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Jeffersonian Philadelphia**



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MALCONTENTS AND TERTIUM QUIDS: THE BATTLE TO DEFINE DEMOCRACY IN JEFFERSONIAN PHILADELPHIA

Andrew Shankman

On March 28, 1803, a concerned Thomas Jefferson wrote to his treasury secretary, the Pennsylvanian Albert Gallatin, that he had “for some time been satisfied a schism was taking place in Pennsylvania between moderates and high-fliers.” The president was not describing the still acrimonious Federalist and Republican political conflict of the 1790s. For Jefferson feared that “[t]he same [split which he perceived in Pennsylvania] will take place in Congress . . . and we must expect division of the same kind in other states as soon as the Republicans shall be so strong as to fear no other enemy.” President Jefferson was right to worry. Between 1801 and 1806 Philadelphia Jeffersonians split dramatically over their interpretations of Jeffersonian victory and their hopes for the future.¹

Andrew Shankman is assistant professor of history at Grand Valley State University. He would like to thank the anonymous reviewers provided by the *Journal of the Early Republic*, Steve Aron, Jacob Katz Cogan, Ignacio Gallup-Diaz, John L. Larson, Michael A. Morrison, Cathy Shankman, and especially John M. Murrin. What follows is no fault of theirs.

¹ Thomas Jefferson to Albert Gallatin, Mar. 28, 1803, *The Writings of Albert Gallatin*, ed., Henry Adams (3 vols; New York, 1870), I, 119-20. Explaining why Philadelphia's, and for that matter Pennsylvania's, Jeffersonian party was so startlingly economically and socially diverse, and thus why it contained such combustible material, requires a discussion of its own. For my effort to provide one, see Andrew Shankman, “Democracy in Pennsylvania: Political, Social, and Economic Arguments in the Jeffersonian Party, 1790-1820” (Ph.D. diss., Princeton University, 1997), chaps. 1-2.

The debates the city's Jeffersonians conducted with each other quickly developed into a sustained battle about the meaning and desirability of democracy in Philadelphia—and in the young republic. Demands for democracy were divisive; this was particularly so once it became clear that radical Philadelphia Jeffersonians, referred to in this essay as the "Philadelphia Democrats," (but labeled by their opponents as "Malcontents" and "Jacobins") hoped to transform the new nation fundamentally. By democratizing the republic's politics and culture they planned to force questions of traditional law, including disputes over property use, title, and contract, into popular political realms where those making decisions would be immediately and frequently accountable to a majority of the people.²

Faced with this awesome demand, more moderate Jeffersonians (called derisively the *Tertium Quids* or "third whats" by contemporary opponents) soberly sought to redefine democracy so that it would not encourage what they identified as perpetual and anarchic political and social convulsion. Between 1801 and 1806 Philadelphia Jeffersonians began to argue about precisely which questions democracy would and would not ask, and what issues democracy would and would not address.³ The intraparty arguments eventually became entangled with the justly famous cordwainers conspiracy trial of 1806, *Commonwealth v. Pullis*. In that trial participants clearly

² For debates on the political economy of the Jeffersonian party, see Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York, 1984); Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill, 1980); and Lance Banning, "Jeffersonian Ideology Revisited: Liberal and Classical Ideas in the New American Republic," *William and Mary Quarterly*, 43 (Jan. 1986), 3-19. For the Philadelphia Democrats political economy, see Shankman, "Democracy in Pennsylvania," chap. 5. See also Michael Merrill and Sean Wilentz, "'The Key of Liberty': William Manning and Plebeian Democracy, 1747-1814," in Alfred F. Young, ed., *Beyond the American Revolution: Explorations in the History of American Radicalism* (DeKalb, 1993), 246-82; Merrill, "The Anti-Capitalist Origins of the United States," *Review*, 13 (1990), 465-97; and Merrill, "Putting 'Capitalism' in its Place: A Review of Recent Literature" *William and Mary Quarterly*, 52 (Apr. 1995), 315-26. See Heilbroner, *The Nature and Logic of Capitalism* (New York, 1985). See also, Karl Marx, *Capital: A Critique of Political Economy* (3 vols; New York, 1967), I, 667-96; Ellen Meiksins Wood, *The Pristine Culture of Capitalism: An Historical Essay on Old Regimes and Modern States* (London, 1991). For the rise of free labor, see Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (Chapel Hill, 1991).

³ See Sanford W. Higginbotham, *The Keystone of the Democratic Arch: Pennsylvania Politics, 1800-1816* (Harrisburg, 1952); Kim Tousley Phillips, *William Duane, Radical Journalist in the Age of Jefferson* (New York, 1989); and Richard E. Ellis, *The Jeffersonian Crisis: Courts and Politics in the Young Republic* (New York, 1971).

and fully articulated what was at stake in the battle for the Jeffersonian party of Philadelphia.

There would have been no Jeffersonian arguments in Philadelphia if not for the obstreperous personality and incendiary writings of William Duane. Born in latter day Vermont in 1760 and raised in Ireland, Duane fled Pitt's England for the United States in 1796 to escape political persecution. Prior to his emigration, Duane had been banished from India, joined the radical London Corresponding Society, declared his sympathy for the French Revolution, and embraced the republican writings of Thomas Paine. Once in America, he secured employment from Benjamin Franklin Bache, the grandson of Benjamin Franklin, and helped him publish the Philadelphia *Aurora*. Bache and Duane led the Democratic-Republican newspaper attack on the Federalists and on their Alien and Sedition legislation. When Bache died of yellow fever in 1798 awaiting trial for sedition, Duane took over the *Aurora* and quickly made it the most widely read Jeffersonian organ in the nation.⁴

Duane joined forces with local radicals who made up the ranks of Philadelphia Democrats: James Thakera, Stephen Simpson, Andrew Geyer, George Bartram, James Carson, Michael Bright, Joseph Clay, Frederick Wolbert, John Barker, and especially Michael Leib. All these activists believed that the American Revolution had given the people the chance to reorder the world around them. Once the people realized the radical and democratic possibilities of the Revolution, they argued, "the contest was no longer that of resistance against foreign rule *but which of us shall be the rulers?*" Radical patriots, the *Aurora* reminded its readers, "from weighing the rights of colonies . . . came to weigh the rights of men."⁵

Most Philadelphia Democrats were so obscure that little can be learned about their beliefs beyond their political allegiances. But Leib, their leading spokesman, achieved prominence in the state and even, for a time, in the national arena. The son of a tanner, Leib lived in the Northern

⁴ On Duane see Phillips, *William Duane*. For Duane's milieu see E.P. Thompson, *The Making of the English Working Class* (New York, 1963); Albert Goodwin, *The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution* (London, 1979); Michael Durey, *Transatlantic Radicals and the Early American Republic* (Lawrence, KS, 1997); and Richard N. Rosenfeld, *American Aurora: A Democratic-Republican Returns: The Suppressed History of our Nation's Beginnings and the Heroic Newspaper that Tried to Report It* (New York, 1997). For Bache's and Duane's activities during the 1790s, see James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca, 1956).

⁵ Philadelphia *Aurora*, Sept. 7, 1803. Emphasis is original unless otherwise noted.

Liberties, a suburban neighborhood dominated by artisans.⁶ Trained as a doctor, he served the city's poor at the city dispensary, the alm house, local prisons, and the Philadelphia hospital. Leib's reputation as an ally of working people was bolstered when he risked his life by staying in the city while the wealthy fled the yellow fever epidemics of 1793 and 1798.

Leib also was a founding member of the German Republican Society and an officer of the Pennsylvania Democratic Society, the two Philadelphia Democratic-Republican Societies formed in the 1790s. From the beginning he sought to bring Jeffersonian politics to the city's laborers and poor. But equally important, he attempted to make the members of this constituency regular political actors. Leib tried to cure the sick, proclaimed the rights of man, and insisted that Jeffersonian victory would serve the needs and interests of actual laborers and producers. For Leib, republican internationalism, Jeffersonian triumph, and political power for laboring people were inseparable.⁷

Philadelphia Democrats' views on democracy were shaped profoundly by their theories about British and European history and Britain's economic development. Michael Leib, for instance, saw no hope for Europe's beleaguered subjects. In "the transatlantic world," he wrote in the *Aurora*, "despotism embraces all." Rulers "sustained by a military or a proud domineering nobility," dictated law by "force, or by corruption." The labor of their subjects was "made to minister to the ambition or the pleasures of the ruler." The people's property, liberty, and lives were "literally held by courtesy." European and British monarchy and aristocracy produced unremitting horror and degradation. People had but two choices. They could construct a proper and lasting republic, or they would be caught, painfully and permanently, in "the European condition of society." There were no alternatives and little margin for error.⁸

⁶ For the geography of Philadelphia in the early republic, see Richard Miller, *Philadelphia—The Federalist City: A Study of Urban Politics, 1789-1801* (Port Washington, NY, 1976); and Mary M. Schweitzer "The Spatial Organization of Federalist Philadelphia," *Journal of Interdisciplinary History*, 24 (Summer 1993), 31-57.

