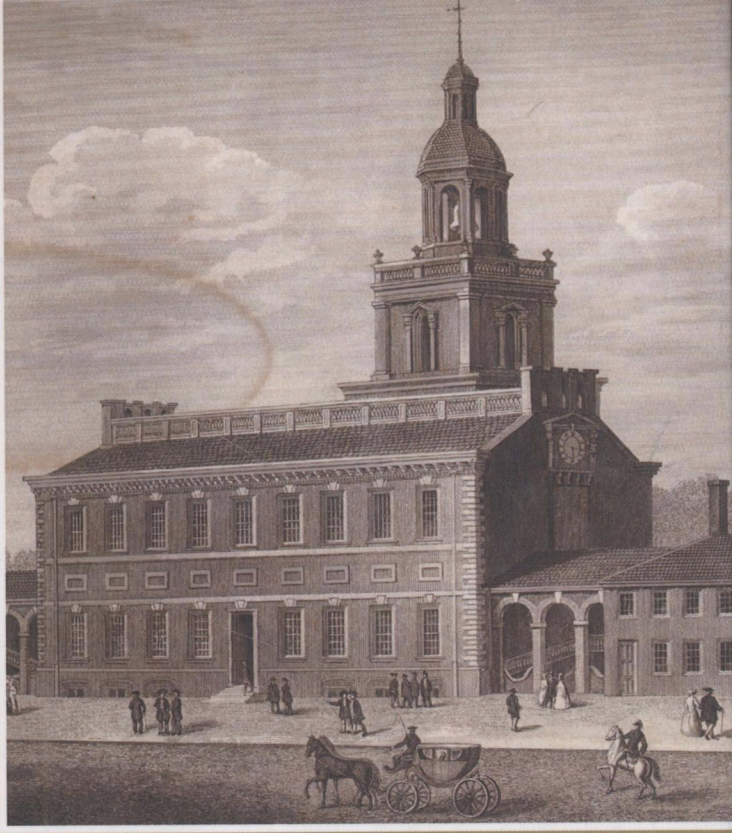

FROM LIBERTY TO LIBERALITY

THE TRANSFORMATION OF THE PENNSYLVANIA LEGISLATURE, 1776–1820

ANTHONY M. JOSEPH

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The Transformation of the Pennsylvania Legislature, 1776–1820

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Abbreviations

AG	*Report on the Finances of the Commonwealth of Pennsylvania, For the Year [1809-1819, 1823]...by the Auditor-General,* Lancaster, 1809-1810, and Harrisburg, 1811-1819, 1823.
Acts	*Acts of the General Assembly of the Commonwealth of Pennsylvania* [1809-10 through 1820-21]. Philadelphia: John Bioren, 1810-1814; Harrisburg: Jacob Elder, 1815-16; Harrisburg: C. Gleim, 1817-1821.
ASP	Archives of the State of Pennsylvania
House Journal	*Journal of the* [First through Twenty-second] *House of Representatives of the Commonwealth of Pennsylvania,* 1790-1822.
HSP	Historical Society of Pennsylvania
Mitchell and Flanders	James T. Mitchell and Henry Flanders, eds. *The Statutes at Large of Pennsylvania, from 1682 to 1801* [1809]. 18 vols. Harrisburg: State of Pennsylvania, 1896-1911.
PMHB	*Pennsylvania Magazine of History and Biography*
RG	*Report of the Register-General of[on] the State of the Finances of [the Commonwealth of] Pennsylvania* [1792-1805], Philadelphia, 1793-1799 and Lancaster, 1800-1805; *The Register-General's Report...1806,* Lancaster, 1806.

Senate Journal	*Journal of the Senate of the Commonwealth of Pennsylvania* 1790-1822.
Votes and Proceedings	Gertrude MacKinney and Charles F. Hoban, eds. *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania, 1682-1776,* in *Pennsylvania Archives,* Eighth Series, Vols I-VIII. Harrisburg, 1931-1935.

