

CONVENTIONAL WISDOM: GEORGIA STATE CONSTITUTIONAL CONVENTIONS AND
THE TRANSFORMATION OF NATIONALISM FROM REPUBLIC TO MODERN

AMERICAN STATE, 1777-1877

by

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(Under the Direction of John Inscoe)

ABSTRACT

This study explores the origins and development of a unique American political institution—the constitutional convention. This institutional phenomenon emerged as a symbolic and working tribute to the ideal of popular sovereignty during the American Revolution. Rebellious English colonials did not invent them, but rather were merely the first people to put the idea into practice. The constitutional convention, in fact, had sprung from a complex conflation of political and religious tensions that unfolded beginning in the late medieval period in Europe. It was a mixed product of ancient and modern political ideas that sought reforms in the constitutional relationship between people and their rulers. From its origins during the American Revolution, the constitutional convention was at the heart of American constitutional culture. Its story reveals much about political identity and particular assumptions about constitutionalism in the nation at that historical moment when the South seceded from the Union. In retrospect, these conventions in the South reached the high-water mark of their impact during the secession crisis in winter and spring of 1860-61. Despite sporadic calls for constitutional conventions in the last half century, the institution has retreated from the attentions of American historiography. This retreat that has occurred despite their influence upon the creation, the temporary destruction, and the restoration of the United States within the span of less than a century is unmistakable. They were peculiar constitutional and political organs that involved delegates, as representatives of the sovereign people, charged with revisiting the fundamental principles of governance. As such, they became, at times, catalysts for profound political change. Such access to fundamental change was always a possible threat to the constitutional status quo. Thus, the ideological and practical components of constitution-making made them potentially revolutionary institutional creatures. This study seeks to explain important aspects of the origins, the meanings, the practices, and the eventual decline in importance of the constitutional convention in America as experienced in the history of the state of Georgia.

INDEX WORDS: constitution; convention; sovereignty; legitimacy; secession; nullification; nationalism, Georgia

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DEDICATION

For Troy E. Jones, Sr. and Bernice Ollie Mattox Jones who always provided me with the safest port in all of life's storms from a grandson who never has and never will fail to admire them and appreciate them.

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INTRODUCTION

THE AMERICAN CONSTITUTIONAL CONVENTION

This study explores the origins and development of a unique American political institution—the constitutional convention. This institutional phenomenon emerged as a symbolic and working tribute to the ideal of popular sovereignty during the American Revolution. Rebellious English colonials did not invent them, but rather were merely the first people to put the idea into practice. The constitutional convention, in fact, had sprung from a complex conflation of political and religious tensions that unfolded beginning in the late medieval period in Europe. It was a mixed product of ancient and modern political ideas that sought reforms in the constitutional relationship between people and their rulers. From its origins during the American Revolution, the constitutional convention was at the heart of American constitutional culture. Its story reveals much about political identity and particular assumptions about constitutionalism in the nation at that historical moment when the South seceded from the Union.

In retrospect, these conventions in the South reached the high-water mark of their impact during the secession crisis in winter and spring of 1860-61. Despite sporadic calls for constitutional conventions in the last half century, the institution has retreated from the attentions of American historiography. This retreat that has occurred despite their influence upon the creation, the temporary destruction, and the restoration of the United States within the span of less than a century is unmistakable. They were peculiar constitutional and political organs that involved delegates, as representatives of the sovereign people, charged with revisiting the fundamental

principles of governance. As such, they became, at times, catalysts for profound political change. Such access to fundamental change was always a possible threat to the constitutional status quo. Thus, the ideological and practical components of constitution-making made them potentially revolutionary institutional creatures. This study seeks to explain important aspects of the origins, the meanings, the practices, and the eventual decline in importance of the constitutional convention in America as experienced in the history of the state of Georgia. Georgia provides a valuable case study of these issues for several reasons. First, its constitutional development was comparatively rapid as it was the last of the original thirteen colonies settled under the British Empire. There were only forty-three years of colonial culture and governance in the colony before America declared independence. As a paternalistic endeavor supported by British philanthropists, the colony began as an experiment in social reform. According to one historical observer, it was “England’s most ambitious colonial experiment in the century of revolution,” less religious or capitalistic in design than other colonial settlements.¹ The political and social beginnings of the Georgia colony were often contentious and largely followed the personal ambitions of its moral and military leader, James Edward Oglethorpe. As a result, its constitutional development followed a particularly slow, often regressive, path, which delayed any local legislative power until 1752.² Such late legislative development was in sharp contrast to the well-established models already in place in most of the other colonies. Georgia was also a latecomer to the American Revolution. A strong conservative element and a favorable relationship with its governor, James Wright, had prolonged the colony’s initial cooperation with other colonies in opposition to England. A strong radical element did emerge but lacked sufficient momentum early. This makes it all the more fascinating that Georgia

¹ Phinizy Spalding and Harvey H. Jackson, “Introduction,” in *Oglethorpe in Perspective: Georgia’s Founder after Two Hundred Years* (Tuscaloosa: University of Alabama Press, 1989), 3.

² Trevor Richard Reese, *Colonial Georgia: A Study in British Imperial Policy in the Eighteenth Century* (Athens: University of Georgia Press, 1963), 7.

was among the first to introduce a formal American state constitution, however crudely constructed.

Another element that makes Georgia a unique subject for inquiry was its experiences as a Confederate state. It was one of only four of the original colonies to secede from the Union along with Virginia, North Carolina, and South Carolina. More conservative Georgians successfully moderated southern inclinations toward secession during the crisis that faced the Union in 1850, yet, in little more than a decade later, many of these same men radically embraced secession in 1861. The state conventions held in both years were examples of the potential revolutionary powers afforded to such assemblies by many constitutional observers at the time. That these two conventions led to drastically different results makes Georgia all the more interesting as an example of the importance of conventions in constitutional history.

Constitutional conventions in Georgia began as a forum for legitimizing constitutional reform, but they evolved during the antebellum period as a means of defining the state's role and presence in the Union as well. Consequently, at a very fundamental level, these conventions not only informed political identity at multiple dimensions, but also were state-building institutions. In the narrative that follows, state-building is a term that holds various meanings. First, it refers to the ideological and governing infrastructures required to develop a recognizably autonomous organized political and territorial entity that may be referred to as a nation-state. Secondly, the term also characterizes the processes involved with Georgia's development as a state within the United States. Sometimes these were complementary developments. Other times, such as during the secession crisis, they were antagonistic developments whereby Georgians retreated from its commitments to the Union and asserted their complete autonomy as a nation-state. The constitutional tension between Georgia's identity as a sovereign nation-state and its role as a

subordinate entity of the United States is a crucial theme throughout this work. Nationalism, consequently, had implications beyond the mere creation of the United States as a nation. It embodied the transformation of each colony into a state as well as its continuing relationship to the union of states.³

As this study will demonstrate, the creation of constitutional conventions in Georgia and their continued importance until the Civil War was the product of a negotiation of ideas and practical circumstances in the state beginning in the American Revolution.⁴ Whereas political identity in the state, as in much of the South, had become strained by the mid-nineteenth century, and had complicated loyalties to the state and fidelity to the Union, the secession conventions sought to resolve these conflicting loyalties. The Civil War, however, reversed the radical course that the secession conventions had begun and ended any practical ambiguities over whether supreme loyalty was due to the state or to the Union. Moreover, the North's military victory effectively ended any pretext of a state's constitutional power to revoke its federal relationship to

³ The idea of a state subjected to a larger political entity has been largely confined to the United States and one in which developed over time. In fact, I argue that the Civil War ultimately decided any lingering ambiguities of the subordinate character of the "state" to the federal government for the United States. The particularism of this use in America is noted by the political scientist Walker Connor who has argued that "the interutilization of the words state and nation" is common. According to Connor, there is a vital distinction between them. "The state," he says, "is the major political subdivision of the globe." On the other hand, he characterizes the nation as "intangible," a "psychological bond that joins a people and differentiates it, in the subconscious conviction of its members, from all other people in a most vital way." Accordingly, it appears to me, that Georgia, upon establishing its first constitution and in a very revolutionary way became both, a *state* and a *nation*, given Connor's definitions. It was certainly a separate, autonomous political entity at least until the Articles of Confederation went into effect. In addition, the people of Georgia did have a "psychological," as well as social and political, affinity to the state that it did not readily have for the colonies as a collective. Therefore, I maintain, even if temporarily, Georgia, as was the case especially with the other colonies which had already had longer established particular identities than Georgia, first became a state and a nation simultaneous with its first constitution. See Walker Connor, "A Nation is A Nation, is a State, is an Ethnic Group, is a..." in *Ethnic and Racial Studies*, Vol. 1, No. 4 (1978), 379-388.

⁴ For a similar discussion of the negotiation between ideas and institutions in American political development see Roger M. Smith, "Which Comes First, the Ideas or the Institutions" in Ian Shapiro, Stephen Skowronek, and Daniel Galvin, *Rethinking Political Institutions: The Art of the State* (New York: New York University Press, 2006), 91-113.

the nation. Thus, the three Georgia conventions after the war, lacked the aura of constitutional supremacy that they had presumed in the decades earlier.

Historians have long recognized many of the important and peculiar features of the American constitutional convention process. From John Alexander Jameson's first attempt at a scholarly investigation of the institution in the wake of the Civil War to the modern scholarship of historians such as Gordon S. Wood, the field has been a crowded one.⁵ So much, in fact, has been written that one could ask what could be new to say. As it turns out, there remains much to say on constitutional conventions. Previous studies fall generally into one of three categories. One group has explored the convention as in a decidedly legal framework. Studies by Jameson, Walter F. Dodd, and Roger Sherman Hoar framed the subject as a distinctively legal curiosity. Another approach, indicative of scholars such as Wood, Willi Paul Adams, and Marc Kruman, has placed conventions in a broader historical context. In these contexts, conventions were merely one of a myriad of the interesting facets among the constitutional and ideological developments in American history. In the third category of scholarship, however, historians have focused on a particular convention or set of conventions in a particular era. Conventions in Virginia and the secession crisis have been especially prominent in this category of scholarship.⁶ There have been, however, no studies that examine all conventions in a single state. This alone justifies such a study.

⁵ A notable sampling includes John A. Jameson, *A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding* (Chicago: Callaghan and Company, 1887); Walter F. Dodd, *The Revision and Amendment of State Constitutions* (Baltimore: Johns Hopkins Press, 1910); Roger Sherman Hoar, *Constitutional Conventions: Their Nature, Powers, and Limitations* (Boston: Little, Brown, and Company, 1917); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969); Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Chapel Hill: University of North Carolina Press, 1980); Marc W. Kruman, *Between Liberty and Authority: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997); Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York: Knopf, 1972).

⁶ For instance, see Dickson D. Bruce, Jr., *The Rhetoric of Conservatism: The Virginia Convention of 1829-30 and the Conservative Tradition in the South* (San Marino: Huntington Library by the Kingsport Press, 1982); Wythe Holt,

There are other reasons for the importance of this present study. Exploring the origins and decline of constitutional conventions in one state adds a new dimension to the historiography of constitutional and ideological developments in American history. The present study ties the idea of constitutional conventions to the concepts of sovereignty and legitimacy.⁷ It attempts to examine how these concepts informed the creation of conventions as a state-building mechanism.⁸ By

Virginia's Constitutional Convention of 1901-1902 (New York: Garland Publishing, 1990). For period studies see Robert P. Sutton, *Revolution to Secession: Constitution Making in the Old Dominion* (Charlottesville: University Press of Virginia, 1989). For a comparative examination of conventions during a specific event see Dwight Lowell Dumond, *The Secession Movement, 1860-1861* (New York: Macmillan Company, 1931); Ralph A. Wooster, *The Secession Conventions of the South* (New Jersey: Princeton University Press, 1962). Also see Thomas Webster Richey, *The Virginia State Convention of 1861 and Virginia Secession* (University of Georgia PhD Dissertation, 1990).

⁷ The idea of political sovereignty has a complex and, in some ways, an elusive history. This study has sought to highlight the implications and consequences of this complicated idea in the history of Georgia conventions. However, to contain such a theoretically pregnant idea within such a limited scope is at best a daunting task, as other scholars have indicated. One of the reasons for this challenge has been the various contexts in which the idea of sovereignty evolved from the Middle Ages to modern political societies. In Chapter 2, I attempted to delineate this evolution as it most related to American history while, at the same time, trying to place its earliest conceptions into the broader contexts of Western political developments. By the mid-nineteenth century, American politicians began appropriating the term popular sovereignty to interests and aims specific to the contemporary problems facing the nation, thus removing it from its abstraction as an organic republican principle. For examples of the historiography of the complexities of sovereignty and popular sovereignty see Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton & Company, 1988); Paul K. Conkin, *Self-Evident Truths: Being a Discourse on the Origins & Development of the First Principles of American Government—Popular Sovereignty, Natural Rights, and Balance & Separation of Powers* (Bloomington: Indiana University Press, 1974); Michael Kammen, *Sovereignty and Liberty: Constitutional Discourse in American Culture* (Madison: University of Wisconsin Press, 1988); and Daniel T. Rodgers, *Contested Truths: Keywords in American Politics Since Independence* (New York: Basic Books, 1987).

⁸ The view of conventions as a state-building mechanism is not novel. David A. Bell has noted that nationalism is a combination of sentiment and actions that propel a community to unite and regenerate itself. Linda Colley has shown how British nationalism was not only a product of the opposition against France and America, but it was also the political and economic infrastructures and resources collectively brought to bear collectively in those oppositions. Liah Greenfeld also has made similar claims in her comparative study on nations and nationalism. For a more capitalist view of this, see Eitienne Balibar, "The Nation Form: History and Ideology" in Eitienne Balibar and Immanuel Wallerstein, ed., *Race, Nation, Class: Ambiguous Identities* (London: Verso, 1991), 86-106. Mona Ozouf, *Festivals and the French Revolution* (Cambridge: Harvard University Press, 1988); David Waldstreicher have demonstrated the importance of American political practices and rituals to nationalism in fundamental ways that included those repetitive, even celebratory, functions and activities condoned or supported by governing authorities. Emory Thomas has argued that Confederate nationalism did not take hold until the war was well under way and under the influences of political and military infrastructures. See David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997). I argue that the creation of the constitutional convention (specifically in Georgia) initially conceived during a conflict with the "Other," in this case the British (c.f. Colley), and its ritualized and institutionalized, though often inconsistently, practices contributed to the constitutional and political developments of Georgia while it also defined its relations with the nation at large. It was a state-building mechanism, therefore, in the most theoretical and practical use of the term.

focusing on a single state, Georgia, it reveals the complex events that brought about institutionalizing popular sovereignty in the early years of the American Revolution and how the convention was the symbol and practice of that institutionalization until the Civil War undermined its preeminent role in the states. Despite these ambitious goals, this study does not claim to be the definitive study of all state constitutional conventions. It does propose, however, a model for future works on the subject. Further scholarship on other states will someday provide a basis for a much-needed comprehensive comparison of all state conventions over time. For the moment, this work offers but a modest beginning.

Constitutional conventions were the political mechanisms that formed the American Union in 1787-1788, split the Union in 1860-1861, and finally restored the Union during Reconstruction. This central fact makes them historically significant and deserving of more scholarly attention. Like all political institutions, they did not develop out of thin air. They were the product of centuries of evolving ideas and ambitions about the fundamental nature of power relations between people and their government. As they emerged in the latter decades of eighteenth century, they became a vital component of American nationalism and a reflection of contemporary interpretations of sovereignty and legitimacy.⁹

⁹ Legitimacy is another concept, like sovereignty, that was one of the primary ideological underpinnings of the convention idea. For example, Willi Paul Adams has noted, ““A new sense of legitimacy had to be created by satisfying the principle of popular sovereignty as well as the basic demand of constitutionalism: the limitation of the power of those in public office by a set of rules unalterable by the rulers.” See Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Chapel Hill: University of North Carolina Press, 1973; rev. 2001), 19. Legitimacy informed the idea of political consent without force or coercion. The effectiveness of a governing authority over a political jurisdiction can be measured by the legitimacy (or perception of legitimacy) of that authority among its constituents. See Reinhard Bendix, *Kings or People: Power and the Mandate to Rule* (Berkeley: University of California Press, 1978), 17; Michael J. Braddick, *State Formation in Early Modern England, 1550-1700* (Cambridge: Cambridge University Press, 2000), 68-70. For a legal view of legitimacy and constitutionalism see Walter Dellinger, “The Legitimacy of Constitutional Change: Rethinking the Amendment Process” in *Harvard Law Review*, Vol. 97, No. 2 (Dec., 1983), 386-432.

In his study of constitutional conventions, John A. Jameson stated, “To any society, far enough advanced in civilization to demand as well the ascertainment as the protection of its civil and political rights, no institution could be of more interest than one charged thus with the *role* of both founder and restorer of its social machinery.”¹⁰ These peculiar constitutional mechanisms had both stabilizing and destabilizing effects on American political developments between the American Revolution and the Civil War. They forged a national identity in the early republic and sparked sectional tensions in the antebellum period. The two major arguments of this study are that the American constitutional convention first emerged as a reflection of the commitment to certain ideological political values and, secondly, that, during the nineteenth century, their institutional power effectively ended with northern victory in the Civil War.

From their outset in the American Revolution, continental patriots used various forms of conventions as a means of establishing and legitimizing self-rule by provincial authority in the newly independent states. Historian Gordon S. Wood has stated that the creation of these new governments was a defining moment of the revolutionary movement.¹¹ By the mid-nineteenth century, however, some states had used the convention as a means of checking federal encroachment on state rights. In the South, particularly, those rights were closely associated with the preservation of slavery.¹² Hence, the constitutional convention transformed from a method of aligning local and national constitutional principles to a potential means for disunion. Conservative leaders in the South utilized them as bargaining chips in a high-stakes game of partisan and sectional politics. It was a gamble lost in the tragic events of the Civil War.

¹⁰ John A. Jameson, *A Treatise on Constitutional Conventions*, 2.

¹¹ Wood, 128-132.

¹² See Dumond, 3-7.

The genesis of these conventions during the radical transition from colonies to American states owed much to contemporary constitutional ideas as well as to the historical patterns and traditions of the self-governing experience in the seventeenth and much of the eighteenth centuries. Revolutionary Americans were the beneficiaries of a grand historical array of theories, concepts, and practices on government, which had become more widely available in the post-Gutenberg print culture.¹³ This was evident in the first state constitutions.¹⁴ Republican and liberal ideas, Enlightenment discourse, interpretations of sovereign power, and the development of American nationalism had profound influences on the revolutionary mind and the constitution-making process in the late eighteenth century.

Legal historian Christian G. Fritz has argued that American views of constitutionalism, sovereignty, and legitimacy before the Civil War were complex and had important consequences on certain events in the decades following the American Revolution. Written constitutions developed out of the Revolution as a means of expressing the people's sovereign will over the forms and structures of their governance. A debate emerged, according to Fritz, over the limitations of that sovereign will once a government had been established. One view was that there were no limitations and, therefore, the people in their sovereign capacity could make and unmake constitutional arrangements as they desired. The counter position argued that once the sovereign people created a government and its fundamental rules and principles, they were bound by the processes and procedures fixed by them. These competing visions of constitutionalism and

¹³ For a valuable discussion of the importance of print to colonial Americans, see Trevor Colbourn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Chapel Hill: University of North Carolina Press, 1965), especially Chapter 1: "History and the Eighteenth-Century Colonist." For a view of the integration of ideas to the American Revolutionary effort, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967; reprint 1992), 19.

¹⁴ See Leach, xviii; Willi Paul Adams, especially Chapter IV: "'Republic' and 'Democracy' in Political Rhetoric" and Chapter V: "Forms versus Principles of Government: Harnessing Enlightenment Ideas to Anglo-American Institutions."

sovereignty subsequently affected questions of legitimate power and authority. The limitless view of sovereignty, as Fritz has noted, “lost sway only after the Civil War.” Until then, however, the fullest expression of this view was the constitutional convention. Its legitimacy rested upon whether the people, as the sovereign, sanctioned the convention.¹⁵

What are constitutional conventions? At one level, the answer is simple. Their basic premise, indeed, is uncomplicated. Constitutional conventions were processes first used by the American states during the Revolution to establish and amend their state constitutions. As such, they were nation-building mechanisms in that the delegates to these conventions sought to construct autonomous political entities independent of Britain and other states. Over time, they evolved into formal gatherings of specially elected delegates charged with writing or amending those state constitutions and became the model for the Philadelphia Convention in 1787. It was a process purposefully distinct from the routines of day-to-day governance and normal legislative activity. Behind this simplistic understanding, however, constitutional conventions have undergone a dramatic transformation throughout American history. Their centrality to state constitutional culture and their impact on national crises made them potentially the most powerful of American political institutions.

The constitutional convention, as the institutional voice of the sovereignty of the people, was the source of all constitutional power, establishing the structural framework and political responsibilities of government in the states and the nation. Political legitimacy was at the core of

¹⁵ Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge: Cambridge University Press, 2008), 2-6, 33. Fritz also has proposed that during this period the people could act in three separate constitutional roles. They could act in their capacity as the sovereign whereby they could create, amend, or void a constitution without deference to any processes or authorities. Secondly, they could assume the role of “the ruler” in which they monitored and controlled government through mechanisms such as recurrent or frequent elections. Finally, they could act merely as the subjects of the government which they had created. See Fritz, 6-7.

the institution. A decidedly Whiggish distrust of governing institutions, inherited ironically from England, a frontier sense of independence, and British intrusions into the American legislative assemblies made legitimacy a preeminent concern during the Revolution.¹⁶ The convention idea spread throughout the colonies in the revolutionary era and became an important tool in the nation-building process.¹⁷ Despite the hundreds of state constitutional conventions assembled throughout American history, there has only been one convened at the federal level. Both are testaments to their importance, though in different ways. The states resorted to them frequently and often instead of their normal legislatures to address matters which they considered fundamental in principle, whether that principle was local in matter or relative to federal relations. On the other hand, the single federal convention had remained the preeminent constitutional moment in American history. Had secession succeeded, that importance might have been reversed.

The term “convention” has had its own history and demonstrates the ambiguities associated with the development of constitutional conventions. The historian John Franklin Jameson, nephew to John A. Jameson, has explored the meanings of the term during the eighteenth century.¹⁸ Its earliest usage generally referred to an assembly or meeting of political activity apart from officially sanctioned bodies. In the seventeenth century, the English often associated it with the convening of Parliament without sanction by the monarch.¹⁹ Even in America, contemporaries of Bacon’s

¹⁶ Elmer E. Cornwell, Jr., “The American Constitutional Tradition: Its Impact and Development” in Kermit L. Hall, Harold M. Hyman, and Leon V. Sigal, *The Constitutional Convention as an Amending Device* (Washington: American Historical Association and American Political Science Association, 1981), 1-36. For the Whig tradition of political thought see Caroline Robbins, *The Eighteenth-Century Commonwealthmen* (Cambridge: Harvard University Press, 1959); Colbourn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Chapel Hill: University of North Carolina Press, 1965); and Gordon Wood, *The Creation of the American Republic*.

¹⁷ Further discussed in Chapter 1.

¹⁸ See John Franklin Jameson, “The Early Political Uses of the Word Convention” in *The American Historical Review*, Vol. 3, No. 3 (April, 1898), 477-487.

¹⁹ *Ibid.*, 479-480. Also see Wood, 311-317.

Rebellion in 1676 noted that one of the early organizing meetings of the rebels had met in a “convention” to formalize their demands.²⁰ In 1719, South Carolina’s lower assembly called themselves a “Convention” because they believed their elections had been improper and, therefore, could not meet legitimately as an official assembly.²¹ Consequently, broadly stated, the term designated a meeting of elected representatives without any legitimate political sanction, but which nevertheless conducted certain official governmental activities.

The constitutional convention was an idea made plausible by the American Revolution. Its idea, however, had been brewing among the colonists long before the crisis with the British. Since the seventeenth century, colonial Americans were sensitive to British meddling in their political affairs without invitation and had engaged in a long tradition of resistance against English imperial policies disagreeable to them. It was a characteristic evident in episodes such as Bacon’s Rebellion and the Glorious Revolution, whereby a discontented segment of the population resorted to violence against the established royal government in the colonies. A bold, even brazen, rebelliousness always existed just beneath the surface of American relations with the British Empire. This was clear in Samuel Adam’s thesis for his Harvard Master’s Degree in 1743, entitled “Whether it be lawful to resist the Supreme Magistrate, if the Commonwealth cannot be otherwise preserved.”²² As the title suggested, Adams, at an early age, explored theories and justifications for maintaining legitimate governing authority, in part to obtain a certain degree of political autonomy from certain strictures of English authority. This theorizing about fundamental and natural rights

²⁰ Ibid., 478.

²¹ Ibid.

²² The text has not survived but references to it are in various biographies. See John C. Miller, *Sam Adams: Pioneer in Propaganda* (Stanford: Stanford University Press, 1936), 15-16; William V. Wells, *The Life and Public Services of Samuel Adams, Being a Narrative of his Acts and Opinions, and of his Agency in Producing and Forwarding the American Revolution with Extracts from his Correspondence, State Papers, and Political Essays* (Boston: Little, Brown, and Company, 1865), Vol. I, 10.

intensified as the relationship with the British government deteriorated after the French and Indian War (1754-1763).

From that point forward, American radicals resisted the British in various committees and conventions, which they used to publicly announce their grievances and demand reparations. In 1765, the situation in Massachusetts became so agitated that James Otis called for a colonial convention of delegates to consult on the new stamp tax. This call resulted in the Stamp Congress of 1765. Using propaganda to incite fear of British tyranny, radicals such as Otis and Samuel Adams convened delegates from the surrounding townships to the Massachusetts Convention of 1768.²³ Such conventions demonstrated the conviction among many Americans that they had a fundamental right, even obligation, to deliberate political action collectively when their official political institutions were suspect of illegitimate or impotent authority.

As American leaders embraced independence, they saw the practical and symbolic utility of constitutional conventions as a reflection of their commitment to legitimate government and popular sovereignty.²⁴ As constitutional mechanisms, their ideological character primarily stemmed from three important streams of influences. First, they embodied particular political values inherited from English constitutionalism. Secondly, they were means of putting in check the political suspicions and distrust among the colonists themselves. Finally, they signified a pragmatic effort to establish a principle-centered and legitimate basis for their new state governments, even under the stress and pressures of war with the British. During the American Revolution, conventions were processes by which leaders of the Revolution in their respective states,

²³ See Richard D. Brown, "The Massachusetts Convention of Towns, 1768" in *The William and Mary Quarterly*, Vol. 26, No. 1, 94-104; John C. Miller, "The Massachusetts Convention of 1768" in *The New England Quarterly*, Vol. 7, No. 3, 445-474; and J. Franklin Jameson, 478. Brown said that this meeting in Massachusetts had "revolutionary significance" because it stood outside of "conventional English norms" and compelled acceptance of the convention as an expression of the people's sovereignty. See Brown, 102.

²⁴ See Wood, 316-319; Adams, *The First American Constitutions*, 61-63.

negotiated their authority and attempted to balance expediency, on the one hand, and legitimacy, on the other.²⁵ By such negotiations, the constitutional convention became one of the primary building blocks of the new nation.

In the late eighteenth century, everything about constitutional conventions was revolutionary. The colonies made a decisive break from the long established tradition of British constitutionalism. They rejected the “ancient constitution” tradition and embraced the principle of written constitutions.²⁶ As we shall see, the reverence afforded written constitutions led to calls for a formal process of writing and establishing them. The first American state constitutions resulted from renegade self-organizing legislative bodies seeking popular support from local communities. In the pursuit of legitimacy necessary to rally such support, revolutionary leaders eventually heeded calls from the people in their communities for a representative assembly elected specially to draft the new constitutions. As this process gained broader recognition, it spread among the new states and became the properly constituted expression of the popular will to make and remake government.²⁷ Through these conventions, the people, not the governing authorities as in the English Parliament, determined the constitutional character of their government.

The first efforts to draft new constitutions began in the winter of 1775-76. By January 1776, the people in New Hampshire were already demanding a special convention for this purpose.²⁸ Nevertheless, the earliest American constitutions were the work of newly elected

²⁵ Wood, 328-332; Adams, 61-63.

²⁶ Wood, 266-282; Also see Dodd, 2. For a discussion of the evolution of the meanings and usages of the ancient constitution relative to American history see John Phillip Reid, *The Ancient Constitution and the Origins of Anglo-American Liberty* (DeKalb: Northern Illinois University Press, 2005). Further discussed in Chapter 2.

²⁷ Wood, 260-305.

²⁸ Dodd, 3-7.

provincial congresses chosen in place of the provincial British assemblies.²⁹ In these early endeavors, the emphasis remained on the content of the constitution rather than on the process of establishing it, especially given the exigencies of war.³⁰ The process, however, became important quickly, as Delaware and Pennsylvania held the first assemblies dedicated solely to the purpose of constitution-making in the fall of 1776.³¹ As the colonies constructed their new governments within the framework of new first principles, each became, in effect, its own nation. Constitution-making was a form of nationalism. It was through such process that the colonists transformed from British citizens into provincial Virginians, New Yorkers, and Georgians before they were ever Americans. Initially, state identity trumped national identity and the state constitutional conventions emerged as the mechanism by which the people determined this identity.

Constitutional conventions did not attract scholarly attention until the Civil War, when the zenith of its practical power was passing. The secession conventions in the South were virtual political revolutions. Northern victory four years later had ensured that these conventions possessed no threat to federal authority and would serve only those constitutional responsibilities within each state in which the federal government had no stake or did not conflict with the United States Constitution. The Civil War might have undermined the institution's practical authority, but scholars continued the debate over its theoretical and ideological importance in America history.³²

²⁹ Wood, 307; Adams, 61-62.

³⁰ New Hampshire, Georgia, South Carolina, Virginia, and New Jersey drafted varied forms of constitutional principles through their provincial authorities by the summer of 1776. Adams, 66-72; Dodd, 4-22; Wood, 331-332.

³¹ Adams, 72-77; Wood, 332-337. This is further discussed in Chapter 3.

³² For examples of these ambiguities and controversies, see Frank J. Sorauf, "The Political Potential of an Amending Convention" in. Hall, Hyman, and Sigal, *The Constitutional Convention as an Amending Device*, 113-130.

The constitutional convention “was to prove the greatest single contribution of America to the theory and practice of politics,” according to the historian Henry Steele Commager.³³ John A. Jameson published the first systematic study of them in 1866, which he had begun during the Civil War. He described them as “the most important and most characteristic of the political institutions of the United States.”³⁴ Walter F. Dodd, another legal scholar and critic of Jameson, underscored the reverence held by early Americans for these conventions. During the American Revolution, for the first time in history, according to Dodd in 1910, a people faced the problem of establishing a written constitution, their social contract, establishing a framework of principles to define their political identity. They achieved this, remarkably, through the constitutional convention.³⁵

John A. Jameson’s work on conventions during and after the Civil War focused primarily on their narrow importance as institutions for making and amending constitutions. With an overt disdain for secession, he attempted to minimize the radical potential posed by the convention process in American history. Jameson’s study appeared immediately following the Civil War and attacked the legitimacy of the southern secession conventions. Despite his repugnance toward secession, he acknowledged the dangerous implications of constitutional conventions in theory, admitting that constitutional conventions possessed “more features that are menacing to republican liberty than any other in our whole political structure.”³⁶ Jameson provides a valuable starting point for understanding the complexity of views toward constitutional conventions. He proposed four

³³ Henry Steele Commager, ed., *Living Ideas in America* (New York: Harper, 1951), 127.

³⁴ J. A. Jameson, 1.

³⁵ Dodd, 3.

³⁶ J. A. Jameson, 2.

distinct “species” of conventions.³⁷ The first one, called the “Spontaneous Conventions,” were meetings that involved engaging the local community in deliberating or protecting various political, religious, social, or economic interests within a community. Peaceful associations in town hall meetings or religious revival meetings were his examples of this type of convention.³⁸ Another type of convention Jameson characterized was one indicative of the representative legislatures and general assemblies as forms of a constitutional convention. Interestingly, he argued that in the routine course of governance, these bodies represented the sovereignty of their constituents, though formally restrained by the established constitution, and, thus, deserved the recognition as a distinctive type of convention.³⁹

Jameson’s third type of convention was problematic for him. The “Revolutionary Convention” was representative of the provincial congresses, committees, and conventions during the American Revolution. On the other hand, it was also representative of the secession conventions, which first inspired his exploration of the topic.⁴⁰ This convention involved extralegal or unsanctioned assemblies seeking to “supplant or supplement the existing governmental organization” in periods of political upheaval.⁴¹ The difference Jameson sought to make between those of the American Revolution and the secession crisis, including the Confederate Convention assembled in Montgomery in 1861, was a difficult one for him. On the one hand, he denied the

³⁷ Ibid., 4-16. Also see J. A. Jameson, “Convention” in *Cyclopedia of Political Science, Political Economy, and the Political History of the United States by the Best American and European Writers*, ed. John J. Lalor (New York: Maynard, Merrill, and Co., 1899), <http://www.econlib.org/library/YPDBooks/Lalor/IIcy301.html>, January 2007.

³⁸ J. A. Jameson, 4-5.

³⁹ Ibid., 5.

⁴⁰ See Dodd, 73 and footnote on 77.

⁴¹ J. A. Jameson., 6.

legitimacy of the secession conventions in the South while he remained sympathetic to those of the 1770s and 1780s that effectively subverted colonial rule by the British.⁴²

Jameson's last category of conventions was the "Constitutional Convention." It was distinctive from his other categories in that it embodied an officially sanctioned quality that the others lacked. He called it an "exotic, domesticated" institution and dismissed the prevalent theoretical "misconception" that it was "above the law, the Constitution, and the government."⁴³ A fundamental characteristic of the constitutional convention, according to Jameson, was its subordination to the legitimately established government; otherwise, it was not a constitutional convention, but a revolutionary convention.⁴⁴ The constitutional convention was simply, in his reasoning, only one branch of the various components of a complex American constitutional culture. In some ways, it was an extension of the normal constitutional processes that was subordinate to "the limits imposed by its commission, by custom, or by the maxims of political prudence."⁴⁵

Jameson clearly pursued an agenda, which sought to discredit permanently the secession conventions. Despite his apparent bias, his work has offered a valuable framework for understanding the broadly conceived idea of conventions. His legalistic analysis remains the most exhaustive study on the subject.⁴⁶ He failed, however, to capture many of the important ideological

⁴² Jameson characterized those provisional conventions of the American Revolution as "necessary" to the effort to "maintain order and tranquility." (113) He spent thirty-six pages (113-148) detailing them and their importance. In contrast, he used only eight pages (243-250) on the principles and acts of secession. To justify this brief attention specifically to the secession conventions, he remarked, "...the view I take of them renders only a few of the leading facts relating to the call of these bodies important." (243)

⁴³ Ibid., 15.

⁴⁴ Ibid., 11, 15.; See Dodd, 77-78.

⁴⁵ J. A. Jameson, 11.

⁴⁶ Hoar's work was similar in scope, but was not legally as extensive. Also, see Dodd, *Revision and Amendment* and Ellis Paxon Oberholtzer, *The Referendum in America. Together with Some Chapters on the Initiative and the Recall* (New York: Charles Scribner's Sons, 1900 and 1911).

forces that informed many of the American conventions from the Revolution through the Civil War and Reconstruction. Moreover, he did not recognize their role in the contentious rise of American nationalism. The constitutional convention, for him, was only a “department” of the government dedicated solely to amending the constitution and not a mechanism for the sovereign people to negotiate and fundamentally define their political, social, and cultural society.⁴⁷ Despite Jameson’s rigid interpretations, the constitutional conventions, particularly in the antebellum South, often acted as though they possessed powers that he was unwilling to admit—a revolutionary potential and that posed a genuine threat to the American Union.

Contrary to his ambitions, Jameson did not have the last word on the history and powers of constitutional conventions. As other interested scholars began to study the phenomenon and contributed to the dialogue, some concurred with Jameson that constitutional conventions were merely temporary expedients to alter or amend state constitutions, limited by mandates from the legislatures and the powers of the federal government. Like Jameson, these observers maintained that the secession conventions were aberrations of legitimate political culture in America that dangerously portended anarchy. For example, Virginia statesman Allen Caperton Braxton, a legal scholar and prominent member of the Virginia Constitutional Convention of 1901-02, also made a distinction between the “Revolutionary Convention” and the “Constitutional Convention.” He called the former an “abnormal” process and the result of “political disease,” while the latter was the “child of law and order” and “legitimate offspring of existing government.”⁴⁸ The secession

⁴⁷ Jameson theorized that the United States had five “distinct braches or departments” that embodied the nation’s sovereign powers. The first was the “Electors,” or those citizens qualified to vote. The next three were the legislative, executive, and judicial braches of government. Finally, the “Constitutional Convention” was “a special legislature, whose duty it is to participate in the framing or amending of Constitutions.” See Jameson, *Treatise on Constitutional Conventions*, 23-24.

⁴⁸ A. Caperton Braxton, “Powers of Conventions” in *The Virginia Law Register*, Vol. 7, No. 2, 80.

conventions were merely products of “political excitement and zeal for party advantage.”⁴⁹ Legitimate constitutional conventions, on the other hand, promoted the harmony of American processes of government.⁵⁰

Others have indicated that constitutional conventions had greater merits than Jameson had afforded them. The political scientist Ellis Paxson Oberholtzer, while denouncing secession in his treatise on referendums first published in 1900, admitted that constitutional conventions might exert “extraordinary powers.”⁵¹ He claimed that conventions were political organs “independent of any other agent the people may establish” and were “over and beyond all law.”⁵² The convening of such assemblies, according to Oberholtzer, returned to the people all political authority delegated previously by them to their government. Ultimately, however, he believed that the Civil War and Reconstruction proved that it was impossible for these conventions to present any permanent threat to America’s established constitutional culture.⁵³ Nevertheless, he recognized and warned of the theoretical radicalism in the convention idea.⁵⁴

Some directly challenged Jameson’s conclusions. In 1891, the historian James Bryce strongly defended the revolutionary powers of a constitutional convention. He characterized it as “a body superior” to any state legislature. The actions of the convention were “far transcending” those of the normal legislature.⁵⁵ The journalist and legal scholar E. L. Godkin also affirmed the

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ellis Paxson Oberholtzer, *The Referendum in America*, 75.

⁵² Ibid.

⁵³ Ibid., 75-76.

⁵⁴ Ibid.

⁵⁵ James Bryce *The American Commonwealth* (New York: Macmillan and Co., 1891), Vol. I, 456.

superiority of the constitutional convention over the regular legislature.⁵⁶ Former state senator, constitutional author, and Attorney General of Massachusetts Roger Sherman Hoar argued more pragmatically that the powers of a constitutional convention depended more directly on its popular appeal. With adequate popular support, he suggested, the convention was boundless in its constitution-making powers.⁵⁷ The theoretical disagreements over the scope and powers of a constitutional convention, therefore, made its understanding and practice all the more problematic at the turn of the twentieth century.

The debate over the role and powers of constitutional conventions continued into the early twentieth century.⁵⁸ Scholarly interest, however, in constitutional conventions began to wane by 1930.⁵⁹ It remained relatively silent in historiography for almost two decades until interest in early American political ideology resurfaced after World War II.⁶⁰ For the most part, historians were less interested in the process and origins of constitutional conventions than in the particular ideologies that they sought to defend.

The rarity of state conventions in the twentieth century and the explosion of historiographical fields of study from the 1960s forward, such as social, ethnic, gender, and

⁵⁶ E. L. Godkin, "The Decline of Legislatures," in *The Atlantic Monthly*, Vol. 80, No. 477, 52-53.

⁵⁷ Roger Sherman Hoar, *Constitutional Conventions: Their Nature, Powers, and Limitations* (Boston: Little, Brown, and Company, 1917), 148.

⁵⁸ See Hall, Hyman, and Sigal, eds., *The Constitution as an Amending Device* for some of the tensions in these views—especially pages vi-viii in the "Preface."

⁵⁹ *Ibid.*, Morton Keller, "The Politics of State Constitutional Revision, 1820-1930," 83.

⁶⁰ There has been a debate among historians who have argued that a Lockean liberalism was the foundation for America's political character and those who have regarded classical republican values as the defining ideology of the early American nation. Examples of the liberal interpretation include Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution* (New York: Harcourt, Brace, 1955); Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: A. A. Knopf, 1948); and Clinton Rossiter, *Seedtime of the Republic: The Origin of the American Tradition of Liberty* (New York: Harcourt, Brace, 1953). Examples of the "republican synthesis" are Caroline Robbins, *The Eighteenth-Century Commonwealthmen* (Cambridge: Harvard University Press, 1959); Trevor H. Colbourn, *The Lamp of Experience*; and Wood, *The Creation of the American Republic*.

cultural studies, deterred historians from much interest in traditional political topics. By the late 1970s, however, a new wave of interest in constitutional conventions, driven mainly by political scientists, emerged as a result of the national activism for the adoption of a balanced budget amendment to the federal Constitution. By 1980, thirty of the thirty-four states required to call for a national convention by the U. S. Constitution had done so. Because a national convention had not assembled since the Philadelphia Convention of 1787, some scholars began to examine the possibilities and implications of such a convention.⁶¹ The American Historical Association and the American Political Science Association jointly conducted forums in 1982 on the question of another national constitutional convention. A ferocious debate ensued between scholars in these forums as they argued about the potential effects of such a momentous event.⁶² Consequently, contemporary politics have had a decided effect on the recent academic interest in American constitutional conventions, but has produced more political analysis of them at the expense of fresh historiographical examinations.⁶³

Most recently, the convention process seems irrelevant. Historically speaking, however, they remain at minimum a peculiar curiosity and at maximum an invaluable lesson in the changing American constitutional development. Some have revealed them as conservative forces of political society, while others have emphasized their revolutionary potential for dramatic change. These

⁶¹ Notable examples are Hall, Hyman, and Sigal, eds., *The Constitutional Convention as an Amending Device*; Wilbur Edel, *A Constitutional Convention: Threat or Challenge?* (New York: Praeger Publishers, 1981); Paul J. Weber and Barbara A. Perry, *Unfounded Fears: Myths and Realities of a Constitutional Convention* (New York: Greenwood Press, 1989); and John R. Vile, *Contemporary Questions Surrounding the Constitutional Amending Process* (Westport: Praeger Publishers, 1993).

⁶² Weber and Perry, *Unfounded Fears* discusses the extent to which this became a highly charged debate and fueled published positions on the subject. See pages 1-4.

⁶³ For example, most scholars limit their studies to a particular era, especially the Revolutionary period, a particular convention, like the 1829-1830 state convention in Virginia, the mechanisms of process, as political scientists often examine, or speculations on its constitutional potential by the legal community. This study differs in that it examines a particular state over the entire life of its constitutional convention process and discusses the changing contexts of the process.

views did not originate with academics. They existed from the very origins of the institutions in the American Revolution and continued, as evidenced in the antebellum era arguments over secession. While the outcome of the American Civil War settled the practical limits of the convention, the theoretical possibilities have continued to be a topic of debate.

In the present study, I also assert that constitutional conventions and nationalism, with its state-building components, were vital to issues of state identity in the period from the American Revolution through the Civil War. The revolutionary quest for nationhood revealed the need for certain political safeguards that the convention mechanism could provide. Once established, the convention provided the resulting constitution with the procedural integrity to gain broad popular support for new nation-building efforts. Scholars have used a variety of historical settings and circumstances to explain nationalism and yet, it remains an elusive concept. They categorize it, describe it, locate it, and detail its consequences, but they have not produced a consensus definition. Historians, anthropologists, and sociologists have debated whether nationalism is a phenomenon of pre-modern or modern society; whether it results from religious, ethnic, or other particular cultural foundations; and whether it is a legitimate framework for understanding historical developments or, rather, a dangerously powerful mechanism employed to invent and sustain identities of political “otherness.”⁶⁴ As the scope of such studies have revealed, nationalism

⁶⁴ For examples of the pre-modern vs. modernist views of nationalism see respectively, Adrian Hastings, *The Construction of Nationhood: Ethnicity, Religion, and Nationalism* (Cambridge: Cambridge University Press, 1997) and Ernest Gellner, *Nations and Nationalism* (Ithaca: Cornell University Press, 1983). Hastings is also a good example of nationalism as a consequence of ethnic unity. For the argument that religion was the crucial impetus for the development of nationalism see Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge: Harvard University Press, 1992), especially chapter one, “God’s Firstborn: England.” Benedict Anderson argues that nationalism originated in North America as the colonists began discovering their common destiny through the print culture in the eighteenth century in his *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London/New York: Verso Press, 1991). In “No Longer in a Future Heaven: Nationalism, Gender, and Race” in *Becoming National: A Reader*, Geoff Eley and Ronald Grigor Suny, ed. (New York/Oxford: Oxford University Press, 1996), Anne McClintock, on the other hand, offers a darker view of nationalism as an invented scheme of gendered power relations. Linda Colley’s *Britons: Forging the Nation, 1707-1837* (New Haven: Yale University Press, 1992) explains the rise of English nationalism in the early modern era as a result “otherness” or contrasting

certainly has been an important ideological component of the modern world. It organizes the political globe. The political and cultural impact has been profound for both individual and collective identities. It has resulted primarily in an “us” versus “them” context that gives a particular self-promoting agenda to languages, symbols, and practices for any given nation.

Constitutional conventions were critical to the creation of a collective political identity and, therefore, their function was intricately tied to nationalism. In an essay on post-colonial nationalism in the twentieth century, Clifford Geertz has revealed the cultural impact that nation-building institutions have on political identity.⁶⁵ The symbolic expressions that give meaning to culture are the same ones that give those within that culture a sense of unity or belonging. These symbols become vehicles for understanding the human experience in a broader context.⁶⁶ Constitutional conventions were not only devices for a particular political process; they were also symbols of their ideological foundations. They were symbols of the legitimacy demanded of their government by the sovereign people—despite whether or not the symbol accurately reflected the

identity with foreigners, especially with the French. Anthropologist Clifford Geertz argues that nationalism is a way of understanding tensions between traditional society versus a revolutionary reinvention of its cultural and political traditions. See “After the Revolution: The Fate of Nationalism in the New States” in his *Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973). Nor have American scholars been immune from attention to nationalism, though the most prominent work has come from southern historians. Examples include Emory Thomas, *The Confederate Nation: 1861-1865* (New York: Harper & Row, 1979); Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge: Louisiana State University Press, 1988); Susan-Mary Grant, *North Over South: Northern Nationalism and American Identity in the Antebellum Era* (Lawrence: University Press of Kansas, 2000). Another book seldom cited, though particularly useful in assessing American nationalism is Paul C. Nagel’s *One Nation Indivisible: The Union in American Thought, 1776-1861* (New York: Oxford University Press, 1964).

⁶⁵ Geertz has stated that ideologies are complex systems embodied deeply within the fabric of culture and must be examined not only as symbols and rhetoric but as “templates” or “blueprints” for social acts. See Geertz, *The Interpretation of Cultures*, 216.

⁶⁶ Geertz, 250-251.

reality or not.⁶⁷ If political identity depended on that legitimacy, then constitutional conventions were supporting pillars of that identity.

The convention process, as both the institutionalization of fundamental governing principles and as a symbol of the sovereign power of the people, fostered a political kinship and gave Americans in the Revolutionary era a sense of common investment in the nation-building process.⁶⁸ Given the diversity of the original colonies and their populations, America struggled from the Revolution forward to forge a national collective identity. From the beginning, there were competing ideas of American identity. Regional geography, wealth, race, and demographic location were only a few of the factors whereby people identified themselves.⁶⁹ While constitutional conventions established the essential political structures necessary for the legitimate establishment of state and federal governmental authority in America, they also made political identity possible. Consequently, there was a strong correlation between conventions and the development of American nationalism, within and among the colonies. The relationship is complex and difficult to see which originated first, common political identities or governmental structures. While nationalism could be an impetus for constitutional conventions, the act of state-building, as

⁶⁷ For a sobering reflection on the “fiction” of popular sovereignty in the American tradition see Morgan, *Inventing the People*, esp. 13-15.

⁶⁸ I argue that conventions were an integral component of nation-building (or, as some refer to, state-building) in early America and, thus, were one of the many facets of nationalism. My interpretation draws from a number of scholarly approaches to nationalism in recent years. See David A. Bell, *The Cult of the Nation in France: Inventing Nationalism, 1680-1800* (Cambridge: Harvard University Press, 2001); Etenne Balibar, “The Nation Form: History and Ideology” in Etenne Balibar and Immanuel Wallerstein, *Race, Nation, and Class: Ambiguous Identities* (London: Verso, 1991); and David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997). My characterization of nation-building is in contrast to the political science approach which views the process as rigidly institutional in nature. For examples of this view see Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1820* (Cambridge: Cambridge University Press, 1982).

⁶⁹ On the idea that nationalism is one among many forms of identity in competition see John Hutchinson and Anthony D. Smith, ed. *Nationalism* (Oxford: Oxford University Press, 1994), 4.

certain scholars have demonstrated, can predicate nationalism.⁷⁰ It is important, therefore, to understand certain theoretical approaches to nationalism.

Nationalism is not merely the shared sense of purpose or a common political identity. As many scholars have noted, nationalism is a dynamic process of ideologies, symbols, and activities that affect social and political relationships in the development of a nation-state. It, of course, has had its own contentious niche in historiography, which has produced an abundance of theories and approaches to early modern history, although none have specifically tied it to constitutional conventions. Because the scholarship on nationalism has been vast, this study cannot sufficiently review all of the important contributions in recent years. Nevertheless, it is necessary to review some of the works most relevant to the present study by American and European scholars.

The nineteenth-century French theorist, Ernest Renan, characterized nationalism in practical and sentimental terms in his essay “What is a Nation?” He described it as a shared feeling of common identity whereupon a people willingly unite by “consent” for “perpetual” existence. Renan asserted that the nation was an embodiment of the “moral conscience” of the people and their quest for the collective greater good of the community at-large. National identity, for Renan, provides more powerful collective loyalties than ethnic identity, religious identity, common language, or geographic and cultural values. He identified two necessary components for the emergence of nationalism. The first was a romantic sense of a collective history or national memory, whereby the people must revere the idea of a shared history. Next, the citizens must also

⁷⁰ See Bell, *The Cult of the Nation in France*, Colley, *Britons: Forging the Nation*, Gellner, *Nations and Nationalism, New Perspectives on the Past*, Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1992), E. J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 2nd ed. (Cambridge [England]; New York: Cambridge University Press, 1992), James R. Lehning, *Peasant and French: Cultural Contact in Rural France During the Nineteenth Century* (Cambridge [England]; New York: Cambridge University Press, 1995), Eugen Joseph Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870-1914* (London: Chatto and Windus, 1977).

be committed to a permanent society based on common fundamental principles. For Renan, then, nationalism is a spiritual bond that forms a perpetual political union and seeks to protect that bond from threats to its existence. The nation survives in succeeding generations through its nostalgic reverence of the past and its longing to persist as a community of citizens.⁷¹

Renan's characterization of nationalism is important because he was among the first academics to acknowledge the unique qualities of nations as collective political identities. It was not until the twentieth century, however, that scholars began to develop nationalism as a professional field of study. In recent decades, scholars have sought to dissemble and reexamine the idea of a nation, rejecting Renan's simplified and romantic interpretation in favor of more complex and dynamic theories of the phenomenon. Nationalism has developed into a major field of inquiry that has examined the emergence of numerous nation-states across the globe. It has also attracted an array of cross-disciplinary interest from historians, sociologists, anthropologists, political scientists, linguists, geographers, philosophers, legal scholars, and literary scholars.⁷²

This diverse scholarship indicates that numerous factors affect nationalism. Most agree that its character is relative to how citizens define themselves to themselves and to others. Linda Colley, in her work on insightful British nationalism in *Britons*, has described the importance of the perception of external enemies to national identity. She has maintained that persistent wars with France had an indelible impact on the formation of British identity.⁷³ On the other hand, David Bell has examined how historical events shaped France's self-identity. As Bell has described it, its

⁷¹ Ernest Renan, "Qu'est-ce qu'une nation?" or translated as "What is a Nation?" in *Nationalism* ed. John Hutchinson and Anthony D. Smith (New York: Oxford University Press, 1994), 17-18. Renan, a French theorist, first delivered this essay as a lecture at Sorbonne in 1882.

⁷² For a broad description of the interdisciplinary approaches and the problems inherent in studying nationalism see "Introduction" in Hutchinson and Smith, *Nationalism*, 3-4.

⁷³ Colley, 52-54.

early modern history reflected “the shifting ways in which the French represented France—their national community—to themselves”.⁷⁴ Nationalism, therefore, is an inwardly and outwardly directed phenomenon, which suggests its elusive quality and difficulties in defining it precisely. Both Colley and Bell have attempted to overcome such difficulties by concentrating on the origins of a national identity in a single nation, Britain and France respectively. Another scholar, Peter Sahlins, has taken a unique approach to understanding nationalism by examining a region divided between two nations and revealing the conflicting pressures on a community to resolve its political identity. A group of settlements in the Pyrenees between France and Spain called Cerdanya was a contested territorial boundary in more than two centuries, from 1659 to 1868. Sahlins’s work has shown how the ambiguities of jurisdictional and territorial rule over Cerdanya left open the possibilities for the people inhabiting the region to exploit shifting loyalties to both nations. Although France and Spain physically divided the region between them in 1868, he concluded that issues of nationalism are often the result of a negotiation between governments and its people. Thus, consistent with the claims of the present study, Sahlins has viewed nationalism as a pragmatic process of establishing political identity.⁷⁵

On the other side of the Atlantic, American scholars also have contributed to the idea of nationalism, especially historians of the conflicts between the North and South during the nineteenth century. Paul Nagel dissected the creation of American nationalism into four chronological developments that concluded in “Absolute Union,” a term he used to characterize

⁷⁴ David Bell, “Recent Works on Early Modern French National Identity,” *The Journal of Modern History* 68 (March 1996): 89.

⁷⁵ See Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989).

the Civil War's successful triumph over states rights by force.⁷⁶ In an argument that resembles Colley's view of early-modern British nationalism, Susan-Mary Grant indicated that a peculiar brand of nationalism grew in the Antebellum North that sprung from animosity toward the South.⁷⁷ Historian Phillip Paludan revealed yet another interesting aspect of northern nationalism in this period. According to Paludan, there was no pervasive nationalism in the North until the demands for industrial and economic efficiency by the Civil War forced local communities to unite and support the effort.⁷⁸

Southern nationalism has attracted more attention in the historiography than the North. Most of this scholarship on the nineteenth-century South has agreed that conflict, whether over slavery, nullification, or states rights, informed a unique strain of political identity in the region. John McCardell claimed that there was an important distinction between sectionalism and nationalism. Sectionalism, in his analysis, was merely a region's agreement on a particular interest or set of interests, whereas nationalism was more broadly common cultural goals and experiences.⁷⁹ A preeminent historian of the Southern Confederacy, Emory Thomas, noted the irony of Confederate nationalism. As the South mobilized for war against the North and began to centralize its efforts, the region sacrificed its antagonism to consolidated authority and its heritage of individualism and, thus, came to resemble the cultural and political characteristics it had opposed in the North.⁸⁰ In contrast to McCardell and Thomas, who have argued that nationalism

⁷⁶ Paul C. Nagel, *One Nation Indivisible: The Union in American Thought, 1776-1861* (New York: Oxford University Press, 1964).

⁷⁷ Susan-Mary Grant, *North Over South: Northern Nationalism and American Identity in the Antebellum Era* (Lawrence: University Press of Kansas, 2000).

⁷⁸ "A People's Contest": *The Union and the Civil War, 1861-1865* (New York: Harper & Row, 1988).

⁷⁹ John McCardell, *The Idea of a Southern Nation: Southern Nationalists and Southern Nationalism, 1830-1860* (New York: Norton and Company, 1979).

⁸⁰ Emory M. Thomas, *The Confederate Nation, 1861-1865* (New York: Harper & Row, 1979).

was a phenomenon that grew out of circumstances and events, Drew Faust proposed that Confederate nationalism, informed by republican and evangelic ideals, was a tool used by southern elites to unite southern support for an aristocratic slaveholding order. It failed, she has said, because the elites lost control of the process and events took a more democratic turn.⁸¹

With so many interpretations of nationalism, it can be difficult to discern a single definitive explanation of it. For the purposes of the present study, however, it is necessary to establish a useful and fundamental understanding of the relationship between nationalism and constitutional conventions. Constitutional conventions were not only mechanisms for creating or modifying organic principles of governance; they also became measures of political loyalty between the state and the nation. As such, particularly during the antebellum era, these conventions often involved contentious constitutional battles between state and federal governing principles.⁸² They were not only vital to governing infrastructures and principles, but were key to forming political identities as well. Consequently, both as a nation-building mechanism and a forum for establishing political values, the constitutional convention was an important aspect to American nationalism from the American Revolution to the Civil War.

This study proposes that nationalism emerges from three distinct, though interrelated, processes. First, it spreads through common acts of participation in civic activities. Such participation is important to the political direction of the nation, and the realization of this binds citizens to the idea of a national identity. Secondly, nationalism is a product of cultural and political symbols that reflect, subtly or not, an ideological message promoting the unity and

⁸¹ See Drew Gilpin Faust, *The Creation of Confederate Nationalism*.

⁸² It is my thesis, however, that the Civil War effectively and abruptly ended state and federal negotiations and established the absolute supremacy of federal principles. Constitutional conventions assembled after the Civil War, therefore, posed little legitimate threat to national sovereign power and were unable to solicit the same reverence or utility that they had maintained prior to the war.

embrace of a national community. Such symbols can generate affective, even nostalgic, associations between the people and their nation.⁸³ Finally, nationalism results from the recognition that political, social, economic, and even cultural disruptions might be better negotiated, or even solved, through a common government. This bound the thirteen colonies during the War for Independence. Even individuals might see pragmatic solutions to immediate problems that are available only to those with official membership within a greater community at-large. When citizenship offers benefits not extended to non-citizens, the nation offers a means of pursuing self-interest and social identity through attachment to it.

American constitutional conventions embody all three of these component aspects of nationalism, although in antebellum America they also hindered the process relative to the Union, as revealed in the secession crisis. In the first instance, these conventions afforded the opportunity for elected representatives of local communities to participate in the most organic of constitutional institutions. Such participation fueled a sense of political investment in state and national affairs. Constitutional conventions were also institutional symbols of a nation invested in popular sovereignty. They were visible expressions of the people's ability to establish or modify their constitutional principles and institutions of government. They also represented mechanisms by which a vigilant electorate possessed the potential to correct the abuses and corruption of government. Moreover, they were effective forums for pragmatically addressing issues associated with a growing and diverse population. As material and political interests shifted, constitutional conventions appeared to give local constituents a voice in the role that government played in addressing those interests.

⁸³ Geertz, "After the Revolution," 252.

Georgia's political and constitutional experiences in the eighteenth and nineteenth centuries reveal much about the peculiar character of conventions, as the chapters that follow will demonstrate. Chapter One follows the ideological development of the constitutional convention and its corollary, popular sovereignty from its religious roots to Radical Whig thought in England. Particular strands of religious thought began to emerge in the late Medieval Period that informed new ideas on the role of people in their government. Some elements of these ideas emerged from contests for political and moral authority within the Catholic Church. Early Christian councils, in fact, bore some resemblance to the convention process, meeting to establish the dogmatic and structural foundations that began to centralize church authority.⁸⁴ By the time the Protestant Reformation burst onto the historical scene in the sixteenth century, more developed ideas on sovereign powers and citizen rights had challenged the traditional absolutist rule by the pope. Following the Reformation and its upheavals, new technologies, new religious and political beliefs, and the surge of interest in overseas conquests informed changes in state development, particularly in Western Europe.

In Chapter Two, I examine how these ideas took root in America. The English colonies in the seventeenth and eighteenth centuries loosely interpreted political principles and arrangements inherited from the English experience. Colonial American views of their role in the British Empire conflicted with the Empire's view of the colonies. As a result, the state constitutional convention became a means for expressing Americans' reverence for values and principles which they believed were their right as English colonials. The irony was, of course, that in the course of

⁸⁴ For example, note the various Catholic councils beginning with the Council of Nicea (327 A.D.) which, among other declarations, adopted the Apostolic Creed with encouragement from Constantine. The political association between the Christian church and the secular rule of state was unmistakable in Constantine's rule as a Christian leader.

formalizing traditional English principles, the constitutional conventions exposed their radical potential.

A discussion of Georgia's early political and constitutional development follows in Chapter Three. This chapter reveals the uniqueness of Georgia as the thirteenth original colony and how the late development of a self-governing legislature affected it. In less than two decades after its first settlers arrived with Oglethorpe, the colony transformed from Trustee rule to a royal colony. The ambitious political experiment in Enlightenment reform quickly faded as Parliament's support for Georgia grew increasingly more costly. Although slow to join the other colonies in the American Revolution, once engaged Georgians were passionate converts. This chapter reveals the events and circumstances surrounding the adoption of the state's first two constitutions in 1776 and 1777.

The next chapter covers Georgia's convention process from the Confederation era through the crisis over nullification in the 1830s. The state continued a strong nationalist sentiment until the Native American removal became an issue of great disagreement with the federal government. The localism of political parties remained strong, but the creation of national parties was beginning to have a more prominent role in the state's political culture. Georgia remained loyal to the Union, but events in this era had strained it and had forced the state to momentarily consider the possibilities associated with disunion, though not to the radical extent of South Carolina.

Georgia's convention in 1850 is the focus of Chapter Four. The Empire State of the South played a pivotal role in the Compromise of 1850 and demonstrated its influence on southern radicalism. A new generation of political leaders in the state ascended to power, whose moderate politics enhanced Georgia's reputation on the national stage. Their influence in the state convention of 1850 revealed that they were yet unwilling to dissolve Georgia's bonds to the Union. The episode also demonstrated that delegates to such conventions assumed the authority to

maintain or break those bonds. Their moderation, however, could not survive the growing anti-slavery sentiment and the constitutional concerns that the movement presented. Despite its gifted politicians, the state's nationalist sentiment diminished over the next decade.

Chapter Five reveals the constitutional convention in Georgia at the height of its career and the most severe of its radical implications during the secession movement in the South. In 1861, Georgia utilized the convention method to leave the Union just as it had joined it in 1788. The powers that this convention assumed were not novel inventions, but were the culmination of constitutional interpretations and experiences in the history of the Union. Unlike 1850, the state abandoned all political moderation and embarked on collaborating with other southern states in creating a new nation, which led to war.

The Reconstruction conventions of 1865 and 1867-1868, as well as the final convention in 1877 are the subjects of Chapter Six. These conventions demonstrated the transformation of the state's constitutional convention process. The Civil War had ended abruptly the practical application of the theoretical principle that state constitutional conventions were the final and undeniable expressions of popular sovereignty. Although the Convention of 1877, like the Reconstruction conventions, lost the perceivable importance they had sustained through secession. In fact, their value remained limited to local issues and no longer held any negotiable influence in national affairs.

Finally, I must concede the difficulties associated with researching and writing on the history of ideas. Ideas move from one generation to another, not through any single vehicle or method, and certainly not perfectly intact. In fact, a single idea moves within a single generation through various means and with various meanings. Ideas spread horizontally in place and time and pass vertically through history not only through written and spoken words, but also in symbolic

expressions and practices. They inform collective memories, institutional traditions, and cultural habits nurtured and challenged by social, economic, and political structures and events. Consequently, any effort to map the historical journey of a single idea is a highly subjective endeavor that requires careful examination of sources, interpretations, and conclusions, as well as checking one's own bias and influences. Consequently, the task can be daunting and, as this study demonstrates, often overwhelming. Nevertheless, this is a decidedly resolute effort to meet those challenges with as much accuracy, determination, and attention to detail as I have to offer. My aim in this study has been to describe the progressive march of a single idea in history, the constitutional convention, and follow it in a single state.⁸⁵ My hope is that the result is worthy of the subject.

Nationalism is an ideological prism for strengthening the personal, social, and cultural attachments to a collective identity that transcends other characteristic identities so that the political community at large, and the structures it entails, is believed to be public extensions of the political individual. How nationalism is created and becomes an essence of a particular society can be understood through the development of American constitutional conventions. Fundamentally, it is a journey from available abstract ideas to the practical implementation of institutional norms. Despite this simple characterization, however, it is a journey fraught with conflicting visions of

⁸⁵ Although certain ideas matured, advanced, or evolved over time, this work does not advocate any suggestion of a progressive march of history in these developments, described herein as a general "progress" of history. Any use of the word 'progress' (either as a noun or verb) indicates purely a movement forward in time or space and not a subjective interpretation of a process of improvement. In fact, this study demonstrates an ebb and flow of processes and advocates neither a general ascension nor declension model of historiography. Such commentary or implication on the general narrative is too broad for this work, although the specific thesis on the declining role of constitutional conventions in Georgia applies. Consequently, the term "democratic" does not imply better—rather, it describes processes which are more widely accessible among a population, though not always universally accessible. The democratic character described here for the public sphere pertained primarily to men—not women, slaves, or other classified as dependents; usually propertied men; and usually literate, even well-educated men. Therefore, the author reserves a strictly limited character for terms which may otherwise suggest grand implications unless specifically stated. None of this implies the author's objectivity; in fact, the author has a specific view of convention history expressed throughout relevant chapters.

identity and constant renegotiation of political, social, and cultural acceptability, both vertically and horizontally within the national community.

Where and when some of the most influential ideas developed that eventually led to the creation of American constitutional conventions are the subjects of the chapter that follows. It was a winding and often contentious journey from the view that ultimate governing authority emanated from the divine to the belief that it actually emanated from the imperfect individual. That journey blurred the lines of authority between the religious and secular spheres and confirmed that ideas never travel in a straight line. Certainly, these ideas were no exception.

CHAPTER 1

EUROPEAN ORIGINS OF AMERICAN CONSTITUTIONAL CONVENTIONS

Constitutional conventions historically have embodied ideas of particular importance to American political development since the American Revolution. They have been mechanisms for articulating and codifying the fundamental principles vital to legitimate government in the United States. Popular sovereignty has remained steadfastly at the core of these principles. The meaning of sovereignty in American political thought has changed over time and place as it had in Europe during the medieval and early modern eras. The intellectual development of sovereignty and representative government in Europe prepared the way for constitutional conventions in America. This chapter highlights some of the developments in the late medieval and early modern periods that informed the revolutionary creation of these special conventions.

The English constitutional experience in the seventeenth century inspired American political and constitutional assumptions in the eighteenth century. One of the most intriguing by-products of those assumptions and expectations was the constitutional convention. The convention provided a forum for institutionalizing the popular will on constitutional matters beyond the scope and powers of a regular legislative assembly. It was a distinctive form of popular participation into the act of creating and reforming legitimate functions and forms of government. As such, it was an institutional monument to popular sovereignty.

The American tradition of representative government had many seeds of influence. Classical ideas of government, medieval intellectual thought, and early modern constitutionalism

provided eighteenth-century Americans with centuries of accumulated political reflection on the relationship between a people and its ruling authority.

Some scholars have demonstrated the importance of classical political theories to America's founders.¹ Others, correctly, have emphasized the greater impact by English political and constitutional history. For example, there has been a broad scholarship on the direct impact of seventeenth and eighteenth English Whig ideas on American political developments in the eighteenth century.² Religion also has played a significant part in shaping the ideas informing the American founding. The Protestant Reformation was a dramatic event that stimulated new theories about legitimate government and justifiable resistance to rulers. All of these factors affected the Enlightenment generation in America and afforded it with the intellectual resources and language necessary to create a radically new kind of government rooted in popular sovereignty. The historical odyssey of popular sovereignty and its structural counterpart, the constitutional convention, actually began even before the classical political contributions of Aristotle and Plato.

One early instance of representative governance began with ancient Greece's Council of 500. In 508 B. C., Cleisthenes, an early ruling reformer, utilized the Council in conjunction with a legislative assembly comprised of all male citizens in Athens over thirty years of age. Citizens drew lots for membership in the Council, which prepared and submitted laws to the assembly for debate and approval. While there has been a scholarly debate as to whether or not Cleisthenes introduced the first real democratic reforms in the western world, there is general agreement on his

¹ For a discussion of some of the recent historiographical debates on the importance of the classics to American thought in the eighteenth and nineteenth centuries see, Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge: Harvard University Press, 1994), 1-7.