⁷ Even Leib, the most prominent of this group after Duane, left few letters. They are not collected, but rather are scattered throughout the Historical Society of Pennsylvania's voluminous holdings. The best discussion of Leib's significance is Kenneth W. Keller, "Diversity and Democracy: Ethnic Politics in Southeastern Pennsylvania, 1788-1799" (Ph.D. diss., Yale, 1971), chap. 5. The letters that reveal the most about Leib's personality and beliefs are, Michael Leib to Matthew Carey, Oct. 12, 1802, Lee and Febiger Collection, (Historical Society of Pennsylvania, Philadelphia, PA); Leib to John Barker, Oct. 18, 1803, Gratz Collection—American Physicians, *ibid.*, case 7 box 31; and Leib to Frederick Wolbert, Nov. 24, 1803, Dreer Collection—American Statesmen, *ibid.*

⁸ Leib's speech was published in the *Aurora*, May 17, 1804, Nov. 2, 1801.

But how had this European condition of society arisen? Who was responsible? What sort of society did they build? And which institutions protected them and maintained their exalted, unequal, and unjustifiable status? During the first few years of Jeffersonian rule, Duane and other Philadelphia Democrats grappled with these questions. They devoted issue after issue of the *Aurora* to discussions of European history as they struggled to understand the development of European nations, especially Britain.

Britain, according to Philadelphia Democrats, in no way escaped the European condition of society. Land was scarce and taxes high. The typical British laborer, the *Aurora* insisted, could expect only “[t]edious and unnecessary servitudes [which] debase and debilitate those whom poverty consigns to a seven year apprenticeship, where labour commences with the dawn, and ceases not for hours after the sun has disappeared.” The European condition of society arose in nations “in a state of fullness with respect to population.”⁹

But the European condition of society was not inevitable, and the *Aurora* had already described the condition of British laborers as unnecessary. Conscious choices made by particular classes of men had visited upon British subjects the European condition of society. In the distant past, Philadelphia Democrats insisted, feudal lords had seized all property in England and monopolized political power.¹⁰ Down to the present day property was still highly concentrated, and the political state oligarchically controlled.

The *Aurora* placed great faith in what it considered the key accomplishments of the modern world: the discovery of printing and the proliferation of commerce. Duane, Leib, and their circle insisted that the Britain of the late eighteenth and early nineteenth centuries was far removed from the England of the Wars of the Roses. Commerce and knowledge, Philadelphia Democrats suggested, ought to have been liberating. Once they exploded onto the scene, the “*exclusive classes*” should have been overwhelmed by “the newly discovered powers of the *press* and the *mint*.” But in reality, the achievements of the modern world had not liberated Britain’s subjects. The riddle was solved, Philadelphia Democrats believed, when one examined politics. For though the achievements of rising men engaged in new activities had challenged the domination of the feudal aristocracy, their oligarchic political power remained. Beleaguered but still powerful aristocrats co-opted the rising

⁹ *Ibid.*, Aug. 18, 1802, Oct. 12, 1803.

¹⁰ *Ibid.*, Aug. 22, 1803.

commercial class, forcing men who in other contexts might behave quite differently, to cooperate with them. In other words, the *Aurora* lamented, "nobility at length found a pedigree in a bale of silk . . . a hogshead of sugar, or a pig of tobacco." Aristocracy flourished in modern Britain, for it had managed to transform itself: "nobility [was] in fact riches."¹¹

With nightmarish irony, the potent capacities of the modern era produced a society far more despotic and unhappy than any known to the ancient or feudal worlds. Commercial and intellectual forces capable of liberating and enriching an entire people had been consolidated in the hands of a few. This minority, the *Aurora* insisted, had become the most awesome and terrifying ruling class the world had ever known. It was precisely this sort of oligarchy that ruled Great Britain. Thus in the most advanced nations, the European condition of society was exhibited at its worst.

From Britain's sorry fate Philadelphia Democrats' newspaper drew a momentous lesson: unequal access to political power allowed those who possessed it to warp or misuse potentially liberating ideas and practices. Commerce and knowledge, the *Aurora* concluded, were not intrinsically liberating. If a state was oligarchically controlled, the opportunities and advances commerce and knowledge promised would be oligarchically enjoyed. Thus Great Britain's ruling elite became a disgusting and unnatural hybrid perpetuating ancient political tyranny by perfecting modern economic enterprises. The Star Chamber still flourished, but it functioned in the guise the Board of Trade, "the head of the supreme *commercio-political* body of the British empire."¹²

¹¹ *Ibid.* The newspaper's insistence that England and then Britain had changed dramatically during the seventeenth and eighteenth centuries was quite insightful. For this transformation, see Christopher Hill, *The Century of Revolution, 1603-1714* (London, 1961); Johann Sommerville, *Politics and Ideology in England, 1603-1640* (London, 1986); Sommerville, "Ideology, Property, and the Constitution," in Richard Cust and Ann Hughes, eds., *Conflict in Early Stuart England: Studies in Religion and Politics, 1603-1642* (London, 1989), 47-71; J.H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London, 1967); P.G.M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688-1756* (London, 1967); Isaac Kramnick, *Bolingbroke and His Circle: The Politics of Nostalgia in the Age of Walpole* (Cambridge, MA, 1968); and John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (London, 1989).

¹² *Aurora*, Aug. 14, 1804. Those who wrote for and read the Philadelphia *Aurora* were not the first Americans to insist that unaccountable political power was dangerous. Those influenced by the classical republican tradition had become quite adroit at identifying and denouncing interested governance and unaccountable decision making. But for classical republicans the solution was government by a virtuous and farsighted elite able to secure the

Commerce and manufacturing in antidemocratic Britain reinforced dependence and increased poverty. Great Britain had built the world's most advanced economy. But, the *Aurora* asked, "what is the condition of her mechanics and laborers in agriculture, the middling tradesmen, and the farmer? Of what use or service is this boasted commerce to them?" If those in power were not made accountable to the people, this "commercio-political" elite would structure the state and the economy "to enable the *merchants, the few* to ride in their carriages and wallow in luxury" while the "government [wa]s supported by draughts on the industry of the people at large"; hence the "luxury and extravagance" of the powerful and the "misery, ignorance, and consequently depravity of all the lower classes."¹³

But if inequality and exploitation resulted from an insufficiently democratized society, was there any reason people who were citizens—not subjects—could not organize their institutions to prevent those things? With Jefferson's victory the Philadelphia Democrats believed that they could build a world that forever would escape the European condition of society. They would do so by democratizing those political institutions that determined what the economy, that structured and regulated relations between Americans, would look like and how it would work. Building on their theories about the origins of social and economic inequality, the Philadelphia Democrats began to examine American society seeking to root out institutions, practices, and beliefs that were not sufficiently democratic.

With the stakes as high as they were, Philadelphia Democrats insisted that in the United States the majority will had to govern. The *Aurora* acknowledged that centuries of opinion warned against direct, majority rule. Sage philosophers, the paper admitted, often warned against trusting the people: they are too ignorant to judge of the characters proper to be brought forward as their governors," and their interests always would be sacrificed "by the ignorance or violence of those they are too apt to raise into office on the score of temporary popularity, and democratic turbulence." But Philadelphia Democrats rejected such concerns as the conservative apologies for the European condition of society. The *Aurora*

popular interest when it furthered the public good, and, by the same token, to thwart it when it threatened to overwhelm that good. See J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975); John M. Murrin, "The Great Inversion or Court vs. Country: A Comparison of the Revolutionary Settlements in England (1688-1721) and America (1776-1816)," in J.G.A. Pocock, ed., *Three British Revolutions: 1641, 1688, 1776* (Princeton, 1981), 368-453; Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca, 1978); and esp. McCoy, *The Elusive Republic*.