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Contents

Tables

Figure

Introduction

Americans take their legislatures for granted, even to the point of scorning them. But legislatures are so deeply rooted in our system of government that no amount of scorn can shake their basic legitimacy. We enjoy the luxury of disdain.

This was not always so. In 1776, the Continental Congress, then barely two years old, was a fledgling institution, largely executive in function and fighting a sometimes desperate war. The newly established state legislatures were on firmer ground as successors to the colonial assemblies, but they stood as almost unique examples of republican governance in a world dominated by monarchies. Legislatures of some sort could be found in most nations of Europe, but only in the Dutch Republic did they exercise sovereign powers independent of a king or queen. And nowhere were the legislatures recognizably democratic. In Britain, Parliament's House of Commons, elected by a small minority of the adult male population, shared power with a hereditary House of Lords as well as with King George III. Hence Americans in 1776 were right to see their own legislative institutions as both distinctive and fragile. Benjamin Franklin's later remark that the Framers of the Constitution had made "a republic, if you can keep it" expressed anxiety about the stability of both the national and state regimes. The legislatures considered central to republican governance in America were young, isolated, and weak.

Apart from their standing as essential instruments of republican governance, what did Americans of the early Republic consider to be the fundamental purpose of a legislature? To answer that question, we do better to examine the state legislatures rather than the United States Congress, which succeeded the Continental Congress in 1788. Although Congress would ultimately become more powerful than any single state legislature, the state legislatures of the early Republic are better specimens of republican governance. Congress's authority was limited to those powers expressly delegated to it by the Constitution. The state legislatures, on the other hand, could claim "reserved" powers under the Tenth

Amendment.[1] Moreover, their historic connection to the liberties of the people made them clearer examples to early republicans of republican governance at its most elemental. For these reasons state legislatures hold a certain priority as points of reference in any discussion of legislatures in the early Republic.

There are already a number of studies that discuss state legislatures in the early Republic. The most influential of these, however, have had different emphases than this book.[2] First, they generally have focused on the mid-nineteenth century rather than the period before 1820. In some cases these studies discussed the earlier period, but such discussions were framed to explain developments of the later years, particularly the increased involvement of state governments in economic growth. Not surprisingly, the truly formative history of state legislatures during the first four decades after Independence was lost. In his study of Pennsylvania, for example, Louis Hartz regarded the ideological justifications Pennsylvanians gave for state involvement in economic development as "hackneyed pronouncements." Perhaps by mid-century, when the form and extent of state involvement was debated, they were; but this was certainly not true of the earlier period, when the basic question of whether the state would be involved at all was at issue. More practically, Hartz saw Pennsylvania's investment in bank stock as motivated by "profit," without further emphasizing that behind that motive was the legislature's desire to avoid direct taxation.[3] Such insensitivities show the need to treat legislative history before 1820 or so (the date will vary from state to state) as a distinct period with its own themes and trajectory of change. Thus the present study is not an examination of the same nineteenth-century "government and economy" question treated in the earlier works. Rather, it examines the Pennsylvania Legislature in light of the history of American political ideology and legal institutions.

Scholars have long struggled to define American political culture in the revolutionary and post-revolutionary eras. In the 1950s, to take up the story *in media res,* Louis Hartz, responding to the progressive interpretations of Charles Beard and others, described an American society that had been "born liberal." According to Hartz, America from its inception lacked the entrenched social hierarchy and elite governance that prevailed in Europe. America also lacked the ideological extremes that attended such conditions—the conservatism that defended hierarchy and elitism and the socialism that attacked them. Ours was a middling, relatively classless world, affirmed by a broad political consensus that scholars term "classical liberalism." Americans affirmed the freedom to pursue their own interests without substantial interference from either class or state.[4]