² See Colbourn, *The Lamp of Experience*, Bailyn, *The Ideological Origins of the American Revolution*.; and Wood, *The Creation of the American Republic*.

importance to such reforms.³ These early Greek legislatures, therefore, introduced an unusual popular quality to their laws and government.

Throughout most of its history, European political developments yielded no consistent trends favoring popular participation in government. Shifting circumstances and events created a broad spectrum of governing authorities throughout the western world. Republics and empires coexisted with feudal authorities and tribal leaders across the continent. Tyrants, emperors, councils, and senates gained and lost power. By the late Middle Ages, a number of factors converged to promote a greater political emphasis on the idea of a popular will.

Rising discontent and rival battles for power within the Catholic Church were at the forefront of these factors. Factional divisions within the Church had forced leading intellectuals to contemplate theoretical justifications of ruling authority, from which emerged the idea of popular sovereignty. The event that sparked this tradition and produced an intense examination of political sovereignty was the Great Schism in the late fourteenth century. Religious writers of the period proposed various resolutions to the crisis by theorizing on the scope of papal power and the limitations to it by representative council. What began as a peculiar ecclesiastical controversy soon bled into secular ideas of government.⁴

The medieval power structure of the Catholic Church was, in some ways, parallel to the monarchies in the secular political realm. The pope was also a monarch ruling over a realm, only

³ For a broad discussion and disagreements among scholars of early Greek democracy, see Lisa Kallet-Marx, "Institutions, Ideology, and Political Consciousness in Ancient Greece: Some Recent Books on Athenian Democracy" in *Journal of the History of Ideas* 55, no. 2 (1994): 307-335. For the importance of drawing lots to the development of modern democracy generally, see Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), esp. Chapter 2: "The Triumph of Election."

⁴ Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism, Enl. new ed., Studies in the History of Christian Thought*, V. 81 (Leiden; New York: Brill, 1998), 21.

without traditional territorial boundaries.⁵ Even with inherent distinctions between the secular realm and the Church's peculiar jurisdictional authority, they shared common difficulties concerning constitutional issues.⁶ For example, efforts toward the centralization of administrative and executive power led to popular resistance in both realms. Both the Church's General Council and secular representative assemblies often jealously capitalized on such resistance for shifting central power away from the papacy, king, or prince. Additionally, the jurisdictional authority of the Catholic Church overlapped secular political power in much of Western Europe and meant that constitutional crises in one realm often affected the political stability in the other.⁷ The Protestant Reformation was only one of the most evident cases of this effect.

Before the Reformation, however, the Great Schism provided an impetus for innovative political thought in both the religious and secular domains of Europe. It produced a sophisticated set of arguments that informed many major political writings of the late medieval and early modern period. This crisis began in the midst of late fourteenth-century conflicts within the Catholic Church, involving the emergence of competing popes. Rival Catholic factions supported Urban VI in Rome, on one hand, and Clement VII in Avignon, on the other. Eventually, a third pope entered the contest for power. Consequently, the church faced the constitutional question of whether the General Council, as the representative body of church government, had the authority to remove and replace a pope over the objections of the sitting pope. The General Council consisted of ecclesiastics of all ranks and laymen across the territorial domains of Catholicism. A divided church vigorously debated whether the papacy was the supreme ruling authority of the

⁵ Ibid.

⁶ Tierney, 10.

⁷ Ibid.

church or whether the Council, representing the Catholic Christendom of cardinals, bishops, clergy, and congregations, possessed an inherent power greater than the papacy. Could the Council, for the ultimate good of the congregation at-large, remove a sitting pope? This question inspired the Conciliar Movement, which concluded and openly supported theories supporting the Council's supremacy. Efforts to resolve the divided papacy continued for most of four decades.⁸

There were two popes competing for the recognized head of the Catholic Church in 1378, and another emerged in 1409. Because the main rival popes were Italian and French, diplomatic tensions in the international community fueled the crisis. England eventually supported the Italian pope, Urban VI, out of its animosity toward France. With the Holy Roman Empire split, rival papal parties pled for support from local authorities across Europe. This, of course, provided a powerful political advantage for provincial leaders and rulers promising their endorsement. Such support, however, came at a price and lessened the Church's grip on local authority throughout the competing realms. The growth of secular political power, then, directly correlated in this period to a steady decline of the ecumenical power of the Church.⁹ These developments facilitated state-building processes under way in the late medieval era, especially in England and France.¹⁰ The Great Schism, therefore, was at the same time the result and the catalyst of the intensifying secularization of the state and the growth of national identity.¹¹ Hence, secular nationalism, with

⁸ Ibid.

⁹ Ibid., 5.

¹⁰ See Louise Ropes Loomis, John Hine Mundy, and Kennerly M. Woody, *The Council of Constance: The Unification of the Church* (New York: Columbia University Press, 1961), 4-5.

¹¹ Ibid., 6.

defined territorial boundaries and interests, began to trump the ecclesiastical conception of a universal community of Christian believers.¹²

The Council of Constance in 1414 temporarily settled the schism when the cardinals officially embraced conciliar theory, declared their superior authority to the papacy, deposed two popes, forced a third to abdicate, and elected a new one acceptable to the competing factions.¹³ The conciliarists had proposed, and a majority of Christendom accepted, the radical idea that a representative body concerned with fundamental principles was the supreme governing power, regardless of a tradition of absolute rule in the hands of a single person.¹⁴ The Council of Constance became the high-water mark for the movement. The end of conciliarism came with the reaffirmation of papal supremacy at the lengthy Council of Basel that convened in the years from 1431 to 1445.¹⁵ Nevertheless, to emphasize the ideological significance of the Conciliar Movement to English constitutionalism, British political historian Harold J. Lanski has said, “the road from Constance to 1688 is a direct one.”¹⁶

Although relatively silent in the American historiography of political thought, other scholars have noted the importance of the Conciliar Movement to the constitutional ideas moving

¹² Ibid., 4.

¹³ Ibid., 39-40.

¹⁴ A discussion of changing ideas of representation in the church’s struggles during the fourteenth century see Tierney, 115-116. These events and the subsequent reactions highlight “an important link between the earlier medieval concept of representation as mere personification and the later idea, growing ever more explicit in the fourteenth century, that a true representative needed an actual delegation of authority from his community.” Tierney, 115.

¹⁵ Francis Oakley, “On the Road from Constance to 1688: The Political Thought of John Major and George Buchanan” in *The Journal of British Studies*, Vol. 1, No. 2 (May, 1962), 5.

¹⁶ Harold J. Lanski, “Political Theory in the Later Middle Ages” in *Cambridge Medieval History* (Cambridge: Cambridge University Press, 1911-36), Vol. 8, 638. Quoted in Francis Oakley’s, “On the Road from Constance to 1688,” 1.

throughout Europe in the sixteenth and seventeenth centuries.¹⁷ Quentin Skinner, the noted intellectual historian, has called it “the most significant strand of radical political theory in the later Middle Ages.”¹⁸ Conciliarism suggested the legitimacy of a political system whereby ultimate political authority resided in the people rather than in the ruler. Conciliar arguments laid the foundation for discussions of popular power and resistance to tyranny. After the Reformation, theorists liberally applied ideas in ways and contexts unintended or unforeseen by conciliar writers. The works of conciliarists such as Francesco Zabarella, Pierre d’Ailly, Jacques Almain, Jean Gerson, and, later, John Major (Mair) became critical sources for justifying radical opposition to tyranny in the seventeenth century.¹⁹

The Conciliar Movement, therefore, informed early modern ideas of popular sovereignty. New theories sometimes demanded that the power to rule emanated from the people’s authority to delegate that power. At other times, they defended the rule by divine right so long as it was consistent with the common good. In all cases, however, where popular sovereignty became an issue, overt or not, there was a debt to Conciliarism. The events, which had begun as a crisis of religious authority, had thrust the importance of the individual political man into the forefront of secular constitutional thought. The eventual discourse of constitutional government with a basis in

¹⁷ John Neville Figgis produced one of the earliest scholarly arguments for this connection in his *Political Thought from Gerson to Grotius, 1414-1625* (New York: Harper, 1960) and his “Political Thought in the Sixteenth Century” in A. W. Ward, G. W. Prothero, and Stanley Leathes, eds., *The Cambridge Modern History*, 13 vols. (Cambridge: Cambridge University Press, 1902-11). The discussion on this scholarship herein owes much to Francis Oakley, “‘Anxieties of Influence’: Skinner, Figgis, Conciliarism and Early Modern Constitutionalism” in *Past and Present*, No. 151 (May, 1996), 60-110. See also, Oakley, “On the Road from Constance to 1688,” 1-31; Zofia Rueger, “Gerson, the Conciliar Movement and the Right of Resistance (1642-1644)” in *Journal of the History of Ideas*, Vol. 25, No. 4 (Oct.-Dec., 1964), 467-486; and, generally, Quentin Skinner, *Foundations of Modern Political Thought*, Volume II; *The Age of Reformation* (Cambridge: Cambridge University Press, 1978).

¹⁸ Skinner, *Foundations*, Vol. II, 114.

¹⁹ Oakley, “On the Road from Constance...”, 4.

popular authority, or popular sovereignty, had critical implications later in the creation of American constitutional conventions.

Another important factor in the dialogue surrounding these ideas was the introduction of the Gutenberg printing press in the fifteenth century. This technological marvel facilitated the rapid spread of literature, information, and ideas. Print, once reserved for the educated and the wealthy, now circulated in the vernacular among the masses. As the printed word became more accessible to the general population, popular opinion suddenly emerged as a valuable social and political commodity. Another important related development was the increasing perception of common experience and interests among the reading population. From this perception, regional and national identities began to supplant what traditionally had been cultures of informed by isolated experience. The individual suddenly became a part of something larger than his immediate environment, town, or borough. Such belief in this collective identity forged what Benedict Anderson has called an “imagined community.”²⁰ The innovation afforded people to begin thinking and talking in terms of a common interest or common good for the political community.

Conciliar thought and other trends found wider audiences and fueled growing criticisms of absolute authority. The Protestant Reformation produced even more sophisticated discussions about political authority and theories of resistance, particularly among Catholic and Protestant monarchomachs, a term used to describe critics of absolute royal authority.²¹ The Reformation

²⁰ See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), 6-7, 33.

²¹ Wood, 56. Monarchomachs was a term to characterize critics of royal power, especially in the sixteenth and seventeenth centuries when religious conflict informed much of this criticism. A dated, but useful, article that links popular sovereignty with the monarchomach theories see William A. Dunning, “The Monarchomachs: Theories of Popular Sovereignty in the Sixteenth Century” in *Political Science Quarterly*, Vol. 19, No. 2 (June, 1904), 277-301. For a more updated discussion of the sixteenth-century monarchomach resistance theories generally see Skinner,

occurred in the context of a series of upheavals in religious and state affairs in Europe. Religious reformers shared a discontent with secular officials who sought to weaken Catholic power in state structures. Such discontent was especially strong in Germany and England, which secured momentum to the Reformation movement.²² The subsequent cultural and political fallout affected English constitutional development for centuries.²³

Anti-papal sentiment had early roots in England. More than a century prior to the Protestant Reformation, Oxford clerics, led by John Wyclif, vigorously attacked the wealth and power of the Catholic Church. The Lollard Movement, as it came to be known, called for a return to the simpler and more primitive church practices of the first-century Christians.²⁴ Wyclif and the Lollards were the fourteenth-century English precursors to the sixteenth-century Reformation. Once England embraced its decisive break from Rome under Henry VIII, it prided itself as the premier Protestant nation. An important feature of this religious national identity was the ability to claim its longstanding, pre-Reformation disdain for Catholicism as expressed by Wyclif and the Lollards.²⁵ In fact, the historian Reinhard Bendix has said that the English Reformation was a critical element of English nationalism and figured prominently in its political modernization.²⁶

Foundations, Vol. II. For the monarchomachs influence on English thought see Oakley, "On the Road from Constance," esp. 9-11.

²² Skinner, 50-51.

²³ For the argument that church-building and state-building were simultaneous efforts in parts of Europe during and following the Reformation see Philip S. Gorski, *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe* (Chicago: University of Chicago Press, 2003), 17-19.

²⁴ Skinner, 34.

²⁵ *Ibid.*, 48.

²⁶ Bendix, 290.

By the time Henry VIII's personal agenda and private drama resulted in England's public split with Rome in the early decades of the fifteenth century, the English people were fully ready to wrest their own religious and political destiny from Catholic influence. With Parliament's passage of the Act of Supremacy in 1534, the English king became the official religious and spiritual head of the state in conjunction with his secular title, which emphatically married the nation's political and spiritual spheres. English laws and religious policies were the official jurisdiction of the King-in-Parliament.²⁷ The King-in-Parliament effectively supplanted Rome's Holy See (the pope and his councils). This was an important transition in the minds of Englishmen, especially among those who sought continued limits on the power of the monarch. Conciliar arguments demonstrated the primacy of representative bodies over monarchical rule in cases involving the collective good of the Church. Now, such justifications might apply to the English realm as well. If the fundamental laws and rights of the Church had been the charge of those representative of Christendom at-large, then representatives in Parliament must be the legitimate protectors of the fundamental laws and rights of the English people. English religious dissenters justified the secular conclusions to this conciliar argument as early as the fifteenth century.²⁸

Events in the religious realm, therefore, provided a strong impetus for investigations into the issue of legitimate rule in early modern Europe. The impact of the Reformation, the proliferation of ideas through presses, and the emergence of an English nationalism demonstrates the dynamic forces affecting new ideas about the political and social self. Yet, ideas rarely spread succinctly or directly from source to recipient. Rather, ideas were mobile and even sometimes

²⁷ According to Quentin Skinner, examples of this attitude are found in John Fortescue's *The Praise of the Laws of England* from the fifteenth century and Christopher St German's *A Dialogue in English betwixt a Doctor of Divinity and a Student of the Laws of England* (London, 1530). See Skinner, 54-58.

²⁸ Skinner, 235.

elusive commodities that not only spread through the medium of print and word of mouth, but also via events, experience, rituals, and customs. Exposure to ideas took many forms, and the form often determined their interpretation and application.²⁹ Necessity, however, is another critical factor in the creation, transmission, and translation of ideas. The rise of American constitutional conventions was certainly a model example of an idea directly and indirectly affected by precedents, contexts, and, of course, happenstance. This idea and its radical implications were imbedded in the English constitutional history of the sixteenth and seventeenth centuries.

In spite of the popular resistance theories fostered by the Reformation and the printing press, absolutism, with its justification by divine right, became a standard of secular rule in the early modern period. In the fifteenth and sixteenth centuries, Phillip II of Spain, Louis XIV of France, and Henry VIII of England all adhered to the principle that the monarch possessed full authority over the people and land; an authority which emanated directly from God. Centralization of economic, military, and political power by an ever-growing efficient government bureaucracy helped to channel absolute authority into the ruling monarchies across western Europe, along with Austria and Prussia. Circumstances and events, however, afforded the English a number of opportunities to mediate absolutist grip in the sixteenth and seventeenth centuries. Among the tools

²⁹ Compare Pocock's model of language and the availability of ideas across time and space. See J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975 and 2003), 3-9. Essentially, he discounts the specific transmission of specific ideas and emphasizes the cultural and intellectual availability of "universal" ideas and their application and interpretation based on concrete particular events in a particular time. The language, understanding, and implementation of ideas may change over time, depending upon a specific point and place in history. Thus, "modes of thought can be detected which were explicitly concerned with problems of political particularity, with what was intellectually possible when the particular political society was viewed as existing in time, when the particular contingency or event was viewed as arising in time, and when the particular society was viewed as a structure for absorbing and responding to the challenges posed by such events and consisting, institutionally and historically, of the traces of such responses made in the past time." (9)

used to negotiate ruling power in England were a peculiar Protestant identity, a parliamentary tradition, and the nostalgic idea of an ancient constitution.

Since the Roman rule in the first centuries of the millennium, England had a tradition of mediation between monarchical power and local authority.³⁰ Unlike other European monarchies, the English Crown had ruled with a particular, if somewhat irregular, relationship with Parliament throughout the medieval and early modern eras. The evolution of Parliament's power as a deliberative, representative body had become relatively established by the fourteenth century. This early "protoparliamentary" assembly between the kings and barons became a fixed component of legitimate rule in England.³¹ Formulated customs and precedents took root and established certain limitations on monarchical power. By the early sixteenth century, according to Reinhard Bendix's account, English monarchs lacked enough legitimate authority to establish laws without consulting Parliament unless they were prepared to enforce them by military support.³² Bendix further notes that formal rules and procedures restricted the monarch, which established expectations about the behavior of the crown. The monarch was legitimate only to the extent that it conformed to the limits expected and to the oath taken at the coronation. Otherwise, tyranny replaced legitimacy.³³ Thus, the combination of the foreswearing of self-imposed conditions contained in coronation oaths and an established parliamentary tradition helped to cement expected limits on the authority of English kings.

³⁰ See Bendix, 178.

³¹ The term "protoparliamentary", borrowed from Bendix, refers to the irregular and sometimes spontaneous assemblies in which the king and barons met on those occasions when the king critically needed their loyalty. Defense of the realm, personal authority, and wars of aggression are examples. See *Ibid*, p. 193.

³² Bendix, 21.

³³ *Ibid.*, 22.

Parliament's involvement and support for Henry VIII's break from Roman Catholicism added to its institutional integrity. It was a model example of the collaborative rule of monarchical and legislative power in England. Additionally, Parliament's traditional authority to levy taxes made it an invaluable financial resource for the monarch's ambitions, such as wars and imperial colonies. This interdependence often created tensions between a monarch impatient with deliberation and scrutiny of requests and Parliament's growing self-importance. By the early seventeenth century, several factors began to weigh heavily on this relationship and exacerbate the tensions already in play. Irreconcilable conflicts between Protestants and Catholics, a newly emerging public conversation of English rights, and prominent criticisms of the absolutist rule of the Stuart monarchy sparked a series of constitutional crises. These crises, in turn, provoked more radical considerations of the power of the throne over the rights of Englishmen. England in the sixteenth and seventeenth centuries, therefore, underwent a period of dramatic constitutional changes that had powerful implications on national identity as far away as the American colonies.

Religious tensions began greatly affecting the political developments in England during the sixteenth century. It was a period of continuous change and anxieties that produced a radical and influential group of religious dissenters commonly referred to as Puritans. Henry VIII had led England through the separation from Catholicism and, with the cooperation of Parliament, had established the Protestant Church of England. The move had important consequences beyond religious considerations. The English king gained total control of the Catholic wealth, in property and monies, within the realm. With his new riches, the monarch rewarded his friends and supporters while displacing his Catholic detractors. It was an opportunity for many to rise above their previous economic and social disadvantages, thus, generating greater popular support for the

Reformation in England. The succession of the Catholic Mary Tudor, Henry's daughter, however, brought violent retribution against the Protestants. Her marriage to a potential enemy of England, Philip of Spain, her "bloody persecution" of Protestants, and her exile of prominent Puritans helped to galvanize her image as a tyrant and promoted radical resistance.³⁴

The death of Mary and the accession of the Protestant Queen Elisabeth led to a tolerance of Puritan dissent and sparked a renewed optimism about English politics and culture. Puritanism, and its persistent advocacy of reform, became a central feature of English political and religious culture in the late sixteenth century. The exile of the Puritans during Mary's brief reign had intensified their "sense of mission" and emboldened their radical voice into Elizabeth's rule throughout the end of the sixteenth century.³⁵ The later consequences of this activism were dramatic and proved to be constitutionally significant. Certain characteristics of the Puritan faith were especially important to political life in early modern England.

One important characteristic was the Puritan belief in the universal family of all believers.³⁶ The Protestant Reformation had introduced the idea of an equality of souls among the Christian faithful. Calvinism qualified this equality as a principle that applied only to the predestined elect, or those chosen few who were pre-selected by God for salvation. Within this elect, worldly inequalities, such as social or economic distinctions, were irrelevant to the inner spirit or

³⁴ Adrian Hastings, *The Construction of Nationhood: Ethnicity, Religion and Nationalism* (Cambridge: Cambridge University Press, 1997), 55.

³⁵ Ibid.

³⁶ Ibid., 312. Also see David Zaret, *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early Modern England* (Princeton: Princeton University Press, 2000), 24-25.

conscience of the individual Christian.³⁷ All were equal before God. The English Puritans utilized this religious view as a basis for their political activism. In a spiritual sense, they considered themselves “God’s Englishmen,” responsible for the political and religious welfare of England, their “Elect Nation.”³⁸

This religious character of Puritan politics contributed much to English constitutional thought in the late sixteenth and seventeenth centuries. It elevated the importance of the individual’s role in the political realm by emphasizing each Christian’s responsibility for ensuring God’s will in the world. Puritans, therefore, aggressively advanced an agenda of political, legal, and economic reforms consistent with their religious convictions.³⁹ A critical component of this agenda was an attack on the status and character of state-sponsored Church of England. The perception that the Anglican Church had become decadent and unholy was a powerful force in Puritan activism. For these dissenting Protestants, the Church of England, with its ornamental ceremony and clerical hierarchy, was nothing more than Catholicism under a new name. Puritans longed for a literal return to the primitive, simplistic character of the Christian church of the first two centuries.⁴⁰ Their religious ambitions inspired a political activism aimed at purifying not only the church as an institution, but society at-large while at the same time inspiring their covenant relations into the New World.⁴¹

³⁷ Bendix, 310. For the effects of this aspect of Puritan belief in New England see Ola Elizabeth Winslow, *Meetinghouse Hill, 1630-1783* (New York: MacMillan Company, 1952).

³⁸ Pocock, 345.

³⁹ *Ibid.*, 346.

⁴⁰ See Bendix, 31-312; See Pocock, 341-345 for a discussion of the English Puritan historical identity in the “Elect Nation.”

⁴¹ Winslow, 27-28.

It was this legacy of English Protestantism, with its virulent anti-Catholicism, in the sixteenth century that initially fueled changing constitutional perceptions. Yet, Puritan political activism was only one of the influences affecting the English constitutional culture by the early seventeenth century. The Puritan challenge to royal authority regarding religious practices coincided with a particular legal strategy to thwart monarchical abuse of traditional English liberties. Within the first decades of the seventeenth century, common-law jurists and lawyers began codifying legal precedents based on the concept of an “ancient constitution.” Like the Puritans, who cited the early years of the apostolic church as the founding precedent for English spiritual salvation, the common-law tradition cited the ancient constitution as the legal foundation of English liberties. Both groups highly regarded historical precedence as a structural basis for resolving contemporary English concerns.⁴²

The ancient constitution embodied an eclectic mix of historical memory and legal precedence. Unlike later American conceptions of constitutionalism, which built upon deliberate written documents and particular principles of jurisprudence, the ancient constitution referred to an unwritten and unsystematic reverence for a tradition of English rights.⁴³ This tradition incorporated coronation oaths, the Magna Carta, and the increasingly established common law jurisprudence as legal precedents.⁴⁴ By the early seventeenth century, these rights found greater expression in codified decisions by such prominent jurists as Sir Edward Coke. The common-law tradition represented by Coke reinforced the ancient constitution as a harbinger of popular rights, further

⁴² Bendix, 298. Also see Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830* (Chapel Hill: University of North Carolina Press, 2005), 29.

⁴³ J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957, 1987), 30. Also see Chapter II for more discussion of the idea of an English ancient constitution.

⁴⁴ Bendix, 191. Also see Hulsebosch, 8.

cemented the notion of popular political participation, and facilitated a national identity rooted in English liberties. The political nation was not only the power of the king, but was a power shared and checked by the people's rights guaranteed by the ancient constitution and protected by Parliament. Coke's opinions in cases such as *Calvin's Case* (1608) and *Bonham's Case* (1610) strengthened the legal reasoning behind this argument.⁴⁵

Both *Calvin's Case* and *Bonham's Case* demonstrated the legal efforts to codify English rights and to raise the importance of common-law courts above other forms of English law, such as monarchical laws, law merchant, parliamentary laws, and local customs.⁴⁶ In *Calvin's Case*, Coke, as the Chief Justice of the Court of Common Pleas, confirmed the right of property owners to vindicate their titles exclusively in common-law courts. Such jurisdiction portrayed the common-law courts as a check against the abuse of English rights by the monarch or even Parliament. These courts became the primary venue for the legal redress of English rights and reflected the intended reverence for common law above other legal forms.⁴⁷ The effect of this common-law activism and the ancient constitutional rights argument was a broader acceptance of limitations on the powers of the monarch. Coke's ruling in *Bonham's Case*, a landmark case proposing the existence of a higher or fundamental law above regular legislative processes, also implied certain limitations on Parliament's scope of power.⁴⁸

⁴⁵ See, Hulsebosch, 23-31.

⁴⁶ Ibid., 31.

⁴⁷ Ibid.

⁴⁸ Ibid. Also see Gary L. McDowell, "Coke, Corwin and the Constitution: The 'Higher Law Background' Reconsidered" in *Review of Politics*, Vol. 55, No. 3 (Summer, 1993), 393-420; Charles Grove Haines, *The Revival of Natural Law Concepts: A Study of the Establishment and of the Interpretation of Limits on Legislatures with Special Reference to the Development of Certain Phrases of American Constitutional Law* (Cambridge: Harvard University Press, 1930), especially "Chapter II: English Higher Law Doctrines."

All of the spokes in this wheel of reform converged on the same axle—the role of Parliament in protecting English rights. Liah Greenfeld, a nationalism historian, has argued that by 1600, the English people had a firm sense of national identity, which was intricately bound to the idea of English rights and the role of Parliament. As Greenfeld asserts, English identity and the individual right of political participation through representatives in Parliament “went hand in hand.”⁴⁹ By the early seventeenth century, therefore, a political consciousness had emerged in England that distinguished the limited authority of the monarch from the unassailable rights of the people. The contentious relationship of Parliament with James I and his heir and son, Charles I intensified the efforts to define those rights. The Stuart monarchy’s determination to make Parliament less relevant to governing affairs led to Parliament’s defenders to begin a series of increasingly elaborate justifications for representative government. Tensions mounted between the Royal Court, self-assured of its absolute authority, and Parliament, determined to share in that authority, throughout the early decades of the seventeenth century.

A combustible set of developments in this period informed these political tensions: a progressive Puritan engagement in politics, the idea of rights protected by an ancient constitution, the emerging integrity of common-law precedents, and the assertion of divinely sanctioned absolutism by the Stuart monarchs. As the relationship between the monarch and Parliament deteriorated, by the 1620s Parliament had developed, as the historian Robert Zaller has described, “a powerful sense of corporate consciousness.”⁵⁰ This collective sense of identity emboldened their

⁴⁹ Greenfeld, 44.

⁵⁰ Robert Zaller, *The Parliament of 1621: A Study in Constitutional Conflict* (Berkeley: University of California Press, 1971), 1. Conrad Russell offers a dissenting view of the empowerment of Parliament in the 1620s. He has argued that even during this period Parliament was little more than a temporal institution with little impact on the substantial authority of the monarch. See Conrad Russell, *Unrevolutionary England, 1603-1642* (London: Hambledon Press, 1990), especially Chapter I: The Nature of Parliament. Also see Morgan, 20.

rhetoric and their actions. According to Zaller, they “no longer conceived of themselves as a body sporadically assembled at the king’s pleasure, and existing, like the Cheshire cat, only when the sovereign’s eye was upon it, but as an ongoing and permanent function of state.”⁵¹ Parliament, as representatives of the people, took on a new, higher meaning than it had before. With an emerging self-importance, Parliament battled with James I. As the first English monarch to assert the divine right principle, James I provoked those who had come to believe that, divinely sanctioned or not, an English monarch must respect the sphere of authority of Parliament. Historically, procedurally, and practically, Zaller has argued, Parliament developed its image as “the voice of the nation.”⁵²

In particular, the House of Commons, as the chamber of government most representative of the people, challenged James I role as “God’s lieutenant” and supreme arbitrator of English rights.⁵³ Edmund Morgan, who has called “representation” a fiction, albeit necessary to modern democracy,⁵⁴ has noted that the House of Commons vigorously defended its representative role and the duties that role entailed. The Commons claimed to represent all Englishmen and dedicated to the good of the whole realm. “If they gave money to the king,” Morgan has written, “they gave for everyone, and by the same token if they contended for the rights of subjects, they were under some constraint to contend for all subjects.”⁵⁵ Because it maintained that its authority emanated from the English people, the Commons boldly asserted that the monarch could not restrict or abridge its

⁵¹ Zaller, 1-2.

⁵² Ibid., 1-4.

⁵³ For a discussion of the divine right of the English Stuarts and the negotiations of authority by Parliament see Morgan, Chapter 1, “The Divine Right of Kings,” esp. 17-22.

⁵⁴ “The success of government thus requires the acceptance of fictions, requires the willing suspension of disbelief, requires us to believe that the emperor is clothed even though we can see that his is not...Make believe that the people have a voice or make believe that the representatives of the people are the people.” Morgan, 13.

⁵⁵ Morgan, 23.

duties and privileges without violating the constitutional trust of the people at-large.⁵⁶ The subsequent contest for power with James I and his successor and son, Charles I, deepened the Commons's resolve to seek a redefinition of English sovereignty. Eventually, the impasse between the Commons and Charles I led to civil war.

The House of Commons had begun to assert some political autonomy from the crown in its Protestation on the Apology and Satisfaction of 1604 and the Petition of Right in 1628.⁵⁷ Both instances were attempts by the Commons to remind the English monarch of the limits of royal authority and of the privileges of Parliament. Such efforts helped to erode the absolutist position of the crown. Increasingly, representative power translated into the sovereign will. In 1642, on the eve of the English Civil War, Parliament issued Charles I a list of grievances. The grievances resulted from Parliament's desire for a greater share of governing authority. The Commons already had passed much legislation without royal consent and threatened to expand its power beyond tradition.⁵⁸ In an effort to moderate tensions, Charles's advisors prepared an elaborate response known as *His Majesty's Answer to the Nineteen Propositions of Both Houses of Parliament*. The document presented a radically new vision of the governing relationship between the crown and Parliament. Ironically, Charles I approved a reply to Parliament that ultimately undermined the absolutist view of the English monarch and empowered support for Parliament, an act that ideologically justified the English Civil War.⁵⁹

⁵⁶ Bendix, 12. See also Zaller, 2.

⁵⁷ See Morgan, 24; Zaller, 178-179.

⁵⁸ Pocock, 361-362.

⁵⁹ Ibid., 362.

Instead of affirming divinely-ordained absolutism, the *Answer to the Nineteen Propositions* described the power of the English government as a constitutional balance between the king and the two chambers of Parliament. It characterized this balance in Aristotelean terms that translated the three kinds of government (monarchy, aristocracy, and democracy) into the English crown, House of Lords, and House of Commons, respectively. It was, in essence, a concession of constitutional power shared by the king with the Parliament. According to this document, England's government was closer to a classical republic than a contemporary monarchy. This was a critical philosophical turn for English political writers in the seventeenth century.⁶⁰

The English Civil War was a watershed for many political ideas, including conceptions of representation and sovereignty. The writings of the period reflected an array of views on the political tensions involved in the war. Moreover, the dissemination of these views in print added a new and important dimension to English culture. David Zaret has argued that the political discourse and printed dialogue from the outset of the English Civil War created a forum of popular participation by citizens, known in sociological theory and historiography as the public sphere.⁶¹ The public sphere was about space, forms of interpersonal engagement, ideas, and expression. It was generally in the common domains of society where individuals could interact personally or commercially with others. The print culture emerged as a powerful aspect of this public forum. Published essays, pamphlets, and declarations became central to political opinions. The increasing accessibility to information, ideas, and opinions helped to shape the political culture. This civic

⁶⁰ Ibid., 362-363.

⁶¹ See Zaret, 6-9. Compare Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge: MIT Press, 1989). Habermas argues that the public sphere did not develop until the eighteenth-century Enlightenment when capitalism and "reason" encouraged the possibility a consensus public view. This public expression often occurred at salons, coffeehouses, and public readings. Both agree, however, that the public sphere first emerged in England.

engagement afforded a social structure for the emergence of collective or public opinion on matters of social, political, and economic interests. According to Zaret, this public arena embodied certain “democratic tenets” that led to “the importance of consent, open debate, and reason for the authority of opinion in politics.”⁶² The print culture during the English Civil War, then, promoted discussions of new and sometimes radical political ideas.

From the early arguments of the influential Parliamentary theorist, Henry Parker, to the later radical demands of the Levellers, the war unleashed a multitude of publicized views on the relationship between government and the people. By the time military operations began in 1642, a changing perception of English government had spread throughout much of the population arguing that representation was not only important, but, indeed, necessary for legitimate governance.⁶³ There were numerous discussions about representation, civic participation by the people, and the proper realm of sovereign powers. Leading up to the conflict, the political discourse among MPs, civil and common-lawyers, and other royal critics had involved, for the most part, the cooperation necessary to the distinctive governing roles between Parliament and the king.⁶⁴ The war itself, however, radicalized the dialogue by asserting parliamentary supremacy over the English crown. Though some scholars have claimed that religion was the primary impetus for Parliament’s willingness to wage war against the king, the changing views of constitutional legitimacy were also central to the conflict.⁶⁵

⁶² Ibid., 6.

⁶³ Ibid., 361.

⁶⁴ D. Alan Orr, “Sovereignty, Supremacy and the Origins of the English Civil War,” in *History*, Vol. 87, No. 2 (October 2002), 479.

⁶⁵ For an interpretation of the war as the “last and greatest of Europe’s Wars of Religion,” see John Morrill, Brian Manning, and David Underdown, “What was the English Revolution?” in *History Today*, Vol. 34 (March 1984), 11-

The English Civil War, consequently, was a series of ideological battles as well as military ones, rooted primarily in religious controversies. A variety of factors escalated the tensions between royal and parliamentary factions. Religious discontent, a war with the Scots, and the entrenching rift between Charles I and Parliament ignited violence and divided Englishmen. Cavaliers loyal to the king defended divine-right and absolutist rule. Religious and political reformers rallied support for the parliamentary army, while moderates split between both sides. It was a complex struggle that has had a broad and distinguished historiography, and which is beyond the scope of this study. While the war began as a battle for moderate institutional and ideological reforms, it soon quickly became a breeding ground for radical ideas. While many of the most radical proposals did not take root in England, the war inspired influential writings by political thinkers like Isaac Pennington, Jr., Thomas Hobbes, and James Harrington.⁶⁶ Other cultural features of early modern England also played an important role in the conflict.

Millennialism, puritanical reforms for the Church of England, anti-Catholicism, parliamentary supremacy, and popular rule boiled to the surface and inspired extremists toward reinventing the government. The historian David Wootton has argued that such radicalism emerged from fears that Parliament might make concessions to the king in order to end the war.⁶⁷ Rumors of concessions raised the stakes for parliamentary activists like Henry Parker, John Lilburne, and William Walwyn, extremists who avidly supported and wrote about the potential power of popular representation and theories of popular sovereignty. Their influence was critical to

17. Also see Morrill, "The Religious Context of the English Civil War," in *Transactions of the Royal Historical Society*, 5th series, Vol. 34 (1984).

⁶⁶ See Pocock, 384-385; Morgan, 84-86; and J. R. Pole, *Political Representation in England and the Origins of the American Republic* (New York: St. Martin's Press, 1966), 7-13.

⁶⁷ David Wootton, "From Rebellion to Revolution: The Crisis of the Winter of 1642/3 and the Origins of Civil War Radicalism" in *The English Historical Review*, Vol. 105, No. 416 (July 1990), 654-655.

political expectations during the war. For instance, Wootton has stated that Walwyn's *England's Lamentable Slavery* may have been the original source for "the Leveller theory of popular sovereignty, which stressed the right of the people to rebel even against their representatives."⁶⁸ This, indeed, was a radical idea at the time—more than forty years before Locke's theory of resistance had appeared in England.

Radicalism was gaining momentum by 1645. In an effort to improve its record on the battlefield, Parliament saw it necessary to renovate its army. The result was the New Model Army, characterized by a rejection of traditional social stratifications and the establishment of a rank structure based on merit and ability rather than status in society. Radicalism gained momentum following the capture of the king in 1647. Soon, Leveller soldiers and civilians collaborated on their proposal for a new English constitution known as the "Agreement of the People."⁶⁹ Distressed by Parliament's own ambitions for absolute power and rumors of making Presbyterianism the state-sanctioned religion, the army's religious Independents, supporters of religious tolerance and freely independent congregations, sought political and religious reform.⁷⁰ The Agreement included this reform agenda and attempted to limit the powers of Parliament through a theory of popular sovereignty. The Putney Debates in the fall of 1647 demonstrated the increasing commitment to this theory. The Levellers declared that the Agreement must meet approval by the people of England and must prevail as a contract between the English and their representatives.⁷¹ As long as Parliament needed the New Model Army to fight against the king, the Levellers held significant

⁶⁸ Ibid., 658.

⁶⁹ Ibid., 72.

⁷⁰ Ibid., 67.

⁷¹ Ibid., 76.

political influence. With the military victory over the royalists, however, the radicals lost their advantage and momentum. Parliament and military leaders, like Oliver Cromwell, soon quelled any populist claims to power and, instead, installed a sovereign Parliament. The English Civil War had brought the full eclipse of absolute royal sovereignty by absolute parliamentary sovereignty.

With the Civil War won and King Charles I beheaded in 1649, Parliament issued a proclamation, commonly called the “Engagement,” as a declaration of its redefined representative authority. It required unconditional loyalty to the new republican government and, thus, greatly advanced the powers of Parliament without any formal popular approval. Once the House of Commons had gained control of the New Model Army and its leaders, the threat of military force became the instrument by which it claimed power. With access to such force, there was little to prevent, with the exception of public criticism, the House of Commons from conferring vast powers to itself.⁷² For Parliament, compliance was consent and did not deem necessary any formal approval by the representative constituents. In essence, the Rump Parliament possessed more power with fewer restrictions than had the English monarch since the Magna Carta in 1215.⁷³

Opponents of the Engagement were agitated at the omission of popular consent and the self-aggrandizement of such a broad scope of parliamentary powers by the representatives. They demanded that representatives lacked the legitimate power to remake government without validation by their constituents. Parliamentary power did not include reinventing constitutional government without popular consent. According to this argument, the representative power inherent in Parliament was a grant from the political constituency for traditional legislative

⁷² Ibid, 78-80.

⁷³ Ibid., 78.

responsibilities. The power to make and unmake government resided solely in the constituent authority, which representatives could not assume except by a specific and formal mandate to do so.⁷⁴ As Issac Pennington, Jr. wrote in 1651, “They who are to govern by *Laws* should have little or no hand in making the *Laws* they are to govern by.”⁷⁵ This was possibly the earliest public call for a special process for consensual constitutional change. Certainly, the idea resonated for American colonists more than a century later.

By the 1650s, several authors began exploring the political possibilities in the wake of the Civil War, the Leveller movement, and the ascendancy of parliamentary sovereignty. James Harrington’s *Commonwealth of Oceana* (1656) described a model republic based on innovative mechanisms to ensure political legitimacy and stability. Among these devices were secret ballots, rotating government service, and bicameral legislatures with distinct governing roles, and a generally equitable distribution of land.⁷⁶ Others writers, like George Lawson and Henry Vane, argued that legitimacy demanded a sovereign assembly independent of Parliament enact any fundamental changes to the constitutional order. For Lawson, the reconvening and renaming of Parliament as a convention assembly would be sufficient. Vane, however, suggested that the army was representative enough of the English population and could act effectively as such an assembly.⁷⁷

These ideas never made it into the English constitutional system during the seventeenth century. Nevertheless, more theories of resistance and legitimacy continued throughout the rest of

⁷⁴ Ibid., 81.

⁷⁵ Issac Pennington, Jr., *The Fundamental Right, Safety and Liberty of the People* (London, 1651), 2; quoted in Ibid., 84.

⁷⁶ Morgan, 85-87. Also see Pole, 8-13.

⁷⁷ Morgan, 87-89.

the politically contentious century. Historian Lee Ward has described how crises in the latter half of the century affected English constitutional thought.⁷⁸ After the Restoration of Charles II to the throne in 1660, sovereign power, for the next thirty years, returned to the king. Although popular sovereignty or parliamentary sovereignty no longer seemed to present any serious threats to the restored monarchical power, the antagonism between Protestant reformers and royal religious policies reemerged and produced more ideological battles.⁷⁹ Informed by religious intolerance, the Exclusion Crisis and the Glorious Revolution exemplified the constitutional consequences at stake during this era.

The Exclusion Crisis involved Protestant objections to the Catholic James II as his brother's, Charles II, immediate successor to the throne. Party lines deepened between the Tories and the Whigs over the issue. Memories of the tragic Civil War, extremist ideas, the beheading of Charles I, and the failure of Oliver Cromwell's Protectorate government still weighed heavily on the collective political mind in England. These conservative influences tended to temper and often suppressed radical ideas. Nevertheless, religious bigotry remained central to the political tensions in the 1660s, further inciting Whig challenges to the line of royal succession. This time, however, Whigs claimed a coequal, not superior as during the Civil War, sovereignty with the king. Their justification was Parliament's power directly conferred to it by the people. If the Church of England was the official state religion, then it was the right of the people, through Parliament, to resist a Catholic ruler. Unwilling to repeat the radical escalation of the Civil War, the Whigs

⁷⁸ Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge University Press, 2004). Though his emphasis is on writings inspired by the Exclusion Crisis, his work gives a respectable overview of the politics throughout much of seventeenth and eighteenth century England to the American Revolution. Much of the discussion herein on James Tyrrell, John Locke, and Algernon Sidney owes much to Ward.

⁷⁹ Wood, 94-95.

emphasized the necessary cooperation of the Parliament with the crown in matters of national interest.⁸⁰ Tories responded with divine right arguments and the battle for legitimate rule resumed.

The Earl of Shaftesbury initially organized and led the Whig resistance against the Tory absolutists. The conflict produced a number of important writings from prominent Whigs. Among them were James Tyrrell, Algernon Sidney, and John Locke. Despite the prevailing conservatism, these writers introduced another set of somewhat radical theories of government based on natural reason. While their ideas remained on the margins of the political mainstream in Restoration England, many of them would clearly resonate with eighteenth-century Americans in revolution.⁸¹ The Exclusion Crisis and subsequent events leading to the Glorious Revolution, according to Ward, provided a “critical point” for the later development of American political thought.⁸² For seventeenth-century England, however, these ideas were still out of the mainstream of constitutional ideas.

Exclusion-era Whigs such as Tyrrell, Sidney, and Locke embraced natural rights and contract theories of government, thus, supplanting historical constructs like the ancient constitution as foundations for civil authority. Man’s natural reason replaced reverence for antiquity in their

⁸⁰ Ibid., 102-103.

⁸¹ Some recent scholars have discounted Locke’s influence on eighteenth-century America, his importance to certain ideas and discourse is undeniable. The legacy of Lockean liberalism began to suffer creditable criticism from a historiographical turn in the 1960s and 1970s. Some historians began to emphasize the republican foundations of the American Revolution over the liberal tradition which had been represented by Louis Hartz, Carl Becker, and Richard Hofstadter. By the 1980s, however, a neo-liberal historiography emerged with Joyce Appleby, Isaac Kramnick, and Steven Dwoletz reconsidered and re-engaged Lockean liberalism. For the “republican synthesis” view (a phrase coined by Robert Shalhope’s article “Toward a Republican Synthesis” in *William and Mary Quarterly*, Vol. 29 (1972), 49-80), see Pocock, *Machiavellian Moment*; Bailyn, *Ideological Origins*; Wood, *Creation of the American Republic*. See Ward’s discussion, 2-8. Ward claims to hold a historiographical position between the liberal and republican approaches whereby he finds significant strands of both in the American founding ideologies. See Ward, 6-7.

⁸² Ward, 13.

new brand of constitutionalism. For these writers, Coke's view of an English constitutionalism based on the "artificial reason" of legal precedents rooted in judicial interpretations of the immemorial past, legislative resolutions, and unwritten political protocol were insufficient for their arguments.⁸³ Since the Civil War, there had been a concerted effort to write down changes to fundamental law and rely less upon unrecorded custom and tradition. The Leveller's failed attempt of "The Agreement of the People" (1647), Cromwell's "Instrument of Government" (1654), which gave him virtually limitless power, and Parliament's reorganization in the "Humble Petition and Advice" (1657) had demonstrated the proclivity to document fundamental law.⁸⁴ Thus, the natural reasoning and documentation of fundamental principles, whereby there was at least some reference to popular consent through Parliament's representative role, replaced the artificial reason behind broadly interpreting questionable historical traditions without any popular voice at all.⁸⁵ The concepts of consent and its political opposite, popular resistance, became increasingly important, in varying degrees, to the radical Whig writers of the seventeenth century.

These writers, whom Ward refers to as part of the "natural liberty tradition," all agreed that the basis for legitimate government was consent.⁸⁶ They also argued that sovereignty did not rest, at least absolutely, in the monarch. They disagreed, however, over the exact locus of sovereignty in the political nation. Tyrrell, a moderate among the radical Whigs, maintained that the essential source of political authority in England rested with the king-in-Parliament, not in the people at-

⁸³ Hulsebosch, 24.

⁸⁴ Ibid, 35; Wood, 81.

⁸⁵ Hulsebosch, 35.

⁸⁶ Ward, 12.

large.⁸⁷ For Tyrrell, Parliament was the vehicle of consent. Furthermore, he refused to affirm the right of the people to resist or rebel against abuses of authority. Instead, constitutional change through the king-in-Parliament was the only recourse for natural and legitimate political resolutions.⁸⁸

Algernon Sidney was representative of the ideological middle ground between Tyrrell and John Locke. Sovereignty, for Sidney, belonged in England's representative legislature. This modified version of popular sovereignty, which Ward has called the "'reflection theory' of sovereignty," held that a representative assembly was the only practical and effective mechanism for formally expressing the popular will.⁸⁹ Locke, on the other hand, advocated an individualistic natural rights theory. It was in the collective consent of individuals to form a government that sovereignty resided.⁹⁰ His theory of right to revolution also rested firmly upon the natural power of the individual to resist tyranny.⁹¹

These theories on legitimate authority and natural rights remained, for the most part, on the fringes of early modern English constitutional thought. Moderate views held sway over any radical tendencies. Partisan struggles and their ideological shifts throughout the period illustrate the difficulties, however, of a middle course in English constitutionalism.⁹² Efforts to prevent the

⁸⁷ Ibid., 150.

⁸⁸ Ibid., 150-151.

⁸⁹ Ibid., 14.

⁹⁰ Ibid., 212, 248.

⁹¹ Ibid., 265.

⁹² For a detailed explanation of these changes, see Ward, especially Chapter 10: "The Glorious Revolution and the Catonic Response" and Chapter 11: "Eighteenth-Century British Constitutionalism." Also see Pocock, Chapter 14: "The Eighteenth Century Debate: Virtue, Passion and Commerce"; and Caroline Robbins, *The Eighteenth Century Commonwealthman: Studies in the Transmission, Development and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies* (Cambridge: Harvard University Press, 1959).

succession of Catholic James II to the throne had divided the country into Whig and Tory parties. With a wave of support from the Whigs and the reluctant compliance of the Tories, William of Orange, with his wife, Mary Stuart, replaced James II on the throne in 1689. The ideas of Sidney and Locke, both Whigs whose writings during the Exclusion Crisis did not appear until after the Glorious Revolution, had justified the replacement by advocating the popular right to remove a tyrannical monarch.⁹³ Their ideas were temporary expedients, however. While useful for the Glorious Revolution, afterward they were too radical for mainstream English political sensibilities.

With the radical ascension of William and Mary during the Glorious Revolution, the English returned to a more conservative constitutional climate. The Whigs had been victorious in their pursuits to oust the Catholic monarch and partisan tensions began to decline. The prevailing view of legitimate authority finally rested with the King-in-Parliament. By the 1720s, England began to experience a period of relative political calm for the first time in over a century.⁹⁴ The settlement of Parliamentary sovereignty with a limited monarch had been a sharp contrast to the popular sovereignty advocated by the radical Whigs.⁹⁵

The political stability of this constitutional settlement afforded Parliament greater attention toward colonial and economic expansion. The Act of Union in 1707, joining Scotland with England and Wales, suddenly replaced English with British identity.⁹⁶ The act of becoming the British Empire was the culmination of a centuries-long religious and political struggle. “Nation

⁹³ Morgan, 104-106; Ward, 196-202, 247-248.

⁹⁴ Lawrence Stone, “The Results of the English Revolutions of the Seventeenth Century,” in J. G. A. Pocock, *Three British Revolutions: 1621, 1688, 1776* (Princeton: Princeton University Press, 1980), 81-82.

⁹⁵ Morgan, 120-121. Ward, 326.

⁹⁶ Colley, 1, 11-17.

was replacing crown as the symbol of English identity,” according to one historian.⁹⁷ With this new nationalism and a renewed confidence in its constitutional foundations, Parliament assumed more authority over the British colonies. In 1696, on the other hand, King William III, created a new Board of Trade and Plantations for royal relations with the American colonies. Later, in the 1770s, this move proved significant to colonial assumptions about the fundamental relationship between America and Britain. It effectively contradicted Parliament’s claims of sovereign power over the American colonial governments.⁹⁸ Importantly, Parliament’s presumption of colonial sovereignty clashed with an emerging American nationalism, which defied that presumption.

During the eighteenth-century Enlightenment, other advocates of parliamentary sovereignty continued to dismiss popular sovereignty ideas. The French philosopher Montesquieu was one of the most celebrated apologists for the British constitution by the mid-eighteenth century.⁹⁹ He openly admired England’s mixed government and balanced constitution that divided power between a bicameral legislature, the House of Lords and House of Commons, and a hereditary monarch.¹⁰⁰ The Scottish philosopher David Hume also repudiated popular sovereignty and preferred the institutional checks and balances of the British government. Hume believed that popular sovereignty was as equally an illegitimate basis for government as divine-right absolutism.¹⁰¹ Another staunch supporter of parliamentary sovereignty was the renowned jurist William Blackstone. In his *Commentaries on the Laws of England*, published from 1765-1769, Blackstone argued that sovereignty was not divisible and, therefore, must rest in the representative

⁹⁷ Hulsebosch, 37.

⁹⁸ Ibid.; Morgan, 132-134.

⁹⁹ Ward, 316.

¹⁰⁰ Ibid., 317.

¹⁰¹ Ibid., 313-316.

branch of government.¹⁰² Blackstone, in fact, went further than many others by denying that any separation of powers existed in the English government because the Parliament was only sovereign as the King-in-Parliament. The House of Commons and House of Lords could only legislate with the monarch's participation, thus totally rejecting the importance of a popular will.¹⁰³ Such views demonstrate the diversity of thinking that supported the moderate path of British constitutionalism in the eighteenth century.

Simultaneous with these developments in England throughout the seventeenth and into the early eighteenth centuries, the American colonies were adopting their colonial constitutional ideas and establishing political institutions. In the shadow of the empire, the colonies were not immune from the effects of transformative events and ideologies brewing in England. Although an ocean away, the colonists responded to the constitutional conflicts that hampered the Stuart monarchy in ways that tended to serve their self-interest on the North American continent. They were royalists when it served them best and parliamentarians when it did not. The uniqueness of their conditions, their distance from England, the frontier environment, and the human sacrifice in blood and sweat to forge new communities, led them to interpret ideas from afar differently and apply them in ways inconceivable or unavailable to the English back home.

¹⁰² Hulsebosch, 39. Also see Ward, 319-323.

¹⁰³ Stone, "Results," 91.

CHAPTER 2

THE CREATION OF AMERICAN CONSTITUTIONAL CONVENTIONS

American colonials digested and uniquely applied the ideas fed to them advertently and inadvertently by the British constitutional conflicts during the seventeenth century. Allegiances in the colonies depended upon political, religious, and economic interests and temperaments. The events leading to and during the American Revolution, however, tested, strained, and often destroyed those allegiances while producing a new brand of constitutionalism informed by the ideas and struggles over the past century and a half. This chapter explores the development of American constitutionalism from the early seventeenth century and the factors that drove that development as related to the emergence of the state constitutional convention during the Revolutionary War.

By the time Americans were ready to begin creating their revolutionary governments in the 1770s, they had developed distinctly provincial attitudes of political identity, sovereignty, and representation. The results of this development became obvious in the first state constitutions and the processes they adopted to construct them. Although their general political values were relatively consistent, the practical application of them was not. Early American nationalism emerged slowly through local activities of political resistance against England and solidified through the commonly shared goal of independence. Sovereignty of the people remained a persistent concern in legitimating government, as seen in the writing and principles of the new constitutions. Revolutionaries tied their reverence for popular sovereignty to their constitutional

mechanisms for consent and representation. Popular sovereignty informed American ideas of liberty which they attempted to institutionalize and memorialize in the development of constitutional conventions. Conventions were fortresses for constitutions, protecting them from the arbitrary power of government by asserting the power of the people to determine their fundamental laws.

Understanding the ideas and events most influential in the creation of American constitutional conventions requires also understanding certain political and intellectual developments beginning from the earliest English colonies in the seventeenth century and extending through the 1787 Federal Convention in Philadelphia. This era divides, though not rigidly, into four critical historical phases. It is important to state here that these phases are entirely artificial constructs designed to better understand the ideas and events that culminated in the metamorphosis of the convention idea into a practicable process. The reality of the colonial experiences of seventeenth and eighteenth-century Americans did not, and could not, perceive their lives, actions, and experiences as precursors to later developments. As historians, we impose upon their lives a particular understanding so that we can explain a historical moment. Events and ideas did have particular consequences, which were largely unpredictable; they could have led easily to other ends with other means. Life then, as now, generally was blind to the effects of the present on the future. Nevertheless, in understanding the past, the historian must find or create an orderly narrative to seemingly disorderly events, which often appear more random than significant as they occur.

The first phase of critical influence to later conceptions of a constitutional convention was the era of frontier colonialism, which began with the establishment of Jamestown and extended through the Glorious Revolution in England. Secondly, the decades from the Glorious Revolution

to the American Revolution comprised the era of Enlightenment and religious transformation. Next came the era of colonial revolution, which lasted in some ways through 1787. Finally, the era of established institutions began with the federal Constitution and continues into the present. While there is extensive overlap among these periods, they provide a fair frame of reference examining the chronological developments of the ideas underlying this study.

The frontier colonial experience was a gamble by English settlers in which they bet on successfully carving out a society and enriching themselves in a wilderness environment that was alien and often hostile. Many in the early decades of the seventeenth century lost the gamble with their lives while others, through luck or resourcefulness, persevered and adapted. Building permanent communities was a painfully slow process that frustrated the colonials, their supporters, investors, and government in England. The process meant constant negotiation on all levels of existence. The colonial negotiated survival with the physical environment, the Native Americans, and with the homeland. It was a negotiation of military, political, and economic dimensions.

From the settlement at Jamestown in 1607 to the signing of the Declaration of Independence in 1776, the majority of American colonists were of English descent.¹ Of course, there were other countries and ethnic groups represented in the English colonies beyond the white Anglo-Saxon. For most, their Englishness was a commodity. In the twenty-first century, this English identity appears remote and irrelevant. To the colonists, however, it was the essence of their existence—their lifeline to survival, their blueprint for order, and their historical roots. Their Englishness afforded them access to certain political rights, economic resources, and a common

¹ For further discussions of the Englishness of American colonials see David Grayson Allen, *In English Ways: The Movement of Societies and the Transfer of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century* (New York: W. W. Norton & Company, 1982); Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge University Press, 2004); and Robert M. Bliss, *Revolution and Empire: English Politics and the American Colonies in the Seventeenth Century* (Manchester: Manchester University Press, 1990).

heritage, which gave them at least a modicum of continuity in what was otherwise unpredictable circumstances. Their identity informed the very essence of their social, cultural, political, and economic relationships. Thus, sustaining English traditions and identity proved an invaluable resource on many levels during this period of frontier colonialism.²

England's first successful permanent settlement in America began in Jamestown as a commercial venture by the Virginia Company. Whether by conquest and subjugation of native or imported labor, by trade with the indigenous populations, or by a fortuitous discovery of gold or other precious metals, the sole intent was to enrich England and protect its interests on the American continent.³ Early settlements in America were, according to early American scholar Jack P. Greene, merely "a series of economic units," not political models in the image of English society.⁴ As Morgan has stated, initial conditions for the English settlers in the colonies yielded little toward reflecting on concepts of republican government or ideas of sovereignty.⁵

There was, therefore, little ideological about the first English adventures into North America. Whatever political values were involved mainly stemmed from the colonists' rights as Englishmen. According to the historian Daniel J. Hulsebosch, these rights became more vivid after

² For a similar discussion, see Bliss, especially chapters One and Two. Bliss suggests that Englishness was less of a choice than a necessity. He argues that seventeenth-century English colonies in America had a total dependence on England throughout the century. Also see, Jack P. Greene, "Negotiated Authorities: The Problem of Governance in the Extended Politics of the Early Atlantic World" in Jack P. Greene, *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville: University of Virginia Press, 1994), 16. For the innovation of joint stock companies and their evolving role in the settling of English colonies see Theodore K. Rabb, *Enterprise & Empire: Merchant and Gentry Investment in the Expansion of England, 1575-1630* (Cambridge: Harvard University Press, 1967).

³ See Ibid, 8-11; Jack P. Greene, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill: University of North Carolina Press, 1988), 8-12. For the economic ambitions of English settlements also see Kenneth R. Andrews, *Trade, Plunder and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480-1630* (Cambridge: Cambridge University Press, 1984).

⁴ Greene, "Metropolis and Colonies: Changing Patterns of Constitutional Conflict in the Early Modern British Empire, 1607-1763" in *Negotiated Authorities*, 43.

⁵ Morgan, 125.

Edward Coke, the renowned seventeenth-century English jurist, delivered the ruling of *Calvin's Case* (1608), which gave definition to certain colonial rights.⁶ It did not take long, however, for colonial circumstances to demand political solutions to economic challenges. The troublesome wilderness and conflicts with indigenous populations forced England to abandon any lingering expectations of "get-rich-quick" schemes in America. Circumstances forced the English to establish a plantation economy, which was much more labor intensive and prompting the need for establishing political and social communities. The result in the Chesapeake was the "Great Charter" of 1618 and its first representative assembly in America, the House of Burgesses.⁷ Such a charter became necessary as the Virginia Company realized that the permanence and difficulties of squeezing profits from America would require some organization of society and a measure of self-rule for colonists willing to engage in the high risks venture.⁸ The British monarch was a willing partner in this grant of restrained autonomy for the colonists, primarily because the corporation assumed virtually all the risk, both monetarily and in human capital.⁹

This auspicious start to representative government in America was indicative to the ambiguities suffered by the self-governing experiments throughout the colonies in much of the seventeenth and eighteenth centuries. By the mid-1620s, the economic, political, and material conditions of the Virginia colony had deteriorated to the point that, in a proclamation, King James I rescinded its charter in April of 1624.¹⁰ Although the colony's official status within the empire

⁶ Hulsebosch, 22-28. Refer to Chapter 2 of this study. Also see, David Thomas Konig, "Colonization and the Common Law in Ireland and Virginia, 1569-1634" in *The Transformation of Early American History: Society, Authority, and Ideology*, ed., James A. Henretta, Michael Kammen, and Stanley N. Katz (New York: Alfred A. Knopf, 1991), 70-92.

⁷ Bliss, 11.

⁸ Ibid.

⁹ Ibid.; Jack P. Greene, *Negotiated Authorities*, 11-15.

¹⁰ Bliss, 13-15.

continued to be in question, the king's proclamation made clear that the political and legal rights previously enjoyed by the colonists would continue.¹¹ As Greene has noted, political authority became a negotiated process between the colonials and the metropolitan government.¹² It was a process that persisted, sometimes dramatically, until Americans militarily won their independence. The representative assemblies in America became a critical mechanism in that negotiation.

There has been a disagreement in the historiography over the character of that negotiation. Greene has described the relationship between the American colonies, the English "peripheries," and England, the "metropolitan," as an overeager experiment in which the monarch could not adequately supply necessary resources to the new settlers under his "direct rule" while the Americans lacked any other viable suppliers for those resources. The corporate nature of early colonization meant that the royal government had little risk and investment in the ventures than did the company sponsors. This, according to Greene, gave those who chose the hardships of colonial life a degree of political and economic autonomy otherwise unachievable in the metropolitan.¹³

Historian Robert M. Bliss envisions this relationship in much different terms. In his view, the English colonies were merely dependents upon the crown. Any autonomy, political or economic, was a matter of small degrees and even illusory at times. Especially after Charles I ascended to the throne after his father's death in 1625, the monarch's official authority over the colonies was never in question, despite the inconsistencies or ambiguities with which that authority was applied. The use of proprietary charters, the religious and social experiment of the Massachusetts Bay Charter, and royal councils overseeing the colonies all flowed from the power and sanction of the monarch. Through these mechanisms, English economic policies, and the

¹¹ Ibid.; Greene, *Negotiated Authorities*, 11-15.

¹² Ibid., 11, 15-16.

¹³ Ibid., 6-16.

model political infrastructures in the peripheries furthered America's dependence on the metropolitan.¹⁴ Whether relations were mutually dependent or hegemonic in theory, the practical reality in America was a considerable distance, in time and geography, and a society fundamentally informed by English political and cultural society. Colonials accepted, as scholars have generally agreed, that seventeenth-century American governments, whether crude or elaborate, derived their authority ultimately from the English crown.¹⁵

Colonial constitutionalism in America, thus, grew out of a combination of a traditional perception of inherent English rights, including protections under the *ancient constitution*, and the contractual rights guaranteed by charters granted from the king. Within their complex web of constitutional assumptions, there were certain concepts that colonists made a fundamental part of their political culture. These solidified over time and experience beginning early in the seventeenth century. Among the political ideals most prized in the local American governments were the right to live under laws of their own making, popular participation in government, legitimate representation, and that laws and protections extended to all members of society, including the ruler.¹⁶ Assumptions, however, often clash with realities, as they did throughout the tumultuous politics of seventeenth-century England. The clash between assumptions and realities on both sides of the Atlantic shaped colonial constitutionalism developing in America during the same period.

A number of scholars have emphasized the importance of the English Civil War to eighteenth-century American political thought. The ideas brought to the fore in this conflict had as much to contribute to the development of American constitutional conventions as any other factor.

¹⁴ Bliss, 18-27.

¹⁵ Also see Morgan, 122.

¹⁶ Jack P. Greene, "The Colonial Origins of American Constitutionalism" in *Negotiated Authorities*, 26; Morgan, *Inventing the People*, 122; König, 86-87.

The Levellers especially introduced much to the language about English representation and popular sovereignty. Edmund Morgan has noted the critical ideological shifts in England during the 1640s relative to eighteenth-century America. Zofia Rueger, in particular, has argued that the parliamentary sovereignty ideas during the English Civil War were descended from the Conciliar Movement.¹⁷ According to Morgan, there was a sudden “change of emphasis” in the English political dialogue during this period: “duty toward God gave way to the rights of men.”¹⁸ The incompetence of Charles I in dealing effectively with a hostile Parliament practically ended any substantial support for the divine right theory in England. The political emphasis shifted to legitimating rule by representative government. Henry Parker, “the most articulate spokesman for the new ideology,” claimed that the English government rested on the consent of the people at-large through their representatives. Representative government was the best guarantor of English rights. In representative government, if the trust between people and their government had failed, the people held the power to change their government through their elected representatives.¹⁹ This was a very radical turn from the absolutist monarchies thriving in England in the sixteenth and seventeenth centuries. Nevertheless, the English Civil War demonstrated the ebb and flow of ideas as well as the triumph of both change and continuity; in other words, it reflected the uncertainties of fluid events.

The conflict between the royalist and the parliamentarians in England also blended economic and political ideas in novel ways—ways that profoundly affected American constitutionalism. The commercial spirit that informed the settling of Virginia and the dramatic challenge to political traditions led to new considerations about constitutional legitimacy and the

¹⁷ Rueger, 482.

¹⁸ Morgan, 56.

¹⁹ *Ibid.*, 58.

sources of sovereignty. One of the motivating issues at the fore in the English Revolution was freedom of religion. Many concluded that the individual, to borrow a phrase from Bliss, must not be “denied freedom of commerce in ideas and equal rights for men’s consciences.”²⁰ Men had the right to pursue their own interests economically and spiritually. Legitimate government, then, flowed from the consent of individuals with sovereign power over their persons and property and not from a higher authority that might deny or abridge that sovereignty. In America, this translated into a more secular and commercial interpretation of freedoms for the individual’s “pursuit of happiness”—freedoms beyond the will and manipulation of other men.²¹

Another important legacy of the English Civil War to eighteenth-century revolutionary America was the concept of Committees of Safety. These temporary mechanisms of delegated political authority were the backbone of the American Revolution in the early years. Every colony eventually had established them to embody executive duties whenever representative assemblies were not in session. The origins of the name and style of such a governing committee began at the beginning of the English Revolution.²² As the English Civil War had loomed in the early 1640s, Parliament created a system of committees designed to facilitate efficiency in legislative management of the war and perform executive functions without the king. Out of these exigencies came the first known Committee of Safety. “This Committee is to meet with a Committee of a proportionable Number of the Lords, to take into Consideration whatsoever may concern the Safety of the Kingdom, the Defence of the Parliament, the Preservation of the Peace of the Kingdom, and of opposing any Force whatsoever which may be raised against them: And are to

²⁰ Bliss, 54.

²¹ Jack P. Greene, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill: University of North Carolina Press, 1988), 195.

²² Agnes Hunt, *The Provincial Committees of Safety of the American Revolution* (Cleveland: Winn and Judson, 1904), 159-160.

meet when and where they please.”²³ A succession of such committees emerged in Parliament through the turbulent seventeenth-century political conflicts. As a crisis-management tool, the Committee of Safety sometimes had absolute control, however temporary, over the Parliamentary army and the treasury.²⁴ This conception of an emergency committee rule during times of crisis found its way across the Atlantic to American colonists during the Glorious Revolution.²⁵

The English Civil War had particular effects on both the political ideals and the economic activity in the Chesapeake and New England settlements. Although throughout the 1640s the colonies had managed, for the most part, to remain relatively unengaged politically in the fray, there were certain concerns that differed from one region to another. In New England, for instance, the Puritan religious and political culture had a kinship with the religious parliamentarians opposing the king in England. Virginia, on the other hand, had still not acquired a new charter since James I had rescinded the old one and believed its best hopes remained with a strong monarch. In fact, after the beheading of King Charles I, colonies outside of New England, including Virginia, Maryland, Antigua, Barbados, and Bermuda, issued proclamations of loyalty to the monarch.²⁶

The actions of the Rump Parliament soon served to alienate all of the American colonies. With the establishment of the Commonwealth of England on May 19, 1649, Parliament officially assumed absolute control over all English colonies and territories previously ruled by the monarchy. In response to the scattered declarations of monarchical loyalty in the colonies,

²³ From: 'House of Commons Journal Volume 2: 04 July 1642', *Journal of the House of Commons: volume 2: 1640-1643* (1802 edition), 649-51. URL: <http://www.british-history.ac.uk/report.asp?compid=8790>. Date accessed: 26 July 2006. Also partially quoted in Hunt, 160.

²⁴ Hunt, 163-164.

²⁵ Ibid., 165.

²⁶ Bliss, 60.

Parliament issued the Act of 3 October 1650, which mandated submission of all colonial possessions to parliamentary discipline by any means necessary, including economic sanctions and military actions.²⁷ The Act prohibited trade with any of the rebel colonies, voided all of the colonial charters granted previously by the monarch, and submitted that all colonists were subjects to the laws and the institution of Parliament. Even Massachusetts, which had not demonstrated any official support for the king, found the Act disturbing for its trade restrictions and its violation of the self-rule policy as guaranteed by the colony's Charter of 1629.²⁸

The Act of 1650 was, for all practical purposes, the first of Parliament's navigation acts in the seventeenth century. Bliss has called it "the first Intolerable Act" for its effects in the American colonies.²⁹ Importantly, it transgressed certain political tenets held by the English in the early modern era.³⁰ First among them was the belief that individuals must remain independent of the wills of others. All men must be free to self-determine and pursue his interests. Secondly, this independence also meant freedom to reject any relationships entered into without an individual's consent or against his interests. Another political assumption of seventeenth-century Englishmen was that the role of government was the effective protection of individual interests, including his person and property, in the public forum and the just conduct of social and economic relations between its citizenry.³¹

Events in the 1650s, during the Commonwealth years, are important to understanding American political development for several reasons. They demonstrate the ambiguities of the

²⁷ Ibid., 60-61.