¹³ *Ibid.*, Jan. 15, 1805.

dismissed the “dialectical syllogism of Aristotle” that a blend of monarchy, aristocracy, and democracy would prevent the danger each form posed alone: despotism, oligarchy, and anarchy. On the contrary, preventing the majority from governing was far more dangerous to freedom and the republic than allowing it to do so.¹⁴

But how did a majority govern? By the first decade of the nineteenth century most Americans could explain that the people were sovereign and that all law, including fundamental law, derived from them. But clearly the majority did not always or automatically govern. Upper houses checked lower houses, executives vetoed legislatures, and some even maintained that judges could declare the acts of the legislature unconstitutional. In fact, the declaration of popular sovereignty had done much to undermine arguments for direct majority governance. In effect, the popular will of the people had established constitutions that constrained them from acting too popularly.¹⁵

In the name of democracy Philadelphia Democrats came to reject this development in American constitutional thought. Constraints on the majority, they feared, prevented the people from addressing policies that led to dangerous inequities in the distribution of political and economic power. Pure democracy perhaps was impracticable, but they desired nonetheless the spirit of such a government. If people agreed to a structure of politics that allowed some greater shares of power than their fellow citizens, then regardless of intention the aim of that government would be “the exclusive aggrandizement of the few.”

Philadelphia Democrats intended democracy to wipe out all gradations among citizenry. When the majority had the power to enforce its desire not to be oppressed, then people could decide what the community would and would not tolerate. Only after the people had established such majority rule could they attain the public good. Philadelphia Democrats understood that monarchs, aristocrats, and especially republicans oftentimes concerned themselves with the public good; but in the *Aurora* they insisted that those (possibly sincere) efforts had failed, and they believed that they knew why. A republic, by definition, sought the public good, but usually a self-

¹⁴ *Aurora*, Apr. 15, 1803, Aug. 20, 1802.

¹⁵ The strange career of popular sovereignty and its antidemocratic implications in both the United States and England are a principal themes in Gordon S. Wood, *The Creation of the American Republic* (Chapel Hill, 1969), and Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988). For early defenses of judicial review in the United States, see Maeva Marcus, “Judicial Review in the Early Republic” in Ronald Hoffman and Peter J. Albert, eds., *Launching the “Extended Republic”: The Federalist Era* (Charlottesville, 1996), 25-53.

proclaimed enlightened few identified and pursued it. Few republics in the past had established regular methods for forcing this minority to defend its actions before the people. Philadelphia Democrats believed that this failure meant that the people's interests would not be pursued regardless of the intentions of the rulers or the name that they gave to the political system. The most important component of the public good was the capacity of the people to determine what it was. Thus the public good could not be achieved outside of a democracy. Only when commitment to the public good and the capacity of the majority to determine it were merged was it at all possible to pursue the commonweal. A republic without democracy ended with a dictator like Cromwell or Napoleon.¹⁶

A democratic republic never could stand still. People pursued the public good through frequent discussion, not just of laws or policies but how best to carry on discussion itself. Philadelphia Democrats conceded that this discussion had to be conducted primarily by representatives of the people, but they were thoroughly dissatisfied with the mechanisms in place for holding those representatives answerable to the majority. Philadelphia Democrats demanded what they deemed a legitimate democracy. In pursuit of it they attacked in rapid succession independent judges, executives, and senates that wielded power at the expense of more popular lower houses. They concluded that such balanced constitutions prevented lower houses—the most direct instrument of majority will—from preserving those “foundations of liberty” that only could be laid on the “independence of circumstances among the majority.”¹⁷

First Philadelphia Democrats denounced the independent judiciary, and that judiciary's use of English common law. Like many Pennsylvanians and all Jeffersonians, they were outraged by the overbearing Federalist judges Alexander Addison and Samuel Chase. The two judges regularly bullied juries, expressed contempt for state legislatures, and even denounced the Jeffersonian party. In 1803 their conduct led to demands for their impeachment: Addison's came from the Pennsylvania state legislature, Chase's from the House of Representatives.

These impeachment efforts (Addison's in particular) initially were popular, and indeed Addison's succeeded. But Philadelphia Democrats quickly ran afoul of other Jeffersonians. For they began to articulate a theory of impeachment that stressed the dangerous behavior of the judges. Actual crimes, they reasoned, did not have to be proved against agents of a democratic state. If judges held their offices in good behavior, it was

¹⁶ *Aurora*, Sept. 18, 1802.

¹⁷ *Ibid.*, June 5, 1805.

necessary to redefine good behavior so that it conformed to the needs of the democratic majority as defined by that majority. "The point," the *Aurora* editorialized, was "to ascertain what is and what is not good behavior." The paper argued that a democratic definition of a violation of good behavior had to be much broader than "a crime punishable as a felony in private."¹⁸

A more appropriate and democratic definition of a violation of good behavior was the display of judicial partiality. Partiality, the *Aurora* suggested, covered any criticism from the bench of the acts of the legislature. Impeachment could prevent judges from thwarting, or even opposing, democratic bodies if "partiality [was] a ground for removal." Wrongdoing by judges included "the right of courts to set aside laws as unconstitutional." The *Aurora* defended impeachment as democratizing the judiciary, insisting that "removal from office . . . is the most harmless of punishments, and ought to be employed for the slightest offenses." Good behavior was a matter to be determined by the majority. It logically followed that this majority should be empowered to punish those in power who disobeyed majority will.¹⁹

Philadelphia Democrats concluded that Addison and Chase could be impeached if they displayed hostility towards democracy—the will of the majority. This position frightened more moderate Jeffersonians in Philadelphia such as former Secretary of the Commonwealth Alexander J. Dallas. Though Dallas had handled Addison's impeachment, he had argued that the judge actually committed a crime by silencing a colleague during a trial and so denying Pennsylvanians access to all of their court officers. But if he could not make his case, Dallas argued, then Addison should not be removed no matter how obnoxious or hostile he was to democracy.²⁰

The Addison impeachment effort hinted at nascent divisions among Philadelphia Jeffersonians. But the suit of Thomas Passmore against the insurance underwriters Andrew Petit and Andrew Bayard, which also occurred in 1803, completely exposed them. In brief, the Philadelphia

¹⁸ *Ibid.*, Mar. 3, 1804.

¹⁹ *Ibid.*, Jan. 25, 1804.

²⁰ On the Addison case and the theory of impeachment for "dangerous tendency," see Peter Charles Hoffer and N.E.H. Hull, *Impeachment in America, 1635-1805* (New Haven, 1984), chap. 10. See also Ellis, *The Jeffersonian Crisis*, chap. 11. For radical Pennsylvania Jeffersonian attitudes towards the judiciary in this period, see James Hedly Peeling, "Governor McKean and the Pennsylvania Jacobins (1799-1808)," *Pennsylvania Magazine*, 54 (Oct. 1930), 320-54; and Elizabeth K. Henderson, "The Attack on the Judiciary in Pennsylvania, 1800-1810," *ibid.*, 61 (Apr. 1937), 113-36.

merchant Thomas Passmore sued the two insurers for damages when his property was destroyed at sea. By agreement the suit went to arbitrators who found for Passmore. Petit and Bayard then appealed and the decision was overturned by the state supreme court. Petit and Bayard were represented by Alexander J. Dallas. Infuriated, Passmore denounced Bayard in a written statement that he posted in a city coffee house. He said nothing about the judges' decision, nor even why he denounced Bayard. But his attack angered prominent Philadelphia Jeffersonians. Bayard was a leading citizen, and his partner was the brother-in-law of Pennsylvania's Jeffersonian governor, Thomas McKean. Thus at Dallas's behest the three sitting supreme court judges, Edward Shippen, Thomas Smith, and Jasper Yeats, found Passmore in contempt through an interpretation of the common law of contempts that extended their jurisdiction outside the courtroom. The three Federalist judges fined Passmore and incarcerated him for thirty days.²¹

Philadelphia Democrats leapt to Passmore's defense. The *Aurora* denounced the three judges and demanded their impeachment. But the *Aurora* went far beyond Passmore's grievances. The paper used the event to launch a discussion about the place of the judiciary in a democratic society and the accountability it owed to the legislature—the most direct and immediate instrument the people possessed. In response to Passmore's imprisonment for publicly speaking his mind, the paper asked "why judges . . . should be more independent of the control of a free people, than those who have the formation and execution of the laws entrusted to them?" Judicial independence, the *Aurora* editorial argued, arose in England to protect judges from the Crown—by definition an illegitimate governor. But the people were of course legitimate sovereigns, and no agent of the state should be protected from their desires. Passmore's case showed, according to the *Aurora*, that an independent judiciary had no place in a democracy. Judicial independence only encouraged mistreatment of citizen Passmore.²²

The judiciary's independence was not the only danger. The judges also had been able to invoke English-inspired common law, in this case the common law of contempts, to trump what the Philadelphia Democrats believed to be guarantees provided in the first amendment. Philadelphia Democrats denounced the entire legal apparatus based on English common law. Their focus on the common law was not surprising; Philadelphia

²¹ Hoffer, *Impeachment in America*, chap. 11; Ellis, *The Jeffersonian Crisis*, chaps. 11-13.