Around the same time, however, scholars began to describe an apparently different America. Caroline Robbins, Bernard Bailyn, Gordon Wood, and J.G.A. Pocock, among others, showed that Americans of the revolutionary era tapped into a strain of political thought now most commonly termed republicanism. Although ultimately traceable to antiquity, the republicanism of the early modern Anglo-American world first took shape among late seventeenth- and eighteenth-century English political outliers known variously as "commonwealth-

men," "radical Whigs, "real Whigs," "the opposition," or the "country." In contrast to the classical liberalism described by Hartz, republicanism was profoundly communal and state-conscious. In a republic, the liberty of the people was the supreme value. This liberty lay not simply in freedom from tyranny but in the individual as well as corporate exercise of political authority by citizens. Republican citizens preserved their liberty through material self-sufficiency; secure in this "independence," citizens were "equal." In exchange for all that liberty gave them, citizens stood ready to sacrifice their own interests, including their very lives, in its defense. Such sacrifice was necessary because liberty faced threats from the effeminizing influence of luxury and the corrupting influence of political factions. A republic was always in danger of being picked apart by its enemies, internal as much as external.

In England and America, of course, no true republic functioned. But theorists "republicanized" the English situation by casting the king as, ideally, a kind of "first citizen," and by emphasizing the dangers of commercialization and the political influence of kings who failed to act ideally. Indeed, royal government—the "court"—was a center of power that threatened the liberty of the "country."[5] Parliament's House of Commons was envisioned as the guardian of the liberty of the people and chastised when it failed to live up to its role. In America, colonists adopted the republican paradigm to understand their relation to royal power. Colonial assemblies tussled with their governors in a kind of proxy war between country and court. When the crises of the 1760s and 1770s escalated into war and Independence, republicanism was perfectly positioned to inspire the American transition to self-government.[6]

Republicanism has also proved an attractive paradigm to explain the politics of post-revolutionary America, but here the picture becomes less clear. At some point, it has been proposed, a cool and calculating classical liberalism replaced the revolutionary fervors of republicanism, and America became an individualistic, market-driven society whose government became an arena for clashing interests. Scholars have disagreed as to when this transition to liberalism occurred. Gordon Wood initially placed the transition in the 1780s, with the adoption of the United States Constitution. The Constitution's elaborate system of checks and balances seemed a tacit acknowledgment that American society was not composed of self-sacrificing citizens.[7] Others saw clear evidences of republicanism in the 1790s and the early nineteenth century, as Federalists and Jeffersonian Republicans wrestled for control of the governance of the young nation.[8] From one point of view, the Jeffersonians seemed to have the stronger republican credentials, for they envisioned a republic of virtuous independent farmers who rejected luxury and who kept industrialization, with its dependent wage-earning masses, at bay. But the several varieties of republicanism ultimately posited by historians—classical, agrarian, urban, enlightened, Hamiltonian, Jeffersonian, liberal—have together created a historiographical big tent under which almost anyone can find shelter. Meanwhile, some scholars dismissed the whole notion of a republican-to-liberal transition. Joyce Appleby insisted on the

centrality of classical liberalism, particularly among the very Jeffersonians who seemed to others the best exemplars of republicanism.[9] Even the architects of the historiography of republicanism have not been entirely cooperative. Caroline Robbins considered her studies a contribution to the history of English "liberal" thought. And in his second major work, *The Radicalism of the American Revolution* (1992), Gordon Wood ignored the term "liberalism" altogether, speaking instead of a transition to "democracy." In Wood's understanding, a Revolution that began as an act of republicanism quickly changed America into something more—a democratic, middle-class order. Colonial America had been a "truncated" society shorn of the excesses of wealth and power found in the Old World; nineteenth-century America would now have an ideology to match. For all of Wood's deft historical description, his American democracy recalled none other than Hartz's liberal America—bringing nearly a half-century of historiographical debate full-circle.[10]

The difficulty of distinguishing classical liberalism and republicanism arises partly from the fact that the two do not stand on quite the same footing historically. Classical liberalism as a political theory did not come into widespread use in America until after the Civil War. Republicanism, by contrast, is a theory that Americans actually professed in the revolutionary and post-revolutionary eras. Americans were constantly referring to "republican principles," "republican government," "republican policy." Republicanism was America's only political "-ism," and the adjective "republican" modified many nouns. Americans did acknowledge self-interest, a key component of classical liberalism, but always within the framework of a greater public good to which it was expected to contribute and, when necessary, to defer. A republican government, particularly a republican legislature, was charged with determining what constituted that public good and how interests might be directed so as to best serve it.