²⁸ Ibid., 61-62.

²⁹ Ibid., 62.

³⁰ This discussion derives from the ideas of C. B. MacPherson in the *Political Theory of Possessive Individualism* (Oxford, 1962) as characterized by Jack P. Greene in his "Metropolis and Colonies," 44.

³¹ Greene, "Metropolis and Colonies," 44.

colonies, at least politically, within the half-century of empire. Reactions by the colonial governments to the Act of 1650 also reveal a certain spirit of independence from the rule of Parliament.³² Soon, however, another declaration by Parliament, the Navigation Act of 1651, eased some of the tensions by regulating trade but leaving open questions of enforcement and colonial self-rule.³³ By the fall of 1652, the rebellious colonies that had sworn allegiance to the monarch had agreed to “articles of surrender” presented to them by Parliamentary emissaries. The terms were generous enough to reinforce colonial faith in their right to self-rule, despite Parliament’s insistence of its authority over all territorial governments.³⁴ Thus, colonial governments survived the turmoil and disruptions of the English Revolution and the subsequent policies of the Commonwealth and Cromwell’s subsequent Protectorate without any practicable diminishing of their political roles. Rather, the episodes reinforced American colonial faith in their local governments’ ability to weather external threats to their authority.

After the Restoration of Charles II to the English throne in 1660, the colonies resumed under monarchical control, with policies reminiscent of Charles I’s reign. One notable change from the earlier Stuart era was Parliament’s efforts to maintain England’s monopoly on colonial trade through largely unenforceable navigation acts.³⁵ Whereas Virginia had been the most contentious American colony during the Commonwealth period, Massachusetts was as defiant of the monarch’s sovereignty after 1660. Massachusetts’s defiance was rooted in its support for the Puritan Revolution and its subsequent suspicions of the monarch’s religious intentions.

³² Bliss, 73.

³³ *Ibid.*, 63.

³⁴ *Ibid.*, 89.

³⁵ Greene, “Metropolis and Colonies,” 45.

Consequently, when the Whigs in England began to contest the succession the throne of the kings' Catholic brother, James II, the New England colony supported his exclusion to the monarchy.³⁶

The Glorious Revolution as an event had tremendous and immediate impact on the American colonies.³⁷ After the Restoration of Charles II, England's control over the colonies expanded. Economic decline in the relationship with continental Europe and the growing centralization of political power meant tighter restrictions for English colonials.³⁸ In the years following the Restoration, the number of American colonies doubled with the addition of New Hampshire, the Carolinas, New York, New Jersey, and Pennsylvania. All of the new colonies were proprietary grants with the exception of New Hampshire. Pennsylvania was the only new colony which did not have a charter granting to the proprietor absolute control over the provincial governments.³⁹ Issues that had fermented beneath the political and economic surface began to demonstrate a general frustration with English colonial policies.

Colonists considered themselves true-blooded Englishmen deserving of all rights afforded citizens in the mother country. "Colonists in America shared Englishmen's rights...and their appeal to these rights was based on their understanding of the role they played in the empire, a role which in no way discriminated against them as Englishmen."⁴⁰ The post-Restoration colonial policies of the English crown dismissed such ideas, which eventually led to aggravated tension and

³⁶ Bliss, 133-147.

³⁷ There are some insightful works on this, but the scholarship has yet to be fully exploited. See David S. Lovejoy, *The Glorious Revolution in America* (Middletown: Wesleyan University Press, 1972, rev. 1987); Pocock, *Three British Revolutions*; Theodore B. Lewis, "A Revolutionary Tradition, 1689-1774: 'There Was a Revolution Here as Well as England'" in *The New England Quarterly*, Vol. 46, No. 3 (September 1973), 424-438; Ian K. Steele, "Communicating an English Revolution to the Colonies, 1688-1689" in *The Journal of British Studies*, Vol. 24, No. 3 (July 1985), 333-357.

³⁸ Lovejoy, xxv.-4.

³⁹ Ibid., 2.

⁴⁰ David S. Lovejoy, "Two American Revolutions, 1689 and 1776" in Pocock, *Three British Revolutions*, 253.

rebellions in at least five American colonies before and during the English Glorious Revolution.⁴¹ It was these tensions that sparked Bacon's Rebellion in 1676 Virginia and produced upheavals more than a decade later in Massachusetts, New York, Maryland, Connecticut, and Rhode Island.⁴² Though there were a multitude of factors affecting these rebellions in the American colonies, at the heart of colonial demands was the principle of self-governance and a greater control of their own economic, social, and political destiny in the American frontier.

These episodes presented important implications for the development of American constitutional conventions. Colonial militant reactions to England revealed the importance of organic or fundamental law and the processes which validated it. The post-Restoration monarchy had virtually ignored or revoked particular colonial charters that had informed so much of English life in America for most of the seventeenth century. Virginia led the way in attempting to remedy this apparently blatant disregard for contractual rights granted previously. Although James I had revoked the original charter in 1624, he had promised a new one for restoring prior privileges to Virginia's planters. James died before fulfilling this promise, but no monarch had gone so far as to impose taxes without colonial consent until Charles II. In the 1770s, Virginia vigorously lobbied for a new charter with specific demands for a return to self-governance and for recognition of colonial rights as Englishmen.⁴³ Bacon's Rebellion and the denial of a new charter occurred almost simultaneously, and thus, temporarily halted Virginia's quest for greater self-rule.⁴⁴

By 1689, James II had converted many of the northern colonies into the Dominion of New York. Sir Edmund Andros ruled over this expansive incorporation with the same disregard for

⁴¹ Ibid., 251-253.

⁴² Lovejoy, "Glorious Revolution in America," 32-57, 73-74, 239-257.

⁴³ Ibid., 38-39.

⁴⁴ Ibid., 40-41.

colonial rights as Virginia had experienced little more than a decade earlier. Increase Mather traveled to London in 1688 in an attempt to persuade the king to restore Massachusetts's charter and end the Dominion. His pleas to James II failed, despite Mather's persistence. On 18 April 1689, amid mounting rumors of the accession of William III and Mary Stuart to the English throne, Boston erupted in rebellion against Andros and his associates.⁴⁵ Discontented colonials quickly seized the opportunity to throw off the oppressive policies of the Dominion and the streets of Boston filled with armed citizens rallying for rebellion.⁴⁶

Out of these events in Boston, a Committee of Safety emerged as a representative body for temporarily managing the affairs of the colony. Among the men on this committee were fifteen moderate colonials who had met at the Town House amid the events on 18 April in an effort to keep heightened tensions from spiraling out of control. These same men had proclaimed a public declaration from the Town House on that first day of unrest. *The Declaration of the Gentlemen, Merchants and Inhabitants of Boston, and the Country Adjacent* recounted the grievances born out of post-Restoration colonial policies and the Dominion particularly as justifications for the rebellion.⁴⁷ "In the *Declaration* and subsequent works, the revolutionists spelled out the rights which the Andros government had denied them."⁴⁸

As argued by Hunt's examination of Committees of Safety, the Massachusetts's body was only a temporary expedient. On 2 May, the Committee called for a convention of representatives from the colony's townships to determine the proper course of governance until the will of the new

⁴⁵ For an account of how news and rumors of the Glorious Revolution made their way into America, see Ian K. Steele, "Communicating an English Revolution to the Colonies, 1688-1689" in *The Journal of British Studies*, Vol. 24, No. 3 (July 1985), 333-357.

⁴⁶ *Ibid.*, 239-240.

⁴⁷ *Ibid.*, 241.

⁴⁸ Theodore B. Lewis, *The New England Quarterly*, Vol. 46, No. 3 (September 1973), 425.

king of England could be conveyed.⁴⁹ Rhode Island also called for township representatives “to consult about what ought to be done and whether they should insist upon their ‘ancient privileges and former methods’ as many of the free people were bent on doing.”⁵⁰ Connecticut conducted a general election to decide the direction the colonial government should take during the confusion. Given three choices—to continue under Andros’s rule, to choose a Committee of Safety, or resume under the system prior to Andros—the voters chose the later.⁵¹

The establishment of the English Declaration of Rights in 1689 also was another episode in the Glorious Revolution that affected the constitutional and convention history in America. According to historian Lois G. Schworer, the Declaration of Rights, along with the subsequent English Bill of Rights, “laid the foundations for genuine political and constitutional changes” in the following century.⁵² It was a Janus-faced event that sought to assert and formalize rights traditionally assumed by the English while providing a precedent for future appeals to those rights. Furthermore, the body that drafted the Declaration, although a meeting of the Commons and Lords, was technically not the Parliament but rather a special convention. Designed to resolve the constitutional crisis of the abdication of King James II and the arrival of William of Orange to assume the monarchy, special elections chose delegates to the “Convention” and “provided a precedent” for referring extraordinary constitutional issues to the people at-large for legitimate deliberation by their representatives.⁵³ These events demonstrate the importance in seventeenth-century America of representative consent or elections directly expressing that consent for concerning issues related to fundamental principles of governance. According to Theodore B.

⁴⁹ Lovejoy, “Glorious Revolution in America,” 245.

⁵⁰ From *Records of the Colony of Rhode Island*, Vol. III, 257 quoted in *Ibid.*, 247.

⁵¹ *Ibid.*, 248-249.

⁵² Lois G. Schworer, *The Declaration of Rights, 1689* (Baltimore: Johns Hopkins University Press, 1981), 282.

⁵³ *Ibid.*, 135.

Lewis, the Glorious Revolution and its colonial impact became an important reference for early American revolutionary pamphlets and writings.⁵⁴

In the eighty-five years from the Glorious Revolution in England to the American Revolution, there were numerous influences on colonial political thought. Scholars continue to debate the degrees of importance among those influences. Nevertheless, a fair treatment of them here, while not comprehensive, includes the impact of empire, religion, Enlightenment, political ideologies, and an emerging national identity in America. Debate over the relative influences of each of these factors, no doubt, will remain. However, there can be no denying that all had important effects on the colonial and revolutionary mind.

Efforts to tighten the English empire began in earnest just prior to the Glorious Revolution when Charles II established the Lords of Trade in 1675. This body, later replaced by the Privy Council, sought stricter accountabilities from the governors and attempted to drain some of the power from the colonial legislative assemblies. There was a concerted effort to validate the claim that these legislative governments existed at the pleasure of the monarch. In order to prevent such tiresome arguments in the future, the Lords tried to prevent the establishment of any more private colonies. Although they failed to block William Penn's grant, they were successful in creating the Dominion of New England and vacating the Massachusetts Bay charter.⁵⁵

With the rise of Parliamentary power during the Glorious Revolution, a new Board of Trade emerged in 1696 to wield even greater control of the empire. Parliament became more engaged in colonial affairs than it had since the Commonwealth period. Ultimately, however, the colonies remained largely unaffected by these intentions. Queen Anne's War, partisan tensions in

⁵⁴ Lewis, 437-438.

⁵⁵ Greene, "Metropolis and Colonies," 46-48.

Parliament, the traditional reverence for private property, and the growing defiance of pretentious colonial lower assemblies made any enforceable measures to reign in the colonies virtually impossible. Still, the English metropolitan government continued to assume that the colonies were subordinate to its will and that the empire existed for the good of England. The colonials did not share in these assumptions. In fact, such thinking violated the commercial spirit and traditional freedoms that had informed the founding of the original colonies in return for the risks and dangers of braving the wilds of frontier adventure.⁵⁶ England chose not to impose these issues too strongly because it lacked the power for direct control and needed a fair degree of English patriotism in the colonies to perpetuate its rule.⁵⁷

The policies of empire in America throughout the early eighteenth century, then, served more to embolden the independent spirit and the feeling of autonomy among the colonial legislatures rather than instilling a sense of dependence on England. It was an attitude informed by a combination of the colonizing experiences, cultural traditions, and a peculiar blend of English and American political ideologies influenced by the constitutional turmoil of the seventeenth century.⁵⁸ The negotiation of authority between the metropolitan and the peripheries, to use Greene's characterization, only emboldened the colonies over the long term. Other ideological and cultural developments affected the entrenchment of American attitudes in the decades between the Glorious Revolution and the Seven Years' War. They were Whig political thought, the Great Awakening, and the American Enlightenment.

⁵⁶ Ibid., 50-59.

⁵⁷ Greene, "The Glorious Revolution and the British Empire, 1688-1783" in *Negotiated Authorities*, 87.

⁵⁸ Hulsebosch has said that eighteenth-century Americans "lived in a constitutional world shaped by the English Civil War." Although this seems an oversimplified statement, it confirms the view of the current study that seventeenth-century English politics supplied the ideas necessary to conceive the constitutionalism of the American Revolution. See Hulsebosch, 42.

English Whiggism, which initially had developed in the parliamentary battles with the crown during the Exclusion Crisis, held a particular interest and usefulness to eighteenth-century colonials devoted to crafting constitutional defenses of their self-rule. Bailyn has argued that this radical “country” party tradition synthesized various streams of ideological thought and played a significant role in framing the revolutionary mind in America.⁵⁹ Although partisan tensions with the “court” party in England often involved disagreements over fundamental political principles and pragmatic posturing for power, the issue underlying all others was sovereignty—more specifically, where it resided.⁶⁰ By the beginning of the eighteenth century, English sovereignty had undergone several transformations since the founding of Jamestown in 1607. In that one-hundred year period, sovereignty went from the absolute domain of the monarch, to the realm of Parliament, and finally settled into the idea of the king-in-Parliament.⁶¹ It was a pendulum that swung from one extreme to the other then settled into the middle.

There were no parallels to this development in the American colonies during the seventeenth century. England was a long-settled land in which everyday life had become, at least in the broad sense of the terms, routine and traditional. America, on the other hand, was at best an adventurous frontier and at worst at a dangerously alien wilderness. Certainly, traditions and customs made colonial settling more politically, culturally, and even psychologically less crude. Nonetheless, the process was still rudimentary and difficult. A commercial spirit, a desire to improve one’s station in life, and religious idealism drove the early endeavors. These circumstances left little room for the wide reflections of political theories and constitutional

⁵⁹ Bailyn, 34-35. In his *Politics of Liberty*, Ward defines Whig thought even more generally. See Ward, 2-18. Also see Chapter 2 of this present study.

⁶⁰ Ward, 16-17, 307-308.

⁶¹ See Chapter 2.

conflicts that occurred in the same period in England. Sovereignty for early colonists, indeed if it was ever given any similar considerations as in Stuart England, was the individual's right to pursue his self-interest at his own financial and personal risk, restricted only by the terms of his contract with the throne. Though loyalties divided between the monarch and Parliament, there was no pendulum of sovereignty for eighteenth-century American colonists.

American Whiggism was equivalent to radical Whiggism in England. It was a skeptical, oppositional, and even provocative brand of political activism. Suspect of virtually any centralized authority and corruption, this brand of Whiggism in America, according to Gordon Wood, an individualistic approach to liberty.⁶² This made it consistent with the colonial experience of personal risk and individual accountability for success or failure. Underlying Whig thought in colonial America was a closely related concept to sovereignty: legitimate government. The basis for this legitimacy in the colonies, as Bailyn has argued, was the successful control or management of political power.⁶³ The source of legitimacy, and, as a result, the source of liberty, for the colonists was the charter or royal grants. These devices defined their relationship with England, established their mission, and framed their expectations. They were documents that reflected the consent of all parties to an agreement. While such official agreements did not specify all liberties and rights comprehensively, such as their inherent rights as Englishmen, they provided the legal basis of their political and commercial character. Importantly, Americans drew not only on their charters and royal grants for constitutional defenses of their status in the empire, but also upon the

⁶² Wood, 23-24.

⁶³ Bailyn, 56-70.

legacy of such recent events as the Glorious Revolution, including the 1689 Declaration of Rights by Parliament.⁶⁴

Since the Glorious Revolution, which had rescued the traditional English constitution from the arbitrary authority of illegitimate rule, Whig colonists had perceived a slow decay of that constitutionalism by collusion between the monarchical ministries and Parliament.⁶⁵ Attempts by the English government to rescind or modify charters only exacerbated colonial distrust of intentions and actions of centralized imperial governance.⁶⁶ Oppositional politics, therefore, by the mid-eighteenth century, had become a mainstay in colonial thought and added to the complex attitudes toward self-rule in America.

Another significant contribution to the unique political ideas of eighteenth-century Americans was the transformation of religious culture in the colonies during the Great Awakening. Religion had been a major impulse to the contentious politics in England for two centuries by the time the Great Awakening appeared in America. Politics and religion were intractable elements of English constitutionalism. The persistently changing dynamics of both elements affected the English colonies. Colonial politics and religion, then, owed much of their influence to the imperial center, but the provincial environment had a decided impact on the developing American constitutional culture.⁶⁷

⁶⁴ Morgan, 122-127; Greene, "Metropolis and Colonies," 44, 59; Greene, "The Glorious Revolution," 84, 87; Marc W. Kruman, *Between Liberty and Authority: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997), 12-13. Note that while Wood recognizes a continuity of colonial thought that rested upon the experiences since the first settlers, Kruman argues that the continuity rather was a tradition of "customary restraint" on governmental power as old as the Magna Carta. See Kruman, 8-14.

⁶⁵ Wood, 32-33.

⁶⁶ Greene, "Metropolis and Colonies," 50-59.

⁶⁷ For some of these political distinctions, see Greene, "The Growth of Political Stability: An Interpretation of Political Development in the Anglo-American Colonies, 1660-1760" in *Negotiated Authorities*, 132-135. For some of the religious distinctions, see Patricia U. Bonomi, *Under the Cope of Heaven: Religion, Society, and Politics in Colonial America* (New York: Oxford University Press, 1986), 3-9.

As Patricia U. Bonomi has revealed, the religious zeal that captivated much of the American colonies throughout the 1740s, known as the eighteenth-century's Great Awakening, occurred in the context of larger changes in colonial culture. There was a rapidly growing and changing population from the natural increase within the colonies and the greater diversity of immigrants coming from without. Commercial culture expanded competition for economic opportunities and brought a similar competition of ideas. Enlightenment rationalism battled with religious piety for the individual conscious. The result was a public sphere characterized by contentious competition in both the economic and ideological realms of American society.⁶⁸

The Great Awakening, exemplified by evangelical revivals with emotional intensity, challenged traditional religious authority and formal practices. With its emphasis on the individual's responsibility for one's own relationship to God, the movement encouraged nonconformity and ignored traditions of social civility.⁶⁹ According to David D. Hall, the flourishing print culture during this period had a powerful effect on the ways New England colonials negotiated their understandings of the religious messages they heard and read. Sermons and print were marketplace competitors among the mass of believers listening and reading.⁷⁰ The rise of the importance of the individual and the literate ability to read and interpret religious texts threatened the customary deference afforded to the clergy.⁷¹ The process spilled over into political culture as well. Passive or deferential obedience that had been a conventional element in the religious and political spheres of colonial society weakened under the stresses of economic

⁶⁸ Bonomi, 131-133.

⁶⁹ Ibid., 133, 157.

⁷⁰ David D. Hall, *Era* (Cambridge: Harvard University Press, 1989), 31-70. Also see E. Brooks Holifield, *Era of Persuasion: American Thought and Culture, 1521-1680* (Boston: Twayne Publishers, 1989) for the ways in which early American writers sought to influence their audiences toward certain commercial, religious, and political behaviors.

⁷¹ Ibid., 119.

transformations, increasing emphasis on individualism, and Enlightenment rationalism. Organized evangelical denominations of churches throughout the colonies became respites from religious and political threats to individual liberties.⁷²

The Enlightenment had a critical historical role in the shaping of the American mind. It was, in some ways, more ambiguous in its substance than radical Whig thought or the religious impact of the Great Awakening. Scholars refer the Enlightenment as the period from roughly the late seventeenth century through the eighteenth century when the intellectual world of Western civilization embraced rationalism as the liberating principle of the human experience. Reason became the banner concept for science, politics, philosophy, and even, some corners, religion. Modern historiography has attempted numerous approaches to explain the Enlightenment and its effects on the events of the period and beyond.⁷³ In America, however, the movement had certain facets that differed from the European experience.

As in all other cultural and ideological imports, America selectively digested and applied Enlightenment ideals in a most provincial way. The intellectual life of America was never divorced from the pragmatic demands of the colonial experience.⁷⁴ Reason was the basis of both the European and American Enlightenment movements, but central to the distinctions were the interpretations and utility of reason to everyday life. Ideas that had long developed in the political culture of England, where they confronted significant resistance in practice, had less resistance and more practical value in the colonies. The frontier environment on the edges of colonial centers was

⁷² Bonomi, 188-207.

⁷³ For a concise discussion of Enlightenment scholarship, see Dorinda Outram, *The Enlightenment* (Cambridge: Cambridge University Press, 1995), especially 1-13.

⁷⁴ Donald H. Meyer, *The Democratic Enlightenment* (New York: Capricorn Books, 1976), vii-viii.

relatively closer to the state of nature than any corners of European civilizations. It was a context where ideas were tools, not intellectual fancy.

Natural laws or natural rights, for instance, had a very different contextual interpretation in America than in western Europe, including England. Natural laws referred to those unchangeable and eternal principles or norms that derive from the essence of human relationships, which provide the foundation for establishing and legitimizing positive law (law manufactured by humans in society). Natural rights, by contrast, were those liberties and just considerations inherent to all human life. In Lockean terms, these rights included the right to one's life, personal liberty to be free from oppression, and the freedom to acquire property. In the English colonies, however, these abstract ideals found fertile environments for their practical application. These were not merely intellectual abstractions in America, consequently, but rather useful principles in the frontier for the settlers to understand and negotiate their political relationships and institutions. Natural law, for the colonists, meant a pragmatic code for ensuring virtue, reason, and justice, while natural rights translated into representative institutions for protecting those liberties not specifically expressed or denied in their charters and grants.⁷⁵

There was a tension between religious ideas and Enlightenment thought, but they also informed new understandings of faith and reason. This occurred more overtly in America than in Europe, especially Catholic Europe where conservative dogma rejected man's innate ability to progress without total submission to godly devotion. Some scholars have argued that the Great Awakening was, in fact, a reactionary backlash against the rationalism pervading colonial intellectual culture.⁷⁶ The emphasis on the "balance, order, and religious compromise" translated,

⁷⁵ Ibid., 54, 97-104. Also see, Ernest Cassara, *The Enlightenment in America* (Boston, Twayne Publishers, 1975), 20, 69, and 70.

⁷⁶ See Ernest May, *The Enlightenment in America* (Oxford: Oxford University Press, 1976), 42-55.

according to Ernest May, into a peculiar accommodation of faith and reason in eighteenth-century America.⁷⁷ The result was a blend of religious emotional faith with rational political ideals. The passionate evangelical revivalism offered the political sphere a self-righteous determination and added fuel the radical drama of the revolutionary generation.⁷⁸

More importantly, the Enlightenment paralleled the dissemination of ideas through the free-market press. From the deist influences of Alexander Pope to the Commonwealth critics in *Cato's Letters*, colonial readers took stock in the myriad of newspapers, sermons, pamphlets, novels, and reprint of classical literature that flourished in the print culture. Montesquieu's *Spirits of the Laws* was a popular read in mid-century America.⁷⁹ Such reading often introduced or reinforced radical Whig arguments, the centrality of the individual to the political experience, and a pursuit of constitutional balance and legitimacy.

It is important to remember that the Enlightenment was not a fixed event or set of assumptions. Although it maintained certain common principles of understanding throughout the movement, such as a reverence for scientific reasoning and an unwavering faith in social and political progress through reason, its meanings and relevance changed over time in America. The blend of faith and reason characteristic of the first half of the eighteenth century gave way to civic morality and political radicalism in the second half.⁸⁰ Furthermore, it was only in America that the imagination of the Enlightenment philosophers could be assimilated and used to create a model nation founded on reason—a living monument of sorts to the Age of Reason.

⁷⁷ Ibid., xvi.

⁷⁸ Ibid., 153-154.

⁷⁹ Ibid., 38-41. For the importance of John Trenchard and Thomas Gordon, authors of *Cato's Letters*, see Bailyn, 35-36.

⁸⁰ Meyer, xxvi-xxvii; Cassara, 44; May refers to this change as a shift from the Moderate Enlightenment to the Revolutionary Enlightenment. See May, 88-101.

After the French and Indian War, as Parliament began a determined effort to exert power over the colonists militarily and monetarily, America had amassed enough success in avoiding past efforts in this regard that confidence in its ability to maintain the political balance of legislative power locally was strong. The contentious English politics of the seventeenth-century, the radical Whig ideas, Enlightenment pursuit of progress, the anti-hierarchical mood of the Great Awakening, and the free-market press affording these events and ideas a forum in the public sphere had prepared, both intellectually and emotionally, for the constitutional defenses necessary against Parliamentary intrusions into traditional local authority. Parliament, in the eyes of many persistent observers, had become a den of corruption and had colluded with royal ministers and special interests to enrich their power and wealth.⁸¹

As tensions continued in the 1760s and 1770s, the American colonial leaders began deliberating the constitutional implications and strategies for common resistance against the series of crises that had begun.⁸² This was not just a movement from above, however. The people demanded certain ideological considerations from their leaders. Ideas in America, after all, were not just the domain of intellectuals. The marketplace of ideas was available to all who could read and purchase cheaply produced publications. In population centers, furthermore, conversation in public spaces offered the free absorption and negotiation of ideas.⁸³ Thus, the people, as a body

⁸¹ Wood, 32-33.

⁸² It is not my intent to recount all of the causes or effects of the American Revolution. This study merely emphasizes those facets, issues, and principles that directly bear in some way upon the development of constitutional conventions.

⁸³ For more on the dissemination of ideas in this period, see Bailyn, 1-21. Also see Pole, 4.

politic, often were not passive observers or deferential to a closed circle of political leadership. Instead, the way forward was a negotiation between constituents and their representatives.⁸⁴

In fact, the very concept of representation held a particular interest for Americans in the revolutionary period.⁸⁵ Not only a rhetorical slogan used to denounce American taxation imposed by Parliament, representation had been at the heart of legitimate government. In the Whiggish interpretation, accountability of representatives in government was a measure of battling political corruption. American beliefs about representation were rooted deeply in English traditions and theories. Crucial to English and American views of representation was the importance of political consent from the people to their governing authorities.⁸⁶ As J. R. Pole has said, the role of consent in representative government took a dramatic twist in the American conflict with Britain.⁸⁷

The Whig tradition, beginning in the seventeenth century, began to bind the theory of consent to legitimate government. Concerns over the increasing unchecked powers of Parliament had led to calls for safeguards to protect the constitutional integrity of the state.⁸⁸ Revolutionary America took political representation even more seriously when some colonies, such as Massachusetts, insisted on the right to instruct formally their representatives on policies and positions in the legislatures and conventions.⁸⁹ This was the strictest form of consent and, for

⁸⁴ The term “the people” is not an all-inclusive reference. There were plenty of segments of the population that were denied specific political rights or participation. Among them included women, black Americans, both free and slave, and the disenfranchised poor. Nevertheless, the term is appropriate when describing a select group comprising a body politic, or, in other words, a political constituency, across a constitutional domain.

⁸⁵ The benchmark study on representation in English and American political thought remains J. R. Pole’s *Political Representation in England*.

⁸⁶ See John Phillip Reid, *The Concept of Representation in the Age of the American Revolution* (Chicago: University of Chicago Press, 1989), 11-22. Reid argues that consent was such an important concept in English constitutionalism that it was the primary impetus for the English Revolution. See, 14.

⁸⁷ Pole, 343-344. Also see Wood, 239-262.

⁸⁸ Wood, 28.

⁸⁹ Pole, 72-73. Many colonies employed instructions to their representatives to the Stamp Act Congress. See Reid, 98-99.

radical colonists, the most necessary to ensure legitimate government, given the British encroachment on local legislative authority.

The theory of consent was a reflection of the early modern idea that there were ultimately two types of ruling authority. The first, and least desired, was rule by force or conquest. In English thought, this was an anathema to the principle of natural rights. The second was a government established by the agreement of the people it served, or more concisely, consent.⁹⁰ The manner and measure of consent remained ambiguous throughout English and American colonial thought in the seventeenth and much of the eighteenth centuries. The tensions, however, between Britain and the colonies crystallized the implications of applying principles of legitimacy and consent to provincial political power.

Consent implied that a people should live under a rule of law created and agreed upon by them. This reasoning also led to another critical idea related, even inseparable, to American views of legitimate government—popular sovereignty. Not only should the people have fair representation in their government, they should be the final source of all political power.⁹¹ Sovereignty, the location of legitimate political authority of a state, had been a problematic concept throughout early modern English history. The monarch was the sovereign throughout the Tudor and into the beginning of the Stuart reigns in England. Changes in jurisprudence, constitutional conflicts between Parliament and king, the English Civil War, the Exclusion Crisis, and the Glorious Revolution forced changing views of sovereign power.⁹² By 1776, popular sovereignty had become the basis for establishing new governments in America. Both George Mason's

⁹⁰ Reid, 17.

⁹¹ See Michael Kammen, *Sovereignty and Liberty: Constitutional Discourse in American Culture* (Madison: University of Wisconsin Press, 1988), esp. 11-32.

⁹² See Chapter 1.

Virginia's Declaration of Rights and Thomas Jefferson's words in the Declaration of Independence made explicit references to the people as the foundation of political power.⁹³ The exigencies and circumstances of the American Revolution solidified practicable solutions to implementing and sustaining a political system founded on popular sovereignty.⁹⁴ The most evident legacy of this effort was the constitutional convention.

This, then, was the ideological context of America on the eve of revolution. The context was complex, disorganized, and incomprehensible to most at the time. A variety of unforeseen and otherwise unrelated events gave this context a meaning and inspired political innovations, including the constitutional convention. This institution, in particular, was not a process imposed from the leadership onto a compliant public. Nor was it accidental or fortuitous. Rather, it was a demand from a population only conditionally willing to delegate its natural political authority to representatives who, in turn, were willing to acknowledge the popular basis of sovereign power. The constitutional convention was the symbol and the act of that agreement.

Despite the novelty and theoretical complexity of the idea of constitutional conventions, they developed relatively rapidly in the course of the American Revolution. Yet, the idea did not catch on immediately during the early stages of the crisis with the British. There were, however, indications of the importance of special conventions as early as the Stamp Act crisis beginning in 1765. The Stamp Act Congress, the Massachusetts Convention of 1768, and the First and Second Continental Congress all implied a potential for radical political change. Acting in accordance with instructions from each participating colony, these specially convened bodies assembled to address

⁹³ Kammen, 19.

⁹⁴ Ibid., 5-16.

perceptions of unconstitutional imperial policies of the British.⁹⁵ Though not fully appreciable at the time, these conventions were, in a broad interpretation, forums for restoring constitutional legitimacy. More formalized constitutional conventions began in the American consciousness shortly thereafter.

The Stamp Act crisis inspired a flurry of various assemblies, convocations, and conventions throughout the colonies. Such spontaneous meetings had been a part of American culture and conventions appeared, in the words of Gordon Wood, “for quasi-public purposes.” The Glorious Revolution in America had produced similar effects.⁹⁶ These various meetings or conventions, empowered by rights of assembly and to present political grievances, typically intended to reinforce constitutional tradition rather than supplant it.⁹⁷ The Massachusetts Convention of 1768 was the first notable revolutionary attempt to subvert the established legislature by replacing it with another informal representative assembly. The entire affair rapidly dissipated with the landing of British troops in Boston.⁹⁸

Before the First Continental Congress ever met, committees of correspondence and county conventions had started preparing for organized and uniform resistance against the British. Opposition leaders had established formal methods of communication within and among the colonies to maintain an efficient network of collective action.⁹⁹ These efforts were extralegal tactics

⁹⁵ See Ward, 329-330; Willi Paul Adams, 30-32; Also see John C. Miller, “The Massachusetts Convention 1768” in *The New England Quarterly* (Vol. 7, No. 3), 445-474.

⁹⁶ Wood, 312.

⁹⁷ Ibid.

⁹⁸ Ibid.; Miller, 465-468.

⁹⁹ Adams, 32-36; Wood, 314-325.

aimed at restoring the constitutional integrity and balance that colonists had thought badly damaged, if not destroyed, by the British.¹⁰⁰

The First Continental Congress first assembled on September 5, 1774 in Carpenter's Hall in Philadelphia. Of the thirteen American colonies, only Georgia did not send delegates.¹⁰¹ Interests in such a congress had grown over the previous months as tensions with the British escalated. Despite the political anxiety, a conservative mood informed the proceedings. In reality, however, the mere act of assembling representatives from twelve of the thirteen colonies without British sanction was itself a revolutionary event.¹⁰² It centralized and structuralized colonial resistance and provided a broadly supported forum for addressing collective constitutional grievances.

In 1775, war broke out and affected all levels of American culture in different ways, at different places, at different times. By this time, American revolutionaries had united against the British imperial policies, but still remained divided on the measures necessary to the success of that resistance.¹⁰³ The Continental Congress was a sign of unity while the new provincial governments that were quickly emerging became evidence of the divisions. When the First Continental Congress met in 1774, the colonies used a variety of methods to choose their delegates. Provincial legislatures, committees of correspondence, and even regular assemblies were vehicles used by different colonies to send representatives to this convention.¹⁰⁴ Although the Continental Congress

¹⁰⁰ Wood, 313-319; Adams, 30. Also see Marc W. Kruman, *Between Liberty and Authority: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997), 11.

¹⁰¹ Adams, 36-37.

¹⁰² Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (Baltimore: Johns Hopkins University Press, 1979), 10-27. Indeed, there had been limited collective behavior among certain colonies prior to the First Continental Congress. Examples include the Dominion of New England, the Albany Plan of Union, and the Stamp Act Congress. The opposition infrastructures, however, such as the committees of correspondence and county organizations, in place before the Continental Congress met, as well as the collective determination and shared sense of grievance, all made it an unprecedented event.

¹⁰³ Adams, xvii.

¹⁰⁴ Morgan, 263; Rakove, 29-34.

became the center of collective resistance, the radical and more important constitutional changes took place locally.

The colonial assumption of provincial power was gradual, intermittent, and complex. From the Stamp Act crisis through the Revolutionary War, local communities throughout the colonies established various committees, representatives, and ad hoc associations for sustaining a political and social agenda that opposed British policies that appeared to threaten colonial rights. These various formal and informal organizations engaged in boycotts of British goods, called public and secret meetings to correspond with other colonies or record their grievances, identified disloyal residents, and generally sought support for their cause.¹⁰⁵ The geographic and demographic distinctions among them, with their peculiar political cultures, made the experience unique in each colony.

The historiography of this period is as diverse as were the colonial experiences. One of the dominant interpretations of the American Revolution in the recent historiography has been the paradigm of republicanism. The works of Gordon S. Wood, Willi Paul Adams, and Pauline Maier are representative of this school and their work is especially relevant to the present study. Fundamentally, they argue that particular political values permeated the ideological foundations of American revolutionary achievements in politics and government. According to this republican view, the colonists acted and reacted out of a concern that centralized political authority, without fair representation and strict measures of popular control, was dangerous to the political common good. Republicanism has broad and often ambiguous connotations as a single lens into American history. For example, Wood has said that it “added a moral dimension, a utopian depth” to the political thought of the Founding Generation of America. Whereas Wood’s republicanism has

¹⁰⁵ Adams, 28-30.

indicated that it embodied a type of optimistic, virtuous, and progressive ideal, Willi Paul Adams's use of the term has implied a more structural, even pragmatic, constitutionalism.¹⁰⁶

Critics of the republican school have come from two specific historiographical directions. One has been the emphasis on the impact of liberal ideals on the early American mind. The scholarship of Louis Hartz, C. B. MacPherson, and Joyce Appleby is representative of this historiography. They argue, generally, that Lockean principles, individualism, and natural liberty were the bedrocks of American political culture. Free-market ideals and the protection of property rights, according to this view, had the greatest impact on the political and constitutional developments of eighteenth-century America. If virtuous republicanism dominated revolutionary America, Appleby asks, then "where and when are scholars to find the sources for the aggressive individualism, the optimistic materialism, and the pragmatic interest-group politics that became so salient so early in the life of the new nation?"¹⁰⁷

Another historiographical school has taken the middle position and argued that both republicanism and liberalism were equally important in American ideological developments in the colonial and revolutionary periods. Jack P. Greene, Daniel J. Hulsebosch, and Lee Ward, in particular, have described those developments as a series of negotiations engaged through competing provincial and imperial economic and political interests. America's political and constitutional legacy owed more to traditional English systems of common law, imperial policies, and opposition literature of the seventeenth century than a dichotomous republican/liberal tradition.

There was as much ideological continuity as discontinuity from seventeenth-century English political culture to revolutionary America, according to this interpretation. The

¹⁰⁶ Wood, 47. Adams, 118.

¹⁰⁷ Joyce Appleby, "The Social Origins of American Revolutionary Ideology" in *Journal of American History* (Vol. 64, No. 4), 937.

metropolitan-periphery relationship, which lasted throughout America's colonial experience, to coin Greene's characterization, was a complex system of bargaining and compromises over local versus centralized political and economic control. England maintained a view of the colonial periphery as an economic venture designed to enhance and primarily benefit the metropolitan. Thus, the colonies only required enough self-government to sustain their economic viability. On the other hand, the colonists, who sacrificed their personal safety for the sake of empire had grander expectations of political and economic liberty. There was, as a result, a persistent negotiation of liberty versus control between the colonies and England, which manifested themselves in a reverence for charters and contracts. While ideas were important to these negotiations, their utility to the physical conditions in America were of premium value to the colonists. As Hulsebosch has explained this historical approach, "the focus...is on the way people experienced constitutions rather than on constitutional theory."¹⁰⁸

Understanding the creation of American constitutional conventions requires employing all of these approaches, to varying degrees. Republicanism, liberalism, and English traditional constitutionalism played critical roles in the political developments of the American Revolution, in addition to other factors such as the exigencies of war, local interests, and changing views of popular sovereignty. How and when constitutional conventions emerged in American practice demonstrates the complex forces at work in the revolutionary ideological thinking.

Increasing colonial discontent with the tightening of imperial policies following the French and Indian War led to the rise of increasingly organized political cooperation within and among the American colonies.¹⁰⁹ The development of structured, even formalized, intercolonial resistance in

¹⁰⁸ Hulsebosch, 7.

¹⁰⁹ For examples, see Rakove, 4-20.

the 1770s grew from the local, sometimes ad hoc, uniting of men with common political or economic stakes in opposing particular British policies. They set up unofficial networks of communication outside their local communities while managing boycotts and non-importation activities. The Sons of Liberty remained a sustaining force of radical sentiment. Committees of correspondence, first developed in 1772 by Samuel Adams in Boston as a channel of communication throughout Massachusetts, expanded across colonial boundaries in 1773 at the behest of the Virginia Burgesses.¹¹⁰ The Intolerable Acts provoked interest in greater collective agreement and strategies against the British and a need for an intercolonial congress of delegates to confer on these matters.

Already in the summer and fall of 1774, in reaction to the Intolerable Acts, Virginia and Massachusetts had begun assuming provincial power from the royal government. Towns sent delegates to county conventions, which directed a variety of activities, including organizing boycotts, policing communities, inciting mob actions against royal officials.¹¹¹ In Massachusetts, representatives from the counties met in late August and early September to draw up the Suffolk Resolves, a strategic plan of organized resistance to the Intolerable Acts. Before the end of the year, Massachusetts had a new provincial government in control of the administration of the colony. This assumption of power by groups, committees, and conventions was not new in the colonies and was a pivotal component of the political developments of revolutionary America.¹¹²

Marc W. Kruman has said that the Intolerable Acts was “the death knell of two constitutions” in America. It ended the colonial charters and constitutions previously established to

¹¹⁰ Ibid., 5-6; Robert P. Sutton, *Revolution to Secession: Constitution Making in the Old Dominion* (Charlottesville: University Press of Virginia, 1989), 6-8.

¹¹¹ Nevins, 29.

¹¹² Ibid., 32-34; Wood, 321-325. Also see Allan Nevins, *The American States During and After the Revolution, 1775-1789* (New York: MacMillan Company, 1924), 36. Also see Maier, 3-26, 278.

define colonial rights and obligations, and, secondly, concluded the power and respect for the traditional English constitutionalism.¹¹³ On the other hand, it was the opportunity for a new brand of constitutionalism created not only out of ideas formulating in the intellectual sphere, but from the popular excitement and participation of communities supporting revolution. The participation of people in mobs, committees, and conventions raised their expectations for government that would be more responsive and accountable to them.

The Intolerable Acts, though punitively directed against Massachusetts, resonated in other colonies and inspired a willingness to participate in a congress of colonial delegates to discuss ways to respond to increasing tensions. It was not a novel idea. There had been other intercolonial conventions dating back to the seventeenth century.¹¹⁴ This one, however, was different. In many cases, provincial conventions or special elections took place to choose the delegates to the First Continental Congress. Furthermore, in addition to specially chosen delegates, the meetings and conventions that selected them also pledged a certain deference to the decisions made by the congress.¹¹⁵ Thus, as the historian Jack Rakove has characterized it, there was at the outset of the convening of the Continental Congress “a latent apparatus of resistance already in place” that reciprocally flowed from the local extra-legal meetings, committees, organizations, and provincial assemblies all the way up to the national convention.¹¹⁶

When the First Continental Congress convened in September of 1774 there were many who believed that the crisis with Britain was merely temporary and could be resolved through

¹¹³ Kruman, 11.

¹¹⁴ Examples include the New England confederation of 1643, the Albany Plan commission in 1754, and the Stamp Act Congress in 1765. For a comparison of ideas between the New England confederation and the Albany Plan for Union, see L. K. Matthews, “Benjamin Franklin’s Plan’s for a Colonial Union, 1750-1775” in *The American Political Science Review* (Vol. 8, No. 3), 393-412.

¹¹⁵ Rakove, 29-30.

¹¹⁶ *Ibid.*, 30.

diplomatic efforts. Others, such as Patrick Henry in Virginia, held that a series of illegitimate usurpations of colonial authority had climaxed in the Intolerable Acts against Massachusetts, which had rendered the relationship between the British and the American colonies untenable. These radicals argued that the colonies must dissolve the old structures of governance and begin constructing anew.¹¹⁷ Enough conservative sentiment remained among many of the colonies that they had not empowered their delegates to provoke violent hostilities.

The First Continental Congress, however, did take some critical steps toward a political unity among the colonies. It formally adopted the Suffolk Resolves from Massachusetts as a general strategy of colonial resistance and it created the Continental Association. The Suffolk Resolves called for a broad range of tactics to disrupt British authority, including obstructing royal courts, a disruption of civic responsibilities by jurors and sheriffs, and diversion of tax revenues. Rakove has called this “a strategy of civil disobedience, but not passive resistance,” which was certainly in keeping with the moderate tone of the convention’s delegation.¹¹⁸ The Continental Association was a reflection of the colonial belief that economic resistance was an effective method to coerce the British into submitting to provincial grievances and rights. Essentially, it was fourteen articles outlining specific provisions and responsibilities for implementing non-importation and non-exportation of British goods.¹¹⁹ These important measures provided a collectively organized political and economic agenda for uniform implementation in each of the twelve colonies represented.¹²⁰ Thus, a national convention of delegates had established an official policy of intercolonial cooperation with the invaluable support of local governing authorities.

¹¹⁷ Adams, 38.

¹¹⁸ Rakove, 47.

¹¹⁹ Rakove, 49-52.

¹²⁰ Georgia sent no delegates to the First Continental Congress.

The Continental Association was especially important to the changing constitutional environment in America in the early stages of revolution. In particular, it provided for an elected committee of inspection in each American community that would manage and enforce the massive boycott. With this act, the First Continental Congress redefined its role from a forum for colonial delegates to discuss and agree on strategies of organized resistance to a body imposing its decisions on local structures of authority. Moreover, it had officially validated the extra-legal existence of the various groups and committees that had appeared throughout the series of crises with the British since the 1760s. These groups became directly accountable to the congress, thus circumscribing traditional structures of local political power. Moderate in intent, the establishment of the Association was a watershed for American nationalism.¹²¹

Legitimacy soon became high on the agenda for the provincial governments, which continued to meet without constitutional sanction. A notable example was in Massachusetts. One feature of the Intolerable Acts was the Massachusetts Government Act, which nullified the Charter of 1691, a document characterized by Allan Nevins as “the shining palladium of Massachusetts liberties,” and effectively undermined the powers of the colony’s representative assembly.¹²² Some advocated for a reinstatement of its original Charter of 1629 while others argued that this action had voided the contract between the crown and the people, thus returning the people of the colony to a political “state of nature.” Those in this second camp called for the establishment of an entirely new constitutional government. Moved forward by the engagements at Lexington and Concord, the Massachusetts provincial assembly petitioned the Continental Congress for advice on creating a new state constitution in May of 1775. The issue in question was whether the Continental Congress

¹²¹ Rakove, 51-52.

¹²² Nevins, 4.

would offer a model for constructing a constitution or should Massachusetts develop its own framework. The response was calculated and cautious, avoiding any official sanctions for constitutional innovations and suggesting that the colony merely revert to its most recent charter, the Charter of 1691.¹²³ This congress was not yet ready to assume authority to sanction local constitutional arrangements, nor could it legitimately assume the role of a central government with supremacy over the states. Many of the delegates to the Continental Congress acted only with direct instructions from their colonial assemblies and were seldom uniform across the delegations.¹²⁴ Consequently, with no common set of delegated authorities or agreed upon principles to unite the colonies yet established, the body was little more than a hub for resistance measures, military policies, and limited foreign affairs.

The outbreak of military hostilities in Massachusetts in April 1775 further burdened the provincial congresses and committees with preparations for further conflicts. More colonies turned to the Continental Congress for direction on creating new constitutional governments. The two major exceptions were Connecticut and Rhode Island, which held charters that granted their legislatures power to appoint their governors and, thus, did not perceive the necessity for the revolutionary constitutional changes pursued by other colonies.¹²⁵ Other colonies, however, anxiously began to consider constructing new constitutional governments, although they continued to see such acts merely as temporary expediciencies until the crisis with Britain passed and normal relations resumed.¹²⁶

¹²³ Adams, 51.

¹²⁴ *Ibid.*, 49-54.

¹²⁵ In fact, Connecticut did not adopt its first constitution until 1818 and Rhode Island until 1842. See Adams, 64-65.

¹²⁶ Virginia became the first colony to react to the Intolerable Acts with a revolutionary legislature consisting of select Burgesses in Williamsburg on August 1, 1774. The temporal nature of these bodies is evident in the preamble of the New York Constitution of 1777. It states "Whereas, the present government of this colony, by Congress and

After refusing any official constitutional recommendations previously, in November 1775, the Continental Congress acted and sanctioned on petitions from New Hampshire and South Carolina to establish new constitutional governments.¹²⁷ These two colonies, respectively, established the first revolutionary state constitutions in America. Though their circumstances and processes differed, they began the dramatic development of a unique constitutionalism with two important characteristics shared by other colonies. They established a written set of constitutional principles that created a republican form of government.¹²⁸ The evolving process of new state constitutions became the defining element of an American nation.¹²⁹ An overview of these developments provides important insights into the creation and central role of constitutional conventions.

Acting upon the recommendations of the Continental Congress, New Hampshire immediately held special elections for a new assembly to meet and draft a new constitution, as well as other normal governmental functions.¹³⁰ This provincial congress voted and passed a new constitution on 5 January 1776. They treated the bill containing the constitution no differently from any other legislation that this congress considered during its session. In fact, in the days immediately following its passage, the representatives amended the constitution with ordinary legislation, suggesting that delegates determined any special treatment was not necessary to

committees, was instituted while the former government, under the Crown of Great Britain, existed in full force; and was established for the sole purpose of opposing the usurpation of the British Parliament, and was intended to expire on a reconciliation with Great Britain, which it was then apprehended would soon take place..." See quote in Jameson, *A Treatise on Constitutional Conventions*, 114. Also see Adams, 66-67; Nevins, 28-29, 127.

¹²⁷ Rakove, 81-82; Adams, 66-68; Wood, 133.

¹²⁸ Rakove, 81; Adams, 66-70; Nevins, 126-127.

¹²⁹ See Wood, 132.

¹³⁰ Seven colonies held special elections in advance of framing their new constitutions. They were New Hampshire, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, and New York. See Wood, 332; Nevins, 129.

constitution-making procedures.¹³¹ Towns in the western part of the state, however, did not recognize the legitimacy of this expedient government because they were not represented in the new provincial assembly.¹³² Some in the eastern settlements opposed such an overt message of resistance to the British.¹³³ Others objected because the new constitution contained no specific bill of rights and had not been proposed by an assembly specifically convened for constitution-making. Thus, internal tensions prolonged broad agreement on the legitimacy of the new government. These divisions kept political tensions high until finally in February 1778, following a model designed in Massachusetts, the New Hampshire Assembly requested that a special convention design a permanent constitution to be ratified by three-fourths of the people in town meetings.¹³⁴ After several rejections by the people, New Hampshire finally ratified and implemented its first permanent constitution in 1784.¹³⁵

South Carolina, on the other hand, enacted a new, though temporary, constitution using its established provincial congress and no special elections or instructions from its constituency. The excitement of tensions with the British allowed the congress to implement the new constitution on 26 March 1776, despite conservatives' attempts to maintain some control of the radicals, who

¹³¹ Adams, 66-67.

¹³² Wood, 287-289.

¹³³ Dodd, 5.

¹³⁴ Wood, 341-343.

¹³⁵ Ibid.; Adams, 67-68; Dodd, 5-7. All of these scholars have noted the frustrations of New Hampshire's efforts to establish and popularly ratify their first permanent state constitution. None, however, have revealed the specific objections by the people against four proposed drafts of new permanent constitutions, which took two specially called constitutional conventions. The most detailed account has been offered by Charles Sumner Lobingier. Even he has not specified the reasons for so many rejections by the people of New Hampshire. The second convention, which had proposed the second and third constitutional drafts, however, remained in convention and finally issued a plea to people, urging them of "the necessity and importance of having a free & permanent government established in this State, and cannot omit this opportunity to recommend to their constituents a more particular & serious attention to an object so essential to the Security and happiness of themselves and posterity." See Charles Sumner Lobingier, *The People's Law or Popular Participation in Law-Making from Ancient Folk-Moot to Modern Referendum: A Study in the Evolution of Democracy and Direct Legislation* (New York: MacMillan Company, 1909), 187. Quote from "New Hampshire State Papers," Vol. VIII (Concord, 1874), 970 in Ibid.

persistently sought independence.¹³⁶ In 1778, the newly elected assembly charged with drafting a new and permanent constitution, as well as other routine government responsibilities, presented and enacted it on 26 March.¹³⁷

In the spring of 1776, Virginia had been diligently working on a new constitution when the Continental Congress suddenly acted aggressively on independence. Since the battles at Lexington and Concord a year earlier, the colonial governments had begun to fall apart and tensions with the British reached the point that relations with the empire seemed irreconcilable. As more delegates to the Continental Congress became convinced of the need for more direct and urgent action, on 10 May 1776, it passed a resolution urging all colonies to create new constitutional governments. On 15 May, it followed with a preamble that sanctioned the new governments, informed with the authority of the people, as the legitimate power, and declared that all British authority was no longer in force. According to Gordon S. Wood, “the May 15 resolution was the real declaration of independence, from which the measures of early July could be but derivations.”¹³⁸

Virginia’s provincial congress also met in May of 1776. Though the colony did not hold special elections specifically with a new constitution in mind, the newly elected assembly took up the task. Emboldened by the resolutions passed in the Continental Congress, Virginia moved rather quickly to establish a sound constitutional basis for its new government. This effort received important support and participation by some of Virginia’s most articulate and progressive thinkers, such as Richard Henry Lee, Patrick Henry, Thomas Jefferson, and George Mason.¹³⁹ With a memorable declaration of rights, Virginia passed its new constitution on 29 June 1776 without

¹³⁶ Nevins, 126-127.

¹³⁷ Adams, 68-70.

¹³⁸ Wood, 132; Willi Paul Adams says, “This was a de facto declaration of independence.” See Adams, 59.

¹³⁹ Ralph Ketchum, *From Colony to Country: The Revolution in American Thought, 1750-1820* (New York: MacMillan Publishing, 1974), 95-96.

popular ratification, which Jefferson, in particular, had advocated. In fact, Jefferson was the first to formally advocate that a legitimate constitution required popular sanction.¹⁴⁰

New Jersey was the last colony to adopt a new constitution before the Declaration of Independence. Elected in May, a new provincial assembly took over in June and proceeded to frame a new constitution. As with South Carolina and Virginia, New Jersey did not hold special elections with a view to constitution making.¹⁴¹ Without a particular mandate from the people, and despite some petitions against such action, the assembly voted fifty-four to three in favor of drafting and adopting its constitution.¹⁴²

Delaware became the first colony to assemble a special constitutional convention, although Pennsylvania had expressed weeks earlier its intent to use such a device for drafting a new constitution.¹⁴³ The provincial assembly called for elections to a convention for the express purpose of constitution making. It met on 21 September 1776 and also became the first colony to disband such a convention without immediately declaring its delegation the ruling legislative body. One prominent member of the convention, Thomas McKean, emphatically stated, “We are not vested with the legislative power.”¹⁴⁴

The May resolutions of the Continental Congress inspired those in favor of independence in Pennsylvania. Conservatives controlled the Pennsylvania Assembly, however, and effectively blocked any legislative action toward the radical agenda. The political tensions were high on 20

¹⁴⁰ Ibid.; Adams, 70-71; Nevins, 127; Jefferson believed that the provincial convention did not have a legitimate sanction from the people to adopt a constitution. He argued that a special election for that purpose was needed. He lost the argument, however. See Dodd, 20.

¹⁴¹ Dodd, 19; Adams, 71-72; Jameson, 127-128; Nevins, 129.

¹⁴² Dodd, 19; Nevins, 127.

¹⁴³ Adams, 72-74.

¹⁴⁴ Thomas McKean to Caesar Rodney, September 19, 1776 in Henry Clay Reed, “Delaware Constitution,” *Delaware Notes*, IV (1930), 35 as quoted in Adams, 74. Also see Jameson, 128-130.

May 1776 when an estimated four thousand people gathered in Philadelphia to support an independence movement. The result was a conference of county delegates who met in June and formally called for a provincial convention to frame a new government.¹⁴⁵ The justification for this process was crucial to the developing constitutionalism.

Radicals in Pennsylvania distrusted the loyalties of the old Assembly to the British crown. They argued that the people were not fairly represented in the Assembly and, therefore, any new government formed by it could not be legitimate. In fact, no regular legislative assembly should have the authority to create or amend a constitution because it “might afterwards suppress the new authority received from the people, and thus by continually making and unmaking themselves at pleasure, leave the people at last no rights at all.”¹⁴⁶ The remedy, as they saw it, was a convention specially elected by the people to serve as protectors of their constitutional interests and, therefore, with superior authority to the regular legislature.¹⁴⁷ Moreover, the new constitution, adopted in September, created Pennsylvania’s Council of Censors; a body aside from the legislature specifically designed to amend the constitution as necessary. Though the people did not formally ratify the constitution, the convention printed copies for public review weeks before the delegates finally adopted it.¹⁴⁸

Massachusetts endured a particularly contentious process in adopting its first constitution. It began in 1776 and continued until 1780. In 1775, on the advice of the Continental Congress, the Massachusetts provincial congress resumed its Charter of 1691 with the assent of the people. In September of 1776, the House of Representatives requested the towns to authorize their delegates

¹⁴⁵ Adams, 74-76; Dodd, 15.

¹⁴⁶ *Philadelphia Pennsylvania Packet*, November 12, 1776 as quoted in Wood, 337.

¹⁴⁷ Wood, 337-338.

¹⁴⁸ *Ibid.*, 339; Dodd 15-16; Adams, 75-77.

to form a new constitution, which would not be enacted by the General Court until the towns had an opportunity to review and make recommendations. More than half of the towns responded approvingly, but, as was the case in Pennsylvania, some did not trust the General Court to enact a new constitution and proposed a special convention was necessary to its legitimacy.¹⁴⁹ Moreover, as early as May of 1776, the township of Pittsfield declared that a new constitution must be ratified by a majority vote in town meetings across the colony. Pittsfield's resolves stated that the creation of a constitution was

the Basis and ground work of Legislation. That the Approbation of the Majority of the people of this fundamental Constitution is absolutely necessary to give Life and being to it. That then and not 'till then is the foundation laid for Legislation...That a Representative Body may form, but cannot impose said fundamental Constitution upon a people. They being but servants of the people cannot be greater than their Masters, and must be responsible to them. If this fundamental Constitution is above the whole Legislature, the Legislature cannot certainly make it, it must be the Approbation of the Majority which gives Life and being to it.¹⁵⁰

Despite such concerns, in June of 1777 the Massachusetts provincial congress resolved into a constitutional assembly. On 28 February 1778, it framed a new constitution and submitted it to the freemen for approval in town meetings. The people rejected it, however, by a five to one majority because there was not a specially elected body to construct the constitution.¹⁵¹ Finally, the General Court called for what Willi Paul Adams has described as the "first true constitutional convention in Western history," which met in Cambridge in September of 1779. After the determination that two-thirds of voters in town meetings had approved, Massachusetts's first state constitution went into effect on 25 October 1780.¹⁵²

¹⁴⁹ Wood, 340; Dodd, 8-9.

¹⁵⁰ Robert J. Taylor, ed. *Massachusetts, Colony to Commonwealth: Documents on the Formation of Its Constitution, 1775-1780* (Chapel Hill: University of North Carolina Press, 1961), 27-28 as quoted in Adams, 85.

¹⁵¹ Dodd, 9; Wood, 341; Adams 88-89.

¹⁵² Adams, 89-90.

Maryland called a special congress for drafting a new constitution, which framed and adopted one in November of 1776. North Carolina, on the other hand, established its first constitution in a provincial assembly in December of 1776. Both colonies published the documents weeks in advance of their adoption but did not present them for popular ratification.¹⁵³ North Carolina's Mecklenburg County issued specific instructions and principles for consideration to its delegates to the provincial assembly framing the constitution. They offer interesting insights into constitutionalism in popular thought at the time.

1st. Political power is of two kinds, one principal and superior, the other derived and inferior. 2nd. The principal supreme power is possessed by the servants which they employ...4th. Whatever is constituted and ordained by the principal supreme power can not be altered, suspended or abrogated by any other power, but the same power that ordained may alter, suspend and abrogate its own ordinances. 5th. The rules whereby the inferior power is to be exercised are to be constituted by the principal supreme power, and can be altered, suspended and abrogated by the same and no other.¹⁵⁴

The county also instructed their delegates that once the provincial congress framed a constitution, it "shall be transmitted to the several counties of the State to be considered by the people at large for their approbation and consent if they should choose to give it to the end that it may derive its force from the principal supreme power."¹⁵⁵

The examples of Pittsfield in Massachusetts and Mecklenburg County in North Carolina clearly demonstrate that, as early as May 1776 and before the Declaration of Independence, there was a significant concern among the political constituency that delegates, sent by them to congresses and conventions, understood the final source of sovereign constitutional power was in the people in their communities. These incidents also reveal the initial disregard by provincial leaders for requests to assemble special conventions and popular ratification of constitutions. The

¹⁵³ Wood, 332; Dodd, 13-14.

¹⁵⁴ *North Carolina Colonial Records*, X, 870 in Dodd, 14.

¹⁵⁵ *Ibid.*, X, 954 in Dodd, 14.

constitutional process continued inconsistently throughout the colonies to the end of the Revolution, but similar concerns remained.

The New York provincial congress recognized the importance of a newly elected assembly for constitution-making. They held new elections for a congress that would write a new constitution and possess legislative powers. While there was no general objection to this dual role, it is noteworthy that in Kings County, where no new elections occurred, the incumbent delegate received instructions to attend the new congress, but specifically forbade him from participating in the constitution-making process because he was not elected for this express purpose.¹⁵⁶ Popular ratification was an issue, however, in New York. Simultaneous with the Pittsfield resolves, urban artisans and mechanics protested that not only should new elections inform the constitution making assembly, but the constitution must be legitimized by popular sanction. This sanction was “the birthright of every man, to whatever state he may belong. There he is, or ought to be, by inalienable right, a co-legislator with all the other members of that community.”¹⁵⁷ The provincial congress adopted the constitution, however, without submitting it to the public. The military hostilities in the colony during this period constantly disrupted the process until, finally, on 20 April 1777 the provincial congress adopted the constitution without public sanction.¹⁵⁸

This overview of constitutional events in the midst of revolution demonstrates that some important fundamental expectations of the electorate were either practically unachievable, due to the exigencies of war and other factors, or simply ignored. In some cases the provincial leaders expected the people to follow their direction. The expectations of legitimacy and conceptions of representation that bubbled up from the local communities, however, forced a widespread

¹⁵⁶ Dodd, 11.

¹⁵⁷ Peter Force, *American Archives*, VI, 895 in Lobingier, 157.

¹⁵⁸ Dodd, 10-12; Adams, 82-83.

reconsideration of American constitutionalism. The American Revolution forced many new ideas into the public sphere where they were rejected, modified, or accepted into practicable means of coping with war, social and cultural disruptions, and the reinvention of political identity.

Gordon S. Wood has explained this constitutional revolution as a product of the mistrust of government inherent in radical Whig thought. Colonial American experiences with republican self-government had informed their conceptions of just forms of rule. The distrust began, he argues, with the executive powers within the colonies as royal authorities appeared to undermine the republican principles so important to the colonists. In the early stages of the American Revolution, therefore, the new provincial governments invested their legislatures with vastly enhanced authority. Revolutionaries did not immediately perceive the necessity for constitutions to be treated any differently from other legislative actions. By the 1780s, according to Wood, the people began to perceive that legislatures could be as threatening to liberty as tyrannical executives. Out of these tensions, the constitutional convention emerged as an extraordinary expression of popular sovereignty.¹⁵⁹

Marc W. Kruman, on the other hand, has viewed these developments differently. He argues that the political constituency immediately understood the value of specially constructed constitutions. Liberal, not republican, conceptions of personal liberty and individual rights informed American constitutionalism from the outset of the Revolution. They valued the ancient constitutionalism of England, which, in principle, restricted absolutism by crown or Parliament. The British had simply not adhered to those principles because Parliament had assumed

¹⁵⁹ For instance, see Wood, 331-340.

sovereignty. Americans, thus, realized that a constitution must have protection from ordinary legislative authorities and determined to make its fundamental principles into a “higher law.”¹⁶⁰

Wood conceives of the development of American constitutionalism a series of dramatic transformations, though evolving slowly over time. The chaotic events of the Revolution and disfavor with state legislatures brought renewed calls for special conventions, bills of rights, and separation of powers. Kruman’s interpretation is one of more continuity. Colonists had persistently realized the importance of governing principles, not only inherited from the tradition of English ancient constitutionalism, but from their original charters. American constitutionalism, therefore, was a modification of traditional constitutional and political practices. The greatest change, for Kruman, was the location of sovereignty within the people instead of the rulers.

¹⁶⁰ Kruman, 6-9.

CHAPTER 3

GEORGIA'S FIRST CONSTITUTIONAL CONVENTION

This study has thus far reviewed the important theoretical foundations of constitutional conventions and the European and colonial development of those ideas that were germane to their creation in America. The present chapter narrows the focus to the constitutional experience in colonial and Revolutionary Georgia. It reveals the short, but complex political developments in the journey from colony to state that had a lasting impact on Georgia's constitutional character and national identity. In this period, historical events transformed an infant colony, heavily dependent on the British Empire for its political, economic, and military resources, into an American state that was anxious to pursue all of the advantages and security that it believed an independent nation would provide it. Revolutionaries in Georgia embraced the growing idea among the American colonies that constitution-making required the sanction of the people in their sovereign capacity. Each of the colonies experimented with various processes to achieve that legitimacy, which flowed directly from the local communities to their representative assemblies. Over the course of the Revolution, the constitutional convention became the most acceptable method of expressing the sovereign voice of the people. Georgia was at the forefront of these constitutional experiments and remained committed to the convention idea for more than a century.

This chapter demonstrates how the colony became first an independent state and nation unto itself, and then a member of the United States under the Articles of Confederation, and the ideological and material factors that drove these events. In addition, it describes the transformation

of Georgians from a people largely reluctant to resist British rule into a people reluctant to oppose collective resistance with the other colonies. This transformation owed much to the dynamic character of local communities and their effect on the developing constitutionalism in Georgia. The particular temperament of individual parishes, whether conservative, moderate or radical, had a profound influence on the collective action taken by the various provincial congresses, committees, and conventions. Thus, localism, as the details of this chapter reveal, had an important impact on establishing certain constitutional values, such as legitimacy and sovereignty.

Major Hugh McCall published the first attempt at a comprehensive history of Georgia with a first volume in 1811 and the second in 1816. His work was not a scholarly treatment in the modern understanding of the term, but rather based on his limited research in documents available to him, his personal experience, and oral histories.¹ Despite its crude style, its lack of historical criticism, and absence of documented sources, the work presented, in general, a narrative that has generally persisted in the state's subsequent histories. McCall portrayed Georgia's founding as a project for rescuing the English poor and James Edward Oglethorpe, as an original Trustee, was its primary benefactor and "father" of the colony. Also like other histories of Georgia until recent decades, it ignored the importance of political dissent and social discontent among the colonists that plagued much of the colony during the first nineteen years that the Board of Trustees ruled it before it became a royal colony. This discontent was an important element in the political vision of the Georgia colonists who sought the similar participation and a voice in a local government afforded all other English colonists in America, but denied to them until the Trustees afforded them

¹ Hugh McCall, *The History of Georgia: Containing Brief Sketches of the Most Remarkable Events Up to the Present Day* (1784) (Savannah: Seymour and Williams, 1811-16; reprint, Atlanta: A. B. Caldwell, 1909).

their first official representative assembly, albeit without any genuine political authority, in 1750.² While Georgia's colonial experience was distinct from other colonies in the eighteenth century, the colonists' expectations and political vision was not. It took two decades for it to resemble the rest of English America. A full recounting of the colony's founding is unnecessary in this study, but an overview of the era and its tensions provides an important context for examining its constitutional development.

Philanthropy was certainly one of the forces driving the creation of Georgia as a separate colony in the early decades of the eighteenth century. One foremost historian of early Georgia, Kenneth Coleman, has stated that Georgia was a unique project and the product of two separate activities of concern: Oglethorpe's mission for the poor and South Carolina's need for a military buffer against the Spanish in Florida.³ Another historian, Trevor Richard Reese, puts the founding in a broader imperial context and suggests that it was consistent with the intentions of other royal colonies. According to Reese, England expected Georgia to contribute economically to the empire and provide a strategic military position against foreign competitors. Although its philanthropic character was unique to America, even this element corresponded to certain social and economic efforts in England.⁴ Others have called it a model Enlightenment project that incorporated in its founding many elements considered reform at the time. For example, it offered opportunity to the

² See Kenneth Coleman, *Colonial Georgia: A History* (New York: Charles Scribner's Sons, 1976), 105.

³ Ibid., 13.

⁴ Trevor Richard Reese, *Colonial Georgia: A Study in British Imperial Policy in the Eighteenth Century* (Athens: University of Georgia Press, 1963), 1-2.

poor, banned slavery, and banned rum. Thus, one historian claimed, “there was never a colony so widely based in its foundation.”⁵

There were, however, certain characteristics that unmistakably made Georgia a unique colony beyond its promotion as a haven for the English poor.⁶ For example, it was the only one of the original thirteen colonies that Parliament consistently supported financially as part of the British imperial policy. In its Trustee period, from 1733 to 1752, Parliamentary support accounted for about 52 percent of the colony’s expenses.⁷ Foremost among the unique features of the colony was its governance in this period. There was no local government in the traditional British colonial sense of the term. It initially consisted only of the “Town Court of Savannah,” which was a system of bailiffs, constables, tithingmen, and conservators of the peace. Although Oglethorpe acted as the colonial executive in the absence of an official title, the Trustees ultimately were the government until after the crown took over the charter in 1753.⁸ This failure to establish an effective local system of government had a powerful influence on the developments in early Georgia.