²² *Aurora*, Mar. 7, 31, 1803.

Democrats like many others, recognized that state judges used English jurisprudence to shape social and economic policies and relations. They feared that the state supreme court's use of the common law endangered democracy and encouraged economic inequality. Furthermore, the court's overwhelming commitment to unshackled economic development caused it to invoke common law selectively. Much of the common law of real property, particularly in decisions made prior to 1750, placed constraints on its alienation and transfer. But other parts of the common law, such as those decisions dealing with commercial disputes and mercantile property, encouraged developmental use and free exchange. Furthermore, after 1750, English common law judges began to interpret the common law, including the common law of real property, in ways that protected and encouraged capitalist development. The judges largely ignored the dislocating impact their decisions had on the nation's poor.²³

The Pennsylvania Supreme Court relied on post-1750 common law decisions (including decisions made after 1776) and those more antiquated judgments that supported capitalist development. It justified its stance by insisting that Pennsylvania was a commercial society, that common law decisions less amenable to the alienation of property did not apply to a society or economy such as Pennsylvania's, and that the state's citizens both wanted and needed speedy and untrammelled development. The supreme court benefited from a hierarchical structure of the state's courts that allowed supreme court justices to preside in appellate courts as well as the supreme court. Pennsylvania's constitution also made it easy for property title and other commercial disputes to go from local courts to the appeals courts, where the supreme court justices presided. Bolstered by the hierarchical court structure, top judicial officers easily imposed their vision on Pennsylvania. This imposition by the court helped further the general consolidation of land ownership in the state between 1770 and 1800 and greatly assisted the interests of large land companies over the claims of

²³ This change in judicial interpretation both helped facilitate and resulted from England's emergence during the eighteenth century as the world's first capitalist society. Between 1700 and 1750 Parliament passed 115 enclosure acts, constituting a major commitment to more developmental uses of property, and consolidated property ownership. But between 1750 and 1800 Parliament enacted 2,015 enclosure acts and added another 906 between 1800 and 1810. It was in this climate that the common law became a much more complete instrument of capitalist development. As engaged with English history as they were, it made sense for the Philadelphia Democrats to fear the power common law judges wielded. For developments in England, see J.H. Plumb, *England in the Eighteenth Century* (Middlesex, UK, 1963), 82; and Ian R. Christie, *Wars and Revolutions: Britain, 1760-1815* (London, 1982), chap. 1.

actual settlers. The court's actions led to a popular hostility toward the common law and the court structure, an attitude that Philadelphia Democrats did much to fuel and maintain.²⁴

Philadelphia Democrats argued that the common law—unwritten and based on precedent established in despotic England—was twisted by wily judges who ignored the demands of the democratic majority. In editorials, Duane and his allies insisted that Pennsylvanians should both impeach particular judges and “curb the *arbitrary power* assumed by the courts over the liberty of the citizen in defiance of the constitution as unauthorized by any *law* but the indefinable and incomprehensible doctrines of English common law.” If economic questions and legal disputes were decided democratically, then political, social, and economic equality could be achieved. At that point

a fair spirit of national exertion [could] be made, jealous of foreign interference and exclusive corporations, and emulous to promote American prosperity upon American principles, free, open, and impartial, making private property secondary not superior to public good.

Such a democratic republic, while encouraging the economic dynamism of the citizenry, could carefully preserve the “equal distribution of property which generally prevails in a greater degree [in the United States] than in any other country, the agricultural pursuit of a vast majority of the people, [and] the great proportion of men who are rather independent than opulent.” Thus could the democratic United States “preserve and promote that happy mediocrity of condition, which is our greatest security and our best preservative against gradual approaches of arbitrary power.”²⁵

²⁴ For the Pennsylvania Supreme Court's activities, see James F. Dinsmore, “Courts and Western Pennsylvania Lands: The Origins of the Attack on Pennsylvania's Courts, 1790-1810” (Ph.D. diss., Temple University, 1990), chap. 3. For the changing social structure of land ownership in Pennsylvania, see R. Eugene Harper, *The Transformation of Western Pennsylvania, 1770-1800* (Pittsburgh, 1991). For transformations of the use of common law by judges in America, see Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA, 1977); and R. Kent Newmyer, *Supreme Court Justice Joseph Story: Statesman of the Old Republic* (Chapel Hill, 1985).

²⁵ *Aurora*, Mar. 31, 1803, Jan. 29, 1801, May 27, 1805. The Philadelphia Democrats actually championed a profoundly developmental political economy. But they defended commerce and development only in the context of the democratic political transformation they demanded. Only after the people built democracy could they ensure that prosperity and development did not produce social and economic inequality. For the Philadelphia Democrats political economy, see Shankman, “Democracy in Pennsylvania,” chap. 5.

In the pages of the *Aurora* Philadelphia Democrats sought to provide democratic legal and political structures and jurisprudence that would replace the independent judiciary and judicial review and expunge the common law from American life. By transforming the way in which critical decisions were made, they would maintain the political, social, and economic basis for democracy. Duane, Leib, and their circle insisted that a democratic society had to “be directed by reason, equity, and a few simple and plain laws.” Those laws, in addition to being “few in number [and] written in plain simple language,” had to be “liable to frequent revision.” For laws unacceptable to the citizenry “should be repealed as being contrary to the general voice.”²⁶

Philadelphia Democrats championed an alternative legal structure. They demanded that litigants be allowed to bypass the courts by choosing arbitrators whose decisions would be legally binding. Either disputant would be able to force the case to arbitration. Duane, Leib, and the rest viewed arbitration as a democratic alternative to courts of law presided over by judges who could ignore popular opinion. Arbitrators, elected by the people, would come from the community and be sensitive to what the community thought was just and whom it considered aggrieved in each particular case. Though courts decided cases based on precedent, especially from common law, arbitrators, the *Aurora* insisted, were more concerned with equity. Arbitrators were “as attentive to law as juries” on questions of law, “but in the ordinary course of a dispute arising in society not one in ten requires a legal opinion, but an equitable adjustment.”²⁷

The denunciation of the independent judiciary and judicial review, and demands that arbitrators decide disputes, guided by the majority’s sense of justice, shocked and terrified most prominent Philadelphia and Pennsylvania Jeffersonians. Between 1803 and 1806 the state legislature made several attempts to enact some form of arbitration legislation. Jeffersonian governor Thomas McKean vetoed these bills. He was backed by local luminaries such as Alexander J. Dallas, Pennsylvania Supreme Court Justice Hugh Henry Brackenridge (the only Jeffersonian on the state supreme court), and Thomas Cooper, another Jeffersonian judge in Pennsylvania. Efforts in the legislature ended in the compromise bill popularly called the \$100 Act. The act allowed justices of the peace

²⁶ *Aurora*, Feb. 22, 1804, repr. from *Boston Chronicle*.

²⁷ *Ibid.*, May 11, 1803, Dec. 19, 22, 28, 1804 provide good examples of this position. *Ibid.*, May 13, 1803. The paper often criticized the trial by jury. The Philadelphia Democrats did not oppose that institution, but rather what they considered its easy manipulation by undemocratic judges. See *ibid.*, Nov. 26, 1805.

(appointed by the governor) to act as arbitrators and it made their decisions binding in disputes worth less than \$5.33. Cases not exceeding \$53 could be heard by arbitrators if both parties agreed, and the decision also was binding. No cases exceeding \$100 could be referred to arbitrators.²⁸

Philadelphia Democrats were infuriated by McKean's vetoes and the final arbitration bill. The \$100 Act in no way challenged the power of judges to decide what law and justice were. The act was "a kind of half way matter," that left friends of reform "believing the agitation more useful than the law." Frustrated by what they considered the failure of meaningful arbitration legislation, Philadelphia Democrats moved into the vanguard of an effort to impeach the state supreme court judges, primarily because of their treatment of Passmore. But this effort also failed. Two-thirds of Pennsylvania's twenty-four senators had to vote for impeachment, but only thirteen did so. Faced with the failure of arbitration and the rejection of their democratic theories of impeachment, Philadelphia Democrats were driven to an even more extreme position. Their new conclusions about the theory and substance of democracy frightened even more moderate Jeffersonians.²⁹

Philadelphia Democrats really had no choice but to take their new extreme positions after their initial failures. Majority will had been thwarted, this time not by unaccountable judges but by an elected governor and senate. In the latter case, an actual majority of senators had voted for impeachment, but the state constitution arbitrarily required more than a simple majority. If majority will could be ignored by the governor and senate within the state constitution, then democracy required a more massive restructuring of American politics than even Philadelphia Democrats had first imagined.

