previous question (which shall always be understood to be, "Shall the main question be now put?") shall only be admitted at the desire of four members, and shall preclude all amendments and further debates on the subject, until it is decided.

X. A motion for commitment shall also have preference, and preclude all amendments and debates on the subject, until it shall be decided.

XI. On motion for the previous question, or for postponing, no member shall speak more than once. No member shall be permitted to speak more than twice to any question, except to explain, or with the permission of the Council.

XII. A majority of votes shall govern in all questions, except as to calling a Convention. The President, like the other members, shall be entitled to his vote.

XIII. If any member chooses to have the Yeas and Nays taken upon any question, he shall move for the same, previous to the President's putting the question; and in such case, every member present shall openly, and without debate, declare, by Ay or No, his assent or dissent to the question.

XIV. Every member, when he chooses to speak shall rise and address the President. When two members rise at the same time, the President shall name the person who shall speak first.

XV. No member shall presume to divulge the debates of business of the Council, when secrecy is enjoined.
XVI. The member shall avoid naming others in debate, and have reference to them by distinguishing the time of their speaking, or their seat, whether to the right or left of the chair.

XVII. When a member transgresses, the President shall call to order; if continued, he may name the person transgressing: Any member may desire the President to call to order.

XVIII. When a member is called to order, he shall immediately sit down; and if called on by name, his conduct shall then be enquired into, and such censure passed, as the Council may deem proper.

XIX. Any member called to order may be allowed to explain himself; but no debate shall be allowed on such cases.

XX. When a question of order is moved, the President, if he is in doubt, may call for the judgment of the Council; otherwise he shall, in the first instance, give a decision, and an appeal shall lie to the Council, but there shall be no debates on questions of order.

XXI. A motion to adjourn shall always be in order, and may be made at any time, and the question thereon shall always be put, without any debate.

XXII. All committees shall be appointed by the President, unless it shall be otherwise determined by a majority of the members.

XXIII. When a motion is made and seconded, the name of the member who moves, and of him who seconded it, shall be entered on the Minutes.

XXIV. Every member who does not punctually attend within half an hour after the time of adjournment, shall pay a fine of Two Shillings and Six-pence, which shall be received by the Secretary and be applied as Council may direct.
VITA

The author was born on July 23, 1948, in Reading, Pennsylvania, the son of Mr. and Mrs. Kenneth P. Gertney. After graduation from Reading Senior High School in 1966, he attended Albright College in the same city, where he majored in History, graduating with the degree of A.B. in 1970. During his senior year at Albright, he was elected into the Kappa Beta Chapter of Phi Alpha Theta. After a brief period of active military duty, he began work toward the Master of Arts Degree in History in 1971 at Lehigh University, with graduation expected in January 1976.