⁵ “Introduction” in Phinizy Spalding and Harvey H. Jackson, eds., *Oglethorpe in Perspective: Georgia’s Founder after Two Hundred Years* (Tuscaloosa: University of Alabama Press, 1989), 2.

⁶ It is important to note here that modern historians have been eager to discredit the idea that Georgia was a colony for debtors or convicts. Coleman states, “Although debtors bear considerable credit for the origin of the Georgia movement, once the charter was issued concern for the debtors disappeared.” Coleman, 20. James C. Cobb has even gone as far to say, “the first Georgians were perhaps the most selectively chosen group of colonists to come to British America.” See James C. Cobb, “Georgia Odyssey” in *The New Georgia Guide* (Athens: University of Georgia Press, 1996), 4. For an alternate view see Milton L. Ready, “Philanthropy and the Origins of Georgia” in Harvey H. Jackson and Phinizy Spalding, eds., *Forty Years of Diversity: Essays on Colonial Georgia* (Athens: University of Georgia Press, 1984), 46-59. Ready argues that Georgia was a more philanthropic enterprise than twentieth-century historians have given credit. “An abhorrence of slavery and a concern for the poor,” he says, “were the two dominant charitable impulses of the period.” He sees both impulses apparent in the early settlement of Georgia. See Ready, 50-51.

⁷ Coleman, 90. The Trustees surrendered their charter to the king a year early, but a royal government was not established until 1754.

⁸ Ibid., 17, 89-109; Reese, 19; Phinizy Spalding, “Oglethorpe, William Stephens, and the Origin of Georgia Politics” in Spalding and Jackson, *Oglethorpe in Perspective*, 80.

The first laws and regulations of the colony, passed solely by the Trustees, added to the distinctive character of the new colony. The Trustees retained sole authority to establish all formal laws for Georgia for twenty-one years, as specified by its charter. More than a year after the first settlers arrived, the Trustees met on January 9, 1735 to propose its first regulations to the Privy Council for approval. On April 3, 1735, the Privy Council approved all the submissions. Surprisingly, there were only three. The first prohibited slavery in Georgia; the second forbade rum, brand, and other strong spirits; and the third was a regulation of the Indian trade.⁹ Kenneth Coleman, a prominent authority on the state's early history, sufficiently has pointed out that three formal rules could not govern the colony, nor did the Trustees so intend. Over the course of the Trustee period, ordinances or resolutions passed in executive committee by the Common Council found their way to Georgia only in letters and other informal means of communications. Although lacking royal approval, the Trustees maintained such provisions were legally binding. An example was the "Rules for the Year 1735," which landed in Georgia with newly recruited settlers for Frederica in the year noted. These included instructions for land grants, property inheritance regulations, and settlement allowances. According to Coleman, "it was the most important document issued by the Trustees for the guidance of officials and colonists for the next several years."¹⁰

The character and method of implementing Georgia laws, then, reflected the unusual nature of this colonial experiment. No other American colony in the eighteenth century had all of their laws and regulations dictated to them from England. Furthermore, the restrictions on slavery, hard

⁹ Coleman, 103.

¹⁰ Ibid., 95, 103-104.

liquor, the limitation of fifty acres per man, and the tail-male conditions (that only males could inherit land) further alienated Georgians from the main experience of other colonials. Jack P. Greene has argued that the prohibition of slavery particularly frustrated many Georgia settlers and their aspirations to be more like other colonies with broader authority to local governance and the freedom to own slaves.¹¹

Added to these distinctions was Oglethorpe's assumption of personal control and leadership in the colony's early years. The Trustees, throughout their entire rule, never appointed a governor, though they were entitled one, so long as the person selected received royal approval. A governor accountable to the king potentially would have infringed upon the direct rule of the Trustees, a possibility they were not willing to chance.¹² Oglethorpe did not have any official sanction of authority in the colony. The charter forbade any Trustee to own land, hold any position of profit or trust, or receive payment or income from colonial activity, which was also a distinctive quality of the enterprise. Still, he took a decidedly paternalistic role in the adventure as early as the first voyage on the frigate *Ann*.¹³ His beliefs and attitudes made a powerful impression on the early settlers, and not always for the better. He antagonized both colonials and Trustees with his ineffectual management and his disdain of mundane administrative concerns.¹⁴ The Trustees finally tired of his failure to inform them consistently on the progress and conditions within the colony and appointed an experienced British bureaucrat, sixty-six year old William Stephens, in 1737 as

¹¹ Ibid., 97; Jack P. Greene, "Travails of an Infant Colony: The Search for Viability, Coherence, and Identity in Colonial Georgia" in Jackson and Spalding, *Forty Years of Diversity*, 303.

¹² Reese, 19.

¹³ Coleman, 17, 23-24.

¹⁴ Ibid., 94. Even Phinizy Spalding has conceded Oglethorpe was "ill-prepared by spirit and emotion to perform the methodical acts required of the best administrator." See Phinizy Spalding, *Oglethorpe in America* (Athens: University of Georgia Press, 1984), 154.

their official secretary and correspondent in Georgia.¹⁵ Frustrated colonists personified their grievances with the Trustee laws and regulations in Oglethorpe and labeled him a tyrant.¹⁶ His personal control of Georgia in civil and military matters was unique to the eighteenth-century American colonial experience.

Denied any substantive self-rule or representative voice in their governance by the Trustees, Georgians divided into political factions that did not have any formal mechanisms for expressing or resolving their grievances. The Trustees often ignored or dismissed letters of complaint from the settlers. William Stephens acted as an intermediary between the colonists and London, but Oglethorpe undermined many of his conciliatory efforts. Finally, in December 1738, more than one hundred colonists signed a petition to the Trustees calling for reforms of their regulations, in particular the repeal of the anti-slave law and changes in land tenure policies.¹⁷ Continued resistance to change by the Trustees, including Oglethorpe, led to an anti-Trustee faction centered in the St. Andrews' Club from Savannah, initially established by Lowland Scots in 1734.¹⁸ By 1741, the Trustees succumbed to pressure and divided Georgia into two counties, Savannah and Frederica. Stephens became the president assisted by four assistants in each county. This reorganization did not include any initiatives toward legislative self-rule by colonial Georgians, but it did effectively strip Oglethorpe of his assumed authority. After he left the colony

¹⁵ Ibid., 95; Phinzy Spalding, "Oglethorpe, William Stephens, and the Origin of Georgia Politics" in Spalding and Jackson, *Oglethorpe in Perspective*, 85.

¹⁶ Coleman, 98.

¹⁷ Spalding in "Spalding and Jackson, *Oglethorpe in Perspective*, 89-96.

¹⁸ Coleman, 48-49, 98-99.

for the last time in July 1743, the Trustees' interest in their philanthropic experiment, already tepid at best, faded more dramatically.¹⁹

In October 1739, England declared war on Spain as a result of ongoing conflicts between them on the open seas. English merchants had ambitiously pursued an expansion of trade with Spanish colonies and met resistance from Spanish officials. Another contributing factor was the dispute with the Spanish over the Georgia-Florida boundaries. Although the war, which ended in 1748, accomplished nothing of material significance to Georgia, it rescued the failing reputation of Oglethorpe by solidifying his image as the colony's astute military leader. The war also prevented any notable political developments for Georgia.²⁰

With the war with the Spanish in the War of Jenkins's Ear behind them, in March 1750 the Trustees called for the election of representatives to the first Georgia Assembly. The impetus for this action by the Trustees was the growing need for consistent and accurate reports from the various settlements in the colony. With representatives from each of the areas, an assembly would record vital statistics and, in the process, would propose measures for Trustee consideration. The Assembly consisted of four representatives from Savannah, two for each town with more than thirty families, and one from each town or village with ten families.²¹ Though it could only propose laws to the Trustees, it was the first major step toward self-government in Georgia.²² The Trustees had repealed the prohibition of hard drink in 1742 and legally allowed slavery in 1750. Concessions to the settlers were more frequent and after 1750, the Trustees began negotiating the

¹⁹ Ibid., 101.

²⁰ Ibid., 63-76.

²¹ Reese, 20.

²² Coleman, 104-105.

early surrender of the Georgia charter to the crown. This arrangement served the colony until Trustee rule ended in 1752. With these changes, Georgia began to resemble the other colonies with similar rights.²³ Georgia colonists had longed for self-government since the first settlers landed in 1733. The Trustees had prevented this for almost two decades. With royal government established in the colony, a new political era began.

Trustee rule of Georgia officially ended on 23 June 1752. The colony did not inaugurate the royal government until 31 October 1754 on the heels of the arrival of its first governor, John Reynolds. With President William Stephens and his assistants as members of his governor's council, Reynolds faced the difficult challenge of freshly establishing the familiar framework of local government long established in other royal colonies.²⁴ Historians have remained critical of Reynolds's abilities and effectiveness. In particular, they have cited his inability to resolve factional disputes among colonial leaders, his failure to strengthen relations with the Native Americans, and his attempts to manipulate and subvert the power of his council and the legislative assembly.²⁵ Georgia historian Harvey H. Jackson has claimed that Reynolds's most important legacy was the creation of an opposition faction known early as the Christ Church coalition, named such because much of the opposition belonged to this Savannah church. This group of colonial leaders, according to Jackson, formed the foundation of the Whig partisans who figured prominently in events during the crises with British policies in the 1760s and 1770s.²⁶ Furthermore, Reynolds faced difficulty securing supplies and troops for Georgia as tensions heated between the

²³ Ibid., 103, 107; Greene, 303.

²⁴ Coleman, 179-80; Reese, 22.

²⁵ See Coleman, 181-184; Reese, 24; Harvey H. Jackson, "The Origins and Effects of a Man-Faceted Movement" in Jackson and Spalding, *Forty Years of Diversity*, 254.

²⁶ See Jackson, 251-273.

English and French on the frontier after the summer of 1754.²⁷ After battling his British superiors for support and battling colonial leaders in his council and the Assembly, Reynolds eventually lost the confidence of his superiors, returned to England and resigned while there.

Henry Ellis replaced Reynolds on 16 February 1757. This change proved to be a watershed for Georgia's politically, economically, and physically. By all accounts, Ellis was an accomplished, politically astute British administrator who, despite his short tenure, made an indelible mark on Georgia's history.²⁸ Edward J. Cashin has called him the model "constitutional chief executive" who raised Georgians' expectations and "exciting their patriotism."²⁹ All of his policies stemmed from his commitment that Georgia's future depended on developing and capitalizing on resources within the colony rather than dependence on those from outside of it.³⁰

Despite his effectiveness and popularity, Ellis resigned in 1760, citing declining health. In October of that year, James Wright replaced him as the third and last royal governor of the colony.³¹ Wright served longer and was more accomplished than the other two. The colony underwent a steady political transformation under Wright's leadership and saw Georgia through a period of extraordinary growth in settlement, economic prosperity, and efficient government.³² Wright's successes, however, became overshadowed by the partisan divides and radical activities sparked by tensions with the British.

²⁷ Coleman, 180.

²⁸ Ibid., 184-191; The most extensive and useful treatment of Ellis is Edward J. Cashin, *Governor Henry Ellis and the Transformation of British North America* (Athens: University of Georgia Press, 1994). Also see William Wright Abbot, *The Royal Governors of Georgia, 1754-1775* (Chapel Hill: University of North Carolina Press, 1959).

²⁹ Cashin, 112.

³⁰ Coleman, 184-192; Cashin, 140-142.

³¹ Ibid., 192-193; Cashin, 141-149.

³² Coleman, "Oglethorpe and James Wright," 126-130.

Royal Georgia was hardly a decade old when the Stamp Act crisis began.³³ The Christ Church coalition, which had figured prominently in the opposition to Reynolds and his supporters, had become a part of the inner circle of politicians close to Wright. Many of them had been leaders during the Trustee period and their persistent influences symbolized a continuity of political power throughout the colonial era. Although their coalition first emerged as an opposition party, their affinity for Wright secured their positions of power, but also made them vulnerable to more Whigs who called for more reforms.³⁴ Although radical opposition to British imperial policies only gradually emerged in Georgia, compared to such opposition in Massachusetts and Virginia, their presence was notable as early as the Stamp Act crisis.

There were several reasons for Georgia's radical lag behind the other colonies in the 1760s and 1770s. First, the colony was heavily dependent on the British for financial and military support. Its economic stability relied upon an exchange of its agricultural products for British manufactures and supplies. Furthermore, the colony's population was relatively sparse and scattered, which meant that it suffered constant threats from Native Americans on the frontier. Consequently, the colonists persistently appealed to the British for more military protection and could not afford expressing too much discontent over other imperial policies.³⁵ In addition, the colony's legislative government was in its infancy in the 1760s and lacked the political experience or resources to sustain any meaningful opposition to British authorities.

Another factor was that, unlike other colonies which had become frustrated with the prohibition of western settlements beyond the Appalachian Mountains by the Proclamation of

³³ Jackson, "Georgia Whiggery," 257.

³⁴ Ibid., 257-258.

³⁵ Reese, 121

1763, Georgia generally benefited from the cessations by the Spanish and French after the Seven Years' War. The threat of hostilities on the frontier with foreigners and Native Americans had diminished considerably, thus affording Georgia's expansion deeper into the frontier.³⁶ Governor Wright's reputation and leadership was another factor that tempered the spread of Whig radicalism. His clever skill as a politician, his attempts to work out solutions privately with influential colonial leaders, and his preparations in advance of foreseeable obstacles made him more effective as a governor through the Stamp Act crisis.³⁷ All of these factors, however, only temporarily stemmed radical sentiment in the young colony. How Georgia moved from reluctance to enthusiasm for revolution and its constitutional reinvention involved a series of complicated events.

In 1765, Savannah remained the center of the colony's political power and influence. The Assembly had subdivided the colony into eight parishes in 1758. These parishes were not local governments in the strict understanding of the term. Rather, they were territorial boundaries often characterized by religious or cultural differences. Each had particular obligations toward maintaining militias, elections, and general local order. The only locally elected officials usually were churchwardens or vestrymen, who assessed parish taxes in support of the church and the community poor. Other local officials, such as the justices of the peace, and militia officers were appointments from the governor and legislature in Savannah.³⁸ Thus, while it was gaining the political experience of a self-governing, centralized legislature by the mid-1760s, the colony still

³⁶ Ibid., 103-104.

³⁷ Coleman, *Colonial Georgia*, 249.

³⁸ Kenneth Coleman, *The American Revolution in Georgia, 1763-1789* (Athens: University of Georgia Press, 1958), 5; Albert Berry Saye, *A Constitutional History of Georgia, 1732-1968* (Athens: University of Georgia Press, 1948; reprint, 1970), 66.

retained a decentralized, eclectic quality, characterized by a series of local communities with very little indication of a collective identity in common with all of the other parishes.

The first newspaper in the colony added to Georgians' sense of common experience and destiny. The *Georgia Gazette* appeared in 1763, just as the colonial frustrations with the British had begun to draw attention. The Assembly officially established the press and named a Savannah immigrant named James Johnston, who trained as a printer in his native Scotland, as the Royal Printer. This had an immeasurable impact on Georgia's political character in these years. The paper disseminated ideas and events within and from without the boundaries of the colony in an efficient and systematic way. For years, the *South Carolina Gazette* had been the most immediate public source of commercial, cultural, and political information available to Georgians. Now, there was a local resource for the broad distribution of laws, declarations, opinions, and advertisements of interest and concern to the public. While Johnston depended heavily on other newspapers for many of his columns, he also reported on local matters of particular interests to Georgians. Letters to the paper sometimes provoked controversy and anger, demonstrating that the medium was a valuable resource for public dialogue and engagement. The *Georgia Gazette* also advertised and sold reprints of essays and treatises of European writers such as David Hume, Montesquieu, and John Locke, which appealed to the intellectual interest of certain colonists.³⁹

When the Stamp Act crisis swept the colonies, the *Georgia Gazette* provided a forum for local colonials to express their opinions and frustrations about its effect on them. Johnston, however, stopped its publication from November 1765 to May 1766 when, due to the new tax, he

³⁹ Louis Turner Griffith and John Erwin Talmadge, *Georgia Journalism, 1763-1950* (Athens: University of Georgia Press, 1951), 1-4; Saye, 74.

either refused or could no longer afford to use stamped paper. Until this disruption, the paper had become a valuable resource for news and opinions about the opposition to the British tax in the other colonies. It also carried the views and justifications of the stamp's supporters, including Governor Wright and James Habersham.⁴⁰ While the colony's reaction to the Stamp Act was less emotionally charged and less radical as that in many of the other colonies, the episode revealed the fissures developing among the political leadership in Georgia.

When the Massachusetts Assembly sent circular letter to the other colonial governments encouraging resistance to the Sugar Act and requesting a representative attendance at a proposed Stamp Act Congress, Georgia's Assembly took a decidedly moderate position. Both houses of the Georgia legislature instructed the colony's agent in London, William Knox, to collaborate with other colonial agents in opposing both acts. Georgia's opposition, however, was distinct from the taxation without representation argument of others. It was the economic burden of these taxes, rather than the political principle of representation, that Georgia found most troubling. There were certain provisions in the Sugar Act that adversely affected the colony's lumber trade that were most disconcerting, although there were some voiced objections about the virtual representation claims of Parliament and the non-jury trials sanctioned by the Stamp Act. Still, as Kenneth Coleman has described, "Georgians were meek and mild in their objections and preferred dutiful petitions to ringing declarations."⁴¹

Georgia did not send any delegates to the Stamp Act Congress. This was not only a result of the colony's lukewarm attitude, but also in part, due to the governor's refusal in September of

⁴⁰ Griffith and Talmadge, 5; Saye, 78-79; Coleman, 18.

⁴¹ Ibid.

1765 to convene the Assembly to consider such a move. On the other hand, the Assembly sent notice to the Massachusetts Assembly that Georgia shared in the collective concerns and would support the decisions of the special congress. By October, momentum against the Stamp Act had grown. This more aggressive opposition came from an emerging coalition of generally younger colonials and recent immigrants who sought to challenge Georgia's traditional political elite.⁴² When the act officially went into effect on 1 November 1765, no stamped paper or stamp officer had arrived yet in the colony. Nevertheless, during a Guy Fawkes Day celebration in Savannah on November 5, a rowdy crowd mocked the Parliamentary act and spurred radicals to meet the next day. On November 6, for the first time, the Georgia Sons of Liberty met at Machenry's Tavern to organize local resistance to the scheduled arrival of the stamp officer, who, much to their chagrin, secretly arrived at the governor's house under armed protection in early January 1766. This meeting started the intense, but sporadic activities of various patriot groups like the Sons of Liberty throughout the parishes in revolutionary Georgia.⁴³

True to its word, the Assembly unanimously adopted the resolutions of the Stamp Act Congress on 14 December 1765.⁴⁴ It then authorized a formal notice of agreement with these resolutions to England. One group in particular, labeled as the Liberty Boys, assembled en masse to pressure the governor against enforcing the Stamp Act, at one point threatened to break into the royal storehouse and destroy the official stamps. The governor managed to avert violence and even managed to sell stamps to vessels docked in the Savannah harbor and cleared sixteen vessels in port on 7 January 1766. Although Georgia never sold any more stamps, this single act made it the

⁴² Jackson, "Georgia Whiggery," 258.

⁴³ Coleman, 19-20.

⁴⁴ Saye, 79

only one of the original thirteen colonies to have sold any stamps. The credit went to Wright's shrewd thinking and his ability to command respect among the colonial opposition. Regardless of these overt protests to the Sugar and Stamp Acts, Wright generally was pleased that Georgia escaped much of the radicalism on display elsewhere, especially Massachusetts.⁴⁵

The crisis had a number of consequences in Georgia. In practical terms, events revealed the immense power and control that the governor had been able to exert over the legislature. His ability to thwart a Georgia delegation from attending the Stamp Act Congress and even a debate over the implications of this act demonstrated the inability of the legislature to pursue ambitions contrary to the governor. In addition, the crisis instigated a division between the two houses of the legislature. The Commons Assembly, displeased with the performance of William Knox as their advocate in London during the crisis, attempted to replace him with Benjamin Franklin. The Upper House successfully blocked this attempt until 1768, when it finally relented. In 1767, both houses also disagreed over the enforcement and funding of the British Quartering Act of 1765. In each case, the two assemblies eventually compromised, but not without considerable political costs.⁴⁶

There were, however, instances that compromise between the Commons Assembly and the Upper House or governor became impossible. When Parliament passed the Townshend Acts, which instituted new taxes to fund royal officials in America, the *Georgia Gazette* persistently published objections by other colonies. The paper also printed John Dickinson's *Letters of a Pennsylvania Farmer*, another protest of the acts. In December 1768, the Assembly approved another letter of opposition by the Massachusetts Assembly and Governor Wright immediately

⁴⁵ Ibid. Coleman, 20-21; Coleman, *Colonial Georgia*, 248.

⁴⁶ Coleman, *American Revolution*, 26-27.

dissolved the session. Again, Georgia's objection to the Townshend Acts was not as much a matter of principle, but of financial burden. Whereas other colonies participated in a non-importation agreement of British goods as a means of resistance, Georgians, in 1769 at a mass meeting in Savannah, passed resolutions in support of this agreement, yet had no mechanisms for enforcing it. On 13 September 1769, the *Georgia Gazette* read, "If we are no longer to be allowed the rights of Britons, WE MUST be Americans."⁴⁷ The colony still lagged far behind other colonies in enthusiasm for imperial opposition. In May 1770, South Carolina considered terminating trade with both Georgia and Rhode Island for their failure to comply with the non-importation policies.⁴⁸

Along with the practical tensions and developments occurring after the Stamp Act crisis, important ideological shifts in the political arena also became apparent. The traditionally conservative Christ Church coalition in Savannah split in 1765, and the Liberty Boys became a splinter group. This new faction had been frustrated with the ease at which the traditional political elite had yielded to the governor during the crisis and subsequent disagreements. They were more ambitious than the previous generation in Georgia, and more impatient with the failures of legislative agendas. Most were members of the provincial aristocracy and some were sons of the older coalition, like Noble Wimberly Jones and Joseph Habersham. Their circumstances and family ties gave their new coalition a measure of credibility denied to other factions developing at the same time. Although they plotted and pushed for legislative supremacy, they were less radical than others in the colony. The Liberty Boys were responsible for public meetings and resolutions

⁴⁷ *Georgia Gazette*, September 13, 1769 quoted in *Ibid.*, 31.

⁴⁸ Coleman, 32.

against the Stamp Act and the Townshend Acts, but their goal was to empower the legislature, not to overthrow the governor or the system generally.⁴⁹

Political principle was at the heart of one important dispute between the governor and the Assembly in 1769. While considering a tax bill, the Assembly found it had taxed four new parishes south of the Altamaha River, which it had created in 1765 to make twelve parishes total for the colony, without representation in the legislature. The house sought to rectify this and submitted an appeal for representative elections in the four parishes to Governor Wright. With support from his council, Wright refused, noting that he must have authorization from London to increase the membership of the Assembly. The house, suddenly taking the principle of taxation without representation seriously, took offense. Attempts to resolve this between the houses of the legislature failed. Ultimately, the Assembly passed a tax bill exempting the four unrepresented parishes.⁵⁰ When the issue came up again in the 1770 session, Wright dissolved the Assembly and a series of disagreements, including other issues, resulted in a series of dissolutions of the house by the governor. Finally, the four parishes elected representatives and the government entered a short period of relative calm. These episodes, however, made the Assembly more defensive of its rights and fueled the ideological concerns of the colonists about the power and ability of their elected representatives to govern them.⁵¹

By 1774, economic growth, demographic changes, and political tensions had dramatically affected Georgia. The colony had become economically self-sustaining since Wright became governor. Rice plantations, upcountry farms, forest timber, a robust trade with Native Americans,

⁴⁹ Jackson, 252-260.

⁵⁰ Coleman, 32-33.

⁵¹ Ibid., 34-38.

and a lively merchant trade in Savannah had contributed to the growing economy.⁵² The population expanded from 6000 whites and 3500 blacks in 1761 to 18,000 whites and 15,000 blacks in 1773. Augusta, the most rapidly growing town in this period, had developed from a frontier defense post to a center for Native American trade. Much of the population growth came from people recently arrived with high economic and political expectations.⁵³ In the political arena, the Georgia Assembly had conducted routine communications with the other colonies through a committee of correspondence it had created in January 1774. This act demonstrated the growing political concerns among Whig leaders and their interest in collaborating with other colonies in potential concerted opposition against British policies.⁵⁴

The Intolerable Acts exploded any political calm that may have existed in 1774 Georgia. Radical Whigs saw the opportunity to challenge the established political leadership in the Assembly.⁵⁵ The radical leaders were mainly from the parish of St. John, about forty miles south of Savannah. In the 1750s Puritans from Massachusetts, with a brief stop in South Carolina, had settled the area, seeking to escape the modernizing changes affecting America and to preserve a certain cultural homogeneity inherited from the early seventeenth-century Dissenters. In the 1760s, newcomers, who were more politically ambitious, disrupted their reclusive settlement and sought power in the Assembly. Their tradition of religious dissent, republican ideals, and independence blended with a determined political agenda and informed their radical potential. They saw the Christ Church Liberty Boys as an obstacle to their ambitions.

⁵² Coleman, 10-11.

⁵³ Ibid.; Also see Jackson, 263.

⁵⁴ Coleman, 38.

⁵⁵ Ibid., 40.

The agitation created by the Intolerable Acts gave them an opportunity to challenge the more conservative leaders and they took it. Included among this new brand of political activists were Lyman Hall and Button Gwinnett.⁵⁶

On 20 July 1774, the *Georgia Gazette* published an invitation for a public meeting in Savannah on 27 July to discuss the “the arbitrary and alarming imposition of the late acts of the British Parliament” and to consider “such other constitutional measures pursued as may appear most eligible.”⁵⁷ Those signing the invitation were Noble W. Jones, Archibald Bulloch, John Houston, and George Walton, all of whom were Christ Church Liberty Boys. The Christ Church coalition and St. John’s Parish dominated the meeting, while few, if any, of the upcountry or interior parishes sent representatives. The invitation by the more conservatively inclined Whigs indicated the increasing political anxiety and the willingness of a broader challenge to British authority in a colony that had maintained favorable respect for its royal governor.

The meeting on 27 July attracted a large crowd, including at least one hundred people from St. John’s Parish, concerned about the implications of the Intolerable Acts.⁵⁸ They openly read and considered letters from other colonies and committees of correspondence addressing concerns and inviting all provinces to participate in a general congress for further collective action. Those in attendance passed a motion by “a large majority” to create a committee charged with drafting resolutions of resistance against the British, “nearly similar to those of the Northern Province” and

⁵⁶ Ibid., 41; Jackson, 252-253, 261-262.

⁵⁷ *Georgia Gazette*, July 14, 1774

⁵⁸ A Charleston newspaper reported the event on August 1, 1774. See Peter Force, ed., *American Archives*, Series 4, Vol. 1 (Washington, 1837), 638-639. Coleman has stated, probably correctly, that the especially large representation came from St. John’s Parish. See Coleman, 40-41. St. John’s Parish was located midway between the Savannah and the Altamaha Rivers on the Georgia coast. In fact, the area was first called Midway. Congregationalist Puritans, and consequently, their values and principles dominated the early settlement there.

to decide on Georgia's course of action concerning the inter-colonial convention. There was a general concern, however, that many of the parishes did not have any representatives at this meeting.⁵⁹ They agreed to postpone a meeting of this committee until August 10 and send a letter to the parishes informing them of their intentions and requesting delegates from each to attend the next meeting. Before adjourning, the crowd considered and approved one more important decision. "It was also resolved, that the Resolutions agreed upon and entered into at the next meeting, by a majority of the said Committee then met, should be deemed the sense of the inhabitants of this Province."⁶⁰

At this meeting, there were practical applications of contemporary understandings of the principles of sovereignty, representation, and legitimacy. First, the meeting assumed that it possessed the political will to determine a course of action that violated their constitutional rights. Secondly, they adhered to decisions made by a majority vote. In addition, those in attendance deferred any further decisions made on behalf of the colony until the other parishes could send representatives and inform the process with political legitimacy. This was consistent with earlier protests of the Assembly against taxing the parishes not represented in the legislature. Self-government had come late to Georgia, but the republican principles that other colonial assemblies had long assumed had finally matured in the young colony.

⁵⁹ Though there is no official record of which parishes had representatives present and which did not. However, in the invitation to the next meeting scheduled for 10 August, it noted that "after some business being entered upon, objected that many of the out parishes might not have a sufficient notification of the intended meeting [on 27 July]." See "Request for Delegates to August 10 Meeting in Savannah" in Ronald G. Killion and Charles T. Waller, *Georgia and the Revolution* (Atlanta: Cherokee Publishing Company, 1975), 103.

⁶⁰ Force, ed., *American Archives*, Series 4, Vol. 1, 640. Force quotes McCall's contemporary source accounts of the meeting. Also see McCall, 269-270; George White, ed., *Historical Collections of Georgia* (New York: Putney and Russell, 1854), 44.

It is not known exactly how many representatives from the other parishes attended. Nevertheless, from the language of the resolutions passed by the August 10 meeting in Savannah, there appears to have been sufficient attendance to assure some measure of legitimacy. The committee passed eight resolutions condemning the Intolerable Acts, denying Parliament's right to tax the colonists, and appealing to their rights according to British constitutionalism—"a Constitution founded upon reason and justice, and the indelible rights of mankind." Specifically, this special Georgia committee declared that the abolishing of the Charter of Massachusetts was an anathema to both "those general liberties" afforded them by their English heritage and the "particular immunities granted by such a charter." It was an unconstitutional act by Parliament because a charter "cannot be dissolved but by a voluntary surrender of the people, representatively declared." Once again, the language of sovereignty, representation, and legitimacy appears fundamental to their political thought. In conclusion, the committee declared itself to be "a General Committee," requiring a quorum of eleven to act as necessary and to correspond with other colonies in collaboration.⁶¹

Governor Wright emphatically denounced the meeting and proceeded to assemble a similar meeting of loyalists, who, in turn, signed a dissent to the committee actions.⁶² He maintained that it, "has been industriously propagated, that summonses and meetings of this nature are constitutional and legal," but, in fact, "all such summonses and calls by private persons, and all assembling and meetings of the people which may tend to raise fears and jealousies in the minds of his Majesty's subjects, under pretense of consulting together for redress of public grievances, are

⁶¹ White, ed., *Historical Collections*, 45-46. A copy of these resolutions also appear in Force, ed., *American Archives*, Series 4, Vol. 1, 700-701.

⁶² Copies of Wright's proclamation are found in White, 46; Force, ed., *American Archives*, Series 4, Vol. 1, 700. For copies of the dissent see White, 47-49. Also see McCall, 273; Coleman, 42-43.

unconstitutional, illegal, and punishable by law.”⁶³ Despite Wright’s constitutional criticism of them, such meetings had been an important component of the colonial political culture. Gordon Wood has noted that “quasi-public” meetings and assemblies had appeared in America as early as the Glorious Revolution. The people did not consider them unconstitutional or illegal, but rather as an inherent right of assembly and petition for relief of common grievances.⁶⁴ Furthermore, historian Pauline Maier, in her study of uprisings and mob violence during the American Revolution, has argued that English colonials in the eighteenth century believed in the legitimacy of assembly to reclaim authority delegated to governing officials when they violated the public trust.⁶⁵

The dissenting opinion signed by the governor’s supporters attacked the 10 August meeting on several fronts. “Several artful falsehoods,” it read, “were thrown out to induce the parishes and districts to send deputies.” It complained that only “those few who were in the secret” knew where the meeting was held and that the tavern-keeper refused admittance to anyone not on the list of the select audience.⁶⁶ Loyalists in Augusta in St. Paul Parish and other nearby settlements articulated their objections to these meetings in careful terms. In October, a meeting in St. Paul issued its dissent, agreeing with Wright and stating that the organized opposition in Savannah was “illegal” and served only to “alienate the affection” of the king and Parliament and, subsequently, would endanger the colony. The only proper and constitutional method of addressing colonial grievances was an official petition channeled through official political channels.

⁶³ “Gov. Wright Proclaims July 27 Meeting of Colonials Illegal” in Killion and Waller, 104.

⁶⁴ Wood, 312.

⁶⁵ Maier, 27-28.

⁶⁶ “Dissent to the Resolutions of August 10, 1774” in Killion and Waller, 107-108.

The meetings in Savannah, the dissent declared, did not represent the sentiment of the colony at-large, but rather, those select, discontented inhabitants “whose property lies in or near Savannah, and, therefore, are not immediately exposed to the bad effects of an Indian war.”⁶⁷

The nearby settlements of Kyokee and Broad River nearby also complained that the meetings were “not public” and that “many respectable persons were refused admittance.” That their views had no representation at these meetings and that the resolutions “carried with it unnecessary and unjust reflections on the honour and justice of King, Lords, and Commons” was sufficient to disavow them.⁶⁸ The nearby town of Wrightsborough concurred with these objections to the proceeding in Savannah. Claiming no prior knowledge of such a meeting, the town disapproved of the results and stated that, “such proceedings as a few acting for the whole without their knowledge, we apprehend being contrary to the rights and privileges of every British subject.”⁶⁹ The emphasis was, again, on representation and legitimacy. Both the opposition and the loyalists, though in different terms, implied that legitimate political action was the product of fair representation, though there was clearly some disagreement on sovereignty—the Whigs saw the origins of political authority contractually embedded in the people’s agreement to be governed, while some loyalists considered it a characteristic inherent in the British constitutionalism embodied by the King-in-Parliament.

⁶⁷ “St. Paul Parish Dissent to August 10 Meeting” in *Ibid.*, 108-109.

⁶⁸ “Kyokee and Broad River Settlements Dissent to August 10 Resolutions” in *Ibid.*, 110-111.

⁶⁹ Allen D. Candler, ed., *The Revolutionary Records of the State of Georgia*, Vol. I (Atlanta: Franklin-Turner, Co., 1908), 27. Note that Candler and others have claimed that these dissensions were results of a concerted effort by Governor Wright to exaggerate the strength of the loyalist cause. See Candler, 34; McCall, 273-274. Also note that McCall claims that the *Georgia Gazette*, the only newspaper in the colony at the time, was a tool of Wright’s influence. Griffin and Talmadge, however, have argued credibly against this assertion. See McCall, 273; Griffin and Talmadge, 6-7.

Another controversy arose out of the 10 August meeting. St. John's Parish had persistently pushed for the appointment of delegates to the upcoming Continental Congress in Philadelphia and each time the committee majority had voted against it. An anonymous letter dated 2 September 1774 charged that representatives from Savannah, "who were not properly constituted," had blocked such appointments over the objections of other parishes. Frustrated by this, St. John's invited representatives to another meeting on August 30 to consider the motion further. Eventually, four parishes—including St. John's, St. George, St. David, and St. Andrew—elected Lyman Hall as a delegate contingent upon the approval of other parishes. Such approval never came and Hall did not attend the Continental Congress.⁷⁰ This activity reveals two important characteristics of the British opposition in Georgia's revolutionary political culture. One was the growing divisions between the more conservative Whigs centered in Savannah's Christ Church coalition and the more radical faction from St. John's. More importantly, despite the internal dissent concerning opposition to the Intolerable Acts, the radicals continued to adhere to the fundamental principle of political legitimacy. Hall did not attend the Continental Congress because the other parishes did not sanction his representation.

The First Continental Congress met in Philadelphia on September 5 without a representative from Georgia. Although Governor Wright had been instrumental in preventing the colony's participation in the Stamp Act Congress in 1765, he was not responsible for its skipping this new convention. A special meeting of the people in committee had made the decision for the province—a decision probably hailed by the conservative Whigs and loyalists as well as conservative Whigs. Conservative Whigs wished for an amicable settlement between the aggrieved

⁷⁰ Force, ed., *American Archives*, Series 4, Vol. 1, 767-768; Coleman, 42-44.

colonists, with whom they generally agreed but shunned their radicalism, and the British, whom they believed had become too oppressive. The special committee from August finally called a public meeting in December 1774 to deliberate on the recommendations proposed by the Continental Congress, which included the Continental Association agreement boycotting imports of all British goods. They concluded that a provincial congress in Savannah was necessary and issued a call for elections in each parish for delegates to meet in January, simultaneous with the convening of the Commons Assembly. According to one contemporary correspondent, those communities reluctant to join the resistance in the previous summer had decided to elect delegates to the special assembly and “are now come over to us.” One impetus for this change of heart was the threat by South Carolina to stop all trade with Georgia because of its failure to participate directly in the Continental Congress. The letter’s author appeared assured of the provincial congress’s interest in approving the Association and joining the Continental Congressional delegation in its next session in May 1775. The winds of change were disturbing for Governor Wright, who complained to the Earl of Dartmouth that Georgia took the proposals and resolves of the Continental Congress seriously and noted “we have been in hot water ever since.”⁷¹

St. John’s Parish, once again, fueled excitement. On 6 December, the colonists held a rally in Midway to propose that each parish join the Continental Association individually rather than awaiting action by the upcoming provincial congress. St. John’s immediately joined the Association and began collecting individual signatures of those in agreement. This action placed

⁷¹ Coleman, 44-45; McCall, 277-278; Saye, 85-86; “Extract of a Letter from Savannah...December 9, 1774” in Force, ed., *American Archives*, Series 4, Vol. 1, 1033-1034; “Sir James Wright, Bart, to the Earl of Dartmouth” in *Ibid.*, 1040.

the parish squarely in the most radical elements in the colony. In January, St. Andrew's Parish also joined the Association.⁷²

A meeting on 12 January 1775 in St. Andrew's Parish at Darien, an area settled by Highland Scots, also took a bold political stand. The participants published their resolves, which used some very revealing language about their political ideas. They referred to themselves as "Representatives of the extensive District of *Darien*, in the Colony of *Georgia*," and their meeting as a "Congress, by the authority and free choice of the inhabitants of the said District, now freed from their fetters..." Their resolves expressed not only an empathy with the people of Massachusetts, suffering the brunt of the Intolerable Acts, but a reverence for their efforts "to preserve their liberty," which deserved "not only the applause and thanks of all *America*, but also, the imitation of all mankind." The resolves listed specific and general grievances against the British policies in America, including interference with self-governance and their abhorrence to slavery.

The British, they charged, had prevented "the legal Representatives of the people to enact laws suiting their own respective situation and circumstances" and had undermined the legitimacy of the colonial government by subsidizing the salaries of public officials from London. Such subsidies destroyed the accountability of these officials to those they governed, "being independent of the people who should support them according to their usefulness and behavior." Furthermore, slavery was inconsistent with the principles of the very liberty that the colonists pursued from the British and pledged "at all times to use our utmost endeavors for the manumission of our Slaves in

⁷² Coleman, 45-46.

this Colony...”⁷³ The resolves were the official instructions of their representatives to the new provincial congress.

Convinced that “the salvation of the Rights and Liberties of *America*” rested on the “firm union of the inhabitants” and “of the necessity of preventing the anarchy and confusion which attend to the dissolution of the powers of Government, the assembly expressed its commitment to the Continental Association. St Andrew’s Parish would “adopt and endeavor to carry into execution, whatever may be recommended by the Continental Congress, or resolved upon by our Provincial Convention...appointed for the purpose of preserving our Constitution, and apposing the execution of the several arbitrary and oppressive Act of the *British* Parliament.” The parish appointed a “General Committee” to pursue their objectives locally and organize responses to changing circumstances and dangers. The first name among the signatories was Lachlan McIntosh, a Scottish immigrant and rice planter who played a major role in Revolutionary Georgia.⁷⁴

The Darien resolves provide important insights into certain political assumptions by Georgia Whigs. First, they indicate that particular republican ideas were not simply rhetorical mechanisms used by the elite opposition to bait the masses into resistance against the British. The language employed by the parish was more emphatically confrontational than that of the Whig leaders in Savannah. Their statements also demonstrate the familiar themes of sovereignty, representation, and legitimacy. In their preamble to the resolves, the assembly touted their credentials as informed by “the authority and free choice of the inhabitants” and, therefore, “freed

⁷³ “Darien (Georgia) Resolves: In the Darien Committee, Thursday, January 12, 1775” in Force, ed., *American Archives*, Series 4, Vol. 1, 1135-1136. This prominent declaration of anti-slavery sentiment appears to be isolated to St. Andrew’s Parish, although it might have been shared by others in the colony, but not publicly expressed. After all, the colony had initially banned slavery as a founding principle.

⁷⁴ *Ibid.*, 1136-1137; Coleman, 45-46. Also see Harvey H. Jackson, *Lachlan McIntosh and the Politics of Revolutionary Georgia* (Athens: University of Georgia Press, 1979).

from their fetters” or political restraint to pursue a redress of constitutional corruption. They presumed that political authority emanated the citizens and expressed in an “unfettered” political gathering specifically called to address their constitutional rights, either in person or represented fairly. If represented, then those representatives must be fully accountable to the constituency—unlike those British officials whose accountability was to London.

The Commons Assembly convened on January 17 and the provincial congress, the first specially elected one in the colony, assembled the next day. The Assembly constituted representatives of all parishes while the provincial congress attracted representatives from only five of the twelve parishes.⁷⁵ On the second day of the Commons Assembly, Governor Wright addressed both houses of the legislature, cautioning them against “over-heated ideas” circulating in the colony that were “expressly contrary to law, and hostile to the mother country.” He expressed empathy for colonial concerns over their liberties and assured the Assembly of his “real and affectionate regard for the people” of Georgia. Still, he maintained, the resort to extralegal channels of resistance would only cost them “the enjoyment of your lives, your liberty, and your estates,” currently protected by Britain.⁷⁶ The Upper House replied two days later with notable deference to the governor and guardedly reminded him of their desire for “all the rights and privileges of British subjects, as fully and effectually, in all respects, as the inhabitants of *Great Britain* do.” They asked, therefore, “that the constitutional rights of his *American* subjects may be clearly defined and

⁷⁵ The five parishes represented at the provincial congress were Christ Church, St. Paul, St. Matthew, St. Andrew, and St George. See Candler, ed., *Revolutionary Records*, Vol. I, 42; Coleman, 46.

⁷⁶ “This day the General Assembly of this Province met...” in Force, ed., *American Archives*, Series 4, Vol. 1, 1152.

firmly established.”⁷⁷ Georgians would see that “clearly defined and firmly established” meant a written and popularly sanctioned constitution.

The Commons Assembly’s reply to the governor was markedly more critical of recent British policies in America. Dissatisfied with Wright’s inability to secure more British aid in recent atrocities with the Creek Indians and his condescension toward the people in their “present alarming situation” with Great Britain, the Assembly passed a series of grievances and declarations.⁷⁸ The representatives asserted that English colonial rights were rooted in three sources: “by the immutable laws of nature, the principles of the *English* Constitution, and the several Charters or compact.” Defiantly, they argued, “they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever a right to dispose of either without their consent.” The Assembly proceeded to list all of the specific measures adopted by Parliament, which it deemed “infringements and violations of the rights of the Colonists.” Finally, it called for representatives to the next meeting of the Continental Congress.⁷⁹ Before the Commons could select its representatives to the general congress or adopt the Continental Association and resolves of the First Continental Congress, Wright dissolved the body on 10 February 1775 until May, when, he hoped, more conservative influences would prevail.⁸⁰

Simultaneously, the provincial congress met. Several members of the special convention were current or previous delegates in the Commons Assembly. In all, there were forty-five members in attendance. The congress elected three representatives to the Continental Congress set

⁷⁷ Ibid., To his Excellency Sir James Wright...The Humble Address of the Upper House of Assembly, 1154-1155.

⁷⁸ Ibid., To his Excellency Sir James Wright...The Address of the Commons House of Assembly, 1155-1156.

⁷⁹ Ibid., “House of Assembly, Georgia, January, 1775,” 1156-1158.

⁸⁰ Coleman, 48-49.

to meet in May, all of whom were from Christ Church Parish.⁸¹ In addition, it voted to adopt the Continental Association, but only with specific conditions. Specifically, Georgia would not end trade with colonies that continued trade with Britain, it would continue to import goods needed for trade with Native Americans, and it omitted any mention of the non-consumption agreement of the Continental Association.⁸² Conscious of its practical and theoretical limitations, this convention chose not to assume authority for the colony at-large. The delegates decided to submit its actions to the Commons Assembly for official sanction. Wright, however, had adjourned the Assembly before it could act.⁸³ The three representatives selected for the Continental Congress ultimately made a decision not to attend the session in May because their mandate did not reflect all of Georgia's parishes and thus, such participation would be politically illegitimate.⁸⁴ Once again, there was an overt link between fair representation and legitimacy.

Notably absent from the provincial congress was St. John's Parish. Its delegation attempted to influence the resistance movement with a boycott of the proceedings until the congress unconditionally adopted the Continental Association. The parish met separately on January 18 with Lyman Hall as the chair. This "committee" promptly sent a message to the provincial congress urging it to join St. John's in acceding fully to the Association and resolves of the Continental Congress. After it had ignored St. John's for two days, the congress sent a note that politely, but pointedly, demonstrated its disinterest in the parish's recommendation. On 21 January, St. John's delegation issued resolutions denouncing the provincial congress as unrepresentative of the colony

⁸¹ The three representatives elected were Archibald Bulloch, Noble W. Jones, and John Houstoun.

⁸² Coleman, 46-47.

⁸³ See a letter to the Continental Congress signed by Noble Wimberly Jones, Archibald Bulloch, and John Houstoun, dated April 6, 1775 in Candler, ed., *Revolutionary Records*, Vol. I, 63. Also see, Coleman, 47.

⁸⁴ Letter from Jones, Bulloch, and Houston, in Candler, 63-66.

at-large and, therefore, illegitimate to act on behalf of all parishes. After declaring its intent not to participate in a congress that could only speak for five of the colony's twelve parishes, the committee adjourned *sine die*.⁸⁵

Subsequently, St. John's Parish grew increasingly impatient with the pace of resistance by the Assembly and the provincial congress. The parish's anxiety swelled to the point that it attempted to secede from Georgia and join the colony of South Carolina. In a letter to the Charleston provincial committee, St. John's Committee declared its intentions and stated, "Our being a Parish of non-associated Province [with the Continental Association created by the First Continental Congress], cannot, we presume, prevent our joining the other Provinces...and we are assured you will not condemn the innocent with the guilty, especially when a separation is made between them."⁸⁶ South Carolina denied the parish's request on a technicality in the Association resolves, specifically article fourteen, which essentially only politically recognized colonies as sovereign entities and not counties or parishes.⁸⁷ Ultimately, St. John's accepted that its fate was bound to the same fate of Georgia. The parish did elect, however, its own representative to the Continental Congress. Lyman Hall attended the May session in Philadelphia and received official

⁸⁵ White, ed., *Historical Collections*, "Extracts from the Minutes...of the Committee of the Parish of St. John...", 521-522.

⁸⁶ Candler, ed., *Revolutionary Records*, Vol. I, "The Committee from St. John's to the Charleston Committee," 60-61. Also see Coleman, 49-50. Coleman calls this move by St. John's as an attempt to "divorce" from Georgia rather than secede, as I have termed it. In historical perspective, however, both terms adequately describe the act as both as a social, economic, and political separation from Georgia.

⁸⁷ Ibid., "A Letter and sundry other Papers...considered," 62. Article fourteen of the Association reads, "And we do further agree and resolve that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country." A copy of the resolves can be found at http://www.constitution.org/bcp/art_assoc.htm (last accessed, 8/12/07).

recognition by the Congress, but refused to cast a vote because each colony possessed one vote and he did not legitimately represent Georgia at-large.⁸⁸

In May 1775, the Commons Assembly decided not to meet as scheduled, given the level of excitement caused by the news of the battles at Lexington and Concord and the unpredictability of events generally. Georgia Whigs grew restless and some began a series of raids and disruptions against military stores and official British events. By June, the momentum of resistance was clearly behind the Whigs and Governor Wright felt the pressure against him.⁸⁹ The call went out for elections to another provincial congress for 4 July to fully adopt the Continental Association and, in the absence of a sitting Commons Assembly, to petition the king once again for the relief of their grievances. Conservative Whigs saw this as a desperate, but necessary, final attempt at reconciliation with the British while radicals viewed it as futile delay.⁹⁰ Meanwhile, Savannah agreed to the Association on its own. The Christ Church Whigs printed an invitation in the *Georgia Gazette* on 21 June for a meeting of residents of Savannah the next day to institute a council of safety and elect its members. This council enforced the Association in Savannah.⁹¹

When the provincial congress met in July, without any rules for proportional representation, 102 delegates attended representing ten of the twelve parishes. Only St. Patrick and St. James parishes, two of the smallest and most southern, were absent. Christ Church Parish and St. John Parish had the most delegates and together had only two votes short of a majority in the congress. Conservative opposition had little voice in this session, but, unlike Georgia's first

⁸⁸ Force, ed., *American Archives*, Ser. 4, Vol. II, 1830-1831.

⁸⁹ *Ibid.*, 871-872. Also see Coleman, 53-54.

⁹⁰ Candler, ed., *Revolutionary Records*, Vol. I, 232-234; Coleman, 55-56.

⁹¹ *Ibid.*; McCall, 287-288.

provincial congress in January, the membership believed that it fairly represented the entire colony and could legitimately act and speak on its behalf.⁹² For the first time, a revolutionary legislature had emerged with enough popular legitimacy to compete vigorously with the royal government in Georgia.

No one understood better the revolutionary moment any more than Reverend John J. Zubly, a conservative member of the congress whose sermon opened the proceedings. The men gathered in this congress, according to Zubly, “in a most critical time, and on a most alarming occasion, not in a legislative capacity, but (while the sitting of the usual representation is not thought for the King’s service, or necessary for the good of this Province) you are chosen by the general voice of this Province to meet on their behalf, to consult on such measures as, in our local circumstances, may be most to the real advantage...of this Province, and of all this Great Continent.”⁹³ He captured the important distinction of this congress from the “usual representation” of the Commons Assembly, namely that a special convention was sometimes necessary, even “natural,” when laws become oppressive and destructive to those bound by them. “When a people think themselves oppressed and in danger, nothing can be more natural than that they should inquire into the real source, and endeavour to apply the remedies which are most likely to procure relief...” If the normal legislature, bound by laws deemed unconstitutional or “destructive in themselves” by the people, then the people have a natural right to constitutional remedies.⁹⁴ Zubly

⁹² Coleman, 56-57. A record of the proceedings of this congress has been published in Candler, Vol. I, 229-282. Also see William Bacon Stevens, *A History of Georgia: From its First Discovery by Europeans to the Adoption of the Present Constitution in 1788* (Philadelphia: C. Sherman and Son, 1859; reprint, Savannah: Beehive Press, 1972), 104-118.

⁹³ Force, ed., *American Archives*, Ser. 4, Vol. II, 1565. The complete text of Zubly’s sermon can be found on pages 1557-1567.

⁹⁴ *Ibid.*, 1558.

was a monarchist who urged reconciliation with the crown, but he understood the implications of a potentially radical provincial assembly.

When the congress met on 6 July, it unanimously passed sixteen resolutions that soundly placed Georgia in the collective movement of resistance against the British. It unconditionally adopted the Continental Association, the American Declaration or Bill of Rights, and all other measures recommended and passed by the Continental Congress. In addition, it called for the creation of committees in every town and parish to enforce the Association agreements. To prevent Savannah from dominating future proceedings, the body established a rule of fixed proportional representation, which totaled ninety-six delegates.⁹⁵ The provincial congress remained busy until a temporary adjournment on 17 July. During this time, it acted as a regular legislative assembly and a revolutionary body at once.⁹⁶

Among its other accomplishments, the congress chose five delegates to the Continental Congress already in session.⁹⁷ They included John Houstoun, Archibald Bulloch, Noble Wimberly Jones, Reverend John J. Zubly, and Lyman Hall, who was already in Philadelphia representing St. John's Parish. Not really considering himself a revolutionary in any terms, Zubly expressed openly

⁹⁵ Coleman, 60. Christ Church Parish, which included Savannah, Little Ogeechee, Vernonburgh, Sea Islands, and Acton communities, still retained the highest number of delegates permitted at 17. St. John Parish had the second most with 12. Coleman has detailed the representation of each of the twelve parishes, including the addition of the unorganized territory from the Native American cessation of 1773. See Coleman, 296, fn. 17.

⁹⁶ Force, ed., *American Archives*, Ser. 4, Vol. II, 1545-1547.

⁹⁷ By the rules of the Continental Congress, each colony/state had only one vote regardless of the number of delegates it chose to send. See Jerrilyn Greene Marston, *King and Congress: The Transfer of Political Legitimacy, 1774-1776* (Princeton: Princeton University Press, 1987), 198. A minimum of two delegates must be present before they could cast a vote for the colony. Georgia chose five to ensure that at least two could be present at all times.

his surprise at his appointment and, in fact, did not serve very long.⁹⁸ A “Secret Committee,” sanctioned by vote of the delegates, served the interests of the Georgia Whigs by being “vigilant and active in the discovery of all matters which may affect the publick...in order that the evil designs of wicked men may be early frustrated.” In addition, on 10 July, the body passed another series of resolutions, this time offering important revelations about the fundamental political principles informing their actions. They asserted the people’s inherent freedom and other natural rights. The king’s ministers and the Parliament had violated the British constitution, which was “superior to every man or set of men whatever, and that it is a crime of the deepest dye...to impair or take it away, or deprive the meanest subject of its benefits.” It was the right of a governed people to meet and consult on constitutional issues if otherwise prevented by the dissolution of a legitimate legislature, as Governor Wright had done.⁹⁹ The delegates addressed the colony’s finances in case the Commons Assembly did not meet promptly. They also created a framework for future provincial congresses, fixing representation more fairly apportioned, and limiting the body to ninety-six delegates. Finally, they established a Council of Safety to function with full executive powers during recesses.¹⁰⁰

The last recorded session of the provincial congress was 17 July. The body called for elections no later than 1 September to another congress. In August, the president of the Council of Safety, William Ewen, issued an official proclamation for elections to a congress set to meet on 4

⁹⁸ Zubly later betrayed his colleagues at the Continental Congress by secretly informing Governor Wright of its proceedings and intentions. He was banished from Georgia in 1777, but returned after royal government temporarily regained power during the American Revolution. See Stevens, 120-121.

⁹⁹ Ibid., 1547-1550.

¹⁰⁰ Ibid., 1551; Coleman, 59-61; Candler, ed., *Revolutionary Records*, Vol. I, 259.

December.¹⁰¹ In the meantime, the Council of Safety assumed executive authority, acting on behalf of the recessed provincial congress. Its power remained ambiguous, but it performed legislative and judicial functions as deemed necessary. From the summer of 1775 forward, the provincial congress and the Council of Safety quickly began draining power away from the royal government in Georgia. Events demonstrated the powerlessness of Wright and his royal officials to stem the activities of rival political authority. As Coleman has described it, Wright “was governor in name only.”¹⁰²

Military events were never far from the political mind in this period. News of the engagements at Lexington and Concord led to the confiscation of military stores in Savannah on 11 May by Noble Wimberly Jones, Joseph Habersham, Edward Telfair, and others.¹⁰³ In late July, South Carolina’s Secret Committee intercepted a letter from Governor Wright to General Gage in Massachusetts requesting military and naval support. Wright’s tone was desperate.¹⁰⁴ By August, the Council of Safety had requested from the governor permission for Georgia’s militia to elect their officers. Denied this request, the militia took matters into their own hands and replaced officers not pledged to the Association.¹⁰⁵ For all practical purposes, the royal government in Georgia had ended.

The first recorded sessions of the Council of Safety began on 3 November 1775. The members elected a new president, George Walton, in December, at which time they also

¹⁰¹ The text of this proclamation is in McCall, 292.

¹⁰² Coleman, 62-65. Quote on p. 64.

¹⁰³ Stevens, 100.

¹⁰⁴ See “Letter to General Gage from Governor James Wright” in Killian and Waller, 138.

¹⁰⁵ Stevens, 123-124.

established rules of order for the Council. That this body took seriously its responsibilities and importance to Georgia's security, political and otherwise, became evident in the rules and regulations established for its members. Any failure to attend regular or emergency meetings, "without reasonable excuse," cost the absentee member twenty shillings. The rules also stated that no one could miss meetings for more than a week without express permission.¹⁰⁶

Before the third provincial congress met on 20 January 1776, the Council of Safety had made significant strides in consolidating the colony's resources under the power of the provincial government. After George Walton took over as president on 11 December the Council quickly accelerated control over militia command and financial disbursements necessary to colonial governance and defense. It maintained correspondence with other special committees in other colonies, especially South Carolina, and reviewed communications and recommendations from the Continental Congress. From the end of 1775 to the convening of the next congress in January, most of its deliberations and actions concerned organizing, funding, and deploying companies of the Georgia militia. In its boldest move to date, during a special meeting on January 18, the Council ordered and secured the arrest of Governor Wright and his council in response to the arrival of several British naval vessels at the mouth of the Savannah River.¹⁰⁷

Georgia's third provincial congress assembled in Savannah on 20 January 1776. The events surrounding this congress are especially memorable as the result was Georgia's first, albeit temporary, written constitution. The previous year had brought a succession of political tensions and forced many Georgians to pledge their loyalties to the royal government or to the provincial

¹⁰⁶ Candler, ed., *Revolutionary Records*, Vol. I, 68-71.

¹⁰⁷ A complete copy of the surviving records of the Georgia Council of Safety is in Candler, ed., *Revolutionary Records*, Vol. I, 68-228. Also see Stevens, 126-129; Coleman, 68.

government. With the arrest of Governor Wright on 18 January and the dispersion of his council members, the third provincial congress became the sole governing institution in the colony. Wright fled to the British ship HMS *Scarborough* on the night of 11 February and, thus, ended any permanent royal authority. Georgia militia clashed with British from the naval vessels beginning on 2 March over rice vessels in harbor and an attempt to invade Savannah. The militia repelled the attack, though the British escaped with about 1,600 barrels of rice on more than a dozen vessels. The conflict, however, marked the first Revolutionary War battle in Georgia.¹⁰⁸ As Georgia historian William Bacon Stevens dramatically and sympathetically related it, “Hitherto the Georgians had only heard of British aggressions; but now their own soil was moistened with the blood of the slain; their quiet homes had been assailed; their property pillaged; and their province threatened with devastation and ruin.”¹⁰⁹

Amid the political and military anxieties gripping Georgia, the third provincial congress finally met on 20 January 1776. The body elected Archibald Bulloch as president of the executive committee and proceeded directly to the business of deliberating and legislating affairs of the colony, including the authorization of paper money to ease financial arrangements. Having received the news that Parliament had determined to crush violently the colonial opposition in America without negotiation, the assembly began to expedite their planning for military organization and resources. They provided a regiment of troops for the Continental army under the local command of Colonel Lachlan McIntosh, a position coveted by his personal rival, Button Gwinnett. In early February, the congress elected new delegates to the Continental Congress.

¹⁰⁸ Stevens, 132-137; Coleman, 69-70.

¹⁰⁹ Stevens, 137.

Among them were Gwinnet, Archibald Bulloch, John Houstoun, Lyman Hall, and George Walton.¹¹⁰

On 10 February 1776, the officers for the eight new companies of the continental battalion made a public pledge to the colony. They declared their loyalty “to such supreme and civil power of this Province as are or shall be erected for the purpose of our rights and liberties” and to follow “the orders and commands of the present or any future Congress or Council of Safety of this Province...”¹¹¹ Notable in this oath was the faith that the “rights and liberties” of the people informed the basis of the provincial government. The loyalty of the military was conditional on this premise. It indicates the expectation was a government founded on a principle of popular rights and liberties and not on traditional structures of sovereign power in the rulers. The inference is that if the government was not popularly founded on freedoms and privileges of the citizenry, this military loyalty would not be afforded it. This demonstrates the extent to which opposition to the British had crystallized more radical assumptions about legitimate governance.

After the failed British attempt on Savannah, the provincial congress retreated to Augusta and reassembled on 8 March. The body realized that without the royal government or its primary officials in the colony, a new system of fundamental governance was necessary to prevent arbitrary political and social circumstances. It was a momentous realization in Georgia’s constitutional history. The journal of the third provincial congress were lost or destroyed. Enough tangible records, however, survive to provide critical insights into the context and creation of Georgia’s first written constitution in April 1776. As the season moved from winter to spring in 1776, fear,

¹¹⁰ Candler, ed., *Revolutionary Records*, Vol. I, 268-273; McCall, 302-303.

¹¹¹ White, ed., *Historical Collections*, 94.

anxiety, and uncertainty strained all political, social, and economic relations in Georgia. The colony teetered on the verge of anarchy as any semblance of order and authority had faded in the months since the second provincial authority had effectively usurped the royal government the previous summer. Loyalist judges and other royal officials had refused to comply with the new provincial authority, thus disrupting the system of justice and leaving the people without much security to their property and persons. Wright had fled the colony after a brief attempt by the British to retake Savannah. The Whig authorities required proof of loyalties and physically intimidated those either loyal to the British or who preferred to remain out of the fight altogether. The new leadership accepted no middle ground.¹¹²

Georgia revolutionaries made a surprising discovery after James Wright had quickly fled the colony. Among a series of official dispatches to the governor, the rebels discovered a copy of the Prohibitory Bill passed by Parliament and signed by King George II in December 1775, which called for an end to all British trade with the thirteen colonies. Edmund Burke had attempted to exempt Georgia from the provisions of the bill because of the colony's unusual conservatism during the recent series of crises with the Empire. The discovery of such a blanket policy against the colonies, however, aroused greater opposition to the British by those with moderate sentiments.¹¹³

Angered by the discovery of the Prohibitory Act passed by Parliament, the attempted British attack on Savannah, and fearful of the breakdown of all law and order, the provincial

¹¹² Coleman, 64-76.

¹¹³ The Prohibitory Bill was an act passed by the Parliament in December of 1775 that excluded all trade between the British and America. Georgia revolutionaries discovered it in early March in British dispatches to Governor Wright, who had already fled the colony. The discovery aroused much animosity and pushed many moderates to favor increased resistance against the British. See "Lord North's Prohibitory Bill" in Force, *American Archives*, Series 4, Vol. 6, 185-198; Jones, 232-233.

congress reconvened in Augusta and determined that circumstances required a new foundation for government. In order to entice a broader acceptance among the people in Georgia, these rules had to be consistent with the same principles on which they had opposed the British. The result was the Rules and Regulations, constructed and adopted by the sitting congress on 15 April 1776. It was admittedly a temporary expediency until the colony could present a permanent and more formalized constitutional foundation.¹¹⁴ Details of the debates and discussions leading to the vote in favor of this constitution are unavailable. Nevertheless, there are clues to much of the reasoning and concerns surrounding its adoption. One is purely anecdotal. In his narrative history of Georgia, Hugh McCall claimed that when the resolutions for the new constitution came before the congress, “many of the members were opposed to acting on them; alledging that they had no authority to do so, from their constituents.”¹¹⁵ Because he never documented any of his sources, there is no way of verifying McCall’s account. The contention, however, is entirely plausible as similar concerns had appeared in the considerations of other revolutionary governments.¹¹⁶

The preamble of the Rules and Regulations provides concrete insights into the considerations of the provincial congress. It began with a list of grievances against the Parliament, king, and James Wright and expressed the concerns about the suspension of virtually all judicial proceedings. Most importantly, the drafters sought to defend the construction of a new constitution by this provincial congress as “in the present state of things, it is indispensably requisite that some

¹¹⁴ Although contemporary accounts did not refer to this as a constitution, specifically, its substance, ideas, and formal structure was consistent enough with the term to regard it as such.

¹¹⁵ McCall, 309.

¹¹⁶ See Chapter 4. James Johnston stopped printing the *Georgia Gazette* in February of 1776 so there was no consistent contemporary newspaper accounts of events in this period. Griffin and Talmadge state that the paper resumed in 1777 and 1778 under a new printer, but no copies of these papers have survived. See Griffin and Talmadge, 6-7.

temporary expedient be fallen upon to curb the lawless and protect the peaceable.”¹¹⁷ In the absence of formal governing authority, the leading revolutionaries attempted to establish a modicum of legal order and civic peace. They apologetically expressed this necessity and admitted, “before any general system of government can be concluded upon, it is necessary that application be made to the Continental Congress for their advice, and directions upon the same.”¹¹⁸ This admission revealed the tentativeness of some of the revolutionaries in acting alone and the complex nature of the task of formulating a sovereign government independent of the British and autonomous of the other colonies.

How had the colony, indeed all thirteen of them, come to radical considerations of reformulating government and redefining their national identity? The full and just answer to this question lies beyond the scope of any single chapter or even book. For the purposes of this study, nevertheless, some important constitutional considerations suffice. By early 1776, other colonies had begun to establish new constitutions.¹¹⁹ New Hampshire and South Carolina, especially, had petitioned the Continental Congress in 1775 for advice and direction in pursuing new state governments. In the winter of 1776, many delegates to the Continental Congress remained hopeful, if not optimistic, that reconciliation with the British was possible, even desired. This national convention, then, remained cautious about any radical changes in the constitutional foundations of colonial governments. Colonial charters had defined the American-British relationships and if the

¹¹⁷ Copies of Georgia’s Rules and Regulations of 1776 are abundantly available. For example, see White, ed., *Historical Collections*, 96-98; Stevens, 292-294; Killion and Waller, 172-174.

¹¹⁸ Ibid.

¹¹⁹ See Chapter 4.

present crisis passed without a permanent breach, any changes to the legitimacy of these charters would be problematic to the resumption of peaceful relations.¹²⁰

Another factor in the Continental Congress's reluctance toward dramatic changes in American constitutionalism was the popular character these changes might take. The variety of local committees, conventions, and special congresses involved in British resistance had ensured the participation of large segments of local communities. For many, it was their first taste of political activism and they came to expect a continued voice in government affairs. Those who had been politically invisible under royal governance suddenly were vital to the defense of colonial liberties and became determined to retain a constitutional role in their new society. Opening political culture to vastly greater participation appeared dangerous and unpredictable to the traditional elite leadership of the colonies. If the colonies sought new constitutions, and the Continental Congress sanctioned them, the inevitable result of gaining popular support was popular participation.

What was, at least thus far, an organized and controlled program of British resistance might break free from the responsible control of the moderate leadership and fall into the hands of a broader, possibly more radical, political constituency.¹²¹

At the level of the individual province, these and other complications confused constitutional change. There was a paradoxical relationship between the colonies and the Continental Congress. On the one hand, each colony assumed its distinct political and geographical identity. The provincial assemblies elected and instructed their delegates to the general congress on

¹²⁰ Rakove, 82-86.

¹²¹ Ibid. Also see Maier, 38-42.

which issues to promote and those to oppose. Too much political deference to the Continental Congress would infringe on the constitutional autonomy of the province. However, the colonies recognized the necessity of collective action in regards to their military and economic interests. In certain regards, the provincial congresses, committees, and militias were often instruments for implementing decisions and strategies proposed from the Continental Congress.¹²² The balance between local sovereignty and a collective government with other colonies developed into an unresolved and fundamentally contentious issue that informed the sectional divides in nineteenth-century America up to the Civil War.