Accordingly, Philadelphia Democrats first called for a constitutional convention. To help their cause, they started a proconvention organization, The Society of the Friends of the People. Meetings soon took place in the various city wards and in the more radical suburbs as Philadelphia Democrats sought to mobilize their constituency. The city radicals wanted Pennsylvanians, "express[ing] themselves in their sovereign capacity," to establish annual elections for senators and to strip the governor of his patronage and veto. These demands would have left the judges elected or

²⁸ See Henderson, "The Attack on the Pennsylvania Judiciary." McKean's vetoes were printed in the *Aurora*, Dec. 14, 1802, and Mar. 24, 1803. The report that became the \$100 Act appeared *ibid.*, Jan. 21, 1804.

²⁹ *Ibid.*, Nov. 19, 1804. The *Aurora* printed how each senator voted and underscored the names of those Jeffersonians who voted for acquittal. See *ibid.*, Jan. 30, 1805.

appointed by the popular legislature. Philadelphia Democrats reserved their strongest language for the judiciary, calling for an end to “in good behavior” and declaring once and for all that judges could not “decide on the constitutionality of all acts of the legislature.”³⁰

In the process of organizing support for the convention, Philadelphia Democrats made their clearest and most complete statements about what democracy was and how best to achieve it. Democracy, they thought, was a government designed to ascertain majority opinion and immediately enact that opinion into law. “It is a correct maxim,” the *Aurora* insisted,

that the will of the people ought to rule, and that the will of the majority is the will of the people. Therefore, every part of the Constitution, which prevents the will of the people from becoming the supreme law, whenever that will can be conveniently ascertained, is unjust, and dangerous, and ought to be abolished.³¹

Philadelphia Democrats’ radical demands provoked a sustained, concerned, and sober response from other elements in the Philadelphia Jeffersonian party. As early as 1802 dissenting Jeffersonians began meeting at Philadelphia taverns. Initially concerned about the prominence of Michael Leib and his influence in the party, prominent politicians, rising businessmen, master artisans, and merchants—such as Alexander J. Dallas, Manuel Eyre, Mathew Carey, and Tench Coxe—all took exception to Leib’s extreme stances and the positions they saw taken in the *Aurora*. In 1803, when Leib represented Pennsylvania in Washington, his fellow Jeffersonian congressmen, Andrew Gregg, Robert Brown, John Smilie, John A. Hanna, Issac Van Horne, and John Stewart, publicly opposed him. But chief among Leib’s opponents from the Pennsylvania congressional delegation was William Jones, a close friend of Dallas and Albert Gallatin. Jones, a successful merchant, was infuriated by Leib’s efforts to speak for the entire state party. He publicly denounced Leib and privately tried to discredit him to Jefferson and other party leaders.³²

But as the *Aurora* began to influence city and county politics, and as Philadelphia Democrats mounted a serious political campaign that ended with demands to undo the separation of powers and constitutional

³⁰ The first of such calls appeared *ibid.*, Feb. 28, 1805. The precise intentions of the Philadelphia Democrats on this point are unclear.

³¹ *Ibid.*, Mar. 30, 1805.

³² Higginbotham, *Key Stone of the Democratic Arch*, 58. William Jones to Thomas Jefferson, Feb. 12, 1803, and Jones to John Randolph, Mar. 19, 1803, both in William Jones Papers, Uselma Clark Smith Collection (Historical Society of Pennsylvania).

protection of the independent judiciary, the Quids realized that their problems were much larger than the influence of Michael Leib. Some Quids hoped that Leib was the sole problem, but a Lancaster correspondent of Tench Coxe knew better: even if the cause of Jeffersonian division was “confined to Dr. Leib,” he wrote, “the effects, I apprehend, are by no means so.” By 1803 and 1804 it was clear to the Quids that demands for democracy appealed to and energized the electorate. Philadelphia Democrats represented the wing of the party most resolutely demanding democracy, and until they could be challenged, that term belonged to them. Here was the chief danger: if the meaning and practice of democracy was not seized from Philadelphia Democrats, if “this kind of intemperate conduct [was] countenanced by the Republicans as orthodox democracy,” then Philadelphia politics would remain legitimately and perpetually explosive and turbulent.³³

Of course the Quids would have to fight radical ideas and popular politics with an equally popular movement of their own. For, as Coxe’s Lancaster informant reported, the

effects of Duane’s and Leib’s principles are spreading, or at least becoming more manifest, throughout the whole state. . . . The most discreet, intelligent, and uniform friends to our representative system of government [are] denounced . . . as Tories [and] apostates, . . . private acts, and private character, and even life itself, I believe, were there no laws, would fall an easy sacrifice to these . . . followers of Duane.³⁴

It no longer was safe to allow the *Aurora* alone to speak for Philadelphia’s Jeffersonians. On February 20, 1804, with the help of the printer and editor William McCorkle, the Quids started the *Evening Post*, which by July they renamed the *Freeman’s Journal*. In the pages of their new paper the Quids tried to discredit their opponents’ ideas and definitions of democracy. In the place of majority rule they emphasized a defense of individual rights and the protection of private property. But equally important, the Quids promised that their version of democracy would provide widespread prosperity and genuine social mobility. Philadelphia Democrat ideals, the Quids maintained, threatened this desirable prospect.

Quids wrote proudly about the golden future awaiting the United States, and they emphasized the nation’s inevitable future greatness. Each citizen would share in future prosperity if Americans fashioned a peaceful,

³³ Isaac Worrell (?) to Tench Coxe, June 15, 1804, Tench Coxe Papers, (Historical Society of Pennsylvania, Philadelphia), microfilm, reel 77.

³⁴ Worrell (?) to Coxe, Aug. 22, 1804, *ibid*.

representative politics. Politics should not challenge fundamental laws. Instead it would concentrate on internal economic development. Stressing inevitable future prosperity, Quids defended the pursuit of self-interest and the improvement and enrichment of the individual. If Americans—in particular Philadelphians—would remain calm and take advantage of the tremendous opportunities available, they would see that the Philadelphia Democrats' fears about the onset of the European condition of society were ludicrous.

The true danger to their pleasing vision, Quids insisted, lay precisely in the radical views that in Philadelphia masqueraded as democracy. The Quids urged their fellow Philadelphians to notice the positive conditions unfolding:

our country experiences the full tide of prosperity. . . . We are obtaining new acquisitions of territory; making rapid strides in the cultivation of the arts and sciences; advancing fast towards a state of refinement, enjoying peace and plenty at home, respected abroad; commanding an elevated station amongst the greatest nations of the world; and every circumstance both physical and political conspiring to make us a great and happy people.³⁵

The only threat to this glorious prospect was misunderstanding and misusing democracy. If Philadelphia Democrats established in democracy's name a political system that obliterated "the just and wise lines of distinction which have been marked out for different branches of our government," their actions would have tragic results. The legislature would grow overmighty and destroy the political, social, and economic conditions that fostered individual political and economic freedom, thus, general prosperity and public happiness. The maintenance of those conditions constituted real democracy.³⁶

According to Quids, unprecedented prosperity and almost universal happiness could only be jeopardized by political schism and radical experiments: "Just when we should be happiest, when we are at our most triumphant, we divide amongst ourselves, we trample our unity." The country was booming, according to the *Evening Post*, "yet persons have been weak enough to make attempts at innovations, which if accomplished will dangerously affect the judicial branch of government, which has protected the commerce by which they flourish."³⁷

³⁵ Philadelphia *Evening Post*, Feb. 21, 1804.

³⁶ *Ibid.*

³⁷ *Ibid.*, May 22, 1804.