Thus we cannot speak of a transition to classical liberalism consciously made and openly approved of by early republicans. Rather, this book proposes that the Pennsylvania Legislature from 1776 to 1820 expanded its range of republican values to include "liberality," and in that expanded range liberality came to hold the central place. Eventually, this liberality, initially ensconced within republicanism, would become one of the core principles of American liberalism, which scholars have wrongly conflated with classical liberalism. Scholars' use of classical liberalism as an interpretive framework has obscured American liberalism's partial origins in liberality. This book contributes to a proper history of American liberalism by addressing those origins.[11]

In 1776, the rise of liberality did not seem in the offing. The Pennsylvania Legislature, known in the colonial period as the General Assembly, entered the era of American Independence primarily as a "guardian of the people"—a defender of their liberty. As we have seen, this posture itself had a republican accent. The English had long described their Parliament as guardian "of Liberty and the Laws," or of "the Liberties and Properties of Englishmen."[12] Colonists viewed their own assemblies as "little Parliaments" and endowed them with a

similar responsibility. Pennsylvanians considered the defense of popular rights to be the Pennsylvania Assembly's chief task, and the Assembly agreed. Members of the Assembly were "Guardians of all the Peoples Rights," including the right to petition and the redress of grievances; the right to be taxed only by their own representatives; and a whole panoply of common-law procedural rights such as trial by jury and habeas corpus.[13] Hence Pennsylvania's state constitution of 1776 provided for a Council of Censors to review the constitutionality of government acts and to determine whether the legislature had done its duty as the people's guardians.[14] By 1820, however, the legislature had undergone a decisive transformation. Its concern for the protection of popular rights had not completely abated, to be sure, but the legislature's institutional center of gravity had shifted. The new locus of legislative concern lay in the constellation of issues, policies, and attitudes that was reflected in the concept of liberality.

Liberality was, first and foremost, a classical virtue, and in the early Republic it resonated with ancient connotations. Aristotle had understood virtue to be a habit of excellence—freely chosen, rationally directed, and moderate. Thus one key meaning of liberality, generosity, connoted not mere giving, but free, rationally directed giving that avoided the vicious extremes of prodigality and illiberality. In a second, broader sense, liberality represented the intellectual quality of breadth of vision. Liberality was openness to the full range of argument on a question; the capacity to view an issue in its full sweep; and the willingness to take action on a correspondingly large and comprehensive scale. The liberal mind understood truth as expansive and inclusive rather than contracted and exclusive; it was therefore receptive to new truths provided they were adequately demonstrated. In 1807, one Pennsylvania advocate of roads remarked that experience, having proved the utility of roads, "must carry conviction to every liberal mind." Many "able pens," another noted, had already produced arguments that "have so often carried conviction to the mind of every liberal and well-informed man." On the importance of schools, wrote one commentator, "all men of any liberality of mind" were agreed.[15] Liberality could also refer to political freedom—liberty—or religious tolerance, but these were relatively new meanings, and the older ones predominated. Liberality also retained an important association with gentility. Gentlemen were liberal. They avoided both the tight purse and the contracted vision of the commoner.[16]

After the Revolution, and particularly after 1800, that association became less exclusive as the mores of gentility were claimed by an ever-broadening American middle class.[17] Any American could be, and could be expected to be, liberal. The expectation was particularly acute in the case of the legislator, who acted a historically genteel part. Pennsylvania representative John Sergeant was praised for "the liberality of his ideas and sentiments, so handsomely displayed" in his favorable legislative committee report on turnpikes. Legislative policies, in turn, could take on the same quality. Nathaniel Boileau, in supporting state investment in turnpikes, spoke of "the necessity of pursuing a liberal policy in this respect." One improver offered his support for any improvements plan "of a