These constitutional issues concerned Georgia as much as any other colony. The major distinction, however, was that the youngest colony was also the colony most vulnerable to attacks by the British, especially from East Florida, and the Native Americans on the frontier. The reality of its vulnerability forced Georgia to solicit direction and support from the Continental Congress once the royal government became ineffectual. Despite the reluctance of the national assembly overtly to direct the colonies on constitutional matters, Georgia's provincial congress saw the necessity of laying a fundamental structure of republican government to prevent the dissolution of all authority throughout the colony and to enlist support from a broader segment of the population. The republican character of the Rules and Regulations was evident in the preamble's definition of the provincial congress. The body claimed to act on behalf of the people, "with whom all power originates, and for whose benefit all government is intended." The new constitution was but

¹²² Ibid.

temporary “until the further order of the Continental Congress, or of this, or any future Provincial Congress” declared otherwise.¹²³

Although several colonies had adopted new constitutions by the spring of 1776, they still had not declared officially their independence from Great Britain. A moderate political temperament still prevailed in many colonies, including Georgia, though, in reality, practical events precluded any lasting reconciliation with the royal governments. The Rules and Regulations of 1776 reflect this tension between a radical recreation of colonial government and the possibility of a resumption of royal rule. For instance, this temporary constitution did not dramatically change the current operations of government in Georgia, with the single exception of empowering the judiciary by the legislature. Otherwise, the document merely constitutionally sanctioned the very activities already conducted by the provincial congress. While it established a president, who was also the commander-in-chief and chosen by ballot in the legislature, a chief justice, attorney general, and other officers, all political authority essentially rested with the legislature. It diffused presidential power by requiring executive decisions to result from the collaboration between the president and his council, which was only a continuation of the Council of Safety, and limiting his term for six months. Hastily produced, the first Georgia constitution, therefore, changed little of the practical government of the previous six months. One impressive feature of this document was the deference it afforded to the Continental Congress. It required that no law in Georgia “interfere with the proceedings of the Continental or our Provincial Congresses, and also all and singular the resolves and recommendations of the said Continental and Provincial Congresses.”¹²⁴

¹²³ Rules and Regulations in White, 97.

¹²⁴ See Saye, 92-94; Georgia Rules and Regulations of 1776, Article IV in Candler, ed., *Revolutionary Records*, Vol. I, 276.

In his first speech to the provincial congress as president of Georgia, Archibald Bulloch justified the manner used to adopt the constitution. He declared, “it was absolutely necessary to adopt some temporary regulations for the preservation of the publick peace and safety.” Rather than a radical break from their constitutional history, he maintained, their actions “proceeded from a firm persuasion of having acted agreeable to constitutional principles” against “the designs of a cruel and corrupt Ministry,” which “are become our betrayers and murders.” Bulloch projected a sense of political continuity, arguing that the new constitution, and the resistance to British authority it represented, was merely an attempt to preserve the “invaluable liberties” of “our ancestors” for present and future generations. In portraying their cause as a collective grievance, he additionally indicated that the acts by the provincial congress were “in concurrence with the other associated Colonies.” Thus, historically and continentally, their actions were consistent with shared rights and privileges. He made no mention of independence.¹²⁵

The official response from the provincial congress to the president was equally cautious about British relations. “Being truly sensible that to be a freeman under the *British* Constitution, for which our ancestors fought and bled, implies a right to examine with freedom, every act of Government...” Their political identity as British citizens continued even at this late date. Their object was to act “with the principles of virtuous citizens” and “to persist till law and justice shall rear their heads above tyranny and oppression.”¹²⁶ The provincial government did not indicate any

¹²⁵ “Speech of His Excellency Archibald Bulloch, Esquire, President and Commander-in-Chief of the Colony of Georgia, to the Provincial Congress, at Savannah, June 5, 1776, in Force, ed., *American Archives*, Ser. 4, Vol. VI., 718.

¹²⁶ *Ibid.*, To His Excellency Archibald Bulloch, Esq., President and Commander-in-Chief of the Province of Georgia: The Address of the Provincial Congress of said Province, 719-720.

clues of a determination for independence, though many supported it. Importantly in this period, they continued to refer to Georgia as a “province” and not as an autonomous political state.

In mid-June 1776, George Walton stopped in Williamsburg, Virginia on the way to the Continental Congress in Philadelphia. In a letter written while there, he related that “the Convention in Georgia have authorized their Delegates in Congress to concur in any scheme which may be proposed for the benefit of the United Colonies, even to a total separation from *Great Britain*, and that, in the mean time, a form of Government had been established in the Province.”¹²⁷ The conservative voice projected in the public forum by Whig leaders as late as early June had masked their private acceptance of radical political separation from Britain. Evidence of Bulloch’s complicit agreement with independence in the spring was clear in a letter written to him by John Adams on July 1. Adams congratulated him on his election as president of Georgia and informed him of the momentous debate ensuing over independence in the next few days. He assured Bulloch that “the Colonies will have Republicks for their Governments” and that the Continental Congress had recently acquired “a temper and conduct here somewhat more agreeable to your wishes than those which prevailed when you were here before.”¹²⁸ Despite any public moderation, Georgia’s president had been hoping for a constitutional revolution.

An official copy of the Declaration of Independence arrived in Savannah on 10 August 1776 after Button Gwinnett, Lyman Hall, and George Walton had signed it at the Continental Congress, and thus securing Georgia’s fate collectively with the other colonies. Upon his official receipt of the document, President Bulloch issued a proclamation to all Georgians. He responded

¹²⁷ Ibid., “Williamsburgh, Virginia, June 15, 1776, 903-904.

¹²⁸ Ibid., “John Adams to Archibald Bulloch, Philadelphia, July 1, 1776,” 1193.

not only to the Declaration of Independence, but also to the May resolutions passed by the Continental Congress calling upon the colonies to establish governments suitably independent of their British authorities.¹²⁹ The delegates of the national congress, he said, “have judged it necessary to dissolve all connection between Great Britain and the said United States and have accordingly declared them to be free and independent states.” As a consequence of this act, with the consent of his council, Bulloch ordered all Georgia parishes to elect delegates “to form and sit in convention” in which “business consequence to the government and welfare of the state will be opened for their consideration.”¹³⁰ In a subsequent circular letter to the parishes, he advised the election of “upright and good men...whose depth of political judgment qualified them to frame a constitution for the future government of the country.”¹³¹ President Bulloch had thus called for Georgia’s first constitutional convention, which required a special election by the people.

The convention met on the first Tuesday in October of 1776. Only fragments of the minutes of this convention have survived.¹³² Delegates assembled on the first Tuesday in October and continued until February 1777 with periodic recesses.¹³³ The convention had completed much of the work on a new constitution by 24 January, when it appointed a committee of seven members “to reconsider and revise” a draft “heretofore proposed and reported” to the assembly. The committee included William Belcher, Joseph Wood, Josiah Lewis, John Adam Treutlen, Henry

¹²⁹ See Chapter 4.

¹³⁰ See speech in Candler, ed., *Revolutionary Records*, Vol. I, 280-281.

¹³¹ Circular letter quoted in Stevens, 297. It is noteworthy that he used the term “country.” Its use appears to have been in reference to the collective consequences enjoyed or suffered by the actions of each colony.

¹³² Reprinted in Charles Francis Jenkins, *Button Gwinnett: Signer of the Declaration of Independence* (New York: Doubleday, Page & Company, 1926), 108-110.

¹³³ There is no surviving record of the details of this convention. Consequently, details of delegates and their numbers are largely unknown, with few exceptions. See Saye, *Constitutional History*, 98.

Jones, George Wells, and the chairman, Button Gwinnett. Gwinnett reported their revisions on January 29, which the convention heard and considered over five subsequent days. Finally, on 5 February 1777 they unanimously adopted the new constitution without submitting it for popular approval.¹³⁴ Although more elaborate and detailed than the Rules and Regulations of 1776, the new constitution was relatively brief and precise.

The radical Whig influence on the document was clear in its preamble and articles. When the provincial congress adopted the Rules and Regulations of 1776, they had few contemporary resources to use as models for their work. By the fall of 1777, this was not the case. New Hampshire, South Carolina, Virginia, New Jersey, Delaware, and Pennsylvania had adopted new constitutions throughout 1776 with frameworks suitable to independent statehood. In each, the radical Whig politics of liberty, separation of powers, and popular sovereignty were evident to various degrees. According to Gordon S. Wood, however, Georgia's constitution in 1777 had features of the "most radical" nature.¹³⁵ Specifically, Wood was referring to the protection from arbitrary changes to the state constitution, thus recognizing it not only as fundamental law, but also as a set of governing principles unalterable except by specific appeal or approval of the people.¹³⁶ Popular sovereignty was indeed implicit in the preamble drafted by the convention, identifying the delegates as "the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power delegated to us..."¹³⁷

¹³⁴ Jenkins, 108-110. For a copy of the 1777 Georgia Constitution see Candler, ed., *Revolutionary Records*, Vol. I, 282-297.

¹³⁵ Wood, 272-273. Wood has included Pennsylvania and Vermont among these constitutionally "radical" states.

¹³⁶ See Georgia Constitution of 1777, Article LXIII in Candler, ed., *Revolutionary Records*, Vol. I, 297.

¹³⁷ *Ibid.*, Preamble, 283.

The 1777 Constitution began with a brief reproach of the British and their “repugnant” conduct “to the common rights of mankind.” Great Britain had made laws and levied taxes on the American people “without their consent,” forcing the colonies “to assert the rights and privileges they are entitled to, by the laws of nature and reason.” Consequently, “by the general consent of all the people” in their “representatives met together in General Congress in the city of Philadelphia,” the colonies declared their independence and severed “all political connection” with Britain on 4 July 1776. In response to the dissolution of these political bonds and “for the happiness and safety of their constituents in particular, and America in general,” the Georgia convention “ordained and declared” new constitutional principles and rules for establishing and maintaining an independent state government.¹³⁸ The document closed with an extraordinary criterion for amending the constitution. Any changes or amendments must originate from “petitions from a majority of the counties, and the petitions from each county to be signed by a majority of voters in each county within the state.” Only then, “the Assembly shall order a convention to be called for that purpose.”¹³⁹

The act of adopting this constitution was also the formal establishment of Georgia as an independent state. Georgia was not a state constitutionally subservient to the United States, but rather, in strictly political terms, an autonomous republic just as were the other colonies establishing new constitutions or formally adopting the Declaration of Independence. Neither the Continental Association nor the Declaration created a constitutional union of states, but rather reflected the judgment that collective political, economic, and, finally, military action against the

¹³⁸ Ibid.

¹³⁹ Ibid., Article LXIII, 297.

British would serve the individual colonies best. Only with the later ratification of the Articles of Confederation in 1781 did any formal constitutional union of states begin. Even then, it was an ill-defined union.¹⁴⁰

The new constitution embraced Montesquieu's principle of the separation of powers, though it gave little substance to the principle in its articles. It expressed a reverence for individual rights in the body of the constitution instead of prefacing them in a bill of rights as Virginia had done in its constitution the previous June. The House of Assembly possessed the most extraordinary powers, while the executive council only had the responsibility of reviewing and recommending legislation and amendments. The Assembly elected the governor from its own membership, and, like the conditions established under the Rules and Regulations of 1776, he could only act in accordance with the advice of his council. As Albert B. Saye has characterized it, the governor was "a puppet of the legislature rather than a coordinate branch of government."¹⁴¹ The constitution extended the franchise to "All male white inhabitants, of the age of twenty one years, and possessed in his own right of ten pounds value, and liable to pay tax in this state, or being of any mechanic trade..." and residency of at least six months.¹⁴² It also protected freedom of the press, trial by jury, freedom of religions, required education in each county, and confirmed the right of habeas corpus.¹⁴³ The constitution dissolved the twelve existing parishes and created eight counties in their stead, including lands previously unorganized. The delegates combined and divided the parishes into counties, stripping them of their royalist names and giving them names of

¹⁴⁰ Rakove, 185, 192.

¹⁴¹ Saye, 100-110. Quote from page 109.

¹⁴² Georgia Constitution of 1777, Article IX in Candler, ed., *Revolutionary Records*, Vol. I, 286. Also see Saye, 106.

¹⁴³ *Ibid.*, Article LX-LXI.

English sympathizers or titles appropriate to the revolutionary cause.¹⁴⁴ In sum, the new constitution not only embraced the principle of popular sovereignty, but also institutionalized it by empowering the representative legislature, restricting the executive, extending the franchise, and explicitly protecting certain individual rights.

The Georgia convention that established the 1777 constitution was distinct from the provincial congress that had adopted the 1776 Rules and Regulations. Archibald Bulloch, as president of Georgia, called for the election of delegates to a convention for the purpose of framing a new constitution, whereas the provincial congress had no such mandate. The convention assembled after the colonial delegates to the Continental Congress had officially declared a united separation from Great Britain and, therefore, necessitated formal confirmation by the states either through a resolution adopting the Declaration of Independence or a new constitution asserting its principles. The provincial congress, on the other hand, had acted out of the exigencies of the absence of royal authorities and the unsuccessful British attack on Savannah. Finally, the provincial congress openly admitted that the Rules and Regulations were merely temporary expedients. On the other hand, the convention adopted the 1777 constitution as a permanent plan of government.

There were also some similarities between the two representative bodies. Both sessions legislated as the regular government and conducted business related to executive, judicial, and military affairs. Each acknowledged the principle of popular sovereignty in the preambles to their constitutional documents, which indicated a radical departure from British constitutionalism

¹⁴⁴ The new counties were Chatham, Glynn, Effingham, Richmond, Burke, Liberty, Camden, and Wilkes. For an interesting account of the reincorporation and renaming of the parishes into counties see Stevens, 299-300. Also see Saye, 104.

whereby sovereignty resided in the king-in-Parliament. Aside from this acknowledgement, however, neither assembly submitted their work for ratification by the people. Another common feature was the emphasis on granting the legislature with the bulk of governing authority and severely limiting that of the executive.¹⁴⁵

In both instances, the leaders in Georgia took constitution-making seriously. In the case of the Rules and Regulations, President Bulloch had seemed apologetic for the haste and process of adopting the measures and noted their temporal feature.¹⁴⁶ In his call for new elections for a convention in the fall of 1776, he had urged the parishes to select men with “depth of political judgment” who would represent adequately the interests of the parish and state. Their representatives to this convention were crucial to the constitutional process and that “business of the highest consequence to the government and welfare of the State will be opened for their consideration.”¹⁴⁷ The reverence afforded constitution-making was also apparent in the substance of the new constitution. The last article of the document required extraordinary measures and a high threshold of support before it could be altered or amended.¹⁴⁸ It made clear that Georgia understood and demanded a constitutionalism based upon a process separate from the regular legislative business of the state and that it must be a product of the sovereign will of the people.

¹⁴⁵ Saye, 92-94, 99-111. In both instances, legislature elected the executive, which acted only with the advice of his council.

¹⁴⁶ Speech of His Excellency Archibald Bulloch, Esquire, President and Commander-in-Chief of the Colony of Georgia, to the Provincial Congress, at Savannah, June 5, 1776 in Force, ed., *American Archives*, Ser. 4, Vol. VI., 718.

¹⁴⁷ Circular letter quoted in Stevens, 297.

¹⁴⁸ Georgia Constitution of 1777, Article LXIII in Candler, ed., *Revolutionary Records*, Vol. I, 297. It states, “No alteration shall be made in this constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of the voters in each county within the state; at which time the Assembly shall order a convention to be called for that purpose, specifying the alterations to be made, according to the petitions preferred to the Assembly by the majority of the counties as aforesaid.”

There is, in addition, a historiographical measure for comparing these two constitution-making assemblies in Georgia. From the view of historian John A. Jameson, the process used by provincial congress that adopted the Rules and Regulation was “an evident imitation” of the process used by Parliament in the Glorious Revolution.¹⁴⁹ In 1689, after James II’s abdication of the throne, William of Orange called for elections to a convention to decide formally the legitimacy of his succession to the English crown. Once established, the convention voted itself into a Parliament.¹⁵⁰ Jameson saw a direct parallel between the provincial congress in Georgia, which devolved temporarily into a constitutional forum for adopting the Rules and Regulations, and the English Convention of 1689, which existed temporarily as a constitutional forum before evolving into the Parliament.¹⁵¹ In the case of the convention establishing the Georgia Constitution of 1777, Jameson regarded it a “Revolutionary Convention,” illegitimate without basis in any established legal or constitutional authority. The assembly conducted official political duties, “guided only by its own discretion,” and assumed unlimited power to create constitutional government.¹⁵² Both assemblies, according to Jameson, were not constitutional conventions; they were, in effect, the beginning and end of all governing authority unto themselves.¹⁵³ As such, they potentially were as threatening to legitimate political authority as the royal power they sought to usurp. Jameson argued that true constitutional conventions are “domesticated” mechanisms and limited by “established laws and Constitutions.”¹⁵⁴ Thus, for Jameson, neither Georgia assembly

¹⁴⁹ J. A. Jameson, *A Treatise on Constitutional Conventions*, 134.

¹⁵⁰ *Ibid.*, 8.

¹⁵¹ *Ibid.*, 134.

¹⁵² *Ibid.*, 135.

¹⁵³ *Ibid.*, 12-13.

¹⁵⁴ *Ibid.*, 14-15.

was a constitutional convention, but rather a revolutionary convention unbounded by any theoretical or practical political restraints.

Another means of understanding these two constitution-making bodies in Georgia in the early stages of the American Revolution is through an ideological lens. Gordon S. Wood has described the development of American constitutionalism in the late eighteenth century as a process of institutionalizing republican ideals in the first constitutions and their demise under the liberal principles embodied in the federal Constitution of 1787. Wood, in particular, viewed the first state constitutions as a radical departure from English constitutionalism, especially their emphasis on the principle of popular sovereignty. In their earliest constructions, states did not distinguish, nor did they see the need to distinguish, between their provincial congresses and an assembly specially mandated for constitutional change.¹⁵⁵ Their main concern, according to Wood, was the empowering of the representative legislature over the executive authority.¹⁵⁶ The radical Whig distrust of concentrated authority took aim at the state governors and effectively stripped them of any real political autonomy. Representation and consent were twin foundations of legislative authority for early revolutionaries who perceived little need for separate assemblies for governing and constitution making. In this view, and in contrast to Jameson, both Georgia assemblies were consistent with the contemporary ideas that maintained elected officials were the embodiment of the sovereign will of the people, whether specially elected or not.

Marc W. Kruman has suggested another interpretation of the first efforts at constitution-making in revolutionary America. He contests Wood's argument that the states initially did not

¹⁵⁵ Wood, 372-376.

¹⁵⁶ *Ibid.*, 207.

foresee any reason to separate constitution making and regular legislative business. Wood's republican faith in the new legislatures was not adequate to characterize practical complexities and political dynamics that informed the constitutional experiences, according to Kruman.¹⁵⁷ Instead, revolutionary constitutionalism, from the beginning, reflected a determination to separate the establishment of fundamental law from legislative authority. Informing this determination was a dual set of colonial experiences: the colonial charters and Parliament's disregard of colonial rights.¹⁵⁸ Unlike Wood, Kruman portrayed the development of American constitutionalism as a process of more continuity than of radical change. The revolutionary state constitutions exhibited the influences of the seventeenth-century political tradition that argued the English ancient constitution constrained Parliament's authority to tax or legislate without representation or, simply put, a "constitution of customary restraint" and the tradition of colonial charters as written social contracts between the colonists and the crown.¹⁵⁹ During the American Revolution, colonists relied on these two traditions to construct, as Kruman described, "a novel constitutional doctrine, in effect inventing the notion of higher law."¹⁶⁰ Although the early congresses and conventions that formulated and adopted new state constitutions were not necessarily special assemblies mandated only for that purpose, the people and their representatives understood and annunciated the differences between constitution making and regular legislation. The evidence was not only in the call for new elections to assemblies writing constitutions, but also in the constitutional preambles

¹⁵⁷ Kruman, x-xi.

¹⁵⁸ *Ibid.*, 7-8.

¹⁵⁹ *Ibid.*, 8-12; Kruman contrasts this term with the "constitution of sovereign command," which emerged after the Glorious Revolution and, simply stated, asserted the "absolute and unrestrained power" of the sovereign king-in-Parliament.

¹⁶⁰ *Ibid.*, 8.

that asserted the principle of popular sovereignty, as in the case of Georgia in 1776 and 1777.¹⁶¹ In contrast to Jameson's argument, Kruman denied that the provincial congresses and conventions of the revolutionary era assumed to themselves the perpetual governing authority or claimed unbounded power. Instead, their sessions and, consequently, their authority ended with the prompt election of a new legislature, which, he asserted, "loomed mere weeks or months away" from the assembly in session.¹⁶²

All of these interpretations of the first state constitutions and the representative bodies that formed them have minimized the context of the experiences. Jameson was certainly correct in characterizing these assemblies as revolutionary, though his use of the term was more disparaging than complimentary of the radicalism involved. More accurately, these conventions were revolutionary in that they were innovations of constitutional processes and their intent to recreate a political society structured on organic principles or fundamental law, which explicitly defined both the limits of government and the practicable individual rights afforded its citizens. Both the Rules and Regulations of 1776 and the Constitution of 1777 in Georgia exhibited these features.

Wood accurately explained the importance of ideas such as "the common good" and "civic virtue" in American republicanism. In the Rules and Regulations, Georgia's provincial congress spoke of "a sense of duty to their constituents" and the need "to preserve rules, justice, and order," indicating the delicate balance between accountable civic service, liberty, and social restraint.¹⁶³ The Constitution of 1777 required oaths of all voters, representatives, and the governor that called

¹⁶¹ Ibid., 17-20.

¹⁶² Ibid., 22-23.

¹⁶³ Georgia Rules and Regulations of 1776 in Candler, ed., *Revolutionary Records*, Vol. I, 275.

for allegiance to the state and the constitution as symbols of the greater good.¹⁶⁴ Republican ideals, however, were not the only, even the main, influence on constitution making, especially in Georgia. Military invasion, Native American hostilities, and economic survival were equally, if not more, important influences on both the process and substance of the state constitutions. The period was an era in which the president of the provincial congress would, in person and with gun in hand, defend against attacks by the British or the Native Americans.¹⁶⁵

Such activity and involvement by the political leadership had a profound impact on the drafting of constitutional authority. Proof of the influences of such unpredictable, violent, and often tragic environments in a young, sparsely settled colony was evident in the first two Georgia constitutions. The preamble in the Rules and Regulations disparaged the British assault on Savannah and accused them, with the aid of Governor Wright, of inciting “a state of confusion” in the colony. The “hostile intentions” of the British “armed forces” had undermined the general order of Georgia society and, thus, required a new foundation of government.¹⁶⁶ The 1777 constitution required that every county with a population of 250 men supply the state militia with at least one battalion and those counties with less than that number supply it with independent companies. It also established a military tribunal for armed captures by land and sea.¹⁶⁷ Incessant recesses amid real and rumored assaults were as much a part of the proceeding of assemblies and committees as were their legislative agendas.

¹⁶⁴ Georgia Constitution of 1777, Article XIV, XV, and XXIV.

¹⁶⁵ Archibald Bulloch was among the defenders of Savannah against the attempted British assault in March of 1776. See Jackson, *Lachlan McIntosh*, 36.

¹⁶⁶ Georgia Rules and Regulations in Candler, ed., *Revolutionary Records*, Vol. I, 275.

¹⁶⁷ Georgia Constitution of 1777, Article XXXV and Article XLIV in Candler, ed., *Revolutionary Records*, Vol. I, 292, 294.

In this period, the ideological, material, and practical resources available for constructing new principles and structures of governance had to compete with the mental, emotional, and psychological strains imposed by a general sense of impending crisis. No single ideology or pragmatic explanation can account for this early constitutional development in Georgia. By the time that the convention assembled in the fall of 1776 to create a permanent constitution, the state had a number of model frameworks from other states to use in creating it. Nevertheless, the state adopted its own unique document. Unlike Virginia, it did not have a bill of rights, although the document contained a number of protected liberties throughout its provisions. In addition, it extended the franchise, required the building of at least one state supported school in each county, and protected freedom of religion. The assemblies that produced Georgia's first two constitutions, therefore, were revolutionary, with overt distinctions as well as similarities to English constitutionalism, and embodied peculiar republican and liberal ideas. The dynamic events of their physical environments made these constitution-making experiences in Georgia quite democratic in their assumptions. Neither, however, fully applied the principle of popular sovereignty, which they had implied in their language. This principle required constitutional sanction by the people.

The revolutionary era was a period of much political intrigue in Georgia. Though many were only tangibly relevant to the state's constitutional development, certain events are worth noting here. Late in 1776, South Carolina's General Assembly unanimously voted in favor of politically uniting the state and Georgia. The resolution stated, "that a union between the two States of South Carolina and Georgia would tend effectually to promote their strength, wealth, and dignity, and to secure their liberty, independence, and safety."¹⁶⁸ In January 1777, William Henry

¹⁶⁸ The resolution is quoted in Stevens, 301.

Drayton, former president of the provincial congress of South Carolina, and John Smith attended the Georgia constitutional convention to sell the idea to the delegates. The Georgia convention was not amused. While Drayton claimed that, despite the rejection of the proposal by the delegates, he had found “some gentlemen of fortune, though not in office or convention, who heartily approved the measure.” He rebuked, even mocked, a major contention against the union by the assembly that, according to Drayton, asserted the Articles of Confederation prevented such a union. Drayton scoffed at the notion and noted that no official articles pertaining to an official confederation of states had yet passed.¹⁶⁹

South Carolina soon embarked on a persistent campaign to win public opinion by printing and circulating petitions disparaging Georgia’s government and promoting political distrust. By the summer, relations had heated considerably, forcing John Adam Treutlen, Georgia’s first governor under the new constitution, to issue a proclamation on the matter. On 15 July, he issued a public statement accusing Drayton “and divers other persons” in South Carolina of “UNLAWFULLY endeavoring to POISON the minds of the good people of this State against the Government thereof.” Treutlen repeated the erroneous argument that a union between the states was “contrary to the Articles of Confederation, entered into, ratified, and confirmed by this State as a cement of union between the same and the other United and Independent States of America.” He subsequently offered a reward of “ONE HUNDRED POUNDS” for the capture of Drayton or any of his accomplices.¹⁷⁰ Unwilling to ignore this attack, Drayton responded on August 1 with a mix of condescension and anger, calling the proclamation “a compound of nonsense and falsehoods.”

¹⁶⁹ “Letter from Wm. Henry Drayton to Humphrey Wells, of Augusta, dated ‘Snow Hill, S. C., June 8, 1777’ in White, ed., *Historical Collections*, 203, 205. Also see Jones, 175; Coleman, 89-91..

¹⁷⁰ “By his Honour John Adam Treutlen, Esquire, Captain-General, Governour, and Commander-in-Chief in and over the said State: A Proclamation” in *Ibid.*, 206.

He denounced Georgia's government as "a disgrace and detriment to the American cause" and ineffectual in protecting its people's "life and liberty." Additionally, he called leaders in Georgia "concealed Tories, or their tools" who had constructed a "*burlesque* Government." Inviting further debate, Drayton teased, "if you have a mind to amuse the public with any other productions of your *masterly* pens, and wish to draw me in to contribute to the entertainment, I have no objection to be of the party."¹⁷¹ Distracted by more important and pressing concerns, both parties quietly let the issue fade.

Internal tensions among the Whigs also produced some dramatic events. Within weeks of the adoption of the Constitution of 1777, Archibald Bulloch, president and commander-in-chief of Georgia, mysteriously died in late February. The new constitution did not go into effect until 1 May 1777, so the executive council elected Button Gwinnett as Bulloch's temporary replacement. A personal animosity between Gwinnett and Lachlan McIntosh developed in early 1776. Georgia's third provincial congress in January 1776 complied with a request from the Continental Congress to organize a military battalion under the command of the Continental army. The balance between the more conservative faction of the Whigs and radical revolutionaries in provincial power was very tentative at this time, with both vying for control of Georgia's political destiny. Conservatives supported Colonel Samuel Ebert to head the Continental forces in the province while the radicals pushed for Button Gwinnett.¹⁷² Because of the concessions made by conservatives over the previous year to the broader population in exchange for their support in the resistance movement,

¹⁷¹ "Mr. Drayton's Reply" in *Ibid.*, 207-209.

¹⁷² For two very different views of Button Gwinnett, compare Jenkins, Button Gwinnett and Jackson, *Lachlan McIntosh*, 29-34. Jenkins gives a sympathetic account of this revolutionary while Jackson portrays him more critically as an impetuous opportunist and suggesting that the *American Revolution* rescued him from failure and obscurity.

the radical influence had grown and Gwinnett won the appointment. Conservatives rejected Gwinnett, believing him too much of an extremist to judiciously command the troops. Lachlan McIntosh became the compromise appointment and Gwinnett, as a consolation, accepted an appointment as a delegate to the Continental Congress. Tensions between the two men escalated after Bulloch died and Gwinnett suddenly became the interim president of Georgia. The rivalry doomed a military expedition to attack the British at St. Augustine in 1777 and eventually led to a duel between the two. Both men suffered wounds and Gwinnett died as a result. These events shed light on the personal and political stakes at risk among the Whigs in Georgia. Although united against the British, internal strife often worked against the efforts to create an independent state in Georgia.¹⁷³

A final episode of worthy of comment involved rumors late in the war suggesting the Continental Congress considered a peace treaty with the British that offered control of South Carolina and Georgia in exchange for peace.¹⁷⁴ Though never formally considered, Georgia took the suggestion seriously. In January 1781, George Walton, William Few, and Richard Howley, all delegates from Georgia to the sitting Confederation Congress, published a tract promoting Georgia's importance to the Union and denouncing any plan to surrender it permanently to the British. Their argument began with an assertion that the breakup of the Union, "having united in the one cause, and have sacrificed their blood and fortunes in its support," was an "unjust and inhuman" idea. Not only would be ideologically abhorrent, the commercial value of Georgia to the Union was too unmistakably great to sacrifice for "armed neutrality" with the British. The state's

¹⁷³ Coleman, 87-89; Jackson 33, 64-66; Candler, ed., *Revolutionary Records*, Vol. I, 273.

¹⁷⁴ See Stevens, 331-334; Saye, 121.

“amazing variety and extensive usefulness” owed to its production and export of rice, indigo, lumber, horses, tobacco, and an increased quality of tobacco and cotton. Its rivers provided an important afforded important access to interior lands attractive to new settlement and for defenses against foreign encroachment from Florida and Spanish settlements further west. Ultimately, the authors concluded, Georgia was “a material part of the Union” and abandoning the state would succeed only in undermining the safety of the whole.¹⁷⁵ This pamphlet revealed the tenuous situation often confronting Georgians during the revolutionary era and the insecurities that informed their position relative to the other states. Such insecurities paradoxically worked against the revolutionary movement in Georgia during its early stages and then helped to crystallize it once the movement gained broader acceptance among the population.

These insecurities plagued Georgia politics throughout most of the revolutionary era and made even the appearance of constitutional legitimacy in the occasional government impossible. According to the Constitution of 1777, the House of Assembly officially terminated on the day preceding elections for the next legislative session, which the constitution set annually for the first Tuesday each December. The British capture of Savannah on 29 December 1778 began a perpetual disruption of the revolutionary governing authority in Georgia until 1782. Technically speaking, the British invasion interrupted and prevented the required constitutional protocols necessary for the annual renewal of the government.¹⁷⁶

While various factions struggled for power and claimed rightful authority, Georgia’s government remained in constant flux from December 1778 to January 1782. In early January

¹⁷⁵ “Observations upon the Effects of Certain Late Political Suggestions, By the Delegates of Georgia” (Philadelphia: R. Aitken, 1781) in White, 106-108.

¹⁷⁶ Candler, ed., *Revolutionary Records*, Vol. I, 398.

1779, the governor and the Executive Council did possess temporary emergency powers, but their terms had expired early in the month under the limitations imposed by the constitution. A few of the representatives selected in the most recent December elections for a new January session retreated to Augusta long enough to assemble in a “Convention of the Representatives of the State of Georgia” on 9 January 1779.¹⁷⁷ Without a quorum and realizing the desperation of their circumstances, these representatives referred to their meeting as a convention rather than a legislature and formed a “Committee” to act as a temporary government. Notably, the representatives recognized their illegitimate basis of authority, calling themselves a “Convention,” not the Assembly, and the “Committee,” not the Executive Council.¹⁷⁸

Another minority among these representatives, in conjunction with other Georgia patriots, assembled yet another convention in July 1779. This body created a “Supreme Executive Council” with all executive authority. Their stated aim was “the maintenance and existence of legal and effective authority...until a time of less disquiet shall happen and the Constitution take its regular course” and “to prevent as far as may be anarchy and confusion from continuing among us, and fully to support the laws of the land derived under the Constitution thereof.”¹⁷⁹ The convention issued an oath of loyalty to the Council and issued specified powers to it, including the selection of delegates to the Continental Congress, fiscal responsibilities, appointment of civil officers, regulation of the militia, and judicial powers.¹⁸⁰ All Council actions “for or concerning the public

¹⁷⁷ Ibid., 401.

¹⁷⁸ Ibid., 401-402.

¹⁷⁹ Ibid., 403.

¹⁸⁰ Ibid., 404-405.

weal,” however, were subject to ratification and confirmation by the Convention.¹⁸¹ The president of the Council, John Wereat, issued a proclamation on 4 November 1779 calling for elections for a new Assembly, consistent with the constitution, on the first Tuesday in December.¹⁸²

Simultaneously, another patriot faction, led by George Walton, George Wells, and Richard Howley, attacked the loyalties and legitimacy of the Convention and the Supreme Executive Council.¹⁸³ In response, these men rallied a number of counties to vote for representatives to meet immediately in a separate “legislature.” These representatives assembled, along with others elected properly the past December and who had not attended the Convention, on 4 November 1779 in Augusta. They chose Walton as the new governor of Georgia and William Glasscock as the Speaker of the Assembly. These rival governments remained in contest until a new Assembly, properly and constitutionally elected in December 1779, convened on 4 January 1780, whereby Richard Howley became the new governor. A constitutionally legitimate government finally had assembled, but only briefly.

British incursions and the capture of Charleston in May 1780 forced the Executive Council to take refuge at Heard’s Fort in Wilkes County and conduct official business from there. Executive authority passed through various hands during this period until August of 1781, after the British rule in Georgia had ended permanently. That August, a new legislature met in Augusta. The records do not reflect whether this body was a constitutionally legitimate body elected the previous December or was the result of special elections for the purpose. This Assembly, however, remained the official government until the following December when proper elections established

¹⁸¹ Ibid., 406.

¹⁸² Ibid., 407.

¹⁸³ Ibid., 408-409.

a new Assembly on 1 January 1782.¹⁸⁴ Throughout the revolutionary period in Georgia, as these events demonstrate, constitutional legitimacy infused the language of those grasping the reins of political authority in the state. Even among competing factions, the idea that governing power must have a certain, if illusory, sanction of popular sovereignty as represented in the Constitution of 1777. This was an era that dramatically demonstrated the need for practical solutions to the problems of governance, and yet it also demonstrated the powerful influence of ideological constraint.

Georgia had become an independent state; even an independent republic. It had survived the Revolutionary War for Independence, but only with a political, military, and economic association with twelve other states. Georgia was reluctant, at first, to join the radical resistance against the British, but once it had committed to the cause, it embraced the prospect of union with the other states without reservation. The state's official membership in that union begins the next discussion.

¹⁸⁴ Ibid., 409-411.

CHAPTER 4

GEORGIA CONVENTIONS FROM CONFEDERATION TO THE EARLY REPUBLIC

After adopting the Constitution of 1777, Georgians' most difficult constitutional and military obstacles to a formal union with the other states remained ahead. As this chapter will demonstrate, despite its early successes and enthusiasm in formulating a new state government based on prevailing republican assumptions of political authority, a number of factors affected Georgia's relationship with the other states in rebellion against Britain. This chapter will also reveal the importance of conventions to the creation of fundamental political values and their ambiguous legacy in the events leading to the Philadelphia Constitutional Convention in the summer of 1787. Furthermore, it will explore how the national constitutional development and the problems associated with economic and demographic expansion had a powerful impact on constitutional politics at the local level in Georgia in the 1780s and 1790s.

In the period from 1 May 1777, the date the Constitution of 1777 went into effect in Georgia, to 1 March 1781, the date the Articles of Confederation officially became the first national constitution, the state was, at least theoretically, a constitutionally independent sovereign republic. The records of Georgia's formal acceptance and ratification of the Articles are sparse and, consequently, the episode has received relatively little scholarly attention. Furthermore, the involvement by Georgia's representatives in the drafting and debates of the Articles of Confederation by the Continental Congress was minimal.

Despite the success and enthusiasm of Georgia revolutionaries in the formal declaring of political separation from Britain, there were a number of obstacles in the way of actually achieving independence. Foremost among the obstacles was the military defeat of the British troops on the

continent. The constitutional creation of a formal union of the thirteen states also proved to be a significant hurdle to sustaining independence. As Jack Rakove has observed, “Of all the problems in constitutional theory that engaged the American Revolutionaries, none ultimately proved more challenging or critical than the framing of a federal union.”¹ As early as 1775, the delegates to the Continental Congress had contemplated, without much enthusiasm, a formal confederation of states among the colonies. Continued hope for reconciliation with Great Britain and the constitutional ambiguities of such a proposal effectively tabled any serious considerations of a constitutional union by the Congress until a majority of the delegates resigned to independence as a necessary course of action in June 1776.²

According to Rakove, there were at least six different drafts of confederation proposals from 1775 to 1776.³ Benjamin Franklin introduced the first on 21 July 1775, but the Continental Congress failed to consider it before it recessed in early August.⁴ The Connecticut delegates, including Silas Deane, presented another proposal in the fall of 1775, which underwent a subsequent revision in the early months of 1776.⁵ In June 1776, a congressional committee, with John Dickinson at the lead, began constructing a plan of confederation acceptable to the majority of the delegates. A final draft of Dickinson’s plan introduced as the Articles of Confederation in

¹ Rakove, 135.

² Ibid., 136-139.

³ Ibid., 136.

⁴ A digitized copy of Franklin’s proposal is available on the Yale Avalon Project website at <http://www.yale.edu/lawweb/avalon/contcong/07-21-75.htm> (last accessed 8/28/07).

⁵ A digitized version of their first proposal is available from the Library of Congress in *Letters of Delegates to Congress* (Vol. II, September 1775-December 1775) on its American Memory website at [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg002402\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg002402))) (last accessed 8/28/07). According to Rakove, the revised text appeared in the *Pennsylvania Evening Post*, March 5, 1776.

July 1776.⁶ As Jerrilyn Greene Marston has pointed out, this “Confederation Committee” was markedly distinct from other committees simultaneously important to current events, such as the committee to draft a declaration of independence and the committee to prepare a foreign powers treaty.⁷ The Congress required that one member of each colony serve on the Confederation Committee, an overt reflection of the concern for adequate representation to inform the process with the appearance of constitutional legitimacy. Button Gwinnet served for Georgia.

A final draft of the Articles of Confederation did not pass the Continental Congress until 15 November 1777. The delay was due to several factors. First, the exigencies of war demanded the bulk of the body’s official attention in this period. Moreover, several important issues under consideration in the confederation plan divided the delegates. One issue especially critical to the fundamental power and structure of the confederation concerned the question of counting votes in the Congress. The emotional tensions surrounding all sides of the debates on the representative voices of each state foreshadowed problems in the Philadelphia Convention in 1787. Whether the states would have votes based on proportional populations or equal votes in the Congress had passionate supporters on each side of debate. In the end, the smaller states won the argument over logical and articulate views to the contrary.⁸

Other debates contributed to the contentious delays of a final plan of confederation. The Continental Congress found it necessary to develop a formula for calculating expenses of the union

⁶ A digitized version of the first Articles of Confederation considered by the full Congress in the summer of 1776 is available on the Yale Avalon Project website at <http://www.yale.edu/lawweb/avalon/contcong/07-12-76.htm> (last accessed 8/28/07). Also see Rakove, 136-139.

⁷ Marston, 194.

⁸ Rakove, 158.

to the states.⁹ Some advocated a formula that apportioned expenses based on total population of the states, while others urged a formula based on only the white population of each state. As Marston has concluded, the debate on this issue was less about a fair economic policy than about the much deeper concerns over the location of sovereignty and its practical application. Both of these previous issues spoke to whether or not the Confederation Congress would represent the states as individual political entities or the people individually as citizens. The distinction was vital to the location of political sovereignty, both in national and local terms. That equality of votes among the states and state sovereignty triumphed over the alternatives remained a source of bitter resentment for delegates like Benjamin Franklin and John Adams, who had always maintained that a republic, to be just and fair, must govern by proportional representation.¹⁰

Despite the ire that these issues drew from several delegations of the states, Georgia remained enthusiastic of its support for the Articles of Confederation. On 26 February 1778, the Georgia Assembly officially agreed to the Articles, with four proposed changes in the wording of three of the articles. The formal instructions to the state's delegates to the Continental Congress urged them to defend their proposals, but, regardless of their success, were "empowered and required in behalf of this State, to sign, ratify, and confirm the several Articles of Confederation." Georgia was so thoroughly eager to embrace a union of the states that the legislature, in case the Articles as presented failed to pass the Continental Congress, further instructed their delegates to

⁹ Finally, the Congress decided to calculate each state's due expenses by the "proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint." See Articles of Confederation, Article VIII.

¹⁰ Marston, 199-201.

assent to “any other plan of a general Confederation which shall be agreed upon by nine of the United States.”¹¹

On 24 July 1778, two delegates from Georgia, John Walton and Edward Telfair, signed the Articles of Confederation and Perpetual Union. The third delegate, Edward Langworthy, signed upon his return to the Continental Congress in August.¹² Thus, in its maiden initiation into a continental union with the other colonies, and ignoring the cumbersome protocols necessary to seek popular approval by the constituency at-large, the Georgia Assembly promptly ratified the Articles during a regular legislative session, without assigning any special significance to such an important constitutional moment.¹³ Two factors help to explain the Assembly’s disinclination for popular approval in this event.

The first was the distractions and exigencies associated with the war. As noted in the previous chapter, Georgia’s constitutional government remained in a state of flux beginning late in 1778. As political factions jockeyed for control of the state government, legitimate authority became less a priority than the practical perseverance of law and order. While the Georgia Assembly approved the Articles of Confederation months before the British recaptured Savannah in December of 1778, but attacks by the Cherokee and Creeks remained a major source of concern. The Cherokee War had ended in May of 1777 and, subsequently, had eased some concerns. The Creeks, on the other hand, had attacked and killed almost two dozen Georgians in Wilkes County

¹¹ *Journals of the Continental Congress, 1774-1789* (Washington: Library of Congress, 1904-1937), Vol. XI, 670-671. The proposed changes were to articles four, nine, and eleven and were minor to the foundations and intent of the Confederation. See *Ibid.*, 671.

¹² *Ibid.*, Vol. XI, 656, 712-716. Also see Coleman, 93-94.

¹³ Many of the provincial assemblies had previously authorized their delegates to sign the Articles of Confederation. Exceptions to this were Maryland, New Jersey, Delaware, and Georgia. The provincial assemblies of these four colonies eventually sanctioned ratification by their delegates. See Rakove, 188-190.

in the late summer of 1778.¹⁴ Increasingly, defense and security of person and property took precedence over the protection of constitutional principles in this period.

Another possible influence on the routine manner in which the Georgia Assembly confirmed the Articles of Confederation was the view that the union it established among the states did not threaten local sovereignty. Sovereignty resided in the people of Georgia and the state delegates to the Continental and Confederation Congresses represented that sovereign power but did not delegate that power nationally. The national government was not a threat to state sovereignty and, therefore, since it did not require any fundamental change to existing local constitutional authority, there was no need for popular sanction. The people of Georgia need not assent to a national confederation that posed no threat to their constitutional rights and privileges.¹⁵ Since no records remain that indicated the reasons for the Assembly's assumption of legitimate power to join the Confederation, these explanations provide only speculative, but especially plausible, insights.

In constitutional terms, there were no more major events in Georgia until 1787, when the state sent delegates to the Philadelphia Constitutional Convention. Why and how this convention took place is important to understanding the constitutional effects it generated in the state. A massive scholarship has devoted innumerable interpretations on these questions and prevents any abbreviated treatment of it sufficient. While even a narrow brief of this field is unjust to all of this scholarship, there have been, nevertheless, certain contributions that deserve special attention here.

¹⁴ Coleman, 113-115.

¹⁵ That the Articles as ratified posed no foreseeable threat to state sovereignty was exemplified by the debates over the proposals to give the Confederation Congress the power to limit the boundaries of the colonies. States such as Virginia, Connecticut, and Georgia had charters that granted them "sea to sea" territorial boundaries and refused to give Congress authority over fundamental rights guaranteed to the colonies by their charters and constitutions. The measure failed due to the reverence for local over national sovereignty. See Marston, 200-205.

To understand why there was a national constitutional convention in 1787, it is necessary to understand the Confederation period throughout the previous years in the 1780s. In a broad historiographical context, interpretations of the Confederation period traditionally have fallen into two interpretations. The first has been the view that the Confederation was a disastrous failure and necessitated the rescue of the nation by the federal Constitution of 1787. Such an interpretation, for the most part, has circumscribed the importance of the period. The other historiographical tradition has viewed this era with more skepticism about its failures. Scholars, such as Merrill Jensen, have argued that the Constitution of 1787 effectively undermined the revolutionary principles embodied in the Articles of Confederation. Federalists like George Washington, James Madison, and Alexander Hamilton exaggerated the threats to the Confederation in their effort to centralize power in a national government.¹⁶ Recent scholarship, however, has offered a more complex assessment of the Confederation that has regarded it as an important stage in constitutional development and as a pragmatic solution to the circumstances and goals of the American Revolution.¹⁷

Historians have maintained that the effort to establish a new federal constitution in 1787 was a reaction to the American Confederation. Nineteenth-century historian John Fiske

¹⁶ A dated article that remains very useful in understanding these historiographic traditions is Richard B. Morris, "The Confederation Period and the American Historian" in *The William and Mary Quarterly*, 3rd Ser., Vol. 13, No. 2, 139-156. Much of the discussion here derives from Morris's critique. Critics of the Confederation period have included George Bancroft, John Fiske, and Andrew C. McLaughlin. Confederation apologists included Charles A. Beard and Merrill Jensen. See Morris, 139. Also see Richard B. Morris, *The Forging of the Union, 1781-1789* (New York: Harper & Row, 1987).

¹⁷ Examples include Rakove, *The Beginnings of National Politics*; Marston, King and Congress; Calvin Jillson and Rick K. Wilson, *Congressional Dynamics: Structure, Coordination, and Choice in the First American Congress, 1774-1789* (Stanford: Stanford University Press, 1994); Kenneth R. Bowling and Donald R. Kennon, eds., *Inventing Congress: Origins and Establishment of the First Federal Congress* (Athens: Ohio University Press, 1999); and Keith L. Dougherty, *Collective Action under the Articles of Confederation* (Cambridge: Cambridge University Press, 2001).

characterized the Confederation era as the “critical period” in American history. He used the phrase to emphasize the difficulties associated with a weak national government and the potential threat of anarchy throughout the states as a result.¹⁸ In this view, dramatic events, such as Shay’s Rebellion, pointed to the ineffectiveness of the Confederation government to cope with the economic and social disorders that plagued the new nation. A new federal constitution was necessary to invigorate authority in the national government.

Another interpretation, by J. Allen Smith, proposed that a conservative backlash to the American Revolution led to the Philadelphia Convention. Smith maintained that the Declaration of Independence and the Articles of Confederation were radical democratic departures from the traditional English constitutionalism, which had afforded government buoyed by checks and balances in distinctly separate legislative, executive, and judicial powers. The 1787 Convention, therefore, according to Smith, gave conservatives an opportunity to undermine the radical democracy of the American Revolution and restore constitutional balance to the national government.¹⁹ The heir to this view was Merrill Jensen, who argued that the Articles of Confederation were the practical embodiment of the Declaration of Independence and the 1787 Constitution betrayed those ideals.²⁰ For Smith and Jensen, the period was not “critical” and the nation was not on the verge of anarchy or chaos.²¹ The emphasis by these scholars on conservative fears and ambitions pitted against a radically democratic momentum growing in the states,

¹⁸ See John Fiske, *The Critical Period of American History, 1783-1789* (Boston: Houghton Mifflin, 1888); Also see Morris, 145.

¹⁹ A view resembling Gordon S. Wood’s in his *Creation of the American Republic*. See J. Allen Smith, *The Spirit of American Government: A Study of the Constitution, Its Origin, Influence, and Relation to Democracy* (New York: McMillan and Company, 1907); See Morris, 148.

²⁰ See Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781* (Madison: University of Wisconsin Press, 1940); See Morris, 150.

²¹ Morris, 152.

however, provides little insight into the experience in Georgia, where there were no dramatic uprisings and no opposition to the Confederation established by the Articles.

Another factor affecting the support of the Confederation Union was the elasticity and particularism of American nationalism during the period. In the decade leading to the American Revolution, national identity essentially consisted of an undefined blend of English and colonial attachments. Cultural and political traditions gave citizens in each colony a profound sense of Englishness. On the other hand, the remoteness and particularism of individual colonies informed a uniquely independent spirit. The colonies had never pursued any long-term legal or cultural connections to each other, but to the contrary, remained connected only through their central governance in England. One historian has described the English-colonial relationship as a “nascent federalism,” or a proto-federalism, that operated under various British governmental departments.²² By the advent of the Revolution, however, the thirteen colonies had determined a common cause against the British and discovered their advantages, especially militarily, could be realized only in constructing a formal union. Part of the difficulty in constructing such a union was the “federalistic” design of the traditional relationship with England. The delegates to the Continental Congress had no model to guide them in creating a national government of independent states.²³

To borrow from William T. Hutchinson’s observations, there were at least three characteristics missing from the colonial experiences with the British Empire that Americans found necessary to establishing legitimate government. First, there were no formally written

²² William T. Hutchinson, “Unite to Divide: The Shaping of American Federalism” in *The Mississippi Valley Historical Review*, Vol. 46, No. 1, 4. Compare Jack P. Greene’s characterization of the English-colonial relationship as “center” and “periphery” in Chapter 3.

²³ Hutchinson, 4.

constitutions, which British officials and colonists could have resourced for defining the limits of governing authority and management of political affairs. Secondly, the political relationship between the colonies and England permitted the centralized government in London to participate directly in colonial governments, but prevented colonial governments from direct participation in the central government. Additionally, there were no legal or administrative bonds between the American colonies prior to the Revolution. In fact, as Hutchinson has described, the inter-colonial relations were often generally a “chronic un-neighborliness” toward one another.²⁴ Finally, the Whiggish element in colonial political thought required a genuine distrust and skepticism of aggregated centralized political authority. Thus, any nationalistic spirit shared throughout the colonists in America had evolved out of their common resistance to the British and was motivated more by military concerns in the early stages of the conflict.

This analysis is, of course, at odds with Benedict Anderson’s conclusions about American nationalism in the eighteenth century. Anderson, however, has been more concerned with a cultural identity shared among a broad expanse of people who “imagined” a common kinship forged through the print media.²⁵ Defining nationalism with this criterion implies merely a community rooted in a selective empathy for those unseen others who appear to share common interests. This brand of nationalism is, at best, a fragile psychological bond unchallenged by real material differences. A more appropriate understanding of nationalism in revolutionary America is Linda Colley’s model. Although Colley has agreed with Anderson that nationalism is a cultural and ideological construct, she has demonstrated that substantive national identity first emerges out

²⁴ Hutchinson, 4-5.

²⁵ See Chapter 1.

of the real or perceived danger to one's community and traditions from another political community.²⁶ Certainly, there was an inherent Englishness to the American colonial culture, but by the mid-1770s, the revolutionaries had determined that the British government had become a dangerous "other" and a threat to certain fundamental principles widely assumed by the colonies.

There was another dimension to American nationalism in this period. In the decade before the Revolution, the colonies had argued for their right to self-government and had concluded that sovereignty presided locally in each colony rather than in the central government in London. This argument eventually hailed the political independence of the colony and demanded political, social, and economic allegiance away from the British Empire to the provincial governments. Paradoxically, the Declaration of Independence both confirmed and contradicted the idea of America as a collection of independent nation-states. It confirmed it by breaking free of the British proto-federalist system and asserting the sovereignty of the individual states. Yet, the Declaration contradicted the fundamental concept of state sovereignty in that the power to claim such independence resided in a central governing body, empowered by the states, namely the Continental Congress.²⁷ Despite this paradox, political identity remained tied to the state where the revolutionaries were unwilling to substitute their loyalties from one tyrannical central authority in London to another in Philadelphia. Faith and support for the Continental Congress persisted in proportion to the physical dangers posed by the British or the Native Americans. Beyond the expediency of a loose union during the ebb and flow of wartime events, revolutionaries defined

²⁶ Colley, *Britons*, 5-6; also see Chapter 1 of this study.

²⁷ See Hutchinson, 6.

themselves according to their state identities and interests.²⁸ Hutchinson has argued that, in fact, the Continental Congress survived after the war not out of a prevailing national spirit, but primarily because of the pragmatic concerns for the common ownership of western territories ceded by several of the states.²⁹

The inability of the Confederation Congress to assert sovereign power over the states affected its effectiveness as a national legislature. As Richard P. McCormick has noted, contemporaries and subsequent historians pondered if this congress was “a legislative or executive body, or whether it was merely a powerless diplomatic assembly.”³⁰ By early 1779, the Continental Congress defined itself as “the supreme sovereign power of war and peace,” thus affirming its original purpose as a representative body aimed at securing the liberties traditionally assumed by the colonies.³¹ As the war drew to a close, state support for the national government waned. During the early stages of the Revolution, provincial governments were often insecure about their political legitimacy and turned to the Continental Congress for leadership and support. With the establishment of state constitutions as legitimizing authority and the foreseeable end of Congress’s role in prosecuting the war, local governments began to steal political favor away from the national

²⁸ This point is also made in Claude H. Van Tyne, “Sovereignty in the American Revolution: An Historical Study” in *The American Historical Review*, Vol. 12, No. 3, 529-545. Van Tyne referred to an interestingly telling quote from the Massachusetts statesman, Fisher Ames, in the period: “Instead of feeling as a nation, a state is our country.” See *Ibid.*, 539, fn. 4.

²⁹ Hutchinson, 9.

³⁰ Richard P. McCormick, “Ambiguous Authority: The Ordinances of the Confederation Congress, 1781-1789” in *The American Journal of Legal History*, Vol. 41, No. 4, 411. McCormick highlights the ambiguities of the Confederation Congress’s legislative authority after the Articles of Confederation had been ratified. Citing such instances such as the Land Ordinance of 1785 and the Northwest Ordinance of 1787, he insists that the body grew more assertive in its legislative acts, despite the lack of its capability to enforce them.

³¹ Resolution of 6 March 1779 in *Journal of Continental Congress*, Vol. XIII, 283 as quoted in McCormick, 412.

government.³² The reality was that a majority of the states had ratified the Articles of Confederation during a time when they perceived the greatest need for a central governing body. After 1779, the Confederation Congress seemingly became less relevant to local problems as it halted issues of credit and forced individual states to support military supplies. As one historian has stated, “It is true that Congress had less power after the drafting of the Articles of Confederation than before.”³³ A glaring exception was the state of Georgia.

Until 11 June 1782, Georgia remained under siege by the British. Internally, contentions between conservative and radical partisans continued to plague the state. Moreover, violent conflicts with the Creek tribes throughout the 1780s on the Georgia frontier had eroded much of the zeal felt at the British retreat from the state. The state had been the youngest and least populated of all the thirteen in rebellion and many of its settlers had resided on the frontier where they had to either flee or remain vulnerable to atrocities. The British invasion had secured the state’s major towns, including Savannah and Augusta, and, along with the threat posed by warring Native Americans, and had scattered much of the population on the frontiers, placing the state in desperate circumstances. In the meantime, the revolutionary government met in sporadic locations and the reigns of power passed from one person or group to another, all the while expressing their constitutional apologies for such expedient proceedings.³⁴ After the British left in June 1782, Georgia, devastated demographically and economically by the war, still had to contend with the

³² McCormick, 413.

³³ Nevins, 623. Nevins argued that the Continental Congress had greater assumed authority and broader latitude to wield such authority before the Articles of Confederation went into effect because its powers were undefined and subject to bolder interpretation. See Nevins, 621-630. Also see McCormick, 414.

³⁴ For example, see “Minutes of the Executive Council” for dates 16 August 1779 and 3 February 1780 in Candler, *Revolutionary Records*, Vol. II, 154-159, 211-213. The minutes describe the extraordinary circumstances perceived by the political leadership in this period. Also see Coleman, 147-167.

Creeks. Given these circumstances, most Georgians, even those who had not supported radical revolution but who were now exposed and unprotected on the frontiers, welcomed a resourceful national government, especially one that would come to its aid.³⁵

The drive for a constitution to replace the weak Articles of Confederation was contentious theoretically and pragmatically. The supporters of strengthening the national government, however, were determined, convinced of its necessity. Both Bernard Bailyn and Gordon Wood have argued that the changing constitutional landscape in post-revolutionary America embodied a fundamental shift in social and political assumptions by the people at-large. Their work has described the process of how the language of liberty, rights, and legitimacy, in conjunction with a more inclusive electorate during the American Revolution, undermined elitist conceptions of a “natural aristocracy” as the rightful political leadership and produced expectations among the common people for cultural as well as political egalitarianism.³⁶ Wood, in particular, has said that the “most significant political developments” of the 1780s were due, not to a cadre of nationalist-minded activists, but to grassroots concerns that state governments were not robust enough to address the post-war instabilities locally.³⁷ Nevertheless, it was those nationalists, like James Madison and Alexander Hamilton, who paved the road first through Annapolis and then to the Federal Constitutional Convention in Philadelphia in 1787. Events tested even the provincial

³⁵ The distress of Georgians over the Creek attacks was evident in contemporary newspapers. On 1 November 1787, the *State Gazette* of South Carolina reported that Georgia was under “martial law” and that Savannah “is strongly fortified by several redoubts and other works thrown around it” against the Creeks. The *Massachusetts Gazette* on 5 August 1788 printed an “Extract of a letter from a gentleman in Georgia...dated June 6, 1788” which described “a very cruel war between this state and the Creek Indians.” The letter further informed that “If the federal constitution does well we shall share its blessings; and it is a fact we want them very much.” Also see Coleman, 238-252.

³⁶ See Bailyn, xiii, 43, 307, and 309; Gordon S. Wood, *The Radicalism of the American Revolution* (New York: A. A. Knopf, 1992), 5, 147, 175-176, 179, 180-181, 215.

³⁷ Wood, *Creation*, 362.

republicanism of Thomas Jefferson by 1785, who noted that the Confederation Congress was ineffectual and required more authority.³⁸

On 21 January 1786, the Virginia General Assembly passed a resolution inviting the states to choose delegates for a convention in Annapolis, Maryland “to Consider and Recommend a Federal Plan for Regulating Commerce.”³⁹ The immediate impetus for this convention was the Mount Vernon accords, a meeting between Virginia and Maryland commissioners over navigation rights on the Potomac River.⁴⁰ The resulting compact between the two states presented questions of constitutional compliance with the Articles of Confederation. Historians generally have credited James Madison as the instigator of the Annapolis resolution in Virginia, citing his growing distress over the commercial powers lacking in the national government. In fact, he proposed submitting the Mount Vernon compact to the Confederation Congress for ratification, but the Virginia Assembly and the Maryland legislature declined. As one of Virginia’s commissioners, however, Madison certainly realized Annapolis as a potential to consult with other states on the defects of the Articles of Confederation and negotiate solutions.⁴¹

³⁸ See Jefferson’s letter to Richard Price on 1 February 1785 in Merrill D. Peterson, ed., *The Portable Thomas Jefferson* (New York: Penguin, 1975), 372-373. Jefferson recognized the need for a stronger central government, but despaired that the states would not permit it. He predicted that the people of the states would eventually demand a more powerful national government after suffering impassable “hostilities” between states. For an example of Jefferson’s provincial republicanism, see his letter to John Adams on 28 October 1813 in *Ibid.*, 537. He describes his ideal society of counties divided into “wards of five or six miles square” that would be “little republics, with a warden at the head of each, for all those concerns which, being under their eye, they would better manage than the larger republics of the county or State.”

³⁹ A copy of this resolution is in Charles C. Tansill, ed., *Documents Illustrative of the Formation of the Union of the American States* (Washington: Government Printing Office, 1927), 38.

⁴⁰ Morris, 247-252.

⁴¹ Dougherty, 141-142; Morris, 247-252. A preeminent scholar on Madison has expressed some reservation about crediting him with orchestrating the Annapolis Convention. See Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca: Cornell University Press, 1995), 57.

In terms of constitutional legitimacy, this period demonstrated the ambiguities of collective action by the states. Both the Mount Vernon Conference and the Annapolis Convention were events that attempted to address constitutional matters of national importance outside the legislative deliberations of the Confederation Congress.⁴² Deliberations within that body had become so contentious by 1786 that the national government under the Articles of Confederation appeared finally to be coming apart. One issue emblematic of the distress and fueling the tensions among state delegates was the Jay-Gardoqui conflict, which divided along sectional interests and foretold national divisions in the next century.

Stated briefly, the Jay-Gardoqui controversy involved John Jay's negotiations with the Spanish envoy Diego de Gardoqui over boundary disputes and navigation rights on the Mississippi River. Gardoqui made certain important concessions, but refused American rights on the Mississippi River. Convinced that the terms were the best he could expect, Jay concluded his negotiations and requested new instructions from the Confederation Congress. Seven northern states, which had benefited from the few concessions, approved the agreement, but the southern states, especially Virginia, vehemently opposed them. The Mississippi River provided an important access for marketable products for the southern states and raised the value of their western territories. Since the Articles required nine states to ratify a treaty, the southern states deadlocked the issue. Some among the northern coalition discussed the possibility of seceding and forming a confederation among states with similar interests. Some southerners, like Virginia's James Monroe, hastily concluded that the North was conspiring against southern interests by devaluing their western settlements and attempting to gain a balance of power from new states in the

⁴² Morris, 247-257.

northwest. The controversy was important because Madison only had learned of this as he prepared to travel to Annapolis, which, according to Lance Banning, affected his expectations of the ensuing convention.⁴³

Banning has argued that Madison learned some very insightful lessons about the utility of “supralegal actions” such as conventions during his involvement in the Mount Vernon Conference and the Annapolis Convention.⁴⁴ Madison found that it was possible to assemble such a meeting without generating much controversy or scrutiny from the Confederation Congress, despite its constitutional illegitimacy. He also discovered that such conventions could produce effective, even profitable, results, as Mount Vernon had proven to Virginia and Maryland. Clearly, however, these meetings posed a threat to the respectability and credibility of the Confederation Congress, as Article VI of the Articles of Confederation prohibited states to engage into alliances or treaties without the sanction of the national government. Madison, however, came to view special conventions as potential mechanisms for legitimizing national sovereignty.⁴⁵

The responses across the states to Virginia’s invitation to meet in Annapolis and attend to matters of common commercial concerns varied. Nine states initially heeded the call by electing delegates to the convention.⁴⁶ Georgia, South Carolina, Connecticut, and Maryland abstained, interpreting the convention as a symbol of the troubled national government that would send a dangerous message to the people of the states and to foreign nations. Furthermore, many believed

⁴³ Banning, 66-71. Banning distanced Madison from Monroe’s assessments of a northern conspiracy against the southern states, but emphasized the former’s anger over those northern delegations willing to accept John Jay’s concessions regarding rights to the Mississippi River.

⁴⁴ Ibid., 74. Also see Rakove, *Original Meanings*, 32-34.

⁴⁵ Wood, 529-536.

⁴⁶ Georgia did not elect delegates to the Annapolis Convention. See Saye, 126.

that support for such a convention, outside the boundaries of constitutional legitimacy, could inspire other forms of extra-legal conventions and committees of the sort that informed the revolutionary governments during the war with Britain.⁴⁷ In the end, a disappointing twelve delegates attended the meeting in Annapolis, representing merely five states.⁴⁸

With a less than enthusiastic attendance, the delegates, including Madison and New York's Alexander Hamilton, could not act with any mandate. Nevertheless, the twelve men officially convened on 11 September 1786, exactly one week behind schedule. Their minutes reflected a concern for formality and procedural importance, possibly a subtle compensation for a lack of constitutional legitimacy. Just as representatives to Congress, the delegates presented their credentials, which they read aloud before proceeding. Deciding that the absence of sufficient representatives left them little recourse, the commissioners agreed to draft a report to the Congress and all thirteen states, expressing urgency in the national state of affairs and boldly calling for a "future Convention, with more enlarged powers" to meet in Philadelphia on the second Monday in May 1787. They carefully, however, avoided the details of their urgency, stating that "an enumeration of those national circumstances...would be an useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed."⁴⁹ To avoid any pretentiousness on the part of these commissioners, they submitted their

⁴⁷ Wood, 532-533. For Georgia's criticism of the Annapolis Convention see Jensen, ed., *Documentary History of the Ratification of the Constitution*, Vol. III (Madison: State Historical Society of Wisconsin, 1978), 209.

⁴⁸ The Virginia resolution calling for the convention had established that three delegates from each state would supply a full representation. Delaware, New Jersey, and Virginia met this quota while Pennsylvania sent one and New York sent one. See "Resolution...for Regulating Commerce" in Tansill, *Formation of the Union*, 38; Banning, 73.

⁴⁹ "Proceedings of Commissioners to Remedy Defects of the Federal Government" in Tansill, 42.

report, “with the most respectful deference,” admitting that they “could not with propriety address these observations and sentiments to any but the States they have the honor to Represent,” they “nevertheless concluded from motives of respect, to transmit Copies” of their report both to the Confederation Congress and to the state governors.⁵⁰ Furthermore, they attempted to allay the general fears of the next convention by advising that any proposed changes should have the approval of the Congress and the thirteen state legislatures.⁵¹

A few observations from this are important. First, the delegates to this small and seemingly ineffectual convention foresaw the political potential of extra-legal bodies, as demonstrated to them during the era of provincial congresses and committees in the previous decade. They realized that, with sufficient support, these types of deliberative bodies could build momentum beyond the scope and control of the legitimate government. This was what Madison, Hamilton, and the others were hoping. Cleverly expressing their deference to the Confederation Congress and acknowledging the limitations of their legitimacy to speak for all of the states, these men crafted a national appeal for extraordinary measures for resolving “important defects in the system of the Fœderal Government” and the constitutional obstacles involved, which the Congress had proved incapable of addressing effectively and the states had, at least to that point, no will to confront alone.⁵² The Annapolis Convention, then, was a model of the special conventions and assemblies in the early period of the revolution among the colonies. It also was the necessary springboard into the only national constitutional convention in American history.

⁵⁰ Ibid., 43.

⁵¹ Ibid.

⁵² Ibid., 42.

The Confederation Congress officially received the Annapolis report on 21 February 1787. They had formed a committee to consider the report, which, in turn, presented it to the whole assembly. The committee agreed that the recommended convention should meet the approval of the Congress. After a resolution by the New York congressional representatives failed because its language afforded too much autonomy to the proposed convention, Massachusetts proposed another one with more restrictive wording that passed. The body had approved of the May convention “for the sole purpose of revising the Articles of Confederation,” which required confirmation by the Confederation Congress before “such alterations and provisions” could be sent to the states for their confirmation.⁵³

Interestingly enough, Georgia preemptively acted on the recommendations of the “Annapolis dozen” even before the national congress had considered them. Consistent with its persisting insecurities, the state initially dismissed the call for a May convention on 12 January 1787. Georgia had earned an unwelcome reputation among the other states in the Confederation. There were no Georgia representatives in the national government for the entire year of 1783 and half of 1784. Often the state sent only two delegates at a time, so that when one was not there, the state did not have a vote in the Congress.⁵⁴ Moreover, one of the state’s delegates to the Congress, William Houstoun, wrote to Georgia’s Governor Samuel Elbert of the general attitude toward the state among the other delegations. Houstoun wrote,

⁵³ “Report of the Proceedings in Congress, Wednesday Feby. 21, 1787” in Tansill, 46.