The primary target of the Quids' campaign in 1803 and 1804 was the law mandating arbitration. Arbitration, they argued, would destroy property rights and allow the community to determine proper and improper uses of property. Once the property rights of one person were injured, no one was safe. True, the judicial system needed reform; in growing, prosperous Pennsylvania litigation had increased, and more courts, and trained judges and lawyers were needed. Quids also accepted that certain legal procedures could be refurbished to speed cases through the courts. But the Philadelphia Democrats, Quids insisted, cared nothing for sensible reforms of this sort. Duane, Leib, and their supporters were

not satisfied with pruning the luxuriant branches of so venerable a system, but they must pluck from the very root of that tree which was planted in liberty, and protected and cherished by independence. . . . By our present method of trial, no citizen can be ousted of his property, but by the consent of twelve of his equals[,] . . . [but] what can we expect of men with whom there is every opportunity to tamper; men confined by no rules, but such as they make and break at pleasure?³⁸

In 1804 Leib had to run for reelection to the United States Congress. The Quids made unseating him their top priority. One of Jefferson's worst fears was realized. Ignoring the Federalists, Jeffersonians campaigned against other Jeffersonians. By defeating Leib, Quids hoped to show that the majority did not support his radical strand of Jeffersonian ideology. Between May 25 and election day on October 10, the *Evening Post* or *Freeman's Journal* attacked Leib on at least thirty-seven days. Often whole issues were spent denouncing him. In the end they managed to dent Leib's majority; he received the fewest votes of any Jeffersonian candidate who managed reelection. But Leib still won, and in the laboring suburbs of the Northern Liberties and Southwark he received sixty-nine percent and sixty percent of the votes respectively.³⁹

Leib's reelection notwithstanding, Quids had shown that they could conduct a popular campaign and make a coherent case for their own version of democracy. The decline in Leib's support allowed Quids to argue that Governor McKean had something of a popular mandate for the compromise \$100 Act. When in 1805 McKean also had to run for reelection, he was seriously challenged by Pennsylvania House Speaker

³⁸ *Ibid.*, Mar. 1, 1804.

³⁹ *Aurora*, Oct. 11, 1804. For examples of attacks on Leib see *ibid.*, May 25, 1804; and *Freeman's Journal*, June 16, 20, 21, 22, 23, July 3, 7, 10, 11, 19, 25, 28, Aug. 15, 18, 19, 21, 22, 23, 24, 25, Sept. 1, 5, 8, 10, 12, 14, 17, 28, 29, and Oct. 1, 2, 3, 5, 6, 8, 1804.

Simon Snyder—but Snyder was not a radical Philadelphia Democrat. The Quids had managed to stir the waters, and the city could not identify a gubernatorial candidate to challenge McKean. After the campaign of 1804 that candidate certainly could not be Leib. Quids skillfully equated radical arbitration demands and the call for a constitutional convention with Snyder's candidacy (though hardly Snyder's initiatives), and by equating Snyder with positions more extreme than his own, Quids were able to stay on the offensive throughout the campaign.⁴⁰

Fearing that they were losing ground, Philadelphia Democrats moved to an even more extreme position. Sensing that the demand for a constitutional convention would fail, they exposed yet another layer of political privilege that protected people in power. The constitutional convention was in jeopardy, they reasoned, because the process for calling it was far too complicated and laborious. Elites had designed this process to prevent the people from exercising their sovereignty; and any process, institution, or document, Philadelphia Democrats concluded, that made it difficult for the people to impose their sovereign will as quickly and completely as possible was antidemocratic. Portraying their opponents as "a cunning body . . . accustomed to *speaking* and *writing*," who could manipulate a convention as well as the courts, the *Aurora* began to argue that constitutions themselves were aristocratic documents, resulting "from a disposition to controul [*sic*] future time." The people had as much right to make law this year as last, and a "constitution is but the self same act of sovereignty resolved into an irrepealable act, which a convention can have no more power to make than a legislature who comes after them." The entire ridiculous and elaborate enterprize of requiring a convention resulted from "the same spirit of *dictating to future times*." The only democratic proposition was to allow the legislature to make and amend fundamental law.⁴¹

The Quids quickly moved to taint the entire anti-McKean movement with the most recent and most extreme beliefs of the Philadelphia Democrats. They started the Society of Constitutional Republicans to

⁴⁰ Even the best studies of these divisions, specifically Higginbotham and Ellis, have made no substantive or ideological distinctions between the followers of Snyder and the Philadelphia Democrats. There were crucial differences between the two groups which led to very different visions of the future and distinct demands. For these differences and the role the Snyderites played in defining and constructing democracy, see Shankman, "Democracy in Pennsylvania," chap. 8. The Quids' intelligent strategy is in evidence in the *Evening Post*, June 3, 4, 14, 18, 20, 1805; and the *Freeman's Journal*, Aug. 19, 30, 31, 1805.

⁴¹ *Aurora*, Mar. 21, 1805, Apr. 5, May 10, 1805.

counter the Philadelphia Democrats' Society of the Friends of the People. The Quids' society published Alexander J. Dallas's manifesto, *An Address to the Republicans of Pennsylvania*. Quids were wholly committed to mounting a popular political campaign, for they published the *Address* in the *Freeman's Journal* and distributed five thousand copies.⁴²

Dallas sounded the Quids' main themes. Jeffersonian victory had defeated tyranny and guaranteed prosperity and happiness for all. The only danger to peace and domestic tranquility lay in the specter of Jacobinism. Dallas vigorously defended American constitutional theory, Pennsylvania's Constitution, and those portions of the common law operative in the state. Without them property would be unprotected and chaos would replace reason.

Dallas also sought to establish the Quids' democratic credentials. They did not wish to live in a world where they could silence those whom they believed acted dangerously. The people had to choose between sanity and insanity, between sober, responsible citizenship and the potential for revolutionary terror. Philadelphia Democrats (or Malcontents, to use Dallas's preferred term) wanted to destroy the Republic's constitutional balance. At best they sought "the agency of a convention to organize a political millennium upon the ideal scale of human perfectibility." But the Quids only wished to make their views known. They did not want to dictate to their "fellow citizens" during "the crisis at which your decision is required upon the great questions."⁴³

In his pamphlet Dallas identified explicitly the Quids' worst fears: that the majority would dictate the acceptable use of property. Successful citizens would forever live in fear of their envious neighbors' irrational prejudices. If "men deranged by utopian theories" governed the state, then stable, developmental policies that mobilized available resources and produced a general and shared prosperity would die. What legitimate apparatus, Dallas asked, would replace the Constitution? No sane man who cared for justice and his fellow citizens could lodge exclusive power in "the legislative agents of the people."⁴⁴

Other Quids reinforced Dallas's views. The *Freeman's Journal* insisted that "the present political crisis in Pennsylvania [was] the most important which has occurred since the revolution." The paper constantly

⁴² *Freeman's Journal*, June 11, 12, July 5, 1805. The *Address* is also reprinted in George Mifflin Dallas, *Life and Writings of Alexander James Dallas* (Philadelphia, 1871), 211-33.

⁴³ *Ibid.*, 217, 220.

⁴⁴ *Ibid.*, 221, 225.

reminded its readers that "if the constitution of Pennsylvania falls, that of the United States will follow, and the union is dissolved. . . . The constitution of Pennsylvania [is] the citadel in which rational republicanism will now make its decisive stand." Other Quids were as blunt as Dallas about what they thought was at stake. If Philadelphia Democrats succeeded in defining democracy, "life, liberty, and property [were] in danger of being cast afloat on the boisterous sea of anarchy."⁴⁵

Simon Snyder's supporters tried to distance themselves from the Philadelphia Democrats and abandoned the call for a constitutional convention. But Quids continued to equate opposition to McKean with disrespect for private property and devotion to Duane and Leib. As election day approached the Quids were confident that a vote against McKean was understood to be a vote for the Philadelphia Democrats. Believing that ideas in the *Aurora* intrinsically lacked credibility, and assuming that their efforts had made the election a choice between McKean and the radicals Duane and Leib, the Quids made quite clear what they wanted and expected from the election:

it is of importance not only that the old Governor be carried at the present time, but that the force in his favor be a great majority; because in proportion as the malcontents approach their purpose, they will be encouraged to persevere. . . . Should the present Governor be elected with but a small majority, . . . things will go on in the same way; the administration of justice will be kept at a stand, and the public be poisoned by blasts out of doors, and defamation within. . . . Thus at length the object will be accomplished and a revolution brought about. Then we shall see a renovation of all things. Those that stop short will be denounced; it will be necessary to be violent in order to be something.⁴⁶

⁴⁵ *Freeman's Journal*, June 4, 19, July 1, Aug. 15, 19, 31, 1805.