⁵⁴ Merrill Jensen, ed., *The Documentary History of the Ratification*, 208-209.

the whole body of Congress are become so clamorous against our state...that it is very seriously talked of—Either to make a tryal of Voting Georgia out of the Union or to fall upon some means of taking coercive measures against her. In truth I do not think at any one time since the Existence of Georgia she has been in a worse situation than at present...For my part I am really so fully affected that I almost curse the hour that placed me in a situation to be privy to such cruel aspersions against that Country that gave me birth.⁵⁵

Several factors contributed to Georgia's peculiar position during this period. First, the state's population, economy, and infrastructures had remained in disarray since the British left in the summer of 1782. Political attention focused on the state's internal crises and post-war reconstruction while, despite its needs and desires for a strong central government, the Georgia legislature largely ignored all responsibilities to the Confederation Congress. Moreover, it stubbornly refused requests by the national government for the cessation of the state's western lands as a means of paying the country's war debt. Contentious boundary disputes with South Carolina also distracted attention away from Georgia's role in the national government. In the late 1780s, increasing tensions among frontier settlers and Native American, especially the Creeks, had escalated the violence to the point of war. In consequence, Georgia, the youngest and least resourceful of all the states, desperately needed help from the Confederation Congress and, at the same time, selfishly devoted all of its attentions and energies toward protecting its own interests against those who sought claims against it, whether the Native Americans or the Confederation Congress.⁵⁶

Consequently, Georgia's legislators were reluctant to agree to a convention that may further alienate the state from the Confederation. Its relative uncooperative reputation with the Congress had affected its chances of getting the national support and troops needed in the conflict

⁵⁵ *The Letters of Delegates to Congress, 1774-1789*, Vol. 22 (Washington: Library of Congress, 1994), 301.

⁵⁶ Jensen, ed., *Documentary History*, 209; Coleman, 238-266.

with the Creeks. However, the legislature received a compelling letter from Virginia's Governor Edmund Randolph, who expressed the urgency of the proposed convention and revealed that his state had already authorized delegates. The letter characterized the convention as a means of strengthening the Confederation Congress, which, the state legislature came to realize, might translate into more support from the national government for its own problems. On 10 February 1787, the Assembly reconsidered and immediately elected six delegates of its own.⁵⁷

By the spring of 1787, other factors had played into the ambitions for the upcoming special convention. While the Annapolis Convention was drafting a report to the Congress and the states, a disaffected group of men from western Massachusetts, led by the patriot veteran Daniel Shays defiantly entered the courthouse in Springfield and disrupted proceeding there for several days. They did not stop there. Angered over the forcible payment of the property debts that had mounted during their service in the Revolutionary War, these men from the New England frontier conducted various county conventions to plot their resistance and affect change.⁵⁸ As Bruce Ackerman has demonstrated, there was a contemporary concern about the dangers these particular conventions presented. The argument among those alarmed by Shays' Rebellion conceded the importance of extra-legal conventions during the crisis with the British. However, those assemblies had formed in response to the unconstitutional acts of the Parliament against the American colonies. Since that time, the states had adopted new constitutions and a compact with all the others in the Articles of

⁵⁷ Jensen, ed., *Documentary History*, 209-210; E. Merton Coulter, *Georgia and the Constitution: Georgia in the Making and Ratification of the Constitution of the United States* (Washington: United States Constitutional Sesquicentennial Commission, 1937), 5; Ulrich Bonnell Phillips, *Georgia and States Rights* (Washington: Government Printing Office, 1902), 17. The delegates chosen for Georgia were William Few, Abraham Baldwin, George Walton, William Houstoun, and Nathaniel Pendleton. Walton and Pendleton never attended the federal convention. Houstoun attended, but did not sign the new constitution. See Tansill, "List of Delegates Appointed by the States Represented in the Federal Convention" in *Formation of the Union*, 86.

⁵⁸ Dougherty, 103.

Confederation. Extra-legal conventions were no longer necessary because of the checks on unconstitutional authority inherent in the new constitutional system, such as frequency of elections, and, in some instances, like Georgia's Constitution of 1777, provisions for constitutional change. Such conventions, therefore, were not only unnecessary, but also portended the potential for a civil war. In fact, some used the same argument against the Annapolis Convention.⁵⁹ Ironically, in some ways, Shays' Rebellion solidified support for the Philadelphia Convention in May.

The rebellion actually began in June 1786 and gained momentum throughout the summer and fall of that year. Massachusetts governor James Bowdoin initially adopted a policy of passive resistance to the Shayites, who were demanding debt relief and lower taxes. Estimates of the insurgent numbers have ranged wildly from as many as 15,000 to as few as 2,500. By March 1787, the Massachusetts army, raised and financed by private funds by associates of the governor, had defeated the Shayites, though scattered incidents occurred until June. The backlash against the rebels was severe, including suspension of habeas corpus, disfranchisement, ineligibility to hold public office, and named to a "Black List" for further harassment. These measures against the Shayites were so severe that the majority of Massachusetts became disaffected by the government's policies and voted Bowdoin out of office in 1787.⁶⁰ Despite the local empathies for the defeated Shayites, political leaders on the national level saw the event as a crucial indicator of the dangers posed to existing constitutional structures. This made the Philadelphia Convention all the more enticing.

⁵⁹ Bruce Ackerman has shown that Rufus King and Nathan Dane from Massachusetts used this reasoning against the Annapolis Convention, but in the spring of 1787 supported the Philadelphia Convention. See Bruce Ackerman, *We the People 2: Transformations* (Cambridge: Belknap Press of Harvard University Press, 1998), 44-46.

⁶⁰ Richard D. Brown, "Shay's Rebellion and the Ratification of the Federal Constitution in Massachusetts" in Richard Beeman, Stephen Botein, and Edward C. Carter II, *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina, 1987), 113-121.

Other factors also contributed to the growing interest in a national constitutional convention. The British had ignored the Peace Treaty of Paris and refused to abandon its forts on the frontier in the American northwest. Pirates consistently attacked American ships without the protection of a national navy. State revenues to the Confederation treasury had dramatically declined and interest rates grew the national debt ever higher. Attempts to amend the Articles of Confederation in response to these and other issues failed because such changes required state unanimity to pass. Thus, for many affected by these problems, a national convention appeared to be a welcome event for pursuing their remedy.⁶¹

America had come to a pivotal historical moment in 1787. Several streams of intellectual and political thought converged in the attitudes, designs, and practices of American government at all levels. Two major events demonstrated the profound significance of constitutional conventions to the character of American nationalism. They were the Federal Convention in 1787 and the secession conventions in 1860-1861. The first revealed the powerful potential of popular sovereignty as a unifying force when innovatively channeled into a republican designed government. The second revealed the limits of that sovereignty when used to break the bonds originally forged and supported by military force. In this sense, secession was the failure of innovative constitutional attempts to disunite the constitutional relationships between the state and federal levels of American governance. The Philadelphia Convention, on the other hand, was the formidable product of an innovative constitutional attempt to establish permanently those relationships. It was not insignificant that the Union established in 1787 required military defeat to perpetuate it. However, the fact that the American constitutional system survived a war aimed at

⁶¹ Banning, 71-72.

destroying it also revealed the genius, the fortuitous, or some of both that informed the actions and processes of 1787 and 1788. As delegates approached Philadelphia in May 1787, they sparked a series of events that dramatically changed the American meanings of sovereignty, constitutionalism, and nationalism.

The distressing conditions of the states and the national government's ineffectiveness at addressing even the most elemental issues confronting it mirrored the challenges that faced the Federal Convention. State delegates were determined to protect local interests and were just as determined to establish a central government powerful enough to provide political and economic stability. It was a paradoxical problem to balance state sovereignty with a federal government informed with superior constitutional authority to manage common concerns. The states had already fought and won independence from one central government in England, which had ignored traditional constitutional rights and declared its absolute superiority over local American governments. Were the states willing to submit to another commanding central government and risk more tyranny? The arguments for and against such change were varied and complex. Certain ideological and systematic developments during this period greatly influenced the legacy of constitutional conventions into the nineteenth century.

The Federal Convention was a watershed for American nationalism. As previously discussed, political identity had coexisted with absolute political sovereignty in each state.⁶² The emergence of a broader, more formulated sense of American nationalism began to formulate as a

⁶² Daniel Walker Howe has argued, accurately I believe, that American nationalism had firm roots in the Enlightenment and Protestant character of the eighteenth-century culture. This structural argument reaffirms my own suggestion that ideas had a profound effect on political identity and nation-building throughout the eighteenth and much of the nineteenth centuries. See Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (Oxford: Oxford University Press, 2007), 3.

result of the new federal Constitution. It was neither immediate nor mature, but evolved as a negotiation of individual, state, and national identities over the next several decades into the nineteenth century. There was a peculiar ebb and flow to this negotiation and, in some ways, evident during the summer debates in the 1787 convention. As Rakove has noted, sovereignty, the source of all political authority, depended upon “the ability to command the loyalty of the people.” Only over time and events, therefore, did the people of the states begin to recognize the sovereign powers of the federal government and begin to struggle with the competing national and local identities afforded them.⁶³

Paul C. Nagel has characterized American nationalism as a fluid intellectual commodity that underwent various stages of development from the colonial era through the Civil War.⁶⁴ The Federal Convention, in Nagel’s view, reflected a generally common interest in delegating certain local political authority to a central government in exchange for efficient practical solutions to

⁶³ For instance, a negotiation of the Virginia Plan, which initially afforded more power to the larger states, and the New Jersey Plan, which offered a continuation of state equality under the Articles of Confederation, eventually evolved into a vaguely familiar product of both. In fact, despite the equality of state representation, the New Jersey Plan also proposed a national supremacy article, giving federal laws precedence over state laws. See Paul J. Scudiere, “‘In Order to Form a More Perfect Union’: The United States, 1774-1791” in Patrick T. Conley and John P. Kaminski, *The Constitution and the States: The Role of the Original Thirteen States in the Framing and Adoption of the Federal Constitution* (Madison: Madison House, 1988), 9-10. Another view of this negotiation of political identity and national constitutionalism involved the changing cultural expressions throughout the period, as revealed in newspapers, novels, public celebrations, civic rituals, and public discourse. See Waldstreicher, *In the Midst of Perpetual Fetes*; Rakove, 164-170. Also see Jay Wink, *The Great Upheaval: America and the Birth of the Modern World, 1788-1800* (New York: HarperCollins, 2007), 66-68.

⁶⁴ Nagel portrayed the stages of American nationalism through the Civil War essentially as a circular process. Under British rule, the political identity of the colonies was a result of their compulsive role in the empire. During the American Revolution, the colonies embraced a sense of union that “sprang essentially from emergency” in conflict with the British. In the Confederation era, the idea of union among the states became an “attitude” that they were collectively more prepared against internal and external threats than separately. Thus, union was a means to a pragmatic end. The Federal Convention in Philadelphia was reflective of this pragmatism. So long as the union remained a means to an end, according to Nagel, American nationalism involved an affective sentiment expressed by a voluntary and often enthusiastic embrace of common political identity. Secession and the Civil War, however, thwarted that enthusiasm and resulted in a union, once again, compelled by force. Ultimately, he argued, Americans had never held a truly common view of the nation and, therefore, always remained divided over the character of their political identity. See Paul C. Nagel, *One Nation Indivisible: The Union in American Thought, 1776-1861* (New York: Oxford University Press, 1964), 5-22, 279.

otherwise insurmountable national problems. The nation required a powerful central government informed with a sentimental attachment to it by the people. As Nagel described it, “The need was to balance Union as the hope of security against Union as the enemy of freedom.”⁶⁵ The challenge of the Federal Convention was to construct a constitutional system that afforded the states sufficient benefits to gain ratification while, at the same time, not alienating them by infringing upon traditional liberties or trampling fundamental political assumptions won in the American Revolution. Without adequate incentives for ratification by the states and a sentimental attachment to the union, the constitutional experiment was not secure. Consequently, the convention in Philadelphia continued and solidified the tradition of the constitutional conventions during the Revolution as forums for establishing fundamental principles of governance and legitimate political authority.

William Few was the only Georgia delegate in Philadelphia on 14 May 1787, the date set for the start of the Philadelphia convention. Because the state instructions required two delegates to be present for official representation, Georgia had no vote in the proceedings until William Pierce arrived on 31 May. William Houston finally made Philadelphia on 7 June, followed by Abraham Baldwin four days later. All four had served as representatives to Congress and were familiar with many of the other delegates. Each presented their official credentials to the convention as required. Their formal instructions, however, contained an interesting departure from the Confederation Congress’s mandate to the convention. Whereas the resolution passed by the Congress stated the purpose of the convention was “the sole and express purpose of revising the Articles of Confederation,” Georgia had instructed its delegates to engage in “revising and discussing all such

⁶⁵ Nagel, 16.

Alterations and farther Provisions as may be necessary to render the Fœderal Constitution adequate to the Exigencies of the Union.”⁶⁶ The distinction by the Georgia Assembly, deliberately or not, presupposed the radical actions taken by the convention.

Various delegates kept notes during the proceedings of the convention. James Madison’s were, of course, the most copious and most cited. Georgia’s William Pierce also briefly made personal notes and supplemented them with a series of short, pithy character sketches of several of the delegates he had observed.⁶⁷ All proceedings of the convention were under the seal of secrecy under a rule established by the delegates on 29 May 1787. The rule allowed the delegates to speak freely without the fear of repercussion from constituents and other potential critics to daily sessions. It also permitted them to recount or change their thinking as the convention progressed with appearing duplicitous to the public.⁶⁸

An analysis of the proceedings of this convention is beyond the scope of this study. The convention as a vehicle of constitutional change and arbiter of founding principles, however, provides vital insights into the state conventions that followed in its wake. The Federal Convention confirmed the utility and the theory, firmly established by the states during the American Revolution, of the convention process as a means of establishing fundamental law and legitimizing

⁶⁶ “Report of Proceedings in Congress, Wednesday Feby. 21, 1787” in Tansill, *Formation of the Union*, 46; “Credentials of the Members of the Federal Convention” in *Ibid.*, 82-84.

⁶⁷ Among them were Robert Yates of New York, Rufus King of Massachusetts, William Paterson of New Jersey, Alexander Hamilton of New York, and Dr. James McHenry of Maryland. The comprehensive collection of all documents relating to the Federal Convention remains, Max Farrand, *The Records of the Federal Convention of 1787*, 3 Vols. (New Haven: Yale University Press, 1911). Madison’s notes are widely available, including in Farrand’s Records. The current work refers to “Debates in the Federal Convention of 1787 as Reported by James Madison” in Tansill, *Formation of the Union*, 109-745. Hereafter referred to as “Debates...Madison.” Pierce’s notes only range from 31 May 1787 to 6 June 1787. See “Notes of Major William Pierce (GA) in the Federal Convention of 1787” in Tansill, 87-108 (hereafter known as “Notes...Pierce”).

⁶⁸ “Debates...Madison” in Tansill, 113-114.

frameworks of governance. In constructing a new federal constitution, the delegates validated certain revolutionary ideologies and innovated new institutional designs to protect them. They also developed elaborate structural mechanisms for disseminating, balancing, and checking political power at the federal level. It was a contentious event of passionate disagreements, intense negotiations, and unlikely compromises. The resulting constitution proposed the termination of the Articles of Confederation, a redefinition of sovereignty, and greatly empowered the national government.

Broadly speaking, the Federal Convention reiterated, modified, or introduced at least five important governing principles in its final draft of their new constitution. First, it validated the concept inherited from English constitutionalism that government must be “a government of laws, not of men.” The ancient constitutionalism of the English, the colonial reverence for charters, and the revolutionary state constitutions were rooted in the principle of “rule of law.” The new federal Constitution, however, gave the principle a substance previously unknown. In the English tradition, the law was, at least in practice, subordinate to interpretation by the throne or Parliament—the same people who established the law. Even the revolutionary constitutions among the new American states empowered the legislative branch of their governments so fully that the laws were subject to the same bodies that created them. The constitution created by the Federal Convention, by contrast, not only promised a government of laws, but also cemented it. In Article VI, the United States Constitution declares,

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

This supremacy clause guaranteed the rule of law and subordinated all branches of government and the states to its provisions. Although it took decades for the nation to formulate its practical application, as in judicial review and states' rights, the principle was sound.⁶⁹

The delegates to the Philadelphia convention took the extraordinary step of redefining American sovereignty. James Madison has stood out as the primary architect of the federal Constitution, and certainly, he deserved much of the credit. His vision of a national government based upon a different calculation of popular sovereignty resulted in one of the most innovative features of the new constitution. Madison blamed the ineffectual and partisan character of state legislatures for the deteriorating conditions in the country. Informed by his readings of David Hume, his corroboration with fellow delegates such as George Mason, James Wilson, and Gouverneur Morris, and his own evolving assessments, Madison envisioned a strong national government founded upon a broadly based sovereignty of the American people at-large, stretching across state boundaries. This conception of sovereignty greatly diminished the role of the individual states in the federal system of government. Although Madison despaired that the convention settled only for direct popular vote for the House of Representatives, and indirect for the Senate and President, the move was a radical adjustment for political legitimacy.⁷⁰

Other principles firmly established in the federal Constitution were the distinctive separation of powers and an elaborate series of constitutional checks and balances on political power. An independent federal judiciary with a Supreme Court at its head provided further security

⁶⁹ For a fuller discussion of the principle of "rule of law" see James McClellan, *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government* (Richmond: James River Press, 1989; reprint, Indianapolis: Liberty Fund, Inc., 2000), 347-351.

⁷⁰ See Morgan, 267-277; Banning, 227-231.

to the rule of law concept. Another innovation was a system of federalism that involved two separate institutional levels of government, federal and state, with unique rights, responsibilities, and sovereign authority. The ambiguities beset by this federalist framework developed into a source of virulent conflict until erupting in the Civil War. Finally, though an afterthought brought by state demands, the first Congress under the new constitution attached a Bill of Rights, which established protections for individual rights and liberties against intrusions by the government.

Georgia made few distinctive impressions in the records of the Federal Convention. One of the state's preeminent constitutional scholars, Albert B. Saye, has noted that whereas various delegates from other states addressed the convention a hundred times or more, Madison's records indicated that no Georgia delegate spoke more than eight times.⁷¹ Abraham Baldwin was the only delegate to attend the convention without recess until it adjourned 17 September 1787. With the exception of a brief period in late July and early August, Georgia retained its right to vote with two delegates present after 31 May.⁷² Georgia's delegates left enough evidence in the records to indicate their positions on several of the important issues debated that summer.

Consistent with the young state's persistent anxieties, the Georgia delegation advocated a strong central government, one that "ought to be energetic and formidable," in the words of Baldwin.⁷³ At the same time, certain powers deserved to remain with the states as "it wd. be impossible for the Genl. Legislature [the national congress] to extend its cares t[o] the local matters

⁷¹ According to Saye, Abraham Baldwin spoke eight times, William Houstoun spoke seven, William Pierce four, and William Few never spoke. Saye also determined that their addresses were "so short that their total length would be less than that of any one of the several long speeches by influential members." Saye, 127.

⁷² Pierce left the convention around early July, Houston in late July. Few remained except for an absence between 4 July and 3 August. Coleman, 267.

⁷³ "Notes of the Secret Debates of the Federal Convention of 1787, Taken by the Late Hon Robert Yates, Chief Justice of the State of New York, and One of the Delegates from that State to the Said Convention" in Tansill, 827 (hereafter referred to as "Notes...Yates").

of the States.”⁷⁴ Baldwin and William Pierce supported a lower house elected directly by the people as representative of the popular interests. They, however, disagreed on the basis for the upper house. Baldwin proposed that the upper branch have particular qualifications representative of the property and wealth of the state, while Pierce held that the state legislatures should choose its senators without such special qualifications. Despite Georgia’s relatively low population and size, its delegation usually sided with the larger state coalition or strong federal government faction, given its need for assistance against the Native American threat and need for expansion.⁷⁵

The only issue that appeared to arouse passion from Georgia’s delegates was, of course, slavery. On 21 August 1787, Luther Martin, delegate from Maryland, raised a motion “to allow a prohibition or tax on the importation of slaves.” He cited three reasons for considering his motion.

In the first place, as five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause wd. leave an encouragement to this trafic. In the second place, slaves weakened one part of the Union which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. In the third place, it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.⁷⁶

John Rutledge and Charles Pinckney from South Carolina immediately issued a threat to withdraw its support of a constitution that did not protect its interests in slavery, including the slave trade.⁷⁷ The convention quickly adjourned until the following day when the debate grew heated once again. Baldwin soon joined his neighboring South Carolina delegates in defending against any potential constitutional threat against slavery. “Georgia was decided on this point,” he insisted. Baldwin was upset at the prospect of the federal government power to restrict slavery. This placed

⁷⁴ “Notes...Madison” in *Ibid.*, 305.

⁷⁵ *Ibid.*, 164; “Notes...Yates” in *Ibid.*, 826-828.

⁷⁶ “Notes...Madison” in *Ibid.*, 588.

⁷⁷ *Ibid.*, 588-589.

Georgia temporarily in a precarious position in the convention in light of Georgia's need for a strong national government. Yet, the issue of slavery, Baldwin believed, was one of "a local nature" and was not within the jurisdiction of the "national objects" considered in a new constitution. In the midst of this debate, Baldwin made an intriguing comment that may have reflected his personal sentiments. "If left to herself," he said of Georgia, "she may probably put a stop to the evil." It was, however, a local matter and not subject to national intrusion. Alone among the other states, South Carolina and Georgia held the new national constitutional arrangement for ransom, and the price was slavery. The other states paid the ransom because, according to Roger Sherman of Connecticut, "it was better to let the S. States import slaves than to part with them, if they made that a sine qua non [without which it could not be]."⁷⁸

On 17 September 1787, the convention passed a resolution submitting the new constitution to the Confederation Congress. William Few and Abraham Baldwin, as the only two delegates from Georgia present, signed the final draft of the constitution. As members of the Confederation Congress, they returned to their seats and were present at the body's consideration of the proposed constitution. The convention's resolution specifically did not require Congress's approval, but rather merely requested that it send it to the several states for ratification by specially elected conventions for that purpose. The resolution also clearly lacked the deferential tone of the Annapolis Convention's request to the Congress for approval for the Philadelphia Convention. Even George Washington's letter, as President of the convention, to the President of the Congress in conjunction with the new Constitution, polite as it was, did not mention any need for approval

⁷⁸ Ibid., 589-593. Also see Coleman, 269.

from the Confederation Congress.⁷⁹ Nevertheless, the Congress “Resolved Unanimously” to submit the document to the various state conventions for ratification. A circular letter from the Secretary of Congress went to the state governors, requesting that they present the proposed constitution to their respective legislatures “in order that it may be submitted to a Convention of Delegates chosen...by the people of the State” for their consideration.⁸⁰

Why were special conventions required? The provision for referring the new constitution to special assemblies of the states had sparked discussions over the summer sessions on the reasoning behind the distinctions between state legislatures and constitutional conventions. Oliver Ellsworth, a delegate from Connecticut, addressed his distinction of these two bodies on 20 June. He proposed that any plan drafted by the Federal Convention be considered “an amendment to the Articles of Confederation.” As such, the state legislatures possessed the authority to ratify it. Ellsworth did not trust conventions of the people because they were uncontrollable and subject to the fleeting passions of an uninformed and discontented citizenry. Popular conventions, he asserted, “were better fitted to pull down than to build up Constitutions.”⁸¹ This was, in many respects, a troublesome issue for the delegates. They often struggled with self-doubts about their own authority and the legitimate scope of their convention. As early as 9 June, attacks on the powers of the convention, such as Ellsworth had voiced, revealed the controversial nature of a plan for proportional representation in a national legislature. William Paterson, delegate from New Jersey,

⁷⁹ “Resolution of the Federal Convention Submitting the Constitution to Congress, September 17, 1787” in Tansill, 1005-1006; “Letter of the President of the Federal Convention, Dated September 17, 1787, to the President of Congress, Transmitting the Constitution” in *Ibid.*, 1003-1004. Coleman, 269.

⁸⁰ “Resolution of Congress of September 28, 1787, Submitting the Constitution to the Several States” in Tansill, 1007; “Circular Letter of the Secretary of Congress, Dated September 28, 1787, Transmitting Copy of the Constitution to the Several Governors” in *Ibid.*, 1008.

⁸¹ “Notes...Madison” in *Ibid.*, 240-241.

objected to any proposal that weakened the voice of smaller states. He then charged that the present convention had no authority to pursue any plan other than a revision of the Articles of Confederation. This, he said, was “the proper basis of all the proceedings of the Convention” and any other scheme would result that “we should be charged by our Constituents with usurpation.” He cautioned, “We must follow the people; the people will not follow us.”⁸²

George Mason saw the convention in broader terms. He concluded that the Confederation, in theory at least, was “dissolved by the appointment of this Convention to devise a better one.” The Confederation Congress had proven unable to amend or reinvent itself and, therefore, a special convention was necessary.⁸³ Madison and Alexander Hamilton advocated the power of the convention to change radically the structure and character of the Union. According to Madison, the convention must pursue whatever “was right & necessary in itself for the attainment of a proper Governmt.”⁸⁴ Pennsylvania’s James Wilson argued that it was within the scope of the convention to consider all plans, but noted its limitations for adopting them. “With regard to the *power of this Convention*, he conceived himself authorized to *conclude nothing*, but to be at liberty to *propose anything*.” These men held that they were free to design and present any constitutional plan they prepared, but, ultimately, it required ratification by the people.⁸⁵ The question was, who would ratify it, the people or the states.

Roger Sherman and Elbridge Gerry argued that the ratification of the new Constitution should fall to the state legislatures. Madison and Rufus King immediately countered. Madison’s

⁸² Ibid., 181-182. John Lansing, Jr. expressed similar sentiments. See Ibid., 207-208.

⁸³ Ibid., 150-151.

⁸⁴ For Madison, see Ibid., 193, 226-234. For Hamilton, see Ibid., 215-225.

⁸⁵ Ibid., 211.

distrust of state governments led him to defend popular ratification. Furthermore, he believed, ratification by the state legislatures mirrored the defects of the Confederation. If state legislatures made the Union, they could as easily unmake it. On the other hand, if the constitution was an agreement among the people assembled in conventions, its future was more secure. For King, a convention of the people would have had fewer objections to a constitution that limited state powers than their legislatures.⁸⁶ The people were the proper judge of a new constitution, according to Mason. “The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and can not be greater than their creators.”⁸⁷ Nathaniel Gorham said, “Men chosen by the people for the particular purpose, will discuss the subject more candidly than member of the Legislature who are to lose the power which is to be given up to the Genl. Govt.”⁸⁸ Here, then, is the mature articulation of the idea that special conventions were necessary for the legitimate construction of constitutional government. From its earliest expressions in the seventeenth-century English Civil War by the Levellers, through the awkward state experiments during the American Revolution, the delegates at the Federal Convention at Philadelphia in 1787 finally discovered a practical means of applying a fundamental ideal of political legitimacy to the creation of a republican government.

The first state convention to ratify the United States Constitution was Delaware on 7 December 1787. Georgia was the fourth state, and the first southern state, to ratify it on 2 January 1788.⁸⁹ As always, the state attempted to balance its needs for the support of a strong national

⁸⁶ Ibid., 156-157.

⁸⁷ Ibid., 434.

⁸⁸ Ibid., 435.

⁸⁹ Ibid., 1009, 1014-1015. Albert B. Saye, *New Viewpoints in Georgia History* (Athens: University of Georgia Press, 1943), 224.

government with its desire for independent sovereignty. Georgia Governor George Mathews received a copy of the proposed constitution in the capital at Augusta along with formal letters of notice from Baldwin and Few on 10 October 1787. Circumstances in the state had turned drastic as war with the Creeks became eminent. The Assembly ignored the call for a special convention for almost a week, instead focusing on mobilizing for the impending war. Finally, on 26 October, the legislature briefly considered and passed a resolution for a ratifying convention. The resolution proved unique among other states' calls for conventions. It authorized the special convention to consider the proposed constitutional plan of union, "and to adopt or reject any part or the whole thereof." This meant that Georgia presumed to itself the capacity to ratify the federal Constitution partially, discarding those segments not acceptable. Upon learning this, George Washington responded, given "the powerful tribes of Indians in its rear and the Spaniards on its flank," if the state does not "embrace a strong *general* government, there must, I should think, be either wickedness or insanity in their conduct." In addition, the resolution suspended the state constitution's provision for disallowing dual officeholding, which then allowed public officials to become members of the convention.⁹⁰

Reactions to the proposed constitution were mixed. James Habersham wrote in a letter to his son that it indeed had "its defects," but "it is well calculated to promote the general welfare" and "is that any government is better than the one we have and under which I am certain we could not much longer exist as a people."⁹¹ Though giving his support, Joseph Clay despaired by saying

⁹⁰ Jensen, *Documentary History*, Vol. III, 221, 227-228. For Washington's comments, see "George Washington to Samuel Powel, Mount Vernon, 18 January" in *Ibid.*, 263.

⁹¹ "James Habersham to John Habersham, Augusta, 17 October" in *Ibid.*, 231-232.

that its “powers are great, but of two evils we must choose the least.”⁹² More guarded support came from “A Georgian,” who generally favored the new constitution, but, in a local newspaper, urged the convention to “provide remedies” against dangers of burdensome taxation, standing armies, and unfair representation presented by it.⁹³ Lachlan McIntosh offered similar advice to his friend John Wereat. While he praised the delegates as “the wisest and best,” he warned,

If we bind ourselves and our posterity now, by adopting this Constitution without any conditions or limitation of time, any efforts made thereafter for redress of grievances must be termed rebellion, as it will be impossible to obtain amendments in the mode proposed when the majority, which is observed will ever be against the Southern States, find it in their interest to continue them, and men of influence are once fixed in their saddles...It is known t have been the intention of the Eastern and Northern States to abolish slavery altogether when in their power...Let us therefore keep the proper time for it in our own power while we have it.⁹⁴

Georgian went to the polls at the next general election, 4 December, 1787, which included ballots for delegates to the state’s ratification convention for the new Constitution. The special convention finally reached a quorum in Augusta on Friday, 28 December. Out of the thirty-three delegates elected to the convention, only twenty-six attended.⁹⁵ The next day, the delegates deliberated the proposed federal Constitution and, after one day of consideration, adopted it unanimously on 31 December. There was no mention in the proceedings or the Deed of Ratification about objections, modifications, or amendments. The Deed stated simply, “...We, the Delegates of the People of Georgia in Convention...Do, in virtue of the powers and authority to Us...in behalf of ourselves and our Constituents, fully and entirely assent to, ratify and adopt the said Constitution.”⁹⁶ Clearly, Georgia did not share the concerns for a bill of rights, as many of the

⁹² “Joseph Clay to John Pierce, Savannah, 17 October” in *Ibid.*, 232.

⁹³ “A Georgian [in the] Gazette State of Georgia, 15 November” in *Ibid.*, 243.

⁹⁴ “Lachlan McIntosh to John Wereat, Skidoway Island, 17 December” in *Ibid.*, 260.

⁹⁵ Jensen, *Documentary History*, 269-270.

⁹⁶ “The Georgia Deed of Ratification, 2 January” in *Ibid.*, 278-279.

other states had demanded. Moreover, Georgia was one of three states, along with Delaware and New Jersey, that unanimously approved the United States Constitution.⁹⁷

The state was too preoccupied with other immediate issues to invite much debate between its upcountry and low-country political factions or to celebrate its ratification of the Constitution, much less to contemplate its far-reaching implications for sovereignty.⁹⁸ Georgia's over-zealous pursuit for control over its frontier had several adverse effects throughout the 1780s. Legal ambiguities over state boundaries with South Carolina led to increasing disputes by 1785. Both states accused the other of issuing land grants to territories claimed by both. Commissioners attempted to settle the issue, but to no avail and turned the problem over to the Confederation Congress in hopes that a federal court would rule on it. When the Congress informed both states that the court would hear their case in New York and that they should prepare to bear the burden of the costs for the proceedings, Georgia and South Carolina renewed direct negotiations in Beaufort on 24 April 1787. Five days later, the states resolved the matter and signed an agreement, known as the Convention of Beaufort, which established mutually acknowledged territorial boundaries, possession of coastal islands, and navigation rights. Their respective legislatures ratified the agreement in February of 1787.⁹⁹

⁹⁷ In fact, Georgia, Connecticut, and Massachusetts did not ratify the Bill of Rights until 1939 as part of the celebration of 150th anniversary of the first ten amendments. See Albert B. Saye, "Georgia: Security through Union" in Patrick T. Conley and John P. Kaminski, eds., *The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution* (Madison: Madison House, 1988), 90; Jensen, *Documentary History*, 285. For the unanimous vote, see Phillips, 22.

⁹⁸ The only comprehensive attempt in recent decades to examine the political divisions in Georgia during the late eighteenth and early nineteenth century is George R. Lamplugh, *Politics on the Periphery: Factions and Parties in Georgia, 1783-1806* (Newark: University of Delaware Press, 1986). With all of the political developments in the state and national levels during this era, the field is ripe for more scholarship.

⁹⁹ Coleman, 257-259.

Despite its inability to effectively to secure and protect its frontier, Georgia demonstrated its willingness to pursue aggressive and risky ventures to settle it. Two examples made this clear. The state legislature ambitiously attempted to establish a new county, Houstoun County, on lands in the Muscle Shoals area of the “District of Tennessee.” Private speculators had secured the lands by a cession from the Cherokees and petitioned Georgia for support. Delaware Indians and the Spanish began rapidly to settle the territory, which further accelerated the state’s ambitions for acquiring this new county. By 1786, however, the boundary disputes with South Carolina, the impending war with the Creeks, and the inability to count on support from its new ally, the besieged state of Franklin, Georgia abandoned the venture.¹⁰⁰

Another episode reflected the state’s impractical pursuit of settling its frontier. In 1785, Georgia created Bourbon County. What made this endeavor so fantastic was its location on the Mississippi River, far removed from any prudent means of state support politically, economically, or militarily. The Spanish had declared the land in their possession and, in fact, were negotiating with the Confederation Congress’s diplomat, John Jay, over its rights to this territory. Georgia, nevertheless, moved forward with its plan, appointing thirteen justices of the peace. The initial instigator, Thomas Green an ambitious speculator from the region, did not heed the caution from the Georgia Assembly to refrain from agitating either the Native Americans or the Spanish. Instead, he overtly defied the advice and confronted the Spanish commandant in the area with his intentions to create a county government despite objections to the contrary. Finally, Georgia

¹⁰⁰ Coleman, 260-261. Franklin was a “temporary state” which attempted to detach itself from North Carolina in 1784. Despite its efforts to militarily secure its status as an independent state, the episode only lasted four years. After all of North Carolina’s expense in reestablishing the area in the western parts of its boundaries, it ceded the lands to Tennessee in 1789.

delegates to the Confederation Congress disavowed Green's actions due to the progress Jay had made in his negotiations with the Spanish. The plan suddenly halted.¹⁰¹

Georgia, however, had the opportunity to avoid these setbacks. In 1780 and again in 1786, the Congress requested the states cede their western territories, which stretched to the Mississippi River from its northern and southern state boundaries, to the national government. Congress had received the cession of the northern frontiers in the early 1780s, which led to the Northwest Ordinance of 1787. South Carolina had complied soon after the Beaufort Convention, but Georgia remained reluctant. Finally, the state assembly acted, but its cession, like many of its frontier policies, was illogical and impractical. In 1788, the Georgia legislature finally decided to cede only the southern half of its frontier (140 miles north from the thirty-first parallel of latitude) to the Mississippi River, keeping to itself the territories stretching west from the upper half of the state. This effectively isolated a strip of southwestern frontier from the rest of the country. The legislature further agreed to cede this remote land only under certain conditions, including that Congress count the state money spent on relations with the Native Americans against the state's debt to the national government and that the Congress officially acknowledge the remaining territory as exclusively belonging to the state. Congress refused to accept the conditions and on the grounds that the territory ceded was entirely unconnected with any other lands of the United States and the required credit against the state's debt was unreasonable. Furthermore, other states had not

¹⁰¹ Jensen, *Documentary History*, 206; Coleman, 261-263. The only extensive examination of this have been Edmund C. Burnett, "Papers Relating to Bourbon County, Georgia, 1785-1786" in *American Historical Review*, Vol. 15, No. 1, 66-111 and "Papers Relating to Bourbon County, Georgia, 1785-1786" in *Ibid.*, Vol. 15, No. 2, 297-353.

made similar conditions. Spurned by the offer, Georgia did not make any cession of its lands until 1802. By then, its frontiers had caused the state more difficulties than it was worth.¹⁰²

These examples of Georgia's eagerness to settle its frontier and its inept approach to accomplish its goals revealed its economic desperation, the immaturity of its political institutions, the pressure of its conflicts with the Native American populations, and its short-sighted policies toward state development throughout much of the 1780s. It also demonstrated many of the reasons that Georgia supported and initially accepted a constitutional plan for a strong national government. It was the youngest, least developed, and most dependent state of the Union. By 1788, Georgia was ready to make the constitutional adjustments necessary to its stability. Its ratification of the new federal Constitution and the subsequent drafting of a new state constitution in 1789 was evidence of that readiness. Dangers to Georgia on its frontier had been one of the primary motivations for the state to join a union with a strong central government. It was ironic that the same frontier became a source of great tensions with the national government it had been so eager to adopt.¹⁰³

Calls to amend the state constitution began in the early 1780s. Early in 1784, a series of anonymous articles appeared in the *Georgia Gazette* under the title "Address to the Inhabitants of the State of Georgia." In addition to suggesting a smaller assembly, the critic argued that the unicameral legislature had no substantial checks on its power and that larger counties were under-represented. By the time the Federal Convention had assembled in Philadelphia, the Georgia Assembly had received petitions from a number of county governments and grand juries for state

¹⁰² Jensen, *Documentary History*, 211, 288; Coleman, 264-265.

¹⁰³ Lamplugh, 64.

constitutional revision. The issues ranged from changing the process of electing the governor to a more fluid schedule of court proceedings.¹⁰⁴ Finally, after a special convention had ratified the federal Constitution, the assembly, on 30 January 1788, called for a revision to the state constitution.

Georgia was among the five states that had provided provisions in their revolutionary constitutions for special conventions to amend them.¹⁰⁵ The state proceeded in 1788 with an unusual convention process. In January 1788, the Georgia Assembly passed a resolution that, upon the ratification of the federal Constitution by nine states, called for the legislature to choose “three fit and discreet persons from each county to be convened at Augusta” and revise the state constitution for accommodation with the new federal Constitution. The legislature also limited this convention “to take under their consideration the alterations and amendments that are necessary...and...consistent with the interest and safety, and best secure the rights and liberties of the citizens thereof.” Thus, it only had the authority to draft and propose constitutional revisions. The resolutions also provided for another convention of delegates elected by the counties “for the sole purpose of adopting and ratifying, or rejecting” the proposed changes. Interestingly, the Assembly ignored the constitutional amending process provided in the Constitution of 1777.¹⁰⁶ The impression left by these actions was the legislature’s concern that a body chosen by the Assembly to alter the state constitution could not legitimately ratify its own work. The process, however, proved cumbersome.

¹⁰⁴ Ibid., 57.

¹⁰⁵ The others were Pennsylvania, Vermont, Massachusetts, and New Hampshire. See Dodd, 42-43.

¹⁰⁶ Saye, *New Viewpoints*, 228-229; “Assembly Calls Convention to Revise the State Constitution, 30 January 1788” in Jensen, *Documentary History*, 290-292.

By the end of July 1788, eleven states had ratified the federal Constitution and the following November, the first convention to amend the Georgia Constitution of 1777 met in Augusta. No journal of this convention has survived. The delegates, chosen by the state legislature, deliberated for sixteen days and Governor George Handly, chosen as a delegate from Glynn County, presided as president of the body. The convention drafted a new state constitution and submitted it to the Georgia legislature for referral to another ratification convention. In addition, it printed five hundred copies of the proposed constitution and sent them to various county officers for their examination. County elections to the ratification convention ensued on the first Tuesday of December 1788.¹⁰⁷ This convention, however, exceeded its mandate. This was hardly surprising since it followed the example of the legislature that established it, which had disregarded the legitimate amending process, and the Federal Convention, which had disregarded its charge to amend the Articles of Confederation.¹⁰⁸ Instead of ratifying the state constitution submitted by the previous convention, the body, with only five delegates from the previous convention in attendance, met in Augusta on 4 January 1789 and further amended the document. After another sixteen-day session, the convention adjourned until the second Tuesday in June and submitted its work to the people of Georgia again.¹⁰⁹

Frustrated with such a prolonged process, the Georgia Assembly reacted by passing an act that “earnestly recommended” counties hold yet another election on the first Monday in April for a

¹⁰⁷ The official notification from the Secretary of Congress that nine states had ratified the new constitution arrived to Georgia Governor George Handly on 6 October 1788. See Stevens, 388-390.

¹⁰⁸ See Saye, *New Viewpoints*, 228-229.

¹⁰⁹ *Ibid.*, 229-230; Stevens, 389-390.

new convention to ratify the amendments already proposed and adopt the constitution.¹¹⁰ Ten of Georgia's eleven counties complied, the exception being Camden. Fourteen delegates elected had not participated in either of two previous conventions. The new convention met on 4 May 1789 in Augusta and, after only two days, adopted a new state constitution, "which was nearly identical with that framed by the first Convention" and disregarding the efforts of the second convention.¹¹¹ An eleven-gun salute, one for each of the states that had ratified the federal Constitution to date, followed the official delivery of the document to Governor George Walton.¹¹²

The Georgia Constitution of 1789 dramatically changed the structure of state government. It utilized many of the features drafted in the federal Constitution and, therefore, departed from the substance and character of the Constitution of 1777. Although the 1777 constitution had created a Governor's Council along with the House of Assembly, the council had no legislative authority. Under the new constitution, the legislature divided authority between a State Senate and a House of Representatives, collectively known as the General Assembly.¹¹³ Also reflective of the federal arrangement, the counties had equal representation in the Senate. The state House of Representatives, however, remained fixed by the constitution, ranging from two to five members per county.¹¹⁴ The senate would elect the governor from three selections by the lower house.¹¹⁵ Although since the revolutionary provincial assemblies Georgia had enacted relatively liberal suffrage requirements, the 1789 constitution was even more inclusive of the voting population. In

¹¹⁰ Although the legislature proposed its own additional amendment after the second convention had adjourned. "Resolution of the House of Assembly of January 30, 1788" as quoted in Saye, *New Viewpoints*, 230.

¹¹¹ Stevens, 391.

¹¹² Ibid.

¹¹³ Georgia Constitution of 1789, Article I, Section 1.

¹¹⁴ Ibid., Article I, Sections 2 and 6.

¹¹⁵ Ibid., Article II, Section 2.

fact, as Albert B. Saye has noted, taken literally, the franchise article opened the door for women to vote. There were no records, however, that anyone interpreted it this radically.¹¹⁶

The new state constitution also expressed the concerns about future amending processes. Specifically, it called for another convention to meet in 1794 “for the purpose of taking into consideration the alterations necessary to be made in this constitution.” Once again, the counties would elect three delegates, who, if two-thirds agreed, would proceed with the amending process. The same convention would have the power to adopt and ratify those changes by a simple majority vote of the delegates.¹¹⁷ Thus, in the three constitutional documents enacted in Georgia since the American Revolution, the voting population of the state had never ratified any of them and, as evidenced by the new constitution, the idea still had no appeal to the state lawmakers.

The 1790s was a period of political transformation in Georgia, as it was nationally. Some scholars of this period in Georgia have emphasized security as the primary influence on the state’s political development in the last two decades of the eighteenth century.¹¹⁸ Others, such as George R. Lamplugh, have argued that the contentious nature of the state’s politics in the early years of the American republic was a result of growth and expansion, or the divisions between the “Upper

¹¹⁶ Whereas the 1777 constitution afforded the franchise to “All white males, of the age of twenty-one years, and possessed in his own right of ten pounds value, and liable to pay tax in this State, or being of any mechanic trade, and shall have been resident six months in this State...” see Constitution of 1777, Article IX. The Constitution of 1789, on the other hand, stated suffrage requirements much more broadly: “The electors of the members of both branches of the General Assembly shall be citizens and inhabitants of this State, and shall have attained to the age of twenty-one years, and have paid tax for the year preceding the election, and shall have resided six months within the county.” See Saye, *New Viewpoints*, 232.

¹¹⁷ Constitution of 1789, Article IV, Section 7.

¹¹⁸ For example, see Edward J. Cashin, “Georgia: Searching for Security” in Michael Allen Gillespie and Michael Lienesch, eds., *Ratifying the Constitution* (Lawrence: University Press of Kansas, 1989), 93-116; Albert B. Saye, “Georgia: Security through Union,” 77-92.

Country people” and the “Lower Country people.”¹¹⁹ Not expressly stated in these arguments, however, was another factor that greatly impacted the political and constitutional character of Georgia from its ratification of the federal Constitution to secession. That factor was the state’s assimilation into the Union and the conflicting visions over local self-determination politically, culturally, and economically. Though not apparent immediately, a series of events began in the 1790s that cooled Georgia’s prior enthusiasm for a strong national government. Certainly, the growing security as the state matured and its setbacks on the frontier had much to do with it. At the root, however, there were two entangled issues that could not and would not easily be resolved between Georgia and the Union—sovereignty and slavery. These issues would conflate as time passed, but first, especially in the 1790s, sovereignty emerged as the cause for alarm.

Georgia demonstrated a general optimism of the Union forged by the new federal Constitution. Speaking to a congregation at Christ Church in Savannah on 4 July 1788, William Pierce, one of the state’s delegates to the Federal Convention, voiced this optimism. The American Revolution, he said, had demonstrated “how to search into, to distinguish, and to comprehend, the principles of physical, moral, religious and civil liberty.” “Enough for us, my friends,” he continued, “that we have been the actors in a great scene, intended for the good of mankind.” He urged his audience “to look back and take a view of the principles on which our revolution was founded; seriously observe the objects for which we contended, and examine well the benefits which the promise to society.”¹²⁰ The new order created by the United States Constitution, many Georgians believed, was the fulfillment of the revolutionary principles won against the war with

¹¹⁹ Lamplugh, 52.

¹²⁰ “Extract from the Oration of Major William Pierce, Delivered at Christ Church, Savannah (Georgia) on the 4th of July, 1788” reprinted in the *Providence Gazette*, 6 September 1788, Vol. XXV.

Britain. As such ideals went into their practical application established by the newly adopted federal plan, partisanship and sectionalism tempered that optimism; an optimism associated with a new national identity.

Although Georgians' political identity remained relatively fluid immediately following the American Revolution, by the 1790s, they began to exhibit a sectional character to their politics.¹²¹ In addition to the Creek War, other internal affairs diverted Georgia's attention to national concerns throughout the 1780s. The political divisions between the traditional leadership in the more conservative low-country and the growing dominance of radicals in the up-country produced rabid passions over issues of policies toward Tories, property confiscations, representation in the state legislature, the state economy, and expansion.¹²² Ratification of the federal Constitution, however, sparked some measure of reconciliation, even if superficially, between the factions, as they were bent upon embracing the promise of peace with the Creeks that a strong Union appeared to promote.¹²³ That promise suddenly dimmed in 1790, more than a year after the new system of government went into practice at the national and state level.

President George Washington met with Alexander McGillivray, the titular leader of the Creeks, in August of 1790. The impetus for the meeting was the Creek War in the southeast and ownership of the territories below the Ohio River. The ceremony and respect afforded to the Creeks in New York, along with the concessions Washington made to them in the resulting

¹²¹ William W. Abbot has noted that the immigration from other state residents and the rapid movement of populations from the low-country to up-country settlements in the period "retarded the development of local attachment and pride among voters." See William W. Abbot, "The Structure of Politics in Georgia" in *The William and Mary Quarterly*, 3rd Ser., Vol. 14, Issue 1, 56.

¹²² Cashin, "Georgia: Searching for Security," 95.

¹²³ *Ibid.*, 108-109.

agreement, offended Georgians. No one had represented the state officially, had signed the Treaty of New York, as it was known, or appears to have been consulted on any of its provisions. In effect, the treaty with the Creeks ceded lands in Georgia east of the Oconee River that the state had already acquired from them in the 1786 Shoulderbone Treaty. Washington, for his part, returned to the Creeks the lands between the Altamaha River and St. Mary's River previously ceded to Georgia in 1785, as well as a promise for the retention of their lands west of the Oconee River. This episode quickly reverberated an Antifederalist tone in a state that previously had been solidly Federalist.¹²⁴ Furthermore, Georgia's primary incentive for unanimous consent to the new federal Constitution remained unfulfilled. The state's aggressive policy against the Creeks and Cherokees throughout the 1790s attracted rebukes from Washington until the president finally commissioned another treaty in 1796 at Coleraine in Camden County, Georgia. The meeting of Georgia officials, including James Jackson and federal commissioners with the Creeks at Coleraine, accomplished little except a concession by the Native Americans to abide by the Treaty of New York. The episode only furthered the state's frustrations with the federal management of relations with the Native Americans.¹²⁵

On 25 December 1794, the Georgia legislature called for elections to a constitutional convention, consistent with the article mandating it in the Constitution of 1789. The convention met on the first Monday of May 1795 in Louisville, Georgia. Delegates from each of the twenty counties assembled and made several changes to the constitution. They established new apportionment numbers for the county representatives and trimmed the term of state senators from

¹²⁴ Ibid., 109; Lamplugh, 64-65.

¹²⁵ Stevens, 443-456.

three years to one. They also changed the method of elections by the legislature, including that of the governor. Instead of a nomination process by the House of Representatives and subsequent election by the Senate, the new rule provided for a joint election by both houses. In addition, they moved the capital from Augusta to Louisville. Finally, once again, the state constitution provided for the election of delegates in 1797 for a convention to consider amendments. Consistent with the 1789 convention, they empowered the next convention with the “power to proceed to, and agree on, such alterations and amendments as they may think proper.”¹²⁶

One view of the scope and powers of constitutional conventions in Georgia appeared during this time in an opinion piece in *The Augusta Chronicle*. It advised the delegates to the 1795 convention that it was unnecessary “to define your powers.” The 1787 convention in Philadelphia and the 1789 state constitutional convention had provided the “maxims” for such bodies. Their responsibilities, therefore, were beyond reproach, as “the framers of the constitution form the highest and greatest court, because they draw the line beyond which legislative, executive, and judicial powers shall not extend.”¹²⁷ No commentaries had appeared in the public domain in Georgia that asserted such a broad interpretation of constitutional convention authority. It was telling that the author had referred first to the Federal Convention as a precedent and not to the revolutionary era constitution-adopting assemblies. The Philadelphia convention had made an impression on the political mind that a body of delegates in pursuit of the creation of a new

¹²⁶ See “Amendments to the Constitution of 1789” in Walter McElreath, *A Treatise on the Constitution of Georgia: Giving the Origin, History and Development of the Fundamental Law of the State, with all Constitutional Documents Containing such Law, and with the Present Constitution, as Amended to date, with Annotations* (Atlanta: Harrison Company, 1912), 249-250.

¹²⁷ *The Augusta Chronicle*, 23 May 1795, quoted in Saye, *A Constitutional History*, 147.

constitutional order, being approved by the people either before or after the fact, was unaccountable to other government institutions.¹²⁸

Simultaneous with the 1795 convention in Louisville, an explosive controversy began unfolding in Georgia. The Yazoo Land Fraud of 1795 was another example of the state's ambitious pursuit to capitalize financially on its frontier lands. After the Confederation Congress refused Georgia's cession of its distant lower territories, the state quickly began to ponder alternative schemes to parlay its frontiers as a windfall for profits. As the Bourbon County spectacle had demonstrated, Georgia did not have the resources necessary to settle and protect its western frontiers. Stubbornly, it refused to offer another cession to Congress. In 1789, another opportunity had presented itself in the form of corporate speculators. Several companies began to court the state government for access to its vast western lands that extended to the Mississippi River. In December 1789, the legislature passed a contentious bill selling almost sixteen million acres of Georgia frontier to three separate speculators for just over a mere \$200,000. The companies were the South Carolina Yazoo Company, the Virginia Yazoo Company, and the Tennessee Yazoo Company. The sale, however, fell apart for several reasons. The primary factor was the inability of the companies to pay the state in the required gold and silver. Other influences that affected the momentum for the sale included claims to the territory by the Spanish, aided by Native Americans, and the further complications of claims due to the Treaty of New York with Washington. Consequently, it steadily grew more difficult to entice organized settlements for investors.

¹²⁸ It was not until 1832 that Georgia first considered popular ratification of their constitution or amendments. See Lobinger, 224.

Although speculators attempted to sue Georgia over the failed sale, the adoption of the Eleventh Amendment to the United States Constitution prevented suits against a state.¹²⁹

A more ambitious plan for the sale of the Georgia frontier proceeded in 1794-1795. This time four new companies purchased more than 30 million acres of land for about a cent and a half an acre or \$490,000. Many state legislators suddenly became shareholders in at least one of the four companies while some even accepted bribes in cash.¹³⁰ One historian has described this Yazoo land sale as “the watershed of Georgia’s post-revolutionary political history.”¹³¹ Whether or not it met that level of historical importance generally, the episode revealed the rampant corruption in the state government and, consequently, did have a major impact on the character of Georgia politics late in the eighteenth century.

Popular sentiment rallied against the Yazoo sale, producing mass demonstrations and publicized denunciations of the corruption and greed among Georgia’s political leaders. One man, in particular, became the popular face of the anti-Yazooists, as they called themselves: James Jackson.¹³² Jackson had earned his popular reputation as a young firebrand patriot during the American Revolution. He was eighteen years old when he joined the Georgia militia and assisted an attack on a Tory powder magazine in Savannah, only one month after the battles at Lexington

¹²⁹ C. Peter Magrath, Yazoo, *Law and Politics in the New Republic: The Case of Fletcher v. Peck* (Providence: Brown University Press, 1966), 3-6; Lamplugh, 66-67.

¹³⁰ Saye, *A Constitutional History*, 147-154; Magrath, 5-7.

¹³¹ Lamplugh, 104.

¹³² Several scholars have examined Jackson’s political career in different lights. Lamplugh’s *Politics on the Periphery* uses Jackson as a central figure in the factious politics of the late eighteenth century. The most cited biography of Jackson is William Omer Foster, Jr., *James Jackson: Duelist and Militant Statesman, 1757-1806* (Athens: University of Georgia Press, 1960). A more recent and less analytic article is Marie Sauer Lambremont, “Rep. James Jackson of Georgia and the Establishment of the Southern States’ Rights Tradition in Congress” in Bowling and Kennon, *Inventing Congress*, 191-207.

and Concord.¹³³ Despite his proclivity for theatrical argument and personal affronts, his politics followed the more conservative Whig faction in Georgia. He had the honor of representing the state in the First Federal Congress in the House of Representatives, but lost his reelection bid to Anthony Wayne. So troubled by this loss, he vigorously pursued a campaign to prove that Wayne had won by fraud, and, consequently, had his opponent removed from office. In 1792, Jackson became a member of the United States Senate, where his volatile personality captured much attention and earned him some disfavor among his colleagues. Nevertheless, he effectively articulated arguments defending Georgia's, and more broadly southern, interests against measure of special benefit to the north.¹³⁴

Jackson's most dramatic moment came in 1795, when he resigned from the Senate to return to Georgia, run for the state legislature, and fight the Yazoo land sales. By the time he reached Georgia in June from Philadelphia, the Yazoo controversy was at full throttle. The May constitutional convention, in which he had hoped to participate, had advised the legislature to investigate the matter, based on the numerous pleas for the convention delegates to void the sale.¹³⁵ In November 1795, Jackson won election to the legislature along with other candidates who had campaigned against the land sale and its corruption of the state government.¹³⁶ The Rescinding Act of February 13, 1796 declared the sale void, but did not close the issue. Speculators attacked the

¹³³ Foster, 2.

¹³⁴ Lamplugh 91; Foster, 90-104. Lambremont has used the records in Linda Grant De Pauw, *Documentary History of the First Federal Congress of the United States of America, March 4, 1789 -March 3, 1791* (Baltimore: Johns Hopkins University Press, 1972) offers some insights into Jackson's positions on several issues. For instance, he opposed import taxes on slaves, opposed the assumption of state war debts by the national government, argued that African-Americans were better served in slavery than out of it, opposed high tariffs, and supported a controversial bill that opened congressional sessions to the public. See Lambremont, 194-205.

¹³⁵ This is another indication of the opinion that the constitutional convention possessed superior powers. See Foster, 109; Saye, *A Constitutional History*, 147.

¹³⁶ Magrath, 11; Saye, *A Constitutional History*, 151.

act and filed suits in various courts. The issue was never resolved until, in 1802 during Thomas Jefferson's presidency, Georgia finally ceded its territories west of the Chattahoochee River to the federal government.¹³⁷

James Jackson became governor of Georgia in 1798. During that year, he also served as a delegate to the constitutional convention called by the body in 1795. In May, the delegates chosen during the general election gathered once again in Louisville. The Yazoo affair was still fresh on the minds of the delegates, especially for Jackson. Consequently, one major amendment was the prohibition of sales of lands by the state to any and all parties until such lands had been properly divided into counties and Native American claims settled. The convention enhanced the powers of the governor and specified additional structures and responsibilities to the judiciary. The new constitution also introduced a new amending process. Specifically, it required that a bill for amending the constitution must pass two-thirds of both houses of the legislature after its reading three times on three separate days in each house. It further required the bill's publication "at least six months previous to the next ensuing annual election for members of the general assembly." The process repeated the introduction, separate readings, and passage by two-thirds majority of both houses in the new legislature before the amendments could go into effect.¹³⁸

This amendment process took the convention out of constitutional requirements. Several factors could explain this change. First, the expressed view that these conventions possessed supra-legal authority had impressed upon many the potential for radicalism, political abuse, and constitutional unpredictability by an unruly delegation. Another potential motive, ultimately

¹³⁷ Ibid., 152-153.

¹³⁸ Stevens, 498-501; Saye, *A Constitutional History*, 155-163; McElreath, "Constitution of 1798", 266-267.

connected to the first reason, was the fear of an increasingly democratic process. The state had grown rapidly and the liberal franchise could have led to convention delegates of an “undesirable sort.” The change also may have reflected a more efficient method of constitutional change, especially given that the size of the state continued to increase at a strong pace. All of these reasons possibly had their influence on the new amending process, but Georgia’s constitutional conventions did not end in 1798.

From the Confederation era to the Federal Union in 1798, Georgia’s constitution-making ventures followed no distinctive pattern. The ratification of the Articles of Confederation by the Assembly, the ratification of the federal Constitution by special convention, the three conventions necessary to adopt the Constitution of 1789, and the required conventions of 1795 and 1798 demonstrated the evolving thinking about legitimacy and authority. Even John A. Jameson in his nineteenth-century study of conventions struggled to make a firm conclusion on the ratification of the Articles. He called the method of legislative ratification “proper” and “entirely legitimate” as “a league between States.” However, he immediately recounted, calling it “not legitimate, for it wanted the sanction of the people, who, as distinct from their governments, are alone the constituents, or have power to ratify a Constitution.”¹³⁹ Jameson, however, eagerly defended the Federal Convention of 1787 against criticism that it superseded its mandates by creating a new constitution. He maintained that its ends justified the means, though carefully worded his claim. The convention “felt itself constrained by necessity to disregard” its instructions from the Confederation Congress. Jameson quickly cautioned that, while “obedience...under the circumstances to be impossible,” the convention did not provide “as a precedent to establish the

¹³⁹ Jameson, 147.

right of such a body to disobey the Act that convened it.”¹⁴⁰ Thus, Jameson struggled to balance his justification of the revolutionary acts of the Federal Convention while attempting to discredit the southern secession conventions.

Despite the three conventions necessary for the Georgia Constitution of 1789, two of which had delegates chosen by each county, Jameson insisted that the process was “not legitimate.” Because “it was the legislature, taking upon itself the work of remodeling the Constitution, from which it derived its existence and its powers,” he argued, it either indicated “great ignorance or great disregard of sound principles” that had cast “doubt on the legitimacy.”¹⁴¹ On the other hand, Walter McElreath, in his state’s rights analysis of Georgia’s constitutions through 1877, described the amending process established by the Constitution of 1798 as a measure “which afforded a most effective means of ascertaining the real will of the people upon any change proposed in the organic law.” The complex and lengthy procedures required for future constitutional changes, he believed, guarded against sudden and frivolous amendments. Such a restrictive process gave this constitution “vitality,” according to McElreath.¹⁴²

The Georgia conventions and assemblies that produced and amended its constitutions in the eighteenth century consistently demonstrated a concern for legitimacy and popular support, even though the people never ratified them directly. As the Constitution of 1798 indicated, however, these concerns had begun to dim as the state grew in size, population, and economy. Georgia had finally found a measure of security unknown since its days as a royal colony. Other insecurities,

¹⁴⁰ Ibid., 380.

¹⁴¹ Ibid., 136-137. Jameson did not discuss the conventions in 1795 and 1798.

¹⁴² McElreath, 87-88.

however, were just around the corner and the state would once again resort to conventions as a means of defending itself politically, socially, and militarily, if necessary.

CHAPTER 5

GEORGIA CONSTITUTIONALISM AND CONVENTIONS IN JACKSONIAN AMERICA

The previous two chapters revealed Georgia's experiments with constitution-making and amending processes in its first two decades as an American state. Although Georgia lawmakers were inconsistent with these processes, as we have seen, their reverence for organic principles and the appearance of political legitimacy were unwavering. This chapter examines the continued development of constitutionalism and conventions in Georgia during the early decades of the nineteenth century, a period that the historian Merrill D. Peterson has called "the springtime of American federalism."¹

In this period, the relationship between the state and the federal government grew increasingly contentious until the nullification issue portended a national crisis in 1832. Moreover, Georgia parties, which had traditionally centered on local disputes and personalities, slowly began aligning with partisan divisions on the national scale. As slavery infected the political sectionalism, the idea of a permanent Union came under greater scrutiny. Slave apologists began appropriating precedents and rhetoric from such unrelated episodes such as the Kentucky and Virginia Resolutions, written by Thomas Jefferson and James Madison, and the Hartford Convention in New England to protect the South against abolitionism. Conventions began to supply a political purpose as well as a constitutional purpose and the boundaries between those purposes often were ambiguous. Thus, the Jacksonian era was a critical period in the history of American conventions.

¹ Merrill D. Peterson, *Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820's* (Indianapolis: Bobbs-Merrill Company, 1966), v.

By 1800, Georgia had already adopted four constitutions since the American Revolution.¹ In all but the first of those constitutions, the state had demonstrated an understanding of the need to amend periodically its principles of governing. Only eight of the revolutionary era constitutions provided for such changes. Five of the states, including Georgia, had required change through constitutional conventions, while three others allowed changes by legislative action.² Thus, the amending process established by the Georgia Constitution of 1798, calling for a legislative amendment process, was not a radical departure from other state procedures. Though this constitution remained in force until 1861, the processes of amending it often deviated from its requirements. It demonstrated that the state continued to wrestle with the issue of constitutional legitimacy, while at the same time, attempted to balance the evolving interests of political factions.

Political factions in Georgia were more provincial than national in the first decade of the nineteenth century. Personalities and geography continued to dominate state politics in this period of the early republic. The Yazoo controversy had consumed much of the state's political energies in the 1790s and diverted most of its attention away from national concerns. Certain issues at the federal level, such as slavery and tariffs, resonated at the local levels and the national divisions between the Hamiltonian Federalists and the Jeffersonian Republicans seeped into Georgia.³ Traditional assumptions about the contrasting character of members loyal to each of these parties did not reflect circumstances in Georgia. The wealthy, more aristocratic partisans, like James

¹ These included the Rules and Regulations of 1776, the Constitution of 1777, the Constitution of 1789, and the Constitution of 1798. Scholars have traditionally dismissed the Rules and Regulations of 1776 as a constitution, but I argue that it represented, even if rudimentary and temporary, the establishment of a set of fundamental governing principles. In light of that accomplishment, I include it in the number of Georgia's constitutions.

² The other four that called for conventions were Pennsylvania, Vermont, and Massachusetts. The three states that provided for legislative constitutional changes were Maryland, Delaware, and South Carolina. See Dodd, 118.

³ Phillips, 90; Lamplugh, 148.

Jackson, alienated by President Washington's policies toward the Native Americans, led the Republican faction in the state, while those closely associated with the Yazoo controversy tended to be Federalist, though primarily because of their disdain for Jackson. Those exposed and often helpless on the frontiers and backwoods fell into the Federalist category, believing a stronger central government remained their best security.⁴

At root, these partisan divides emanated from local animosities and provocative personalities. Not only did James Jackson incite public passions for and against him, but Elijah Clark also invited support and opposition from Georgia's politically interested. Like Jackson, Clark, who according to Stevens's account was "quite illiterate, and uncouth in his manners," had earned a hero's reputation in the Revolutionary War.⁵ Frustrated by the tentative responses by the state to federal government policies concerning expansion in 1794, Clark and his devoted frontiersmen defiantly established settlements on lands protected by treaties for the Creeks. Their mission was to create the "Trans-Oconee Republic."⁶ In particular, he was especially angry that President Washington's concessions to the Creek nation in the Treaty of New York had nullified a treaty that Clark had negotiated with the Native Americans in 1785. Emboldened by his popularity, he embarked on a mission to settle the lands that Washington had returned to the Creeks. Despite opposition from Georgia Governor Mathews, Clark and his band of settlers established various settlements and fortifications west of the Oconee River. The act was so egregious that President Washington directed involvement by his Secretary of War, Henry Knox, and offered Governor Mathews support of the federal troops to force the removal of Clark and his followers. His support

⁴ Foster, 144-145.

⁵ Stevens, 401.

⁶ Lamplugh, 65.

was so widespread that, upon surrendering himself in Wilkes County, the authorities there released him by “unanimous opinion.”⁷ Finally, a combination of state militia and federal troops descended upon Clark’s fortifications and demonstrated such a force and determination that the settlers peacefully abandoned their venture.⁸

This episode demonstrated some of the complexities and dynamics at play in Georgia politics at the turn of the nineteenth century. Personalities often trumped issues in the state’s political loyalties. The Yazoo land controversy poisoned the political waters in Georgia for decades, as those affected by it remained passionate about it. Yet, certain events at the national level garnered local attentions. In the presidential election of 1796, Republicans won seventeen of the state’s twenty-one counties. Thomas Jefferson also carried the state again in the election of 1800. Federal appointments in Georgia by President John Adams on the eve of his departure from office excited the state’s Republicans, still led by James Jackson. Jackson foes, such as Federalists James Gunn and Thomas Gibbons, were benefactors of Adams’s last-minute rewards for loyalty. Jackson, now reelected to the Senate, and Senator Abraham Baldwin petitioned President Jefferson successfully to reverse some of the Federalist “midnight appointments” and soon proceeded to groom the new generation of Jackson partisans, including William Harris Crawford and George Michael Troup.⁹

Constitutionally, Georgia remained wedded to the Constitution of 1798 until 1861. The state amended the document a total of twenty-three times in that period. Not until 1821, after

⁷ Stevens., 402-403.

⁸ Ibid., 400-406; Lamplugh, 65.

⁹ See Foster, 144-145; Phillips, 92-94; Lamplugh, 166-168; Donald A. Debats, *Elites and Masses: Political Structure, Communication, and Behavior in Ante-Bellum Georgia* (New York: Garland Publishing, 1990), 23-24.

adopting six amendments, did the General Assembly consider calling a constitutional convention. Upon presentments from grand juries from state counties, including Greene and Hancock, the state legislature concluded early in the year to submit the issue of a convention to the voters in the general election. At issue was the apportionment of representatives set by the 1798 Constitution, which allowed one to four per county according to population. The state had grown at such a rapid pace in its northern and western frontiers that the number of counties swelled from only twenty in 1795 to 49 by 1820, which exponentially increased the size of the lower house. The government was too large and too expensive. Nevertheless, when posed to the electorate, the voters overwhelmingly defeated the proposal for a convention to change the constitution by 18,569 to 5,080.¹⁰

On one hand, the vote against a convention was not surprising. After all, the Constitution of 1798 did not require it for amendments. On the other hand, the vote against a constitutional convention was unexpected for some, especially given the language in the report of counties' petitions to the Georgia General Assembly for a convention. The committee reporting the petitions stated,

That whereas it is the undoubted right of good people of the state, whenever they shall think fit, to alter and change the fundamental compact by which they are associated, and it hath been represented to this Legislature, that great numbers of the citizens of the said state are desirous of altering the Constitution thereof...And whereas it is the duty of the Legislative body to give effect to the public will, when the same shall have been correctly ascertained...¹¹

The state legislature, upon receiving the report, passed a resolution to put the question of a constitutional convention to the electorate. Although a vast majority of the voters declined the

¹⁰“Amendments of the Constitution of 1798” in McElreath, 267-280; Saye, *Constitutional History*, 169-170.

¹¹“Resolutions, Which Originated in the Senate...9th May, 1821” in *Acts of the General Assembly of the State of Georgia, Passed at Milledgeville, at an Extra Session, in April and May, 1821*, Vol. 1, 1821, 31.

offer, the committee report demonstrated the continued centrality of the principles of legitimacy and popular sovereignty to proper governance. There was never a more forthright statement of the faith in these principles in Georgia. It echoed the sentiments of the Levellers during the English Civil War. The persistence of these values in Georgia, despite the national consolidation of federal authority, was consistent with the direction of broader political developments in the previous two decades. Two events, in particular, had significant influence on ideas of the role of state governments as sovereign entities of legitimate constitutional authority—the Virginia-Kentucky Resolutions and the Hartford Convention.

During the contentious decade of the 1790s, a time when the French Revolution and disputes over the scope of federal power affected the American political climate, ambiguities in the United States Constitution divided the country at many levels. In the summer of 1798, Federalist President John Adams signed the Alien and Sedition Laws into force. The growing perception of a French threat to the United States provided cover for the Federalist-controlled Congress to enact measures designed to provoke a patriotic loyalty among Americans, discredit the Jeffersonian Republican Party, and suppress dissent in national politics. The acts essentially repressed foreign immigrants and gave the government a virtual free hand at arresting and prosecuting anyone openly critical of the actions of the federal government.¹² Outmaneuvered and outnumbered in the Congress, Republicans had very little recourse at the national level to oppose these acts, which they perceived as unconstitutional and dangerous to American liberties. Consequently, two prominent Virginians, Thomas Jefferson and James Madison, proceeded to draft an alternate

¹² James Roger Sharp, *American Politics in the Early Republic: The New Nation in Crisis* (New Haven: Yale University Press, 1993), 176-177.

strategy for confronting such constitutional crises. The result was their collaboration on the Virginia and Kentucky Resolutions.

Although they enjoyed little contemporary favor, these statements of constitutional principles adopted by the two respective state legislatures profoundly influenced the states' rights arguments more fully developed in the southern states from the nullification crisis to secession.¹³ Secretly, Madison wrote the Virginia Resolutions and Jefferson the ones for Kentucky.¹⁴ Although there were sufficient distinctions in the language and tone between them, both sets of resolves appealed to the same general principle of checking federal abuses of power. Judicial review had yet to become an established practice of this principle and, even if it had, Jefferson and Madison distrusted the objectivity of a solidly Federalist federal court. Accordingly, the pair of intellectual giants constructed a role for the states as arbiters of illegitimate federal encroachment of powers. This was possible because of the ambiguities that remained in the United States Constitution concerning the delegation of powers to the national government and those reserved for the states.¹⁵

¹³ The overall influence of the Virginia and Kentucky Resolutions on American constitutionalism is questionable. William J. Watkins, Jr. has argued that they have not received their due attention as pillars in the "Pantheon of American charters." See Watkins, *Reclaiming the American Revolution: The Kentucky and Virginia Resolutions and Their Legacy* (New York: Palgrave, 2004). A more nuanced and objective view, however, seems more appropriate given their short-term impact during the antebellum period. For example see K. R. Constantine Gutzman, "The Virginia and Kentucky Resolutions Reconsidered: 'An Appeal to the Real Laws of Our Country'" in *The Journal of Southern History*, Vol. 66, No. 3 (August, 2000), 473-496; Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York: Oxford University Press, 1993), 719-726. Gutzman's argument has particular interest in that she discovered a continuity of constitutional assumptions from Virginia's ratification debates to the Virginia Resolutions, which suggested that the principles asserted by Jefferson and Madison in their resolves were not so radical after all. Despite their limited impact constitutionally in the long-term, I argue here that their core assumptions about the nature of the relationship between the states and the nation were relative to certain state assumptions of the role and powers of state constitutional conventions. In particular, if the states were parties to a federal contract, state conventions were the agents for its ratification as well as its dissolution. Again, this view did not capture wide appeal or attention until decades after these resolutions appeared. Also see Fritz, 197-210.

¹⁴ It took several years before the public discovered the author's identities. See Elkins and McKittrick, 719.

¹⁵ *Ibid.*, 719-721.

The Alien and Sedition Acts, for Jefferson and Madison, signaled the fulfillment of a Federalist conspiracy toward a more monarchical system of governance for America under the pretext of war policies against France. With a Federalist president and Congress, the Virginians found no adequate recourse expressly stated in the federal Constitution to oppose measures that blatantly violated the First Amendment. Consequently, they used state governments as vehicles of opposition against the aggressively unconstitutional consolidation of power by the federal government. Jefferson, in the Kentucky Resolutions, argued that the states “are not united on the principle of unlimited submission to their general government.” Rather, he continued, they were constituted “by compact” and only “delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government.” Furthermore, the federal government created by the compact could not legitimately be “the exclusive or final judge of the extent of the powers delegated to itself.” Such a role was anathema to legitimate constitutional governance. The states, “as in all other cases of compact among parties having no common judge,” therefore, has an equal right to judge for itself” any infractions by the general government, as well as its “mode and measure of redress.” The Alien and Sedition Acts were examples of a federal government “deriving its powers from its own will, and not from our authority” and were laws made without proper consent. The states, thus, have the power and obligation to oppose these measures by “declaring these void and of no force.”¹⁶

Madison’s Virginia Resolutions were more tentative with a milder tone. He also characterized the Union as a compact whereby the states have a “duty to watch over and oppose every infraction of those principles which constitute the only basis of that union.” Moreover, “the

¹⁶“The Kentucky Resolutions” in *The Annals of America*, Volume 4, 1797-1820: Domestic Expansion and Foreign Entanglements (Chicago: William Benton, Encyclopedia Britannica, 1968), 62-66.

states who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.” Madison also made a critical statement that revealed the importance of conventions to American constitutionalism. Virginia, he said, “by its Convention, which ratified the federal Constitution,” had “expressly declared” the sanctity of “the liberty of conscience and the press” and declared that these rights “cannot be canceled, abridged, restrained, or modified, by any authority of the United States.” The Alien and Sedition Acts clearly violated this declaration of conditional ratification and, therefore, the state of Virginia “does hereby declare, that the acts aforesaid are unconstitutional.”¹⁷

After the state legislatures of Kentucky and Virginia passed these resolves, they sent copies of them with messages inviting all of the other states to stand against the Federalist acts on the same principles. Not one of the other fourteen states stood with them. All but four states denounced them outright. Four states, including Georgia, did not reply or take any official action whatever.¹⁸ By 1799, Jefferson became so distressed by the lack of support from the other states and the prevailing arrogance of Federalist assumptions of authority that he penned another set of Kentucky Resolutions. His anxious, even desperate, tone became a bedrock for states’ rights radicals. If left unchecked, he warned, the federal government would tend toward “a total disregard to the special delegations of power therein contained” by the United States Constitution and “an annihilation of the state governments.” The states, “being sovereign and independent, have the unquestionable

¹⁷ “The Virginia Resolutions” in *Ibid.*, 66-67.

¹⁸ Seven states sent replies including Delaware, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Vermont. Three states, Maryland, Pennsylvania, and New Jersey, merely passed legislation condemning the resolutions. The four states taking no action were North Carolina, South Carolina, Tennessee, and Georgia. See Elkins and Mckittrick, 720 and 902, fn. 72.

right to judge of the infraction; and, that a nullification by those sovereignties, of all unauthorized acts done under the color of that instrument, is the rightful remedy.”¹⁹

Despite the cold reception initially for the principles articulated by Jefferson and Madison, the tentative nature of the Union was not strictly relegated to the American South in the early republic. State sovereignty, as a representative expression of popular sovereignty, remained a sacred assumption throughout the Union. The War of 1812 revealed just how conditional the bonds of Union were in New England. In the fall of 1814, representatives of the New England states met in Hartford, Connecticut to address their grievances with the Union. Paramount among them were their declining influence on national policies, the war with England, and a frustration with Virginia’s persisting control of the government.²⁰ New England had concluded that westward expansion, evidenced by Jefferson’s Louisiana Purchase, was a conspiracy among the frontiers and the South to diminish further the North’s political capital at the national level.²¹ President Jefferson’s embargo of 1807 and Madison’s subsequent war with England enticed the more radical of the northern Federalists to call for secession. Before the War of 1812, two relatively minor movements for secession, one in 1804 and the other in 1808, had already withered due to lack of support in New England.²²

¹⁹ “The Kentucky Resolutions of 1799” in *Annals of America*, 106-107.

²⁰ For a valuable ideological treatment of the politics that led to the Hartford Convention, see James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (New York: Alfred A. Knopf, 1970). The standard apologia of the convention is Theodore Dwight, *History of the Hartford Convention: With a Review of the Policy of the United States Government, Which Led to the War of 1812* (New York: N. & J. White, 1833).

²¹ Banner, 114. Interestingly, Banner argued this brand of Federalism, which was hostile to western expansion, informed a sectional prejudice that agitated northern sensibilities into the Civil War. See Banner, Chapter III: “Massachusetts Federalists and the Union,” 84-121.

²² *Ibid.*, 116.

By 1814, however, the political and economic strain of the war and the apparent disinterestedness of Republicans to the region finally moved New England Federalists to take a stand. On 15 December 1814, twenty-six delegates from five states met in Hartford, Connecticut to deliberate “upon the measures which it may be in the power of said states, consistently with their obligations to adopt, to restore and secure to the people thereof, their rights and privileges under the constitution of the United States.”²³ The convention assembled for three weeks and, despite radical momentum building to the contrary, adopted a set of moderately toned protests against President Madison’s prosecution of the war and strong recommendations for amending the federal Constitution.²⁴ There was, however, evidence of extremism in the language of the report of the convention. For instance, it declared, “That acts of Congress in violation of the constitution are absolutely void, in an undeniable position.”²⁵

The report of the Hartford Convention also validated certain claims by the Virginia and Kentucky Resolutions. “It is as much the duty of the state authorities to watch over the rights *reserved*, as of the United States to exercise the powers which are *delegated*.”²⁶ Furthermore, the report, defiant in its resolves, maintained, “in cases of deliberate, dangerous, and palpable infractions of the constitution, affecting the sovereignty of a state, and liberties of the people; it is

²³ Dwight, 351-352. Quote from Rhode Island legislative proceeding as recorded by Henry Bowen, Secretary of the Assembly in Dwight, 351. The convention consisted of twelve delegates from Massachusetts, seven from Connecticut, four from Rhode Island, three from New Hampshire, and one from Vermont. The state legislatures selected all of the delegates.

²⁴ As Banner has put it, “it included recommendations not only for defense and revenue matters but also...a list of proposed constitutional amendments regarding the war power, the admission of new states, embargoes, presidential succession, and the three-fifths clause.” In addition, it proposed an amendment to restrict the rights of naturalized citizens, reflecting the intense prejudice and nativist views of New Englanders of the increasing number immigrants who had arrived and begun to disrupt the racial and cultural homogeneity of the region. See Banner, 337-342.

²⁵ “Report” of the convention in Dwight, 361.

²⁶ Ibid., 358.

not only the right but the duty of such a state to interpose its authority for their protection, in the manner best calculated to secure that end.”²⁷ The convention echoed, ironically, President Madison’s own words in the Virginia Resolutions of 1798. Both documents capitalized on the principle of state interposition, the application of which was ambiguous in practical constitutional terms. What was clear, however, was a broad assumption that a state or a region of states in convention possessed certain inherent powers to safeguard local rights against national constitutional abuses. Underpinning this assumption was the idea of the federal Constitution as a compact among the states in contrast to state constitutions as an inviolable expression of popular sovereignty.²⁸

On the other hand, as recent scholarship has suggested, Americans in this period witnessed a growth in national attachment to the Union. Historians Daniel Walker Howe and Sean Wilentz have noted the technological, economic, and political transformations that occurred in the early decades of the nineteenth century which had powerful and lasting implications on the American political culture. Howe has demonstrated that the market revolution, and its subsequent innovations in transportation, communication, and industrial efficiency along with reinvigorated Protestantism and greater political participation by white men underpinned stronger bonds of attachment to the Union.²⁹ Wilentz, in particular, has viewed this contentious era as a maturation of nationhood that gave unprecedented voice to popular politics. The central problem, according to Wilentz, was that “two distinctive democracies, northern and southern” had emerged in the process, which required a

²⁷ Ibid., 361.

²⁸ For examples of the compact theory interpretation of the Union see Potter, 479-484. For a more recent explanation of this theory and its application to constitutionalism in Jacksonian America see Keith E. Whittington, “The Political Constitution of Federalism in Antebellum America: The Nullification Debate as an Illustration of Informal Mechanisms of Constitutional Change” in *The Journal of Federalism*, Vol. 26, No. 2, 1-24. Also see Fritz, 210-218.

²⁹ Howe, 849.

civil war to reconcile them. Thus, nationalism in antebellum America, like sovereignty, required division based on particular circumstances and issues.³⁰

The crises and developments at the national level had relatively little, if any, immediate impact in Georgia in the first two decades of the nineteenth century. During this era, Georgia cast its presidential electoral votes for Jefferson in 1796, 1800, and 1804, then for Madison and Monroe twice each. In fact, until 1860, the state's electoral votes went to all the presidents elected with the exceptions of 1824 and 1836. Unlike New England states, Georgia unequivocally supported the War of 1812 and readily supplied its quota of volunteer troops requested for opposing the British.³¹ The War of 1812 did little to distract its attentions from the self-interested politics that had dominated the state for so long. Its accelerated growth in the early decades of the nineteenth century continued to direct much of its collective energies to internal affairs and earned it the title "Empire State of the South."³² Even the slavery debate over the statehood of Missouri that threatened the "Era of Good Feelings" brought comparably little controversy in Georgia, as the more pressing concern was the acquisition of more Native American lands within its state boundaries. Georgian's appetite for these lands had been insatiable since the early eighteenth century. However, the economic and cultural transformation associated with what historian's such as Charles Sellers has referred to as the "market revolution" added a renewed sense of urgency to remove the Native Americans once and for all.³³

³⁰ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W. W. Norton and Company, 2005), 791.

³¹ Phillips, 99.

³² Saye, *Constitutional History*, 196.

³³ Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991).

The market revolution was the expansion of a liberal market economic and its dramatic effects on the social and political culture of America. It became a dynamic society whereby economic and political forces generated infrastructural improvements in areas of transportation, banking, and trade. The lure of profitable ventures, whether agriculturally or in manufactures, emphasized efficiency and mass production. It also devalued the traditional subsistence culture and promoted market-oriented goods.³⁴ Of course cotton became the most appealing and most profitable market commodity for many southerners, including Georgians, and entrenched the plantation economic system. Slavery was crucial to this profitability, but land was the most vital of resources. Thus, Georgians focused their obsessions on pushing aside the Native Americans to gain the fertile soils of the frontier. Nevertheless, like other southern states, slavery had become a critical element in Georgia's cultural identity and the proposed restrictions of it in Missouri did not escape the attention of its delegates to Congress.³⁵

³⁴ Ibid., 5.

³⁵ This was an interesting period in Georgia, and even more broadly, in southern history according to certain historians. The contradiction of slavery with the natural rights ideology embraced in the later decades of the eighteenth century made it a tortuous issue for some in the South even as late as the Missouri Compromise. According to Wiebe, "the real danger to the union in 1819 and 1820 was apathy." The cotton gin and its promise for unimaginable wealth and dependent upon slave labor had effectively distracted many southerners from this Enlightenment idealism. Nevertheless, according to Sean Wilentz, a provocative moral defense of slavery (or what later came to be called the "positive good" arguments) had yet to emerge in the South. In 1819-1820, southern apologists for slavery still committed to the "necessary evil" argument, which, therefore, had enough force to unify southern delegates in Congress in opposition to the restriction of slavery in Missouri, but lacked enough emotional or intellectual force to galvanize a radical constitutional threat to the Union by the South at-large. More specifically to Georgia, U. B. Phillips has proposed that many in the state held a moderate view of slavery in Georgia into the 1820s. While the prevalence of this moderation might be questionable, Phillips noted the state legislature's inconsistency of manumission laws and the legal transfer of slaves from outside of the state at different times throughout the antebellum period. Moreover, he revealed that some Georgians even embraced the American Colonization Society after 1817 as a benevolent means of shrinking the slave population. Nevertheless, the Missouri crisis did excite Georgia's delegates in Washington to oppose the slave restrictions in Missouri by Congressman James Tallmadge of New York in 1819. See Robert H. Wiebe, *The Opening of American Society: From the Adoption of the Constitution to the Eve of Disunion* (New York: Alfred A. Knopf, 1984), 202; Sean Wilentz, *The Rise of the American Democracy: Jefferson to Lincoln* (New York: W. W. Norton, 2005), 222-231; Phillips, *Georgia and State Rights*, 154-159.

Thus, when Georgia voters declined the opportunity for a state constitutional convention in 1821, it signaled that the business of business had taken precedent over the business of constitutionalism—at least for the time being. State politics had remained relatively provincial most of the decade, marked essentially by loyalties to either the Troup or Clark factions. As southern historian U. B. Phillips has stated about Georgia parties during this period, “there was no antagonism between them upon the ground of any policy followed by the State or the Central Government.” Even in presidential elections, personality trumped policies.³⁶ After 1824, however, confrontations with the federal government on two central issues forced Georgians to reexamine its constitutional obligations to the Union.

The removal of the Native Americans from their valuable and coveted lands in Georgia had been a focus of much attention, especially following the cession of the state’s claims to its western lands beyond the Chattahoochee to the Mississippi River. Part of the agreement with that cession in 1802 involved the federal government’s commitment to remove all tribes occupying land within the new state boundaries as expeditiously and peacefully as possible. The Upper Creeks had become especially indignant to cede any more of its lands to United States negotiators and a stalemate resulted. Such was the case when George M. Troup finally unseated his nemesis, John Clark, from the governor’s seat in the election of 1823. Troup, anxious to demonstrate his loyalty to the state, protested first to President Monroe and then to his successor John Quincy Adams that Georgia had acted in good faith in the 1802 cession agreement, but the federal government had not fulfilled its obligations. The governor demanded either that the federal government either refund and restore the Alabama and Mississippi states to Georgia or adhere to the original agreement and

³⁶ Phillips, 108.

remove the Indians. In response to a letter from Adam's Secretary of War, John C. Calhoun, requesting Georgia's presence at a negotiation for lands from the Cherokees, Troup's reaction was adamant. To Calhoun, he replied, "The answer is not only no! but never."³⁷

In his annual message to the General Assembly on 8 November 1825, Governor Troup openly expressed his frustration with the presidential administration's duplicitous policies concerning Native American lands. "In every instance," he declared, "where the United States have claimed the soil and jurisdiction, whether the Indians be in occupation or not, the Government has exercised the power to treat all such persons as trespassers and intruders; and an act of Congress authorizes the President to expel them at the point of a bayonet." Did the governor of Georgia not possess the same right over its territories?³⁸ The controversy continued for several years and became increasingly complicated by the willingness of the Creek chief William McIntosh to negotiate a cession of lands without the full consent of the Creek nation. Moreover, McIntosh was first cousin to Troup. The murder of McIntosh by angry Creeks fueled Troup's defiance of federal negotiations and heightened tensions. By early 1827, President Adams had voided recent negotiations between Georgia and the Native Americans, and had renegotiated a federal treaty. Furthermore, the president had threatened military force to prevent Georgia's interference with the new treaty. Troup's reply to Adams was unmistakably virulent.

³⁷ Edward J. Harden, *The Life of George M. Troup* (Savannah: E. J. Purse, 1859), 204. Written more than 150 years ago, Harden's biography remains the only published full account of Troup and is an invaluable resource of his letters and speeches throughout his career. Also see Coulter, *A Short History*, 226-227. Also see Wilentz, 262-265.

³⁸ Harden, "Annual Message of 1825," 412.

Thus the military character of the menace is established, and I am only at liberty to give it the defiance which it merits. You will distinctly understand, therefore, that I feel it to be my duty to resist, to the utmost, any military attack which the Government of the United States shall think proper to make on the territory, the people, or the sovereignty of Georgia; and all the measures necessary to the performance of this duty, according to our limited means, are in progress. From the first decisive act of hostility, you will be considered and treated as a public enemy; and, with the less repugnance, because you, to whom we might constitutionally have appealed for our own defence against invasion, are yourselves the invaders, and, what is more, the unblushing allies of the savages whose cause you have adopted.³⁹

Troup subsequently and immediately issued an order to protect and retrieve from arrest by federal officers any Georgia surveyors of claimed territories.⁴⁰

The president blinked. In November 1827, federal commissioners acquired the concessions sought by the state from the Creeks in a new treaty. This effectively ended the standoff and ended any territorial claims by the Creeks in Georgia. The principles of state rights articulated by Troup, however, endured in other events, including the equally contentious removal of the Cherokees from north Georgia. With President Andrew Jackson's blessings, the state's defiance of Supreme Court Chief Justice John Marshall's ruling against it in *Worcester v. Georgia* (1832), Troup's state rights legacy appeared intact.⁴¹ Other issues fomented, however, that severely challenged the persisting idea that popular sovereignty equated with state sovereignty—an idea that subsequently held that state conventions were the ultimate constitutional arbiters of legitimate authority.

Since Georgia voters had declined a constitutional convention in 1821, there was not another one until 1832. This convention met in the midst of another national constitutional crisis produced by tensions of sectional interests. The War of 1812 had disrupted the dependence on imports and forced America to invest in domestic manufactures, which flourished in New England

³⁹ A letter to Secretary of War James Barbour, dated 17 February 1827 in *Ibid.*, 485.

⁴⁰ *Ibid.*, 486.

⁴¹ *Ibid.*, 489-493.

after the conflict had ended. Once foreign trade had resumed, however, the region suffered from price competition and appealed to the federal government for higher tariffs to offset their losses. These tariffs originally enjoyed enough broad appeal, even if lukewarm, among the states that there were few virulent protests. The early support came from the notion that tariff revenues could be a valuable resource for state improvements for infrastructures such roads, bridges, and canals. In fact, Governor Troup had petitioned President Monroe in the summer of 1824 for a share of the revenue to build canals connecting the Savannah and Tennessee Rivers as well as the St. Marys with the Suwannee River.⁴² By 1827, however, while Troup was battling the federal government over Native American territories, the Georgia General Assembly took exception to Congress's right to "interfere with the just and full exercise by the states, of powers, which each can within itself exercise in a way sufficiently beneficial to itself" including those powers "to make roads and canals and regulate its slave population within its own limits."⁴³ It was not just the perception that the federal government was trampling on states' rights. Rather, Georgia had learned that Congress was considering federal revenues, much of it from the high tariffs imposed on imports, to subsidize the American Colonization Society.

That Congress would assert the right to export and colonize free blacks and slaves using monies from a "common fund" intended for the general welfare of the states was an anathema to southerners. Further, it was a conflict of constitutional rationale, according the Georgia legislature's resolutions. The United States Constitution, drafted and ratified, had protected the importation of slaves for a period of twenty years. The practical aim of that protection was the

⁴² Phillips, 113-114.

⁴³ Acts of the General Assembly of the State of Georgia, Passed in Milledgeville at an Annual Session in November and December, 1827, date 5 December 1827, Vol. I, No. 157, 196.

increase of the slave population. Federal funding of the Colonization Society in 1827 was a folly, according to Georgia lawmakers, since the practical result was “for the purpose of again removing that very population” back to Africa that Americans had imported under proper constitutional sanction until 1808.⁴⁴ Consequently, the tariff issue became a volatile one in the South and conjured the elaboration of the principle of nullification derived from the Virginia and Kentucky Resolutions.

Specifically, the concept of nullification emerged during Andrew Jackson’s presidency as a modified principle to protect sectional interests. John C. Calhoun elaborately reconceptualized an American constitutional system based on this principle. Calhoun had a long and distinguished career by the time that he anonymously wrote the South Carolina Exposition and Protest in 1828 for the state’s legislature while he was vice-president.⁴⁵ A former nationalist, Secretary of War, and also vice president to John Quincy Adams, his volatile relationship with President Jackson was a factor in his growing sectional identity. Tensions between the two men at the Executive head of the government escalated until Calhoun resigned in December of 1832. Afterward, he refined his political philosophy and presented a formidable argument for states’ rights, and, in particular, southern rights within the Union.⁴⁶

In the Exposition and Protest, Calhoun used long and intricately argued theories to denounce the 1828 tariff as unconstitutional. In its technical “letter,” it did not violate the federal Constitution. Still, as Calhoun pointed out, the “Constitution may be as grossly violated by acting against its meaning as against its letter.” He confirmed that Congress had a constitutional right to

⁴⁴ Ibid., 200-201.

⁴⁵ Jefferson was also vice-president to John Adams when he wrote the Kentucky Resolutions.

⁴⁶ Ibid., xvi-xvii.

duties on imports. It abused that power, however, “by being converted into an instrument of rearing up the industry of one section of the country on the ruins of another.” In such a case, even the judiciary cannot intervene because the language is consistent with the constitution. Courts, he said, “cannot look into the motives of legislators.”⁴⁷ The only recourse against these types of constitutional abuses was through the interposition of the states. The division of sovereignty, Calhoun argued, confirmed the right of states “of deciding on the infractions of their powers, and the proper remedy to be applied for their correction.”⁴⁸ He cited Federalist Fifty-one for supporting this claim.⁴⁹ This essay in the Federalist Papers noted that effective checks by the division of powers between the state and federal governments, as well as subdivided among various departments and agencies, safeguarded against political and constitutional abuses. According to Madison, “a double security arises to the rights of the people. The different governments [state and federal] will control each other; at the same time that each will be controlled by itself.”⁵⁰ Calhoun translated this as an affirmation of “the control of the States over the General Government.” He also drew upon the principles of interposition and nullification from the Virginia and Kentucky Resolutions of 1798 to support further his states’ rights constitutionalism.⁵¹

The most pertinent of Calhoun’s philosophy to the present study was the process by which states could legitimately interpose and nullify abuses of federal authority. The process, he believed, must be beyond reproach and a true representative expression of the sovereign will of the people of

⁴⁷ John C. Calhoun, “Exposition and Protest,” 18 December 1828 in *Ibid.*, 314.

⁴⁸ *Ibid.*, 348.

⁴⁹ Though he incorrectly attributed the author as Alexander Hamilton while it actually was one of Madison’s essays.

⁵⁰ See “Federalist Number LI: The Same Subject Continued with the Same View and Concluded” in Isaac Kramnick, ed., James Madison, Alexander Hamilton, and John Jay: *The Federalist Papers* (New York: Penguin, 1987), 321.

⁵¹ Calhoun, 349-350.

the state. Ultimately, he believed, the sovereign was the people organized within each state. The state conventions of ratification had confirmed this.⁵² Calhoun was emphatic stating, “a Convention fully represents them for all purposes whatever,” including “the right of the States to interpose at all.” A state convention was the final judge of whether federal acts were in violation of that state’s constitutional rights and “in what manner they ought to be declared null and void within the limits of the State.”⁵³ The convention process also guaranteed patient and moderate deliberation on such considerations due to the delay in a special summoning of delegates for the specific purpose “and representing the State in her highest capacity...all calculated to allay excitement—to impress on the people a deep and solemn tone, highly favorable to calm investigation and decision.”⁵⁴

Calhoun’s ideas were radical departures from Jefferson and Madison in 1798. It so inflamed Madison that he felt compelled to write a rebuttal to them in 1835. In his “Notes on Nullification,” Madison confirmed that states indeed had the right of interposition on matters of constitutional disputes that remained beyond the jurisdiction of the judiciary. Calhoun, however, had misconstrued the principle as presented by Madison. Interposition, he explained, involved a coalition of states that cooperated and united against perceived abuses by the federal government. No one state had the constitutional right to nullify a federal law. Madison, however, was ambiguous on what he meant by interposition. States did have a right as agents to the federal Constitution collectively to “explain the Constitution or so amend it as to provide a more satisfactory mode within the Constitution itself for guarding it against constructive or other

⁵² Fritz, 223.

⁵³ Ibid., 351.

⁵⁴ Ibid., 354.

violations.”⁵⁵ The United States Constitution either provided for these alternatives or did not preclude them. Moreover, in such instances, the checks and balances prescribed in the constitution, as well as “the influence of the Ballot-boxes and Hustings” provided additional securities against repressive authorities. If these avenues were unsuccessful, then there was the natural right of a people to resist or rebel. This, he noted, was not a constitutional remedy, but a right of final resort. Calhoun’s ideas, therefore, were inconsistent with the constitutional principles established in 1787.⁵⁶

Despite objections such as Madison’s, Calhoun’s interpretations of state sovereignty resonated among many southerners who were increasingly concerned about the national consolidation of power and its implications for protecting slavery. In 1828, the Georgia General Assembly reacted to the Tariff of Abominations. It demanded the repeal of the tariff, which it stated, had “disturbed the Union, endangered the public tranquility, weakened the confidence of the whole States in the Federal Government, and diminished the affection of large masses of the people to the Union itself...” If the Congress chose to disregard their plea, the state would “render necessary measures of a decisive character, for the protection of the people of the State, and the vindication of the Constitution of the United States.”⁵⁷ Other southern states also expressed similar

⁵⁵ James Madison, “Notes on Nullification” in Gaillard Hunt, ed., *The Writings of James Madison*, Vol. IX, 1819-1836 (New York: G. P. Putnam’s Sons, 1910), 592.

⁵⁶ *Ibid.*, 597.

⁵⁷ “Protest of the Legislature of Georgia against the Tariff of 1828, December 20, 1828” in Ames, 153-155.

opinions in 1828, though not as vitriolic as Georgia and South Carolina.⁵⁸ Between 1830 and 1832, three states, Kentucky, Louisiana, and Pennsylvania, denounced this radical state rights position.⁵⁹

The controversy subsided temporarily and did not escalate significantly in Georgia until Congress passed a tariff revision in the summer of 1832. The issue was a difficult one for Georgia because of the state's relationship to President Andrew Jackson. Elected president in 1828, Jackson had supported strongly Georgia's efforts to remove the Native American populations from its borders. On the other hand, the president also threw his weight behind federal enforcement of the tariff despite state resistance to the contrary. The excitement generated by the renewed attention to the tariff issue, thus, produced countervailing currents of opinion about Jackson in the state. Tensions with the federal government over the removal of the Native Americans in the previous presidential administrations had tested and dampened Georgia's national attachments to the Union. Andrew Jackson's backing against the Cherokees, however, helped to restore some of those strained national bonds. The tariff issue, however, once again tested the state's patience with federal interference.⁶⁰

Personal animosities also fed the tempers over nullification. As vice-president to Jackson, Calhoun fell out of favor with the president, socially over the scandal in the Peggy Eaton affair and politically over nullification.⁶¹ In Georgia, many from the traditional Troup party, like John

⁵⁸ States include North Carolina, Alabama, South Carolina, with Mississippi and Virginia passing resolutions in 1829. See *Ibid.*, 148-157.

⁵⁹ *Ibid.*, 158-163.

⁶⁰ See Anthony Gene Carey, *Parties, Slavery, and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1997), 24-25; Phillips, 120-121.

⁶¹ See John F. Marszalek, *The Petticoat Affair: Manners, Mutiny, and Sex in Andrew Jackson's White House* (Baton Rouge: Louisiana State University Press, 1997); William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: Harper & Row, Publishers, 1965).

Berrien, generally sided with Calhoun and organized the State Rights Party, while the Clark faction, which became the Union Party, supported President Jackson in the controversy. Even with these new political alignments, few in the state openly challenged Jackson, though overtly opposing the tariff.⁶² A revealing example of the paradoxical loyalties of Georgians was that of the former governor and sitting United States Senator George M. Troup.

In many ways, Troup was politically conflicted. He generally supported the idea of tariffs and did not embrace nullification as a principle. During the tariff controversy, however, he came to believe that the tariffs enacted benefited certain states at the expense of others. Consequently, Troup denounced the “protective system” and noted, “The danger has become imminent, because it is evident, for the first time, that the entire capital and population of New England and other interested States, are embodying the permanency of the system; and, if not resisted, we must be overthrown, horse, foot and dragoons.”⁶³ Later in the crisis, he expressed his admiration and support for the president, stating, “General Jackson deserves to be supported most liberally by every Georgian, and indeed by every Republican. No man would have hazarded more for correct principles.”⁶⁴ Nevertheless, Troup expressed what many had started to believe about the nature of the American Union—that it was permanent only as long as it was maintained voluntarily. “There cannot be a greater fallacy,” he wrote declining an invitation to a South Carolina benefit for

⁶² The developments from political factions, chiefly organized by local issues and personalities, into political parties divided along state and national agendas was not a precise transformation. In fact, many of the older and more conservative Troup partisans, like John Forsyth, established the Union Party. The State Rights Party generally consisted of the more radical planters from the traditional Troupites of middle Georgia. See Carey, 25; Phillips, 120-138; Donald A. Debats, *Elites and Masses: Political Structure, Communication, and Behavior in Antebellum Georgia* (New York: Garland Publishing, 1990), 45-48; Richard E. Ellis, *The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis* (New York: Oxford University Press, 1987), 102-122.

⁶³ Letter from Troup dated 11 May 1831 in Harden, 514.

⁶⁴ Letter from Troup dated 29 August 1832 in *Ibid.*, 515.

nullification, “than that the Union is to be preserved by a power in the General Government to *coerce* the States. The existence of sovereignty excludes the idea of force. Ours is a Government of opinion, of consent, of voluntary association...” Thus, he advised South Carolina, “You can change your government at pleasure; and, therefore, you can throw off the government of the Union, whenever the same safety, interest and happiness require it.” When the federal government becomes the pawn of “ambition and avarice,” and “the States are to be held to it against their will,” then “the Southern states must withdraw from the confederacy, cost what it may.”⁶⁵ Such words expressed prescient sentiments.

In August 1832, during an annual gathering of Troup politicians at Franklin College commencement ceremonies in Athens, nullification finally divided the party. The moderate tone of the congregation, a reflection of fifty-year old William Crawford’s remaining influence, abruptly ended as a group of fiery anti-tariff agitators, led by John Berrien and Augustin Clayton, interrupted the affair. They aggressively took control of the meeting and disaffected many who left as a result. With urging from Berrien and Clayton, the remaining attendees passed a number of anti-tariff resolutions, called a convention to meet in November, and created a committee of correspondence to collaborate with other anti-tariff factions inside and outside of the state.⁶⁶

The ensuing Milledgeville convention, which its sponsors claimed to possess “full powers” to determine the state’s political destiny, sparked a furious campaign in Georgia. The political atmosphere was reminiscent of all the activities surrounding the establishment of a provincial government in the state during the American Revolution. Unionists and conservative Troupites

⁶⁵ Letter to “friends of State Rights at Columbia, South Carolina” dated 21 September 1830 in *Ibid.*, 510-511.

⁶⁶ Carey, 27; Debats, 45; Ellis, 106-107.

initially ignored or threatened to boycott the convention. Yet, the momentum of the anti-tariff faction soon indicated that the convention could not assemble unchallenged. As a result, this conservative coalition presented their own candidates in an effort to gain control of the convention. County meetings assembled across the state to debate the issues and chose delegates to the Milledgeville convention. Sixty-one out of the state's eighty counties sent delegates to it.⁶⁷

The Milledgeville convention assembled on 12 November 1832 with 164 delegates in attendance. Though not constitutionally legitimate, the convention conducted formal proceedings and asserted its authority and legitimacy on its "majority of the Representative population of Georgia," despite the exit of fifty-three delegates in protest of the convention. Leading the opposition in this protest was the United States Senator John Forsyth.⁶⁸

Before withdrawing on November 16, Forsyth had several contentious debates with Berrien, the perceived "dictator" of the convention, over the legitimacy of the assembly. Forsyth insinuated that the meeting was the product of collusion between the hijackers of the Athens meetings from the previous August and South Carolina nullifiers. He also denounced its legitimacy because more than twenty counties did not have representatives present. After Forsyth suffered a series of defeats on his proposals, resolutions, and amendments in his pursuit of usurping the

⁶⁷ Ellis, 107; Phillips, 130.

⁶⁸ "To the People of Georgia" in Proceedings of the Anti-Tariff Convention of the State of Georgia, Held in Milledgeville, 1832 (Milledgeville: Journal of the Times Office, 1832). It is noteworthy that a biographer of John Forsyth has claimed that the proceedings and publications of the convention failed to mention the exit by protesting delegates. This, however, is erroneous as the preceding citation indicates. Although it does not mention the numbers of delegates who withdrew or their reasons for withdrawing, it did reference their exit and defended the continuation of the convention based on the number of delegates who remained in attendance. See Alvin Laroy Duckett, *John Forsyth: Political Tactician* (Athens: University of Georgia Press, 1962), 159.

proceedings, he and his supporting delegates departed, leaving Berrien in absolute control over the convention.⁶⁹

The remaining delegates adopted seventeen resolutions prepared by a special committee of twenty-one members. Contrary to the expectations of many, the convention ultimately did not endorse nullification. The delegates, instead, requested the Congress to “reduce and equalize the duties on foreign imports” and return to “the principles of just taxation.” They denounced the new tariff law of 1832 and declared, “the people of Georgia cannot submit” to such a law or to the principle of “protection of domestic manufactures” such a law represented. The convention additionally called for a convention of “Southern States” with delegate numbers corresponding to “the number of their senators and representatives in Congress.”⁷⁰

In addition, the convention sought to legitimize further its proceedings. Whether as a response to the continued public attacks by Forsyth and his followers or an intrinsic act motivated by the sanctity of popular sovereignty, the delegates sought public approval of their work. They established a formal protocol in each of the Georgia counties for assessing the “approbation of disapprobation” of the convention’s proceedings and “to obtain a full expression of public opinion” of the issues at hand.⁷¹ The convention could not “profess to speak the will of the people” without such an assessment. The seriousness of events demanded an account of the public reasoning on the tariff and the principles it represented as the following statement, presented to Georgia newspapers for the people’s notice, provided:

⁶⁹ Proceedings of the Anti-Tariff Convention, 12-14; Duckett, 159.

⁷⁰ Proceedings of the Anti-Tariff Convention, 18-19.

⁷¹ Ibid., 19.

Who can so properly decide that question as the people themselves? If the different departments of our state government have mistaken the popular will in this regard, it is peculiarly proper that the error should be corrected, and that it should be corrected now. On the other hand, if they have rightly understood it, the solemn ratification of these principles by the people, will nerve the arm of their functionaries in their efforts to obtain relief from the grievances under which we labor. Thereafter we can no longer be represented to our Northern Brethren as a divided people.⁷²

It was a profoundly articulate statement of the basic principles of popular sovereignty, which would have almost certainly earned accolades from the Puritan parliamentarian Henry Vane in the English Civil War, almost two centuries past.⁷³

Throughout the fall of 1832, the tensions between the anti-tariff and the pro-union faction remained high. Nevertheless, both elements supported Andrew Jackson's reelection to the presidency, demonstrating an unwillingness to oppose the man who had supported the state's rights to Cherokee lands. Jackson's popularity in Georgia, however, faced continued challenges and began to falter shortly after his reelection, especially following South Carolina's passage of its Ordinance of Nullification of the tariff bill in late November 1832.⁷⁴ The president's proclamation on 10 December 1832 rejected the principle of nullification and promised to assert his authority for "preserving the union."⁷⁵ Before the state had received news of the proclamation, Georgia's General Assembly attempted to distance itself from the state's anti-tariff convention by urging patient moderation, though lending its support for a "Southern Convention" to "devise and recommend the most effectual and proper mode of obtaining relief from the evils [of the tariff

⁷² "To the People of Georgia" in *Proceedings of the Anti-Tariff Convention*, 4.

⁷³ See Chapter 2.

⁷⁴ "Ordinance of Nullification of South Carolina" on 24 November 1832 in Ames, 169.

⁷⁵ "President Jackson's Proclamation Regarding Nullification, December 10, 1832" in Yale Law School's The Avalon Project <http://www.yale.edu/lawweb/avalon/presiden/proclamations/jack01.htm>. Last accessed on 19 October 2007.

system].” It soundly denounced nullification “as neither a peaceful, nor a constitutional remedy” and warned its citizens against supporting this “mischievous policy” instigated by South Carolina.⁷⁶

Within days, Jackson’s proclamation hit the public sphere in Georgia and emboldened the growing State Rights Party. Although the state never embraced the radicalism of nullification and secession as widely as South Carolina, the proclamation had a “hostile reception” in Georgia, according to one notable historian of the era.⁷⁷ Furthermore, if Jackson acquired congressional authority for the use of force against South Carolina, it could portend poorly for Georgia. In *Worcester v. Georgia*, the Supreme Court in early 1832 had ruled in favor of the Cherokees against forced removal. A change in Jackson’s political disposition in this matter might also mean that he could seek a similar force bill to make Georgia comply with the ruling. While pro-union Georgia Governor Wilson Lumpkin carefully attempted to delineate the technical distinctions between his state’s defiance of a Supreme Court decision and South Carolina’s constitutional claims to nullify a law and secede from the Union, the timing of the controversy gave many Georgians pause in their support for Jackson over South Carolina.⁷⁸ Fortunately for the state, the reelection of President Jackson was an obvious setback for the enforcement of the court’s ruling and the Cherokees sought to negotiate with Georgia rather than fight the federal power of the nation’s chief executive. Thus,

⁷⁶“Georgia on a Southern Convention and Nullification” dated 14 December 1832 in Ames, 179.

⁷⁷ Ellis, 112. Ellis has conceded that a majority of the state was unwilling to support South Carolina. Nevertheless, he has maintained that the historiography has paid less attention to the state’s more radical elements. For example, William Freehling has stated that Georgia was among the southern states “least opposed to nullification.” See, Freehling, 204.

⁷⁸ Ibid., 113-114. Lumpkin’s argument was ambiguous and weak. Essentially, he suggested that Georgia had pursued its case through all of the proper legal and constitutional channels to protect her local jurisdictional rights over her own citizens and territory” in contrast to South Carolina’s recourse “to the destruction of the Federal Union.” Lumpkin was unwilling to speculate how far Georgia was willing to resist compliance with the court’s ruling in *Worcester v. Georgia*. See Wilson Lumpkin, *The Removal of the Cherokee Indians from Georgia, 1827-41* (New York: Dodd, Mead & Co., 1907), 196-197, quoted in Ibid., 114.

Georgia avoided the kind of showdown between state and federal authorities that continued with South Carolina.⁷⁹

On 16 January 1833, Congress passed the infamous Force Bill, authorizing the president to use military action as necessary to coerce South Carolina's compliance with the tariff. With the swift signature of President Jackson, the bill became law on 2 March 1833. Georgia's delegation in Congress had opposed the act and it produced an extraordinary reaction in the state. Whereas many across the state were relatively ambivalent about the radical constitutional claims of South Carolina, they were outraged at the prospect of a federal military incursion against a state. The episode provided substantial fuel for the further organization of the State Rights Party in Georgia. The more conservative Unionists, however, walked a fine line between their nationalist support of Jackson and maintaining a traditional defense of state sovereignty.⁸⁰ Troup, suffering from a persistent decline in his health while serving in the Senate, and Governor Wilson Lumpkin demonstrated the theoretical and ideological conflicts in southern nationalism under crisis. In fact, U. B. Phillips, has noted, the lack of relative disagreement among the factions "on doctrinal points shows that there was no adequate justification for the use of the names State Rights and Union by the respective parties."⁸¹

Although the historian Richard Ellis has claimed that Troup's stance during and after the crisis remained ambiguous, the aging statesman took the time and effort in early 1833 to write a

⁷⁹ Carey, 29-30; Ellis, 118-119.

⁸⁰ See Duckett, 162; Ellis, 120-122.

⁸¹ Phillips, 135. While Phillips may have overstated the similarities, his point that the differences on state sovereignty were more superficial than substantive is valid.

profoundly articulate statement on the unresolved constitutional issue of dual sovereignty.⁸² In a letter to Major John H. Howard, he revealed the growing tensions between the state as the primary political unit and the growing assumption of “one nation indivisible.” The impetus for his thoughts was the Force Bill. He emphatically denied the right of nullification by any single state, but declared, “That the allegiance of the citizen, primary and paramount, is due to the State or sovereign.” The sovereign people of the states created the United States Constitution, which provided no provision for nullification in principle or practice. The only constitutional rights for a state to pursue relief from “the violation of the articles of compact,” such as the oppressive tariff, were through those provisions allowable in the federal constitution. The only other recourse, which was a natural and not a constitutional right, was secession. Troup argued, however, that secession of a state was a worse solution than its cause, because such an act would “expose her to difficulties and troubles from which the greatest wisdom could not exempt her.”⁸³

Of special relevance to the present study is Troup’s exposition on sovereignty. He departed emphatically from Madison’s nationalist interpretation of sovereignty, which held that the sovereign people collectively made the United States, not the sovereign states. “The sovereign must be found in the States, that is,” he stated, “in the people of the States...It is in virtue of this sovereignty that the State Government is formed; and it is in the same sovereignty that the United States Government is formed.” The governments, and the constitutions that inform them, therefore, were merely “emanations from it, as light from the sun, which parts with it constantly, without itself being impaired, or wasted, or weakened.” The sovereign will can alter or abolish parts or the

⁸² Ellis, 120.

⁸³ Letter to Major John H. Howard dated 10 February 1833, “Appendix” in Duckett, I-XIII.

whole of their “agent or servant called the Government,” as it is “of higher power and authority.” Troup’s implication was that the people in their sovereign capacity, in the practical manner of special state conventions or “acting by the convention of the whole people,” was the ultimate arbiter of constitutional conflicts between the state and federal governments. Even the Supreme Court, he demanded, did not have the final judgment, as it was “but the creature of a creature” or an “agent” created by the federal Constitution created by the sovereign people in the states. Why trust such an organic issue to the Supreme Court and not to the sovereign that created it?⁸⁴

Troup failed to demonstrate any actual scenarios or follow the full implications of these ideas to their conclusion, but responded to the current crisis by cautioning against nullification, disunion, and federal coercion against both by force. “The Constitution authorizes the Federal Government to declare war—but not against a State.” The United States was a nation formed and perpetuated by consent. He warned, “to keep Union by force—to keep amity by force, to keep brotherly love by force, to keep peace by force” was as absurd as impossible.⁸⁵ Troup’s letter revealed the slow turn from the traditional nationalism, embraced in Georgia since the beginning of the American Revolution, toward a more entrenched localism. Even Governor Wilson Lumpkin, a Unionist, expressed a cautious nationalism. Lumpkin stated, “we owe our allegiance to both governments...That each should be kept strictly within their respective constitutional spheres, and, finally, that he who would destroy the sovereignty of the states by *consolidation*, or the Federal Union by *nullification*, is a traitor to liberty, and deserves the universal execration of mankind.”⁸⁶

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Lumpkin, Removal of the Cherokee Indians, I, 142 as quoted in Ellis, 121-122.

The nullification crisis slowly passed as Congress, with strong influence from Henry Clay, passed a compromise bill to reduce the tariff gradually as a gesture to the southern states. In Georgia, the episode had a powerful effect on the development and character of the state's political parties and it forced fuller consideration about its constitutional relationship with the federal government. This, however, was not the only constitutional issue of importance in 1830s Georgia. The state assembled two constitutional conventions in the decade, the first since 1798. The 1830 census forced an adjustment of proportional representation in the Georgia House of Representatives. By early 1832, a combination of political excitement from the increasing radical elements in the Troup faction and the practical problems associated with the increasing number of state legislators led to calls for a constitutional convention. In an effort to improve their strategic and tactical advantages, the Troupites called a convention to meet in Milledgeville in May 1732. Although the Clark-Unionists attempted to rally delegates for the meeting, the Troupites dominated the delegation from the twenty-six counties represented. The session accomplished little and, despite the call for special elections to a constitutional convention, had little immediate impact, but did inspire the Georgia General Assembly to require Governor Lumpkin to announce elections for such a convention in 1833.⁸⁷

The convention met on 6 May 1833 in Milledgeville. Again, the Georgia Constitution of 1798 had not required a convention to amend the constitution, but as in 1821, the state legislature called for one. Unlike the extra-legal political convention in 1832, the legislature had sanctioned it and a majority of the delegates were members of the Union Party. The major issue before the convention was the basis of representation in the state legislature. The contentious session,

⁸⁷ Paul Murray, *The Whig Party in Georgia, 1825-1853* (Chapel Hill: University of North Carolina Press, 1948), 42-49.

however, began with a debate over the powers of the convention. For the first time, the state legislature mandated a limited scope of authority to the constitutional convention. The bill authorizing the convention directed each delegate swear an oath to that effect. The oath declared,

I do solemnly swear that I will not attempt to add to, or take from the Constitution, or attempt to change or alter any other section, clause, or article of the Constitution of the State of Georgia, other than those touching the representation in the General Assembly thereof, and that I have been a citizen of this State for the last three years: so help me God.

The bill denied a seat in the convention to anyone who refused the oath.⁸⁸

According to the political historian, Fletcher M. Green, the debate over the powers of the convention grew heated.⁸⁹ The venerable William Crawford categorically rejected the oath, arguing that the legislature overstepped its delegated authority from the people by placing limits on a constitutional convention. He called it, “an unwarrantable usurpation of the rights of the sovereign people.”⁹⁰ Others believed the limitations were principally unsound and not constitutionally binding, but saw little harm in taking the oath to facilitate the process. Finally, the convention voted to administer the oath to all delegates. At the end of the proceedings, however, the body demonstrated some lingering insecurities when they voted on a proposed resolution that stated,

That this convention whilst they admit the right of the people to instruct their delegates and limit their action when in convention assembled; do expressly deny to the general assembly of the state, by any act of that body, to instruct or control the action of the people, through their delegates when in convention met.

⁸⁸ “An Act to Provide for the Call of a Convention to Reduce the Number of the General Assembly of the State of Georgia, and for Other Purposes Therein Named” in *Acts of the General Assembly of the State of Georgia, Passed in Milledgeville at an Annual Session in November and December, 1832*, Vol. 1, No. 30, 42.

⁸⁹ Among Green’s sources was a journal of the convention (Journal of a General Convention, to Reduce the Members of the General Assembly. Begun and Held at Milledgeville, the Seat of Government in May, 1833). However, this author has been consistently unsuccessful in locating a copy of these proceedings. Consequently, much of the discussion about this convention owes much to Green’s work. See Fletcher M. Green, *Constitutional Development in the South Atlantic States, 1776-1860* (Chapel Hill: University of North Carolina Press, 1930), 233-240.

⁹⁰ Quote from the *Journal...May, 1833* in Green, 234-235.

Although the resolution failed, by a vote of 138 to 64, it provided proof of the persistent concern for political legitimacy.⁹¹

The convention quickly turned its attention to addressing the ratio of representation. The delegates considered several proposals for reducing the size of the Georgia General Assembly. They divided the state into senatorial districts comprised of two counties per district, giving each district one senator to represent them. The next day, “a very animated debate” began over the basis of representation for the lower assembly. Slaveholding interests, primarily Troupites or States Righters, pushed for “incorporating the federal representation as basis,” which counted slaves as three-fifths of a person. With a majority siding with the yeoman-dominated Clark-Unionists, however, the convention voted to base representation of the house on strictly the free white population.⁹²

In the midst of this convention, the Clark-Unionists decided to caucus to strengthen their party statewide. On May 14, they met and passed three resolutions that communicated their political principles. In the first, they embraced the Virginia Resolutions of 1798 as written by James Madison. Interestingly, they ignored Jefferson’s Kentucky resolutions that were more compatible with Calhoun’s nullification theory. In the second resolution, the party denounced nullification outright, claiming it could lead only to “civil war.” Finally, the resolutions praised Senator John Forsyth and James M. Wayne for their unyielding support of Andrew Jackson.⁹³ This meeting illustrated, as others like it previously employed by the Troup-States Right Party, that

⁹¹ Ibid., 235.

⁹² “Georgia Convention” in *Niles’ Weekly Register*, Vol. 44, No. 1132 (1 June 1833), 230. Also see Green, 235-236.

⁹³ “Georgia” in *Niles’ Weekly Register*, Vol. 44, No. 1134 (15 June 1833), 255.

political conventions had become more than an expression of the singular popular will. They had specialized into expressions of distinctions among the popular will.

In the wake of their defeated proposals in the May convention, the States Right supporters began a campaign to deny ratification of the amendments. This was the first constitutional convention in Georgia to submit amendments for popular approval. Consequently, they staged a public attack on the proposed changes in representation by asserting that the new scheme subjected a majority of the state to the minority voters. They suggested 130,000 whites over sixty-two Georgia counties would rule over the 180,000 population in twenty-six counties. The voters, in the end, overwhelmingly rejected the amendment to the state constitution.⁹⁴

In 1838, the Georgia General Assembly once again called for a constitutional convention to revisit the same issue. The bill calling for the convention was almost verbatim to the bill in 1832, including the oath of limitation.⁹⁵ The entire episode was a virtual repeat of the 1833 constitutional convention. The Unionists, though in a minority in the state, controlled the majority of delegates to the meeting. There was some dispute to the limitations placed on the convention by the legislature, but not as intense as previously. Once again, the State Rights coalition charged that the amendments would subject the majority of whites to the minority will. When submitted to the people, they again rejected it a 33,822 against and 18,062 in favor.⁹⁶ Amending the constitution by convention was proving to be an unsuccessful venture in Georgia.

⁹⁴ According to Green, the new reapportionment gave the minority a six member majority in the Georgia House and a two-thirds majority in the Georgia Senate. See Green, 236-237.

⁹⁵ "An Act to Provide for the Call of a Convention to Reduce the Number of the General Assembly of the State of Georgia, and Other Purposes Therein Named" in *Acts of the General Assembly of the State of Georgia, Passed in Milledgeville at an Annual Session in November and December, 1838*, Vol. 1, No. 045, 73.

⁹⁶ Green, 237-239.

The successful amendments to the 1798 Georgia Constitution went through the lengthy process proscribed by it originally, whereby one session of the legislature proposed the changes and the next legislative session ratified it. Among these amendments were the changing the procedural granting of divorces, abolishment of property qualifications of representatives and senators, a reorganization of the state judiciary, and the shift of legislative sessions from annual to biennial. The General Assembly did submit a referendum to the voters in a general for approval on the biennial change. Once approved, however, the legislature followed the constitutional procedure for amendments and made the change.⁹⁷ The amendment with the most impact during this era, however, was the establishment of the Georgia Supreme Court, introduced in the 1834 legislative session and ratified by the 1835 session.⁹⁸

At the close of the 1830s, Georgia's political and constitutional history had undergone some important transformations. The nationalist affections that had characterized the state in the late eighteenth century were in retreat. The factional politics of personalities over issues gave way to partisanship defined more often by federal relations. This evolution also affected the use of conventions, not only as a vehicle for articulating common principles, but also as way of articulating differences in principles. The convention, therefore, was a useful mechanism for strengthening partisan influence and an engine for acquiring and sustaining political power. That the Clark-Unionists had remained in the minority of Georgia's political actors, but had controlled the two constitutional conventions since 1798, demonstrated the inherent potential of shrewdly

⁹⁷ Saye, 162-186; Green 239-240.

⁹⁸ Saye, 183-186.

organizing, managing, and conducting such bodies for partisan interests. The lessons were not lost on the increasing tensions between Georgia and the Union in the next two decades.

CHAPTER 6

THE GEORGIA CONVENTION OF 1850 AND THE SAVING OF THE UNION

In 1850, the nation came to a pivotal political and cultural crossroads as slavery became the most definitive issue that divided sectional interests in the North and South. It was a transformative year for Georgia politics and for the state constitutional convention process. This chapter demonstrates the effects of sectionalism on Georgia's constitutional history and the dramatic use of the convention to define and limit the state's role and membership in the American Union. Unlike the events that unfolded in the 1820s and 1830s, constitutional politics in 1850s Georgia had ventured into the emotional nationwide conflict over slavery. As sectional tensions grew, Georgia lawmakers wielded state rights constitutionalism and sought to defend the perpetuation of slavery and its expansion into new territories and states. The appeal to constitutional principles to that end had important implications for the convention ideal in the state.

This chapter explores the importance of the politics of 1850 and how they informed a decidedly new utility for Georgia conventions. During that contentious year, Georgians faced the possibility of secession, if the politicians were to be believed. At the national level, high pitched rhetoric and threats of a constitutional crisis provoked two potentially pivotal events, which required the state's voters to decide their outcomes at the polls. Both events were conventions, but with very different political agendas and with only questionable appeal for Georgia's electorate. The first was the Nashville Convention, followed later by a state convention. In the end, it appeared that Georgia's politicians had more interest in these events than the people at-large. The

distinctions between those two assemblies were critical as they related to constitutional developments. That the state convention in December 1850 had more political influence on Georgia's constitutional course and its relationship in the Union was evident when its delegates unveiled the Georgia Platform as a sectional policy for slavery, which had far greater repercussions than did any of the measures of the Nashville Convention. The reasons for the discrepancies in influences were many, including the practical, historical, and constitutional foundations that informed them both as well as the general public interest in them. The Nashville Convention was more akin to a political sideshow, which had no official constitutional or political authority granted to it by the participating states. It had been procedurally and technically unprepared for the conflicting assumptions of its purpose and message. Furthermore, its festive celebrations between sessions and the unruly spectators during them, and the failure of many of the conservatives elected to serve as delegates to attend, added to the specter that it lacked any credible or official sanction to speak for its constituent states. In sum, it was less a convention in the traditional constitutional framework than akin to the cotton expositions and conventions that had become a part of the southern culture. On the other hand, the Georgia convention was a constitutionally familiar tradition and it established the precedents and framework for Georgia's secession from the Union a decade later.

One of the major factors that informed the character and direction of these constitutional developments from 1850 to 1861 was the state's party system. The nullification crisis had a profound effect on Georgia's political parties. The net result was an alignment of a party with Andrew Jackson and one in opposition to him. The Jacksonian Union-Democrats, though technically a numerical minority, persistently had out-manuevered the less adept and often divided Troup-States Righters. Throughout the decade of the 1840s, these state parties solidified their

alignments with the corresponding national organizations as Democrats and Whigs, respectively. The historian Anthony Gene Carey has argued that protecting slavery was a shared value across party lines in Georgia's antebellum politics and that partisan differences were more superficial than substantive. As this chapter will reveal, however, Georgia's leading politicians, although certainly committed to the protection of slavery, had fundamental differences over the means to secure that protection and whether constitutional resistance was better than compromise. As a result, Georgia's partisan conflicts at the state level, even during their earliest stages, were substantive and passionately engaged.¹ Steven Hahn, writing on the origins of the Populist movement, more accurately described Georgia's political parties in this era. He noted that political campaigns were part of a public forum for venting or negotiating the various "social and cultural tensions" that informed competing interests and persons vying for access to political power.²

As local parties began to align with national parties, newspapers in Georgia also followed along strict partisan loyalties. As one Georgia historian has put it, they "spun pretty fictions" to garner support for their party platforms.³ By 1840, therefore, a two-party system had emerged solidly in the state that pitted Whigs against Democrats. This system of political competition centered on issues rather than personal loyalties. Furthermore, as these parties developed networks of support and channels of communication and influence, the process proved an efficient and successful means of mobilizing the electorate behind issues of local and national concerns. The system also provided voters with new political identities beyond being Georgian or American,

¹ Carey has argued that white voters in Georgia had more in common than differences. Partisan struggles, therefore in his analysis, were more superficially motivated than expressions of differences in values. Political parties, according to Carey, were primarily vehicles for winning elections and not forums for promoting genuine challenges on principled issues. See Carey, xii-xix, 7-10, and 38.

² Steven Hahn, *The Roots of Southern Populism* (New York: Oxford University Press, 1983), 90-91.

³ Horace Montgomery, *Cracker Parties* (Baton Rouge: Louisiana State University Press, 1950), 2.

which had the effect of refining their loyalties and exciting their passions.⁴ Like nullification in the 1830s, other national issues emerged over the next two decades that inflamed partisan values and, eventually, took the nation to war with itself. Chief among the issues, though not exclusive, was slavery.

There were no calls for a constitutional convention in Georgia during the 1840s. National issues dominated the period as the state's leaders channeled their disagreements through partisan contests. The old Troup-State Rights Party moved toward the Whig Party while the Clark-Unionists generally aligned with the Democratic Party. It was not, however, a clean split. A younger generation of the Troupites had acquired more respect for John C. Calhoun and his innovative constitutional ideas. They also perceived that northern Whigs posed a potential threat to southern slavery. Consequently, in the early part of the decade, some Georgia Whigs bolted to the Democratic side. This realignment remained fundamentally intact until the Whig Party dissolved in the 1850s.⁵

Among the new generation of Georgia Whigs that also emerged in the early 1840s were two lawyers who rose together to prominence on the national stage. Alexander Hamilton Stephens and Robert Augustus Toombs served the state in the U. S. House of Representatives beginning in 1843 and 1844 respectively. Their personal and political bonds forged a powerful team that often

⁴ It is important to note here that Michael F. Holt has argued that, especially in the 1830s, the Whig Party in particular often consisted of voters who nationally united against the policies of Andrew Jackson, but local issues could differentiate them from state to state. Despite these local inconsistencies, however, voters increasingly did identify themselves with national parties. See Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), 49-50.

⁵ Carey, 43-49.

dramatically influenced Georgia's positions on issues of national importance.⁶ Both men were articulate defenders of state rights and, at the same time, tirelessly sought national reconciliation during many of the sectional crises leading up to the Civil War—a paradox that ultimately undermined their achievements. No antebellum history of Georgia can ignore either one of them or their influence on contemporary events. Stephens, in fact, contributed one of the most ambitious statements on the constitutional issues bearing upon the antebellum crises and the Civil War, biased as it was by southern defeat.⁷

In general terms, there were significant distinctions between Georgia's Democrats and Whigs. As the historian Michael Holt has demonstrated for the South generally, in the decade of the 1840s, these parties had undergone a metamorphosis. Ironically, the Whigs became supporters of tariff policies and Democrats had become the more belligerent defenders of states rights. The Panic of 1837 that had devastated local and national economies hit the aristocratic Whigs in Georgia especially hard. Thus, they embraced Henry Clay's policies of using the federal government as an economic engine to offset these kinds of financial calamities. The national government, in this view, was a prime mover in internal improvements, industrial development, and a fail-safe for the country's economic health.⁸ Democrats, on the other hand, countered the proactive approach to government by the Whigs. Jackson's successor to the presidency, Martin

⁶No scholar has yet to capture the full dynamics of the relationship between Stephens and Toombs and their impact on Georgia politics. One recent attempt is William C. Davis, *The Union that Shaped the Confederacy: Robert Toombs and Alexander H. Stephens* (Lawrence: University Press of Kansas, 2001). A more extensive and objective work on Stephens is Thomas E. Schott, *Alexander H. Stephens: A Biography* (Baton Rouge: Louisiana State University Press, 1988). The majority of Davis's study concerns the Civil War era. There is a need for an updated biography of Toombs as the latest is William Y. Thompson, *Robert Toombs of Georgia* (Baton Rouge: Louisiana State University, 1966).

⁷See Alexander H. Stephens, *A Constitutional View of the Late War Between the States; Its Causes, Character, Conduct and Results, Presented in a Series of Colloquies at Liberty Hall, Volumes I and II* (Philadelphia: National Publishing Co., 1867-1870).

⁸Holt, 162-168.

Van Buren, had articulated an ideology of “negative” government, or as Holt has surmised, “Government could best preserve equal rights by doing nothing.”⁹ For Democrats, the states were the hubs of growth and prosperity. In the South, however, constituencies of both parties demanded the protection of slavery, which increasingly put them at odds with the growing anti-slavery sentiments by their northern counterparts. In Georgia, slaveowners in the black belt and urban elites supported the Whig Party, while yeomen on the frontier, in the piney woods, and piedmont regions were most often Democrats.¹⁰

It was not economic issues that made the political culture of antebellum America so volatile or transformed southern constitutionalism. Slavery was at the heart of every national crisis in the two decades prior to the Civil War. The issue began dominating politics on the heels of the Texas Revolution. Often politicians disguised the issue beneath constitutional debates over popular sovereignty or congressional authority over territorial expansion. As the historian David M. Potter has stated, this bait-and-switch tactic was “used by men who needed to discuss the slavery question in terms of something other than slavery.”¹¹ Despite the centrality of slavery to growing tensions, constitutional thought was undergoing adjustments to accommodate its protection by southerners and its restriction by northerners. The annexation of Texas provided pro-slavery southerners and anti-slavery northerners the battlegrounds for articulating and defining the boundaries between the constitutional authority of the people in their states and the jurisdiction of the federal government.

The dubious war with Mexico, aggressively pursued by President James K. Polk in 1846, brought to the fore all of the tensions about slavery that had been seething just below the surface of

⁹ Ibid., 65-66.

¹⁰ Ibid., 115-116.

¹¹ David M. Potter, *The Impending Crisis, 1848-1861* (New York: Harper & Row, 1976), 61.

public debate for a number of years. Even before the Mexican War was over, Congress began deliberating the fate of the American territories certain for acquisition from Mexico. An obscure freshman Democrat from Pennsylvania, David Wilmot, introduced an amendment to an appropriations bill that prohibited slavery in any of the territories gained from the Mexican War. Though never passed by the Senate, the amended bill excited political passions between northern and southern politicians. Furthermore, it made it difficult to adhere to strict party loyalties. Southerners like Robert Toombs, as U. B. Phillips has noted, found it became “increasingly difficult to continue as a Southern champion and at the same time a Whig in regular standing.”¹² The politics of slavery became even more desperate for Whigs in the South after their open support for Zachary Taylor’s presidential candidacy, who, after his election, turned his back on the proslavery lobby in the California statehood debate. Southern Whigs earlier had attempted to avoid the issue of slavery in the new territories. Early in 1847, Georgia Whigs Alexander Stephens and John Berrien introduced resolutions in the House of Representatives and Senate, respectively, which proposed the United States acquire no new territories from the Mexican War, thus averting the slavery issue. This “No Territory” policy became a Whig platform.¹³ Some Georgia Democrats, on the other hand, defiantly and somewhat eagerly, attacked the Wilmot Proviso and began to adopt John C. Calhoun’s radical constitutionalism.

Calhoun reacted to his fears of the rapidly diminishing influence of the southern states on the federal government. In his speech to the Senate on 19 February 1847, he detailed the proportional numbers of delegates in the House of Representatives, the Senate, and rightful

¹² U. B. Phillips, *The Life of Robert Toombs* (New York: MacMillan Company, 1913), 48.

¹³ Holt, 286; Carey, 88.

electors by state in the Electoral College.¹⁴ Only in the Senate was there an equal balance of power, and, much to his dismay, the recent admission of Iowa as a new state would soon upset that in favor of the non-slaveholding states by two votes. In his desperate, but futile, attempt to sustain the south's traditional influence in the government, Calhoun argued that territories acquired by the United States were common public property and, as such, Congress could not constitutionally deny slavery in those territories. Could the Congress, he asked, "proscribe the citizens of other portions of the Union from emigrating with their property to the territories of the United States?" Furthermore, he added that the federal government possessed no constitutional authority to decide which states were slaveholding and non-slaveholding. According to the U. S. Constitution, he noted, "every State about to become a member of this Union has a right to form its government as it pleases; and that, in order to be admitted there is but one qualification, and that is, that the Government shall be republican."¹⁵ In effect, he denounced the Missouri Compromise.

As persuasively argued as Calhoun's reasoning might have been, few were listening. Those few were southern Democrats who increasingly became more disaffected at the growing bravado of the anti-slavery coalition. By early 1849, the members of Congress from the slaveholding states had several critical concerns. Supporters of the Wilmot Proviso continued to press for its passage, there was a bill before the House to abolish slavery in the District of Columbia, and there were contentious debates over whether to admit California as a slave state or a non-slave state. Moreover, several northern states had passed legislation defying southern rights to remand

¹⁴ See "Speech on the Introduction of His Resolutions on the Slave Question" dated 19 February 1847 in Lence, ed., *Union and Liberty*, 513-521.