⁴⁶ *Freeman's Journal*, Aug. 3, 1805. Fine examples are *ibid.*, Aug. 30, 31, 1805. To a certain extent this move was tactical. But though there were substantive differences between the Philadelphia Democrats and the Snyderites, both groups were committed to reforms that the Quids feared. The Snyderites supported some form of arbitration. They moved away from a constitutional convention, but they had initially endorsed it, and they left it open whether such a convention would be desirable in the future. Snyderites such as Nathaniel B. Boileau supported (and he indeed managed) the impeachment of the supreme court judges, and were willing to consider allowing the people to ask fundamental political questions in forums where first principles could potentially be reconfigured. Boileau assured Alexander J. Dallas that he had "no intention of throwing up everything into the wind" but it certainly seemed in 1805 that the Philadelphia Democrats would be far more influential in a state governed by Simon Snyder than in one led by Thomas McKean. Only in 1807 did it become manifest that they would not enjoy greater influence. See Boileau to

The Quids were devastated by the election's outcome. McKean, who had carried the state by almost 40,000 votes in 1802, received the slim majority of 4,766. The final tally was 43,644 to 38,878. Though the Quids carried Philadelphia, Philadelphia Democrats delivered Philadelphia County to Snyder. Despite the Quids' efforts, Leib had delivered his constituents. Furthermore, McKean had now been elected to his third consecutive term. He was constitutionally prohibited from running again in 1808. The Quids had spent all their energy equating Simon Snyder with the Philadelphia Democrats, and now Snyder had emerged as McKean's likely successor.⁴⁷

The Quids' worst fears were seemingly realized. It is not surprising that they sought to make as strong a statement as they could when the "blast out of doors" that they had feared occurred. For in November 1805, the month after the election, eight Philadelphia journeymen cordwainers were accused under the common law of conspiracy of combining to raise their wages and gain more control of their craft. The trial of *Commonwealth v. Pullis* had begun.⁴⁸

Dallas, Mar. 25, 1805, Alexander J. Dallas Papers, George Mifflin Dallas Collection (Historical Society of Pennsylvania, Philadelphia). For the initial tensions between the Philadelphia Democrats and the Snyderites, and the rural group's efforts to distance themselves from the Philadelphia Democrats' more extreme demands, see Shankman, "Democracy in Pennsylvania" chap. 8. It is wrong to overemphasize differences between the two groups too early. In 1804 and 1805 most voters identified city and rural opposition to McKean as part of one reform coalition. This coalition was one of the most radical movements up to that point in the nation's history. Its real success in 1805 shows how dissatisfied most Pennsylvania Jeffersonians were with the Quids. On the vitality of the reform movement in these early years, see John M. Murrin, "Escaping Perfidious Albion: Federalism, Fear of Aristocracy, and the Democratization of Corruption in Post Revolutionary America," in Richard K. Matthews, ed., *Virtue, Corruption, and Self-Interest: Political Values in the Eighteenth Century* (Bethlehem, PA, 1994), 103-47.

⁴⁷ Higginbotham, *Key Stone of the Democratic Arch*, 99.

⁴⁸ Legal historians have thoroughly researched this first in a series of labor conspiracy trials that ended with *Commonwealth v. Hunt* in 1842. Fine discussions include Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge, UK, 1993), chap. 4; Robert J. Steinfeld, "The Philadelphia Cordwainers Case of 1806: The Struggle over Alternative Legal Constructions of a Free Market in Labor," in Christopher L. Tomlins and Andrew J. King, eds., *Labor Law in America: Historical and Critical Essays* (Baltimore, 1992), 20-43; and Wythe Holt, "Labor Conspiracy Cases in the United States, 1805-1842: Bias and Legitimation in Common Law Adjudication" *Osgoode Hall Law Journal*, 22 (Winter, 1984), 591-663. Ian M. G. Quimby provides a good general discussion in Quimby, "The Cordwainers Protest: A Crisis in Labor Relations," *Winterthur Portfolio*, 3 (1967), 83-101. Essential information on the material world of the journeymen is provided by Billy G. Smith, *The "Lower Sort": Philadelphia's Laboring People, 1750-*

Quids had a real presence at the trial. The presiding judge, Recorder Moses Levy, was a leading member of the Society of Constitutional Republicans. During the campaign the *Aurora* had denounced him for his Quid politics.⁴⁹ Though the two prosecuting attorneys, Joseph Hopkinson and Jared Ingersoll, were Federalists, Ingersoll was a close friend of Alexander Dallas, and his son, Charles Jared, was Dallas's political ally.

Both prosecution and bench saw the trial as a crucial chance to respond to the Philadelphia Democrats. Their need to respond certainly did not cause the trial. Tensions had been building between masters and journeymen since at least the early 1790s. But Quid fears about the Philadelphia Democrats shaped how the prosecution and bench used this opportunity to speak publicly on the pressing matters of the day. Levy and the prosecutors hoped to use the trial to establish the right of the independent judiciary to decide crucial questions about the nature of the economy precisely when they feared that they were losing control of the popular branches of government. And they were losing this control at a time when their enemies sought to move decision-making about those economic questions into a more popular realm. This fear had not been present in the 1790s, which explains, in part, why the first labor conspiracy trial in the United States happened where and when it did.⁵⁰

It is also likely that Levy, Ingersoll, and Hopkinson believed that the accused journeymen were Philadelphia Democrats. The journeyman society led by the accused put the Philadelphia Democrats' theories into practice. Majority will was law, and once it was declared the minority was expected to obey the majority's declaration. Much testimony in the trial concentrated on the cordwainers' efforts to force individual journeymen to strike against their will. Probably most frightening, the *Aurora* published the defense of their actions written by the accused cordwainers, and printed supportive editorials. It was the only newspaper to do so.⁵¹

1800 (Ithaca, 1990); and esp. Sharon V. Salinger, "Artisans, Journeymen, and the Transformation of Labor in Late Eighteenth Century Philadelphia," *William and Mary Quarterly*, 40 (Jan. 1983), 62-84. The discussion below suggests that the trial's significance for contemporaries is likely to be misunderstood if it is not placed in the acrimonious political context that did much to shape how it was conducted.

⁴⁹ *Freeman's Journal*, Aug. 20, 1805; *Aurora*, Aug. 19, 1805.

⁵⁰ Salinger, "Artisans, Journeymen."

⁵¹ *Aurora*, Nov. 28, 1805. In Ronald Schulz, *The Republic of Labor: Philadelphia Artisans and the Politics of Class, 1720-1830* (New York, 1993), Schultz shows convincingly that Duane's *Aurora* supported the journeymen cordwainers. For an opposing view, see Richard Twomey, *Jacobins and Jeffersonians: Anglo American Radicalism in the United States* (New York, 1989).

In their opening remarks Ingersoll and Hopkinson showed that the journeymen were not their only opponents. They denounced the *Aurora*, which had “teemed with false representations and statements of this transaction” and so endeavored “to poison the public mind, and obstruct the pure streams of justice flowing from the established courts of law.”⁵² The prosecution was reminding the court that if Philadelphia Democrats had their way “established courts of law” would have little power to decide cases such as this one.

The prosecution concentrated on the two main Quid themes. First, it spent a great deal of time detailing the entrepreneurial behavior of the master cordwainers, and arguing that their energetic activity improved society and created opportunities for all. Second, it sought to demonstrate that the gubernatorial election had been definitive. The issues at stake in the trial would be decided in a law court by an independent judge. And if that judge did not commit a crime, he was unimpeachable and beyond the reach of the legislature and the citizenry. Only such judges, strengthened by judicial review and able to interpret the common law as they saw fit, could protect men such as the master cordwainers and so shepherd Americans towards the glowing future they deserved.⁵³

Ingersoll and Hopkinson insisted that the journeymen were guilty under the common law of criminal conspiracy. But having asserted this claim, they spent much more time defending the common law as sound law from which judges could draw reliable precedents. The cordwainers’ defense attorneys, Caesar A. Rodney and Walter Franklin, never once challenged this use of the common law. They did insist that only those common law decisions which Pennsylvanians had decided in 1776 to incorporate into their legal codes be used to decide cases in the state. But Rodney carefully separated his defense from the position staked out by the Philadelphia Democrats. For he stated that at the time of the American Revolution much of the common law had been “declared binding and obligatory.”⁵⁴ The question, according to Rodney, was whether that portion of acceptable common law could negate the right to assemble. The defense maintained that it could not. But Rodney and Franklin had no complaint about that portion of the common law which Pennsylvanians had decided to adopt.

⁵² John R. Commons, ed., *A Documentary History of American Industrial Society* (10 vols., New York, 1958), III, 67.

⁵³ The presentation of the master cordwainers’ entrepreneurship and the benefits of their activity are *ibid.*, 77, 86-87, 99-101, 105-06.

⁵⁴ *Ibid.*, 188-89.

The prosecution ignored the subtlety of the defense's arguments. Ingersoll reacted as if the common law itself had been attacked, as indeed it had been unceasingly for the previous four years. "Whence comes this enmity to the common law," he queried, "it is of mushroom growth." But like Rodney, Ingersoll defended only "the common law, as adopted and practiced in Pennsylvania. . . ."⁵⁵ Rather than respond to the defense, with which its disagreements, though real, were much less stark, the prosecution used the trial to continue the greater debate that had convulsed Philadelphia and that surrounded the trial. Ingersoll was determined to make the trial a contest between the entrepreneurial and legal-political vision of the Quids and the beliefs of the Philadelphia Democrats.

Levy most clearly articulated Quid beliefs. The presiding judge turned the trial into a denunciation of the Philadelphia Democrats as well as a prosecution of the journeymen. Though the defense was at pains to show that it wanted no alterations in the legal system, Levy had reason to fear for the survival of that system. Though they were not germane to the issues before him, the recorder castigated efforts to undermine the independent judiciary. The independent judiciary, Levy insisted, had to be preserved, for "the moment courts of justice loose their respectability [,] from that moment the security of persons and of property is gone." It was his duty, Levy maintained, to remind Pennsylvanians of this fact, for lamentably "much abuse has of late teemed upon its [the law's] valuable institutions."⁵⁶ Then, responding to no statement ever espoused by the defense, Levy provided an articulate rejection of Philadelphia Democrats' ideals. "The acts of the legislature," he announced,

form but a small part of that code from which the citizen is to learn his duties, or the magistrate his power and rule of action. These temporary emanations of a body, the component members of which are subject to perpetual change, apply principally to the political exigencies of the day.

It is in the volumes of the common law we are to seek for information in the far greater number, as well as the most important causes that come before our tribunals. That individual code has ascertained and defined, with a critical precision, and with a consistency that no fluctuating political body could or can attain, not only the civil rights of property, but the nature of all crimes from treason to trespass. . . .⁵⁷

⁵⁵ *Ibid.*, 222, 223.

⁵⁶ *Ibid.*, 224, 232.

⁵⁷ *Ibid.*, 231-32.

The common law and the courts that administered it were more capable of preserving fundamental rights than the ephemeral and popular legislature. Thus Levy instructed the jury to decide guilt or innocence based on that law "regardless of what the world may think . . . or popular abuse." If fundamental questions were decided other than by strict application of the law, then "numbers would decide all questions of duty and property, and causes would be hereafter adjudged, not by the weight of their reason, but according to the physical force of the parties charged." Once this state of affairs came to pass "the rights, the liberties and privileges of man in society can no longer be protected within these hallowed walls [of the court room]." Levy's passionate remarks were not mere rhetoric. He feared that his might be the last chance to prevent the pandemonium of Dallas's "political millennium."⁵⁸

For the Quids to build their democratic order the journeymen had to be guilty. Levy instructed the jury to find them so, and the jury promptly did. The journeymen's guilt was crucial in its own right. But it was all the more essential because in Philadelphia in 1806 disciplining the journeymen could not be separated from Jeffersonian arguments about the true meaning of democracy and the extent to which popular bodies could determine fundamental law. Levy hoped to equate finding the journeymen guilty with a defense of the independent judiciary and the maintenance of its jurisdiction over questions of property rights, contract, and, by extension, labor relations. To do so, Levy believed it necessary to make the trial a continuation of the arguments about democracy within the Philadelphia Jeffersonian party.

By 1806 Philadelphia's Jeffersonian party had splintered badly. Participating in mainstream Jeffersonian politics had forced fundamental differences between party members to become the subject matter of everyday political discussion. Increasingly, Philadelphians were realizing how unlikely it was that a stable society could emerge whose politics was continually concerned with pursuing the full implications of fundamental disagreements. Yet the experience of the Quids showed that they were unable to resolve the situation. To a great extent Philadelphia Democrats were eminently discreditable. They challenged an orthodoxy of constitution making and the separation of powers, both of which had achieved real legitimacy during the 1780s and had been enshrined in Philadelphia in 1787. Philadelphia Democrats suggested rather murky and nebulous alternatives to existing structures. Most importantly, they never success-

⁵⁸ *Ibid.*, 226.

fully dealt with the nagging question of how to ensure individual rights if the community or the majority could declare fundamental law.

But the Quids, generally wealthier, better educated, holding most of the prominent public positions, and enjoying the support of approximately two-thirds of the state's newspapers, had barely beaten Snyder, the relatively obscure son of a tanner. They were only narrowly victorious though they ran a member of the Stamp Act Congress, a signer of the Declaration of Independence, and easily the most prominent Jeffersonian in the state. Quids had skillfully and successfully equated Snyder with the Philadelphia Democrats, yet they had barely beaten him. In the end, failing to receive votes from the majority of Jeffersonians, they had relied on Federalist support to swing the election.⁵⁹

Ultimately, the Quids could not lead a long term political movement over the new democratic terrain. When the gubernatorial election of 1805 revealed how tenuous was the Quids' control of political power, they rushed to declare their core beliefs in a venue protected from the majority of their party. What the democratic surge in Philadelphia would come to mean was not yet clear. But everybody realized that the position to which the Quids finally had retreated was untenable.⁶⁰

Nevertheless, the Quids achieved something momentous. During Jefferson's first term they realized that in Philadelphia crucial governing precepts, even the emerging political science of constitution making and proper constitutional structure, did not rest on a stable consensus and could not be taken for granted. The Quids were not a cabal consciously seeking a political structure that would make Philadelphia, Pennsylvania, or the United States safe for capitalism. Rather they were committed Jeffersonian activists. They feared that if democracy came to mean the most extreme possibilities of that term, then their republic would be as unstable and short-lived as those of ancient and, sadly, recent history.

But the Quids responded to a particular set of criticisms. These criticisms came from people who were concerned that an insufficiently democratic society allowed an unaccountable minority to create and sanction unequal economic and social relationships. Philadelphia Democrats' answer was for a great deal more democracy. Thus when arguing about democracy in Jeffersonian Philadelphia one had to state a position about emerging capitalist social relations. Quids insisted that the

⁵⁹ Higginbotham, *Key Stone of the Democratic Arch*, 100; Albert Gallatin to Jean Badolet, in Henry Adams, *The Life of Albert Gallatin* (Philadelphia, 1879), 331.

⁶⁰ Their mistakes and difficulties are discussed in detail in Shankman, "Democracy in Pennsylvania," chaps. 6-7.

political structure was legitimate that allowed Levy to play such a significant role in determining the cordwainers' fate. Levy's position and power, and his defense of his position and power, were inextricably tied to his defense of the master cordwainers and the dynamic capitalist economy they were doing so much to create.

Quids realized that during Jefferson's presidency a great deal of political activism and intellectual labor was necessary in order to conceive and articulate what are far too often taken for granted as essential and generally consensual American values. In Jeffersonian Philadelphia the Philadelphia Democrats initially conceived democracy as a means to decide fundamental political and economic questions in popular and accountable political realms. The driving force behind this demand was the desire for constant accountability, and that included the accountability of master cordwainers to journeymen cordwainers. After the trial Philadelphia Democrats continued to make their extreme demands as vociferously.⁶¹

Quids did not have the luxury of knowing that they were much closer than their enemies to what became the American mainstream. This luxury was denied them because that mainstream was only just being constructed. Indeed, the Quids' only partially successful efforts constituted some of the first halting steps toward establishing it. In 1806 it was by no means clear that the Quids would have history on their side. Yet, undeniably, modern America arose. And as it did it more closely resembled, though by no means completely, the future the Quids had hoped for. Exactly how Philadelphia Democrats were made marginal, and how democracy and capitalism in Pennsylvania were bound together, is an unpublished though not untold story.⁶²

Quids began this process of seizing democracy from the Philadelphia Democrats. In Jeffersonian Philadelphia a great battle took place over the desirability of democracy and the institutions without which many feared that private property, free labor, and capital accumulation could not survive. This battle was the stuff of Jeffersonian politics, which is to say it formed the context and issues of mainstream political debate. The first suggestions of what would later become core American beliefs were made in a context of acrimonious political conflict and social and economic struggle. It was the lack of consensus in the neighborhoods of Philadelphia, and the genuine threat posed by the Philadelphia Democrats, that forced Quids to articulate so carefully what were among the first statements

⁶¹ *Ibid.*, chap. 9.

⁶² The Snyderites' effort is the primary theme of *ibid.*, chaps. 8, 9, and epilogue.

of democratic, liberal, capitalist belief.⁶³ Their statements were but one side of a profound—and terrifying—battle within the American mainstream. On the pages of the most widely read newspapers, in the coffee house where Passmore posted his complaint, in the state legislature and the nation's capital where Leib spoke, on the street corners where Philadelphians discussed the issues that surrounded and threatened to overwhelm them, and in the local courtroom where the cordwainers were found guilty, here the battle raged.

⁶³ Support for liberal democratic capitalism in Pennsylvania resulted from profound internal Jeffersonian disagreement. See Stephen Watts, *The Republic Reborn: War and the Making of Liberal America, 1790-1820* (Baltimore, 1987); and Drew R. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (New York, 1989).