¹⁵ *Ibid.*, 518.

runaway slaves under the federal fugitive slave law.¹⁶ The concerns forced southern Representatives and Senators of both major parties to caucus in January of 1849 and consider potential strategies to counter these anti-slavery measures. Once again, Calhoun came to the political fore with his Address to the People of the Southern States.¹⁷

Calhoun's hopes of finally establishing a separate southern party quickly faded. Out of the 121 southerners in Congress, only forty-eight signed the address in support of Calhoun. Forty-six of the signatures were from southern Democrats while only two southern Whigs put their names to it. Several factors accounted for the failure of a united southern front in early 1849. Calhoun's personal reputation had suffered over the years as an enemy of Jackson, an ex-Whig, and an opponent of the Mexican War. In addition to his distrust from southern Democrats, southern Whigs were also suspicious of his motives. Robert Toombs expressed this suspicion in a letter written during the convening of the conference. "We have completely foiled Calhoun in his attempt to form a Southern party," he wrote.¹⁸ In addition, the Whigs were still optimistic because Zachary Taylor had recently won the presidential election, a candidate they had placed much hope for protecting southern interests. For the southern Whigs, Calhoun was merely a distraction from the real solutions necessary to alleviate their concerns.¹⁹

¹⁶ Georgia, in particular, had a controversy in 1837 with Maine's refusal to honor the fugitive slave law. After its failure to get any redress of its claims, the Georgia General Assembly drafted a proposal in 1839 to amend the federal constitution to strengthen the law. See "Inter-State Controversies" in Ames, ed., *State Documents on Federal Relations*, 232.

¹⁷ "The Address" in Richard K. Crallé, ed., *Works of John C. Calhoun*, 6 Volumes (New York: D. Appleton and Company, 1870), Vol. VI, 290-313. Also see Potter, 83-85.

¹⁸ Robert Toombs to John J. Crittenden, dated 22 January 1849 in U. B. Phillips, *The Correspondence of Robert Toombs*, Alexander H. Stephens, and Howell Cobb, *Annual Report of the American Historical Association* (Washington: AHA, 1913), 141.

¹⁹ For example, see Potter, 85-86.

The deaf ear that many southerners had turned to Calhoun, to some extent, demonstrated the power of party politics in the region.²⁰ National politics dominated local attentions, but rather than inspiring regional unity, ambiguities of platforms and candidates on slavery helped to divide southerners by party loyalties.²¹ Partisanship, however, began to suffer dramatically in the 1849 South under the stress of northern abolitionism. In Georgia, a number of Democrats, such as Herschel V. Johnson, Henry L. Benning, and former governor Wilson Lumpkin, realized, along with their party's planter constituency, that Calhoun had been right about the ineffectiveness of either of the two major parties in representing southern interests. Other Democrats in Georgia, like Howell Cobb and John H. Lumpkin, represented the views of their yeoman, upcountry, and mountain constituencies who believed their best chance of protecting their interests was in preserving their national party. Thus, in 1849, Georgia's political loyalties had divided three ways: State Rights Democrats, Union Democrats, and Whigs.²² More importantly, southern radicalism was moving mainstream. In the summer of 1849, Henry Benning wrote to his unionist colleague, Howell Cobb, warning him, "the only safety of the South from abolition universal is to be found in an *early* dissolution of the Union."²³ Secession slowly gained credible currency outside of South Carolina.

²⁰ William F. Freehling effectively has made this argument in his *The Road to Disunion*, Volume I: Secessionist at Bay, 1776-1854 (New York: Oxford University Press, 1990), 479-480.

²¹ For a full discussion on the ideological ambiguities of the 1848 presidential election see Chapter 27: "Southern Convention, Without a South" and Chapter 28: "The Armistice of 1850" in *Ibid.*; and Potter, Chapter 4: "The Deadlock of 1846-1850." Among these ambiguities were the Whig's "No Territory" platform, the Democrats's "Popular Sovereignty" platform, and Zachary Taylor's ability to remain silent on his true political loyalties and his hidden agenda on preserving the Union.

²² Carey 156-158.

²³ Henry L. Benning to Howell Cobb, dated 1 July 1849 in Phillips, *Correspondence*, 171.

Much to their surprise, Zachery Taylor proved to be a disappointment for the southern Whigs. In particular, he was not a champion of their pro-slavery position on California statehood and congressional rhetoric escalated over the slave question. Throughout 1849, several southern state legislatures expressed a willingness for a convention of slave-states to discuss strategies for protecting their “peculiar institution.”²⁴ Finally, in October, Mississippi’s state legislature circulated “An Address to the Southern States,” which invited delegates to a southern convention in Nashville, Tennessee on 3 June 1850. The stated purpose of the convention was “arresting the course of action” by the abolitionist North and, if necessary, to prepare for another “convention of all the assailed States, to provide, in the last resort, for their separate welfare by the formation of a compact and a Union, that will afford protection to their liberties and rights.”²⁵

Clearly, this was a movement designed to generate support for southern secession. Moreover, the general sentiment recognized the need for a special convention to affect such a constitutional change. The Nashville Convention was the most grandiose display of sectionalism to date. The Hartford Convention had been the first example of a coalition of states within a region meeting to collectively oppose federal policies, but the one in Nashville generated broader attention among interested observers of national politics. Furthermore, it became an outrageous social affair reflective of the southern flair for the dramatic, which the growing anti-slavery sentiment in the North made its delegates and spectators all the more impassioned.

²⁴ South Carolina took the lead in this initiative in December of 1848. The state had already earned a radical reputation and, therefore, initially did not generate much excitement for their plan. Within a month, however, Florida, Virginia, and North Carolina began to react against the anti-slavery sentiment in the north. Before the end of March, Missouri also responded. See “Calling a Southern Convention” in Ames, 253.

²⁵ Ibid.

Georgia's political parties were immersed in the sectional tensions over slavery. Conservative Democrats, personified by Howell Cobb, and conservative Whigs, represented by Toombs and Stephens, battled radical sentiment among certain political elements in the state who had sided with John C. Calhoun in calling for the formation of a new southern party. Conservative Democrats like Cobb were rare, however, as northerners in Congress continued pushing the Wilmot Proviso and added to the agitation by proposing the abolition of slavery in the nation's capital. In other southern states, such as South Carolina, Mississippi, Missouri, and Virginia and Alabama, state legislatures and coalitions of prominent politicians had generated momentum toward southern resistance to the anti-slavery measures in Congress and had an immediate effect on Democrats in Georgia.²⁶

At the opening of the 1849-1850 session of the Georgia General Assembly in November, Democratic Governor George W. Towns capitalized on this radical momentum and gave a fiery address to the body, which had just acquired a bare majority of Democrats in the recent elections.²⁷ He denounced the persistence of Congress's attempts to pass the Wilmot Proviso and urged the legislature to authorize a special state convention to decide the state's course of reaction in the event the federal government failed to acknowledge the right of slavery to expand to California. By February 1850, considerable excitement had permeated the legislative session. California had submitted an anti-slavery constitution to Congress, a move President Taylor had endorsed. Georgia's lawmakers, in addition, learned that the Connecticut Assembly was pushing passage of the Wilmot Proviso and had decided to pass legislation denying southerners the recovery of their

²⁶ Richard Harrison Shryock, *Georgia and the Union in 1850* (Durham: Duke University Press, 1926), 185-181.

²⁷ In the state senate there were twenty-six Democrats and twenty-two Whigs. In the lower assembly there were sixty-six Democrats and sixty-three Whigs. See *Ibid.*, 217-218.

fugitive slaves in their state. The culmination of these events and the emotional passions they incited forced many Whigs in the South to abandon their moderate politics in favor of sending a united southern message to the North.²⁸

On 6 February 1850, the Georgia legislature formally enacted resolutions supporting the Nashville Convention, then provided for elections of two delegates to the convention from each of the state's congressional districts and four delegates at large from the state.²⁹ It followed two days later with a bill authorizing the governor to call a state convention in the instance of the passage of any law by the United States Congress that affected the full right of slavery in the territories, District of Columbia, or any new state from the Mexican cession, and upon any interference of the fugitive slave law. The resolutions also indicated that the convention had a right to meet such unconstitutional acts by the federal government "in a calm and manly spirit of resistance."³⁰ The same day, the state legislature passed another series of resolutions on the "State of the Republic." The preamble to this set of resolutions recounted the general disputes over slavery by the northern and southern states from the debates and compromises in the Federal Convention in 1787. It also noted Georgia's consistency in opposing federal encroachment on state rights by citing as precedent its objections in 1827 to tariff revenues used by the federal government for supporting the American Colonization Society.³¹ If such abuses continued, the resolutions stated, "it will

²⁸ Ibid., 219-228. Historians Anthony Gene Carey and Horace Montgomery have downplayed the party divisions among the Democrats and Whigs in this period. Shryock, however, has revealed that there remained evident deep partisan disagreements about the aims of southern resistance. See Carey, 160 and Montgomery, 18.

²⁹ "Resolutions to Send Delegates to the Nashville Convention" dated 6 February 1850 in *Acts of the State of Georgia, 1849-1850*, Vol. 1, No. 530, 418.

³⁰ "An Act to Authorize and Require the Governor of the State of Georgia to Call a Convention of the People of this State, and to Appropriate Money for the Same" dated 8 February 1850 in Ibid., Vol. 1, No. 142, 122.

³¹ See Chapter Five.

become the immediate and imperative duty” of Georgia’s people “to meet in convention, to take into consideration the mode and measure of redress,” including secession.³²

Once again, the governing authorities in the state of Georgia recognized that a state convention of the people was the necessary remedy and protocol for fundamental constitutional change. Though amendments to the state constitution might be legitimately enacted via special legislative actions by joint houses in subsequent sessions, any change in the organic nature of the constitutional principles or the constitutional relationships established by the original document required the deliberation of the sovereign people in convention. Consequently, in the strictest sense of the term, the Georgia Assembly had called for a constitutional convention, in the event of deteriorating federal relations, to assess, alter, and establish constitutional measures to redefine the state’s relationship to the Union and protect the safety and security of the state as needed. The evidence provided by these resolutions indicated that the idea of sovereign political authority resided in the people, and could only be expressed legitimately and precisely in a special convention, had not diminished over time.

These acts and their supporting rhetoric in the Georgia General Assembly, however, did not go unchallenged. The *Georgia Journal and Messenger* newspaper in Macon printed a dissenting opinion by a coalition of Union Democrats and Whigs on 6 February 1850. In this “Protest,” this coalition objected to the radical fever that had apparently gripped the state legislature. Such resolutions, they claimed, were premature as Congress had yet to pass any of the acts which threatened southern constitutional rights. Until then, this moderate coalition asserted, they would stand “against any measure or mode of redress, the inevitable tendency where of, leads to a

³² “Report of the Committee on the State of the Republic” dated 8 February 1850 in *Ibid.*, Vol. 1, No. 518, 405-410.

dissolution of this most ‘perfect union.’”³³ Despite these scattered cautionary pleas, the momentum continued to favor radical resistance in Georgia.³⁴ Senator Herschel V. Johnson, a Calhoun supporter, was an example of those torn by their political loyalties, but ultimately supported aggressive resistance to the north. In a letter to Mississippi Senator Henry S. Foote, in January 1850, Johnson expressed his inner turmoil and hope for a peaceful, if unlikely, resolution to the national furor over slavery. “I love this Union,” he stated. “But the more we yield, the more unscrupulous are our tormentors. Is it not time for the South united as one man, to define her ultimatum and say to the North, ‘Thus far and no farther shalt thou go?’” Johnson was optimistic about the Nashville Convention and longed for “repose for the South.”³⁵

In the midst of these activities in Georgia, Henry Clay, the aging Great Compromiser, stood before the Senate on 29 January 1850 and delivered a comprehensive bill designed to expedite a national conciliation on the slave issue. He proposed eight compromise resolutions that accommodated concerns in the North and the South. Among the central proposals was the admission of California as a free state as slavery was impractical in the region anyway, eliminating the slave trade in the District of Columbia with abolishing slaveholding, organizing future territories acquired from Mexico without reference to slavery, and a strengthening of the federal fugitive slave law. Materially, it favored the North, but in principle, it favored the south because it

³³ “Protest” in *Georgia Journal and Messenger*, dated 6 February 1850, 2.

³⁴ Montgomery, 19.

³⁵ Letter of 19 January 1850 quoted in Percy S. Flippin, Hershel V. Johnson of Georgia: *States Rights Unionist* (Richmond: Deitz Printing Company, 1931), 27.

reaffirmed the constitutionality of slavery.³⁶ It appeared that there was something in it for all parties concerned.

Initially, this compromise omnibus bill received a relatively cool reception in Georgia. One Athens newspaper rebuked the notion that slavery was impractical in California. “There are one thousand citizens of Georgia in the mining region,” it read, “who would start to California in less than a month if they were protected in their property in slaves in that country.” Defiantly, it demanded that if Congress denied slavery in California, “the people of the South will know how to redress their wrongs.”³⁷ Johnson poetically condemned Clay’s compromise as a “cup of hemlock” and the “death knell of the Union.”³⁸ Democrat Howell Cobb, during a contentious run for Speaker of the House along sectional lines, praised his rival Whig Clay’s efforts in a letter to his wife, but was not optimistic about its success. “It will have a bad effect on the public mind of the North,” he wrote, “as it will induce with them the opinion that he [Clay] expresses Southern sentiment, which is far from being the fact.”³⁹ Toombs and Stephens, though sharing Cobb’s pessimism, supported their Whig party leader and his proposals.

Throughout February, southern resistance Democrats kept emotions high and radical rhetoric persistent in the Georgia General Assembly until it officially adjourned on 23 February. Historian Horace Montgomery has said that the legislature “degenerated into little more than a propaganda machine for the extreme Southern rights leaders.”⁴⁰ Georgia Whigs, including

³⁶ See Potter, 99-100.

³⁷ “The Alternative” in *The Southern Whig*, 21 February 1850, 3.

³⁸ Letter responding to inquiries from Macon on his views as quoted in Flippin, 29.

³⁹ Howell Cobb to His Wife dated 9 February 1850 in Phillips, *Correspondence*, 183-184.

⁴⁰ Montgomery, 20.

Alexander Stephens's younger half-brother Linton Stephens, were entirely frustrated with the radicalized proceedings in the house assembly that they effectively prevented a quorum for four days by bolting the session. A sympathizing Toombs wrote the younger Stephens a letter of support stating that the leaders of the state legislature "were the greatest set of scoundrels that even the Democrats ever cursed the century with. I have never known such an utterly base and unprincipled majority as you had to deal with."⁴¹ The radical zeal of southern rights politicians forced conservatives of both parties to discuss a new alliance under the banner of the Union Party.⁴²

While the legislature remained in session, there was broad enthusiasm for the upcoming Nashville Convention in June. After its adjournment in March, however, the fever pitch inspired by the daily dose of fire-eating speeches in Milledgeville began to fade. A planned rally in Monroe, Georgia to promote the Nashville Convention "proved entirely abortive" when it became clear "that no one would attend it."⁴³ Several factors accounted for the sudden decline in enthusiasm for radical resistance. First, Henry Clay's compromise proposals began to reach a wider audience. In his study of the Compromise of 1850, historian Holman Hamilton has suggested that, except for extremists, compromise was as much a part of the American political fabric of the moderate mainstream culture as much as "their day-to-day reliance on representative government and free elections as guarantors of both majority and minority rights." Middling Americans in the North and South naturally gravitated toward equitable concessions that would dampen the radical

⁴¹ "Toombs to Stephens" dated 22 March 1850 in Phillips, *Correspondence*, 188.

⁴² Shryock, 234-236.

⁴³ Macon's *Georgia Journal and Messenger* dated 20 March 1850, 2.

excitement.⁴⁴ Another factor was the pragmatic conclusion that the admission of a free state on the Pacific Ocean would have little practical effect, much less threaten, the daily lives of Georgians.⁴⁵

Capitalizing on the conservative undercurrent, the recent alliance of moderate Whigs and Union Democrats in Georgia began an assault on the southern rights factions by successfully branding them as secessionists bent on using the Nashville Convention for disunion and not for compromise. One newspaper openly denounced the convention, “cherishing as we do a strong attachment to the Union.”⁴⁶ Despite attempts to rebut these characterizations by pro-union leaders and newspapers, the political momentum shifted dramatically against the southern resistance partisans by the early weeks of spring of 1850. The proof was in the polls.

Georgia held elections for the Nashville Convention delegates on 3 April 1850 and voter turnout surprised many Democrats. Out of the approximately 95,000 eligible, less than 4,000 voters went to the polls. Apathy to the convention stung the southern resistance partisans. According to one historian, several factors contributed to the low voter turnout. Whigs in Georgia continued to have faith in their party’s president, Zachary Taylor, to protect southern interests. There were suspicions spreading that the Nashville Convention was a ploy by secessionists to provoke disunion. In addition, by the time of the vote, there was considerable interest and hope for Clay’s compromises. Finally, the emphasis on the state convention in Georgia might have overshadowed the importance of a regional convention outside of the state.⁴⁷ After all the blustering fan-fare and excitement generated by radicals in the previous months, their efforts had

⁴⁴ Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (Lexington: University of Kentucky Press, 1964), 53.

⁴⁵ See Carey, 161.

⁴⁶ “The Nashville Convention” in Macon’s *Georgia Journal and Messenger* dated 17 April 1850, 2.

⁴⁷ For a summary of these factors see Shryock, 260-261.

come to naught. The enthusiasm of the radical leadership was not shared by the electorate at-large. This obvious lack of popular support for the Nashville Convention moved several of the delegates-elect to decline attendance. In the end, only eight Democrats and three Whigs attended the convention.⁴⁸ Wounded partisans made the best spin possible on events by claiming that their resistance in the winter had forced the North to retreat from hostile attacks on slavery. Furthermore, they argued, without broad popular support in the South for the June convention, the North would read it as a sign of southern weakness and reignite the influence of northern abolitionism in Congress. As to the charges from some pro-union corners that the Nashville Convention was little more than an unconstitutional means of addressing political concerns, John Forsyth, Jr., son of the famed Georgia statesman, cited that the Continental Congress that drafted the Declaration of Independence was similarly unconstitutional.⁴⁹ Nevertheless, demonstrative southern resistance continued to weaken in Georgia.

The month of March proved to be an important moment in the crisis, symbolically and rhetorically. John C. Calhoun and Daniel Webster, two aging personifications of the sectional tensions, delivered addresses on the Senate floor that were definitive statements on the contrasting views of the Union. Their speeches were important in that they reveal the contending views of American nationalism and its conditional acceptance among the states. Calhoun considered his message of such paramount importance that he gathered himself up from his death-bed and, on 4 March, leaning upon the sympathetic arm of South Carolina Representative James Hamilton to steady his balance, handed the address to Senator James Mason of Virginia to read because the

⁴⁸ The only Whigs were James W. Ramsey, Robert Bledsoe, and M. P. Crawford. The Democrats were Walter T. Colquitt, Charles J. McDonald, Henry L. Benning, Obediah C. Gibson, Obediah Warner, Simpson Fouche, John G. McWhertor, and Andrew H. Dawson. See Shryock, 264-265.

⁴⁹ Montgomery, 23-24.

South Carolinian had not enough physical strength to read it himself. Though his physical health had greatly deteriorated, his ideological constitutionalism remained consistent and as articulate as ever. Both Clay and Webster attended as Mason delivered Calhoun's final advice to the nation.⁵⁰

The speech was part diatribe against the abolitionist influences in the north, part diagnosis of the strained ties of the Union, and part prescription for repairing those strains.⁵¹ In Calhoun's view, northern states had conspired to abolish slavery since the 1787 Federal Constitutional Convention. Much of reasoning was familiar, but there also was a hint of nostalgia in his characterization of the bonds of union. "The cords that bind the States together are not only many, but various in character," he said. "Some are spiritual or ecclesiastical; some political; others social. Some appertain to the benefit conferred by the Union, and others to the feeling of duty and obligation." His grasp of American nationalism demonstrated the depth to which he had committed himself to understanding and addressing the sectional tensions that he witnessed. Those "cords," he asserted, were "far too numerous and powerful" to suffer a secession attempt "effected by a single blow." Rather, disunion, if it came, would be "a long process" in which the bonds of union slowly frayed, "until the whole fabric falls asunder."⁵²

Calhoun lamented that the process of disunion already had begun. The "spiritual and ecclesiastical" bonds had been the first casualties. Except for the Catholics, the American churches owed their organizing principles to "our political institutions" and "terminated in one great central assemblage, corresponding very much with the character of Congress." Unfortunately, he noted,

⁵⁰ For a definitive political and biographical treatment of these three men, see Merrill D. Peterson, *The Great Triumvirate: Webster, Clay, and Calhoun* (New York: Oxford University Press, 1987).

⁵¹ For a reprint of the full speech see "Speech on the Admission of California—and the General State of the Union" on 4 March 1850 in Lence, ed., *Union and Liberty*, 573-601.

⁵² *Ibid.*, 585-587.

the bonds of union inspired by denominational faith were unable to withstand the agitation over slavery. The Methodist Episcopal Church and the Baptist Church, especially, had devolved into sectional organizations, and the Presbyterians were close to the same fate. The political bonds, however, the most powerful of all of the national bonds, were under siege and portended disaster. The specific political “cords” to which Calhoun referred were the two major political parties, the Democrats and Whigs. These inter-sectional parties had provided a moderating effect on extremist in the North and the South. The recent crisis, he maintained, had “finally snapped” under “the explosive tendency of the agitation” by abolitionism in the North. In the South, traditional party competition had restrained radical excitement by the need to preserve partisan unity with their members in the North. Contemporary affairs had undermined that unity and had inspired partisan competitors in the South to become partisan cohorts in an attempt to allay northern attacks on slavery. The Union, according to Calhoun, was now in serious danger of coming to a traumatic ending.⁵³

Admitting California as a state and denying its inhabitants the right to slaves was just another egregious unconstitutional act that would further wound the ailing nation. There was only one way to preserve the Union, Calhoun warned, and it required the political power wielded by the north. They must “cease the agitation of the slave question” and ratify an amendment to the constitution to protect slavery. Such an explicit constitutional act was the last hope for preventing disunion. The solution, therefore, remained solely in the hands of the north. Because the political

⁵³ Ibid., 587-588.

will of the federal government ultimately resided in the North, the South was powerless to save the Union.⁵⁴ 26 days later, on 31 March, Calhoun died in Washington.

Three days after Senator Mason read Calhoun's address, Daniel Webster followed with his own three hour assessment of the state of the union on the Senate floor, known later as his Seventh of March Speech.⁵⁵ Like the South Carolinian three days earlier, the Massachusetts Whig presented a narrative overview of the history of slave politics since the adoption of the U. S. Constitution. Webster's, however, was a politely scathing refutation of Calhoun's narrative. He attempted to position himself as a man of principle, dedicated to the oath taken by all public servants that requires a pledge to defend and protect the Constitution of the United States. But in fact, Webster seemed more duplicitous to his northern critics than principled. On the one hand, he denounced slavery and cited his public record opposing it. Giving his voice a momentary rest, he allowed a surrogate to read into the Senate record quotes from speeches he had delivered expressing his disdain for slavery and its expansion. "It has happened," he noted, "that between 1837 and this time, on various occasions and opportunities, I have expressed my entire opposition to the admission of slave states, or the acquisition of new slave territories, to be added to the United States."⁵⁶

Webster, however, was a nationalist and was set upon averting disunion in this instance. Consequently, in addition to reaffirming his own abolitionist credentials, Webster also criticized the application of the Wilmot Proviso below the established 36°30' boundary based on political

⁵⁴ Ibid., 600-601.

⁵⁵ A full account of this speech is available in the "Appendix" of the *Congressional Globe*, 31st Congress, 1st Session, 269-276.

⁵⁶ Ibid., 279.

principle and “the law of nature.”⁵⁷ The Proviso violated the Missouri Compromise and he could not support any legislation “that wounds the feelings of others” by reversing principles previously established. Such legislation would merely serve as a “taunt—an indignity” to the southern states and there was no political advantage to such tactics. The north had little to fear over slavery in New Mexico and California because their “physical geography” prevented the institution from flourishing in those territories.⁵⁸ He also supported the South’s proposal for a stronger fugitive slave bill as “the North has been too careless of what I think the Constitution peremptorily and emphatically enjoins upon it as a duty.”⁵⁹

Webster’s attempt to maintain a middle ground in the crisis earned him more criticism in the North than praise in the South.⁶⁰ Northerners believed he had betrayed the anti-slavery movement and had placated the south unnecessarily. Nevertheless, his position was clearly in alignment with several important Georgians who sought a pro-union solution in Washington. Throughout the winter and spring of 1850, Cobb, Toombs, and Alexander Stephens, Georgia’s conservative congressmen, all worked in favor of Clay’s compromises. In the Senate, Georgia’s members split over the compromises as John Berrien opposed it while his cohort, William C. Dawson, supported it.⁶¹

⁵⁷ Ibid., 280.

⁵⁸ Ibid., 280-282.

⁵⁹ Ibid., 283.

⁶⁰ Hamilton, 79-80.

⁶¹ Shryock, 265-268.

On 3 June 1850, the Nashville Convention began with 175 delegates from nine states in attendance.⁶² It had all the social gaiety and flavor of formal, refined southern cultural hospitality during the evening balls for the visiting delegates. The city provided a grand welcome and memorable stay for the flood of southern delegates and interested visitors. During the day's proceedings, journalists, spectators, politicians, and southern belles crowded the McKendree Methodist Church to witness a convention anticipated to be a momentous historic event. Much of the cordiality, however, was superficial. Despite the desire to use the convention as a symbol of united southern resistance to northern anti-slavery politics, there was broad disagreement over what the character of that resistance should be. A major contributor to the divisions among the delegates was the ambiguities of the convention's purpose. Mississippi's resolutions calling for the meeting in Nashville declared its purpose only as "to devise and adopt some mode of resistance to Northern aggression."⁶³ Different states and different delegates sought conflicting interpretations of this "resistance."⁶⁴

The convention elected Mississippi Chief Justice William L. Sharkey as its president. In his brief keynote address, Sharkey redefined the purpose of the convention as the protection of southern constitutional rights and property and the perpetuation of the Union. The proceedings

⁶² The actual attending number of delegates was as follows: Virginia, 6; South Carolina, 17; Georgia, 11; Florida, 4; Alabama, 22; Mississippi, 12; Texas, 1; Arkansas, 2; Tennessee, 100. Each state had one vote. See "The Nashville Convention" in Ames, 261-262. Only five states had selected delegates through special elections, including Virginia, South Carolina, Georgia, Mississippi, and Texas. Delegates from these states, therefore, carried a certain legitimacy to the convention. On the contrary, Florida, Alabama, Arkansas, and Tennessee chose delegates through less representative methods, such as legislative appointment and partisan conventions. Delaware, Maryland, Kentucky, Missouri, North Carolina, and Louisiana sent no representatives. From the outset, therefore, the South failed to present the united front that the radicals had desperately desired in the convention. See Potter, 104; Jennings, 215-218.

⁶³ "Mississippi Calls a Southern Convention" in Ames, 254.

⁶⁴ Thelma Jennings, *The Nashville Convention: Southern Movement for Unity, 1848-1851* (Memphis: Memphis State University Press, 1980), 7.

were orderly and without major disruption until the third day when Henry L. Benning from Georgia introduced twenty-three resolutions that urged radical resistance. Over the next three days, the convention became increasingly contentious as disagreements between delegations began to surface over the direction of the convention.⁶⁵ Soon, the number of competing resolutions presented overwhelmed the convention and required a special committee to sort through them for a more efficient consideration by the whole body. By Saturday 8 June, the committee had decided upon thirteen resolutions to present to the convention body. Two days later, the number had jumped to twenty-eight. The majority of the resolutions admonished Congress of its powers relative to slavery and demanded the federal government should stop immediately entertaining state anti-slavery petitions and resolutions as such right of petition “was never designed or intended as a means of inflicting injury on others or jeopardizing the peaceful and secure enjoyment of their rights.”⁶⁶ Finally, the resolutions called for the delegates to reconvene “the 6th Monday after the adjournment of the present session of Congress” to revisit the state of the union at that time.⁶⁷

Notably, these resolutions did not mention any potential for secession. Although a number of radical delegates were in favor of overtly opposing compromise and threatening disunion to strengthen their position, the final product of the convention was relatively moderate. The plan was to wait and see what Congress would do with Clay’s compromises. The resolutions stated that southerners were content to extend the Missouri Compromise to the Pacific Ocean, “as an extreme concession.”⁶⁸ Whatever moderation emanated from the resolutions, however, faded with the

⁶⁵ Ibid., 140-146.

⁶⁶ “Resolutions of the Nashville Convention, 1850” in Ames, 262-268.

⁶⁷ Ibid.

⁶⁸ Hamilton, 102.

convention's adoption of a prepared formal address to the southern states authored by the South Carolina fire-eating secessionist Robert Barnwell Rhett.⁶⁹ Abandoning all political restraint, Rhett denounced the north's "spirit of fanaticism" and chastised southerners for being too "passive." The south, he regretted, had "waited until the Constitution of the United States is in danger of being virtually abolished" before calling the convention. The compromises proposed by Clay were unsuitable, according to Rhett. Though a number of the delegates objected to Rhett's address on the grounds that it was too inflammatory for peaceable negotiations with the North, the convention overwhelmingly adopted it as a part of their official record. Moreover, the Georgia delegation solidly backed the defiant rhetoric, which was not surprising since the more conservative delegates elected decided not to attend.⁷⁰ The convention then adjourned on 12 June.

Reaction to the convention was mixed in Georgia. Conservative voices dismissed it and criticized the state's delegation. Those men were "less of that kind of character, which is calculated to elicit the esteem, and meet the approbation of the people of the Southern states." The "men of elevated standing" in Georgia, in fact, had declined to accept nomination to the Nashville Convention.⁷¹ A more radically inclined newspaper defended the convention, stating that it "was devised by wise heads and honest hearts to secure the purity of the Constitution and the integrity of the Union." It was time to "wake up our busy cotton growing millions to support the Nashville

⁶⁹ A reprint of this address is available in "Address of the Nashville Convention" in Macon's *Georgia Journal and Messenger* dated 26 June 1850, 1.

⁷⁰ Shryock, 271-272.

⁷¹ "The Nashville Convention" in Macon's *Georgia Journal and Messenger* dated 5 June 1850, 2.

Convention” and enjoin with the rest of the South in “battling with Christendom for the institution of slavery.”⁷²

Momentum in Georgia shifted back in favor of radical resistance in the summer of 1850. Widespread attention to the Nashville Convention, the enthusiastic appeals for southern resistance by the state’s returning delegates, and a renewed opposition to compromise helped to solidify support among Georgia Democrats for accepting nothing less than an extension of the Missouri Compromise westward. Southern Rights Associations began organizing in local communities to embolden support against any further compromise with the North. ⁷³ Democratic Congressman John H. Lumpkin wrote to Howell Cobb in the summer lamenting the unfortunate split in his party. The Democratic support for extending the 36°30’ line was a red herring, according to Lumpkin. It measure was “impracticable” and merely “calculated” to antagonize the opposition and threatening to compromise. On the other hand, the Georgia Whigs, he indicated, were “united to a man for a settlement of the question and the preservation of the Union.”⁷⁴

The state rights faction of the Democratic Party in Georgia continued to gain support. On 21 August, radical Democrats dominated a convention in Macon. Two thousand people gathered in protest of Clay’s compromises, the Wilmot Proviso, and the north generally. It was a revival of sorts, with the slave South as their religion and Calhoun as their messiah. The party had a tent big enough for those who supported immediate disunion and those, including some Whigs, who supported the principle, if not the immediate practice, of secession. From the time of Andrew

⁷² “The Convention at Nashville” in Milledgeville’s *Federal Union* dated 4 June 1850, 3; “The Nashville Convention in the South” in *Ibid.* dated 16 July 1850, 3.

⁷³ Shryock, 275-276.

⁷⁴ John H. Lumpkin to Howell Cobb dated 21 July 1850 in Phillips, ed., *Correspondence*, 206-207. Lumpkin, however, overstated Whig unity.

Jackson's presidency, Georgia parties had distinguished themselves over policies concerning economic visions and the role of government in the life of the nation. Suddenly, parties began to divide strictly over pro-union versus pro-sectional loyalties, which made traditional compromise a much more complicated achievement.⁷⁵

The Nashville Convention and the subsequent emergence of the Southern Rights Party in Georgia were not the only obstacles to the pro-union coalition fighting for compromise. In fact, their primary obstacle was President Zachary Taylor's opposition to Clay's compromise bills and his threat to veto them if passed by the Congress. Taylor's sudden death on 9 July, however, was a bright spot for the unionists. Taylor's vice-president, Millard Fillmore, had supported the compromise legislation and his rise to the highest office offered new hope for its success. Democrat Howell Cobb joined with leading Whigs Toombs and Stephens to ensure the legislation made its way through Congress.⁷⁶ Their efforts paid off, when, beginning 7 September with the free admission of California, the individual bills began to pass in the Congress. By the third week of the month, all the bills had passed, including the admission of New Mexico and Utah as territories without regard to slave status, abolition of the slave trade in the District of Columbia, and a stronger fugitive slave law.⁷⁷ Compromise had won the day in Washington, but remained in serious doubt across the south.⁷⁸

⁷⁵ Montgomery, 24-25.

⁷⁶ Shryock, 267.

⁷⁷ Carey, 164; Potter, 113.

⁷⁸ Potter accurately has argued that the Compromise of 1850 was not a compromise in the genuine meaning of the term. Rather, he has insisted, "a truce perhaps, an armistice, certainly a settlement, but not a true compromise." It was "not an agreement among adversaries," which compromise usually indicates. Instead, the series of bills passed through the Congress only through the efforts of competing sectional coalitions with the majority of northern and southern Representatives and Senators remaining divided on the central issue of slavery. Without the skillful and

After Congress adjourned in late September, Cobb, Toombs, and Stephens rushed back to Georgia to fight for support of the compromises in their home state. The previous winter, the Georgia General Assembly had anticipated such a crisis and authorized Governor Towns to call a special convention in the event that Congress failed to make restrict slavery from California. The free admission of California and the abolishment of the slave trade in Washington put the mechanisms in play for such a convention, though the radical momentum under which it had been called for the most part had stalled. Consequently, on 23 September, upon official notice of the successful passage of the compromise bills, Towns called for elections on 25 November for delegates to a Georgia Convention to meet on 10 December in Milledgeville.⁷⁹

There were some efforts to maintain radical resistance to the compromises passed through Congress throughout the fall of 1850. For example, such compromises, a Milledgeville editor wrote, was “not the liberty for which our fathers fought, nor is it the government which they framed.”⁸⁰ A letter from “Hampton” to the same paper also denounced it. “Our course is plain. Let us listen to no man who preaches of ‘Tomorrow, and tomorrow, and tomorrow;’ let us resolve on Secession, and above all, let us act now.” In ironic disgust it stated, “Isn’t this a glorious Union—for the North! What Northern man would not love a Union so efficient in the furthermore of all his wishes and demands?”⁸¹ The emotional antagonism against the compromise measures, however, slowly cooled.

careful management of the bills by Illinois Senator Stephen A. Douglas after Henry Clay had finally given up on his proposals, the measures had little chance of success. See Potter, 113-120. Also see Hamilton, 133-150.

⁷⁹ Shryock, 295-296.

⁸⁰ “The South Disfranchised” in Milledgeville’s *Federal Union* dated 17 September 1850, 3.

⁸¹ “Secession” in *Ibid.* dated 24 September 1850, 2.

The campaign for delegates to the Georgia Convention began immediately. The pro-compromise factions adopted a clever strategy and quickly gained the advantage. They capitalized on the fact that many in the Southern Rights Party opposed the compromise, but did not support immediate secession. Men like Cobb, Toombs, and Stephens turned it into a campaign of extremes—a vote against the compromises was a vote for disunion. The pro-union coalition began to solidify and formed the Unionist Party. They deployed speakers to county meetings and made local speeches in support of the compromises while the Southern Rights resistance relied heavily on spreading their message through conflicting newspaper accounts.⁸² Moreover, Georgia Unionist M. C. Fulton had discovered in his travels throughout the state that much of the electorate was uninformed on the compromise details. After explaining them, he found that people “could see nothing wrong in all that, and said if that was so, he would prefer to stay in the Union.”⁸³ This approach paid off and momentum shifted against the fire-eating radicals. By early November, only a few diehard secessionists, like Henry L. Benning, remained so outspoken against the compromises.

Interest in the scheduled second Nashville Convention waned and less than sixty delegates attended its opening on 11 November. Even the president of the convention, Judge Sharkey, failed to appear. It was sharp contrast to the June proceedings, which had a general spirit of unity. Eleven delegates from Georgia again returned to the second session and feebly attempted to support a southern resistance platform. In November, there were opposing policies strongly argued by delegations. South Carolina demanded secession while Tennessee advocated full acceptance of the

⁸² Shryock, 309.

⁸³ M. C. Fulton to Howell Cobb dated 6 November 1850 in Phillips, ed., *Correspondence*, 217.

compromises. So disruptive and divided were the delegations that when proceedings were interrupted by a funeral service in the church, the meeting adjourned without passing any resolutions.⁸⁴ The attention of the nation then turned to Georgia to see what measures the state convention would adopt on the compromises.

On 25 November, Georgia voters went to the polls and elected an overwhelming majority of Unionist delegates to the convention. In fact, 243 of the 264 delegates were Unionists.⁸⁵ One Whig newspaper rejoiced. “Notwithstanding every possible attempt to forestall and mislead public sentiment was made, the people of Georgia have decided for themselves that the maintenance of Southern Rights is not inconsistent with their allegiance to the Union.”⁸⁶ Southern Rights candidates sourly blamed their defeat on the Unionist mischaracterization of their goals and positions.⁸⁷

The convention assembled in Milledgeville on 10 December and immediately began its organization. They elected as president Thomas Spaulding of McIntosh County, owner of Sapelo Island and one of the state’s largest slaveholders. The delegates met only for five days. The Unionists controlled the proceedings and the results to their advantage. The product of the convention was a formal position known as the Georgia Platform. Only 19 of the 264 delegates voted against this official statement of compromise that sought to balance a pro-union sentiment with a defense of southern rights. Comprising a lengthy preamble and but five resolutions, the platform provided an anti-climatic ending to a year of dramatic events. It noted the objections posed toward

⁸⁴ Jennings, 188-197.

⁸⁵ Carey, 167.

⁸⁶ Macon’s *Georgia Journal and Messenger* dated 4 December 1850, 2.

⁸⁷ Montgomery, 33.

the compromise package. “It may well be doubted whether upon the broad territory of the Republic, there dwells an intelligent citizen, whose judgment approves every part of each link in this extended chain of adjustment.”⁸⁸ The people of Georgia were no exception, according to the preamble. As much as radicals of extreme positions on the matter wished, the question before the convention was not whether “to subject legislative acts...to the rigid test of yielding either the full measure of right or the full fruition of anticipated benefit.” Rather, the convention had to answer a more practical, pragmatic question: “May Georgia, *consistent with her honor*, abide by the general scheme of pacification?”⁸⁹ The decision of the convention was a conditional “yes.”

Georgia, according to the platform, would abide by the measures of the compromises as long as “the people of the non-slaveholding States will yield acquiescence in, and faithful adherence to, that entire action.”⁹⁰ Otherwise, secession would result. The convention warned the nation that Georgia considered “the American Union secondary in importance only to the rights and principles it was designed to perpetuate.” The Union was safe only “so long as it continues to be the safeguard of those rights and principles.”⁹¹ It was the first time since 1788 that an officially sanctioned convention had met in Georgia to deliberate the state’s constitutional relationship to the nation. It was an innovative use of the constitutional convention. Though conservatives prevailed in 1850, the pro-union faction in Georgia recognized that another such convention likely would lead to disunion.

⁸⁸ *Journal of the State Convention, Held in Milledgeville, in December, 1850* (Milledgeville: R. M. Orme, 1850), 13.

⁸⁹ Ibid.

⁹⁰ Ibid., 14.

⁹¹ Ibid., 18.

The Southern Rights Party in Georgia openly expressed its frustration with the convention. The pro-union majority, they insisted, were “submissionists” led ineptly by those “old, trained and cunning Whig leaders, such as Toombs and Stephens.”⁹² The fight, according to the radicals, was not over. “Be vigilant, and when the day for action shall come, as come it will...be firm, and united,” they demanded.⁹³ Despite this initial criticism of the Georgia Platform, it produced a moderating influence on the south at large. According to Thelma Jennings, a historian of the era, the Georgia convention had impressively accomplished a feat that the Nashville Convention did not. According to her, the Georgia Platform “saved Southern pride and honor, upheld the legal right of secession, and placed responsibility for the maintenance of the Union and peace on the North.”⁹⁴ In a letter to a Georgia newspaper, Henry Clay asserted that the platform had “crushed the spirit of discord, disunion and Civil War.”⁹⁵ He would never know that his words were premature.

Another major contribution of the Georgia convention was the immediate realignment and organization of the state’s political parties. The Unionists used the opportunity of the convention to formally meet and structure a viable party to challenge the more radical partisans of the Whig and Democrat parties. The new Constitutional Union Party ambitiously pursued a presence on the national stage, but were unsuccessful. Nevertheless, the Union Party enjoyed a brief career in Georgia and elected Howell Cobb as governor under its banner. The party, however, could not withstand the stress of sectional tensions that continued throughout the 1850s.

⁹² Milledgeville’s *Federal Union* dated 7 January 1851, 3.

⁹³ *Ibid.*, 17 December 1850, 2.

⁹⁴ Jennings, 209.

⁹⁵ Henry Clay letter to the *Macon Union Celebration* dated 13 February 1851, 3.

The crisis of 1850 had a permanent impact on Georgia's political culture. Traditional party lines shifted as many southerners weighed their loyalty to the union against the need to protect slavery. Former partisan adversaries suddenly had become allies in the face of disunion. Sectional interests undermined national coalitions while slavery increasingly dominated Washington politics over the next decade. Traditional political loyalties would not reconcile with sectional hostilities. Conservative views gradually lost influence as former Whigs and pro-union Georgians retreated into the southern wing of the Democratic Party. Suddenly, political power in the state concentrated into a smaller circle of leaders. The Compromise of 1850 and the resulting Georgia Platform, therefore, became a watershed moment for the state's constitutional and convention history. There would not be another convention in the state until January of 1861.

CHAPTER 7

GEORGIA SECESSION AND THE ZENITH OF STATE CONSTITUTIONAL CONVENTIONS

Historians have well documented the tumultuous sectional issues of the 1850s, including the strengthening of northern abolitionism, the Kansas-Nebraska Bill, the Dred Scott decision by the Taney Court, and the capture and subsequent hanging of abolitionist John Brown.¹ For the purposes of the present study, however, one ideological transformation in this period was as critically important to American constitutional thought as any other events in the years just prior to the Civil War. That transformation involved the issue of popular sovereignty. To understand fully the significance of this idea to American constitutionalism, it is necessary to place into the context of the contentious politics of slavery in the 1840s and 1850s. It was during this period that the state convention developed into something more than a constitution-making and amending mechanism—it fully developed into a vehicle for negotiating and defining the boundaries between state and federal government authority and the relationship between these two constitutional spheres of government.

The politics of slavery in antebellum America produced some creative ideas about the role of the “peculiar institution” in territorial expansion. Several historians, including David M. Potter, have provided insights into the competing policies on slavery, especially concerning the new

¹ I have already cited most of those most generally relevant and important to my work including Michael F. Holt, William W. Freehling, David M. Potter, Sean Wilentz, Donald A. Debats, and Anthony Gene Carey. Also see Michael F. Holt, *The Fate of their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004); Michael F. Holt, *The Political Crisis of the 1850s* (New York: W. W. Norton, 1983); John C. Waugh, *On the Brink of Civil War: The Compromise of 1850 and How it Changed the Course of American History* (Wilmington: SR Books, 2003); and Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861* (Baton Rouge: Louisiana State University Press, 1953).

territories acquired from the Mexican War and their subsequent consideration into statehood.¹ Until the Missouri Compromise in 1820, Congress had used no formal blueprint for the admission of slave or non-slave states to the Union. The Northwest Ordinance of 1787, ironically influenced by Thomas Jefferson and affirmed by the new federal Congress in 1789, had excluded slavery in those territories. The states resulting from that region had also excluded slavery. On the other hand, Congress determined that slavery was permissible in the Southwest Territory in 1791, the Mississippi Territory in 1798, and admitted Kentucky as a slave state in 1792. Although a pattern of action had emerged above and below the Ohio River, before the Missouri controversy, Congress had acted to regulate slavery without virulent objection.²

The Mexican War had officially commenced in May 1846. In August, the House of Representatives began deliberations on the Wilmot Proviso, which proposed excluding slavery from all of these territories. An emotional debate ensued. The Whigs countered the restrictions proposed by Wilmot with a “No Territory” platform. This position opposed any new territorial acquisitions, which proved increasingly impractical.³ Before the Compromise of 1850, Southern Democrats advocated the extension of the Missouri Compromise throughout the western territories. A more contentious argument was that Congress had no authority to regulate limits on personal property in federal territories, including slavery. The most articulate spokesperson on this position, of course, was John C. Calhoun.⁴

¹ Potter has detailed four policies as a general program of events, including the Wilmot Proviso, the continuation of the Missouri Compromise to the Pacific Ocean, popular sovereignty, and the Calhoun doctrine that maintained that Congress had no constitutional authority to legislate slavery in the territories. See Potter, 54-60.

² Ibid., 54-55.

³ See Holt, 252-257.

⁴ Potter, 55-57, 59-60.

The proposed policy toward territorial expansion, however, was the politically charged application of popular sovereignty. This study has argued that the ideal pursued by constitutional conventions, in theory if not always in practice, was an expression of popular sovereignty. Though the Madisonian understanding of national sovereignty conflicted with those, such as Calhoun, who sought instead a recognition of state sovereignty, these traditions viewed popular sovereignty in a traditional constitutional frame of reference. The popular sovereignty of the mid-nineteenth century had shifted the idea away from an organic understanding as the right of a people to form and control a government to their liking—a decidedly republican ideal. It was an ideal that had underpinned the provincial conventions and congresses of the American Revolution, intended to establish a collective of states united against the British under an umbrella of shared political values and interests. However, the late antebellum politics applied the ideal to self-serving partisanship, intended not to employ traditional republican principles, but to mediate the increasing political tensions over the expansion of slavery in new territories and states. The Georgia Convention of 1850 was a reflection of the transformation of the state convention into a mechanism for negotiating local versus federal power over slavery.⁵

The process and procedures for federal territorial expansion and admission in to statehood largely had unfolded inconsistently since 1787. The United States Constitution guaranteed “to every State in this Union a Republican Form of Government,” thus insuring the traditional principle of popular sovereignty in new states. Historically, Congress had approved the slave status of all new states admitted to the Union after 1789. Because sectional tensions plagued the process and persistently forced the Congress to find innovative compromises to ensure these acquisitions,

⁵For discussions about the nineteenth-century developments of the term in America see Potter, *The Impending Crisis*; Hamilton, *Prologue to Conflict*; and Freehling, *Road to Disunion: Secessionists at Bay*.

in 1847 Senators Daniel S. Dickinson from New York and Lewis Cass from Michigan introduced a “nonintervention” policy by the federal government in new territories, a policy later elaborated by Senator Stephen A. Douglas from Illinois. This involved a specific application of the principle of popular sovereignty that allowed the people of the territories to decide their stances on domestic issues, including slavery, through their own constitutional process.⁶ This policy toward resolving the slavery issue as it related to territorial expansion became a platform of the Democratic Party in the presidential campaign of 1848 when Cass became its nominee, but did not gain congressional acceptance until Douglas’s influence on the Kansas-Nebraska Bill in 1854.⁷

Although Calhoun had offered his own theory of nonintervention, there was a big difference with the Dickinson and Cass proposal. Calhoun rejected both proposals and maintained that neither the federal government nor territorial governments could interfere with slavery because it was a property protected by the federal Constitution. The new policy proposed by the Democrats afforded local governments the authority to decide the issue. Though in this respect it contradicted Calhoun’s position, and was technically ambiguous, this new proposal reinforced the southern rights position that local governments should be free from federal intervention on slavery. Moreover, it became the basis of the New Mexico-Utah territorial settlement in the Compromise of 1850.⁸ Alexander Stephens defended the new settlement stating that it was better than the Missouri Compromise. It was, he said, “much more consistent with the great republican principle upon which our government rests, to let the people do as they pleased over the whole territory up to 42

⁶ Potter, 57. Hamilton, 144-145.

⁷ William W. Freehling has noted that the policy of popular sovereignty, sometimes referred to as “squatter sovereignty,” was an example of the unwillingness of the Congress to directly confront the expansion of slavery. According to Freehling, “Let-the-people-on-the-spot-decide became a magic formula for not deciding when to let local folk decide.” See Freehling, 476.

⁸ Hamilton, 144-145.

deg. north latitude, just as the Utah and New Mexican bills, which passed, than to have the people *restricted* in any portion of the territory.”⁹

With the enactment of the Kansas-Nebraska Act in 1854, it became clear that the local sovereignty that states rights advocates had asserted throughout the antebellum era had finally triumphed. While the slaveholding South rejoiced over the controversial victory of the bill, the episode created a more concerted opposition in the North. Northerners who had rejected abolition and tolerated slavery in the South began to reconsider. In fact, the presidential election of 1856 revealed the power of this disagreement and fortified the anti-slavery Republican Party, which began as a small movement in 1854. The partisan strife in 1856 demonstrated that the Compromise of 1850 did not resolve the issues of slavery and Union, but merely postponed them.¹⁰ Consequently, events such as the Dred Scott decision, which infuriated northern sensibilities, and John Brown’s raid at Harper’s Ferry, which intensified southern anxieties, had a profound effect on the importance of presidential elections.

The unexpected result for these southerners, however, was the program of mass migration by free soilers to the territories and subsequent bloodshed it produced with slaveholding settlers. As the principle of popular sovereignty slowly became synonymous with slavery in the southern mind, conventions that claimed to speak for the sovereign will of the state, as in the example of the Georgia Convention of 1850, were more than just constitutional mechanisms—they were the

⁹ Alexander H. Stephens to Messrs. Fisher and De Leon, 25 February 1852 in Phillips, ed., *Correspondence*, 283.

¹⁰ Potter, 117-118. Potter insightfully and, I believe, correctly has noted that politics is not the triumph of one value at the exclusion of another. My conclusion is that such an equation is usually the product of war after politics has failed or been abandoned. Politics is the strategic and pragmatic attempt to reconcile conflicts in values and priorities. Constitutional conventions were mechanisms for various kinds of reconciliation within state conflicts or between state and federal relationships, but war, the Civil War, undermined their effectiveness on the national stage in practice and theory.

ultimate sovereign power for southerners. The next Georgia convention, in 1861, exhibited no uncertainty of its sovereign authority to leave the Union to protect slavery. Slavery and popular sovereignty, in the southern mind, had become inseparable during the 1850s and Georgia conservatives, such as Robert Toombs, gradually began to intellectually justify and embrace politically what many of them had tried hard to prevent: secession.

American nationalism underwent a substantial change in the decade leading up to the Civil War. A new type of political identity took root in the competing regions. The North and the South increasingly viewed each other with contempt as the sections grappled with their own internal struggles. Both developed distinctly different brands of nationalism—that is, a view of the nation through the ideological and moral visions of their particular culture. To say that the South was sectional misses the point. Both regions were sectional in their aspirations for the nation. Yet, both were national in that their aspirations were not limited to the section. Each wanted to expand their culture and values across the country. The intensity of pursuing that expansion eventually clashed, first politically and then militarily. The result was a triumph of northern nationalism, which has tempted many to view antebellum national identity in the south as sectional rather than national.¹¹ Before the Civil War, nationalism pervaded the North and the South, though with clashing values. In this context, the South saw itself as the preserver of traditional American constitutionalism and

¹¹ For a fuller discussion of sectionalism and nationalism in this period see Susan-Mary Grant, *North Over South: Northern Nationalism and American Identity in the Antebellum Era* (Lawrence: University Press of Kansas, 2000), 1-15. To illustrate the common features of northern and southern nationalism in the late antebellum period, Grant argued that the north also developed a “siege mentality,” which has often been seen as a purely southern event. In *One Nation Indivisible*, Paul Nagel has suggested that in the 1850s American nationalism had acquired another dimension. The notion that states could negotiate their relationship or membership in the Union was ludicrous to some northern politicians like William H. Seward. According to Nagel, these men maintained that the Union was indelibly permanent because of the physical, cultural, and political currents that bound the states and the people together, as well as the established traditions and constitutional mechanisms firmly entrenched in the American mind and spirit. See Nagel, 104-106.

viewed the North as increasingly its antithesis in that preservation. Consequently, American nationalism remained intact throughout the nineteenth century, although Americans increasingly disagreed as to the meaning of that nationalism.

For more than twenty years, political identity in the North and the South organized along partisan lines. With the breakdown of the Whig Party in the mid-1850s, conservative southerners became political transients. The rise of the Republican Party and its overt anti-slavery platforms served to increase the insecurities of all southern apologists, especially those without a political home. Eventually, especially after the Kansas-Nebraska Act had undermined the Missouri Compromise, the pro-union faction in Georgia, including Cobb, Toombs, and Stephens, had nowhere else to go to align on national issues but the big tent of the Democratic Party, though some adamantly rejected the party until 1860.¹² The big tent, despite or even because of its broad membership, invited internal tensions to build and threatened the tentative bonds holding the party together. In the winter of 1860-1861, fire-eating secessionists tested those bonds and exposed the weakness of maintaining such a diverse coalition of interests.¹³

The Georgia Secession Convention of 1861 was the culmination of a number of factors, including the divisions within the Democratic Party. In 1850, the state had issued a warning to

¹² A few Georgians delayed joining the Democratic Party until 1860. Among them were Benjamin H. Hill and Eugenius A. Nisbet, who joined the Know-Nothing or American Party. By 1856, even these men supported the Democratic presidential candidate, James Buchanan. See Saye, *Constitutional History*, 213-214.

¹³ Drew Gilpin Faust has argued that there never really was a united South. See Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge: Louisiana State University Press, 1988), 1-21. William H. Freehling also has maintained that the South was a divided region. Specifically, he has pointed to the ambivalent sectional identity and their opposition to the Confederacy by many whites in the border states and the slaves and former slaves in the Deep South. See William H. Freehling, *The South vs. the South: How Anti-Confederate Southerners Shaped the Course of the Civil War* (New York: Oxford University Press, 2001), 20-27. On the other hand, Emory Thomas has claimed that there indeed was a southern unity, but not until the early stages of the Civil War. This Confederate nationalism emerged out of a desperate need to survive. See Emory M. Thomas, *The Confederate Nation, 1861-1865* (New York: Harper & Row, 1979), 221-224.

those seeking the restriction or the abolition of slavery in America. The Georgia Platform threatened secession if anti-slavery policies continued to dictate the national agenda and if northern states refused to comply with the new fugitive slave law. Extremists were dividing the party along sectional lines and the differences became more entrenched toward the end of the 1850s. Former Georgia conservatives, such as Robert Toombs, joined veteran radicals like Henry L. Benning in advocating disunion. The presidential campaign of 1860 was a seminal historical moment, politically and constitutionally.

An important factor in the partisan and sectional tensions experienced by Georgians in 1860 was the newspaper culture. As Benedict Anderson has argued, print culture had a powerful effect on political culture in America.¹⁴ Throughout the 1850s, newspapers in the south grew exponentially due to a rapid population increase, a decline in the illiteracy rate, and the affordability of costs. One historian has calculated that more than 80 percent of the publications in the South during this time were politically oriented.¹⁵ Although newspaper editors often were highly partisan, the costs of publication meant that they could not afford to offend or alienate their advertisers or readers. Consequently, there was a reciprocal relationship between the editors and the consumers; the politics favored by a particular newspaper influenced and was influenced by its readership. Because the relationship was capitalistic and ideological, the historian must be careful in evaluating the popular sentiment through newspaper editorials and reports. Nevertheless, Georgia newspapers in 1860-1861 did offer valuable insights into the complexities of differing political opinions on the state of the Union. For example, three competing newspapers in the

¹⁴ See Anderson, 61-65.

¹⁵ Donald E. Reynolds, *Editors Make War: Southern Newspapers in the Secession Crisis* (Nashville: Vanderbilt University Press, 1966), 3-9.

relatively new city of Columbus reflected a diversity of views of Abraham Lincoln's presidential campaign and election.

The Columbus Enquirer, *The Columbus Times*, and *The Daily Sun* were daily papers that posted the range of emotional positions during the election year. In addition to their original reporting, all three dailies reprinted editorials and articles from newspapers in the north and south and kept Columbus promptly informed on the tide of political developments in Georgia and the nation. The splintering of the Democratic Party and the Republican nomination of Abraham Lincoln in the presidential election of 1860 ensured a captive audience for newspapers across the nation, as well as Georgia. Eventually, three candidates emerged out of the Democratic fold, including Stephen A. Douglas, John Bell, and John Breckinridge. Douglas, adhering to the policy of popular sovereignty, had refused to endorse the southern rights platform that called for a guarantee of slavery's expansion, which forced the party's splintering into Douglas Democrats, Breckinridge Southern Rights Democrats, and Bell's Constitutional Union faction. By 1860, party conventions had become a mainstay ritual of the presidential election process and attracted much public attention.¹⁶

The tense political drama of 1860 had divided Georgians. Though the vast majority of the state's delegates to the Democratic Convention in Charleston had bolted with the other southern

¹⁶ Potter, 407-417. Also see William H. Freehling, *The Road to Disunion*, Volume II: Secessionists Triumphant, 1854-1861 (New York: Oxford University Press, 2007), 292-308; Dwight Lowell Dumond, *The Secession Movement, 1860-1861* (New York: Macmillan Company, 1931), 35-54. It is noteworthy here to point out that party conventions were an entirely different kind of process from constitutional conventions, as the Democratic Convention of 1860 demonstrated. Born out of the structured partisanship organized by Andrew Jackson and Martin Van Buren for the presidential campaign of 1828, national party conventions were meetings of state party delegations for nominating a candidate for president and constructing a set of political policies designed to illicit support for their candidate. The Anti-Mason Party actually held the first national convention in 1831, but the Jacksonian Democrats followed a year later and the Whigs in 1839. See Holt, 7-18, 92-93. For a broader discussion of Jacksonian developments, also see Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Noonday Press, 1990), 87-95; Craven, 325-339.

delegates over the choice of Douglas and his platform, a few Georgians remained in their seats, despite having no vote. When competing delegations from the state attended the reconvened national party in Baltimore, the convention refused to seat either of them. Douglas had a few supporters in Georgia, including Alexander H. Stephens and Hershel V. Johnson, a reformed unionist, who agreed to join Douglas as his vice presidential candidate. Douglas Democrats, however, were fewer by far than the supporters of Breckinridge and Bell. The agitation was so great that it soured the decades-old friendship and political partnership of Stephens and Toombs. The divisions in Georgia were symptomatic of the South in general and virtually handed the election to Lincoln, who was not even on the ballot in Georgia.¹⁷

Many Breckinridge supporters had advocated secession in the event of a Republican victory while the Douglas and Bell camps sought national reconciliation. The election returns demonstrated that Georgians actually favored moderation over radical disunion, though only slightly, if measured by the platforms. In a record voter turnout for Georgia on 6 November, Breckinridge received 51,893 votes, Bell had 42,886, and Douglas got only 11,580. Together, however, Bell and Douglas took in more than 2500 votes than Breckinridge. Despite this seeming victory for conservative sentiments, Georgia leaders ignored it. Because none of the presidential candidates received a majority of the state's popular votes, the choice of Georgia's delegates to the Electoral College fell to the legislature, which subsequently gave the state solidly to the more radical Breckinridge faction.¹⁸

¹⁷ Carey, 220-229; Johnson, 5-17; Montgomery, 236-246.

¹⁸ Flippin, 149-150.

Governor Joseph E. Brown wasted no time in reacting to Lincoln's election. On 7 November, he transmitted an elaborate message to the General Assembly declaring, "the time for bold, decided action has arrived."¹⁹ He readily revealed the reasons for urgency. The Republican administration, Brown argued, soon would embark on a conspiracy of events to undermine the South and slavery. Lincoln would bribe southerners susceptible to the glory of federal office appointments, send abolitionists as federal officers to the south, and subvert slavery by disseminating floods of abolitionist literature and pamphlets.²⁰ "It is not to be presumed that a State," he maintained, "will secede from the Union without a just cause."²¹ How that cause is determined, he argued, by each state individually "when, in the judgment of her people, the compacts of the Constitution have been violated."²² A convention was necessary to judge whether Georgia had reached that bar, and to decide what action the governor and the General Assembly should take in "the protection of the rights and the preservation of the liberties of the people of Georgia."²³

Brown had cited the blend of traditional and transformed importance of a convention of the people and its sovereign power to decide all political questions as the ultimate constitutional authority concerning the state, including secession. To make his point that this was a sovereign constitutional decision and not a revolutionary act, as was the colonial resistance to the British in

¹⁹ "Special Message...to the Senate and House of Representatives," by Gov. Joseph E. Brown, 7 November 1860 in Allen D. Candler, ed., *The Confederate Records of the State of Georgia*, Vol. 1 (Atlanta: Charles P. Byrd, 1909), 45.

²⁰ Ibid., 47. For a historical view of the political-economy of these fears, see Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (Cambridge: Cambridge University Press, 1990), 18-33.

²¹ "Special Message...", 49.

²² Ibid.

²³ Ibid., 56-57.

the American Revolutionary War, Brown declared that there was “no just analogy between the two cases.” The colonies had been subjects to the British Crown and separation from it had been rebellion. On the other hand, he insisted that “the States of the Union are not the subjects of the Federal Government, were not created by it, and do not belong to it.” To the contrary, the states “created it; from them it derives its powers, to them it is responsible, and when it abuses the trust reposed in it, they, as equal sovereigns, have a right to resume the powers respectively delegated to it by them.”²⁴

On 8 November, the *Columbus Daily Sun* reacted to Lincoln’s election. The editor acknowledged that a divided south must confront the question of union or secession. He predicted South Carolina’s secession, but doubted that the rest of the south would follow. Still, he questioned whether the southern reluctance to disunion was out of “devotion to the Union, or timidity resulting from the idea that ‘it is better to bear the ills we have, than fly to others we know not of.’” Nevertheless, he warned that if South Carolina met resistance to her right to secede, the South would forget its differences and unite to defend their sister state. In the same issue, a local militia group, the Southern Guard, announced its ensuing formation. This was the first of many such announcements by old and new militia companies.²⁵

Excitement over Lincoln’s election spread quickly. The *Columbus Daily Times* advocated immediate secession and noted, “an intense feeling of resistance to Black Republican rule pervades the southern mind.” Suddenly, it reported, “as if by common impulse, the people are arming and organizing committees of safety and military corps...for the protection to their homes and

²⁴ Ibid., 49-50.

²⁵ *Columbus Daily Sun*, dated 8 November 1860, 3.

friends.”²⁶ In Milledgeville, the newspaper had urged patience and counseled that Georgia consult and cooperate with other southern states rather than act independently or prematurely. “We must not get ahead of the music,” it read.²⁷ According to newspaper accounts immediately prior and after Lincoln’s victory, the pressing issue was not whether Georgia should respond to the Republican ascendancy, but how it should do so.

The Georgia General Assembly convened on 7 November in Milledgeville. The new Speaker of the House, General Charles Williams of Muscogee County and veteran of the Mexican War, set the tone for the task “of preserving the honor and the institutions of our beloved State” and for the “preservation of our States’ equality in the Union.”²⁸ On 20 November, the Georgia House entered into the official record resolutions from thirty-nine counties in the state, demonstrating the flurry of local meetings and conventions that had occurred in the days immediately following the election results.²⁹ Mass meetings had fueled a general excitement throughout the state. U. B. Phillips has noted this phenomenon, though likely overstated, saying,

²⁶ *Columbus Daily Times*, 8 November 1860, 2.

²⁷ *Milledgeville Federal Union*, 15 November 1860, 3.

²⁸ *Ibid.*

²⁹ “Resolutions on Federal Relations, Adopted by the People in the Various Counties of this State, and Presented by their Representatives” in Candler, ed., *Confederate Records*, Vol. 1, 58-156. Recent Georgia historians have not fully appreciated the content of these resolutions. Michael Johnson only sporadically has cited them as sources and Anthony Gene Carey has devoted less than deserved to their contemporary importance. See Carey, 231-232, fn., 320. The resolutions offer a unique insight into an unfiltered spectrum of constitutional thought and nationalism among various Georgia communities in this critical period. While I have only scratched the surface of them here, a more detailed treatment of them is warranted and necessary to a fuller understanding of Georgia political and cultural history in the antebellum era.

“Every outspoken man in Georgia was in favor of resistance, and most of them thought the sooner it was made the better it would be for the interests of the South.”³⁰

The county resolutions in early November provided significant insight into the emotional state of politics in the state, but also, more importantly, local views of the meanings and importance of a convention of the people. Even a sampling of these resolutions revealed both the impassioned calls for immediate secession and the rationally argued pleas for patience and restraint. As disturbing as Lincoln’s election was to virtually all Georgians, the people expressed a variety of articulate and reasoned responses to it in their local meetings and committees. The more radical resolutions reflected the rhetoric often rehearsed by the fire-eating South over the previous decade. Those more conservative spoke as if they had been silent for too long, frustrated by the ineptness of the politicians that they had endured for so long.³¹

In the upcountry, Banks County echoed the coastal county of Chatham in denouncing the Republican ascendancy as a threat to the state, as well as the South overall. “That there can be no union of Government without a union of sentiment,” remarked its first resolution.³² Chatham County stated in its first resolution, “That the election of Abraham Lincoln and Hannibal Hamlin, to the Presidency and Vice-Presidency of the United States, ought not be, and will not be submitted to.”³³ The counties of Screven, Lowndes, Oglethorpe, Carroll, Meriwether, White, Troup, and

³⁰ Phillips, *States Rights*, 196. Also see N. B. Beck, “The Secession Debate in Georgia: November, 1860-January, 1861” in J. Jeffery Auer, ed., *Antislavery and Disunion, 1858-1861: Studies in the Rhetoric of Compromise and Conflict* (New York: Harper & Row, 1863), 335.

³¹ “Resolutions on Federal Relations...” in Candler, *Confederate Records*, Vol. 1, 58-156.

³² *Ibid.*, 60.

³³ *Ibid.*, 61.

Glynn concurred with similar sentiments.³⁴ At a Richmond County rally in Augusta, leaders introduced “a white flag with the lone star, and inscribed thereon: “*Georgia—Equality in or Independence out of the Union*”” as a measure of their resistance to the election.³⁵ Loyalty to the state was Ware County’s pledge as it declared, “we recognize Georgia as our country—right or wrong, we are for her, and with her, in weal or foe.”³⁶ Most resolutions urged secession, by either a state convention or a southern convention.

Though few, there were calls for calm, conservative deliberation. For example, Greene County, which had the longest set of resolutions introduced into the record, acknowledged the harmful effects that Lincoln’s election might pose to the south and that southerners “ought not to submit, except temporarily, to the policy which resulted in the said election.” Its citizens stated, “we do not think that election *per se* a sufficient cause for the immediate dissolution of this Union...[b]ecause Messrs. Lincoln and Hamlin have been constitutionally elected; and the people of the South have always claimed to be satisfied with the Constitution and with anything constitutionally done.”³⁷ Furthermore, the blame for the crisis laid squarely upon the politicians. “Politicians and demagogues, on both sides, have made inflammatory appeals to the passions of the people, and instead of allaying excitement, have stirred it up,--instead of repressing mutual distrust and dislike, have promoted it...” Thus, the two sections find themselves in a fierce

³⁴ Ibid., 62, 66, 81, 84, 87, 90, 93, 95.

³⁵ Ibid., 97-98.

³⁶ Ibid., 111.

³⁷ Ibid., 68-69.

controversy which they had no hand in bringing on.”³⁸ Walker County and Milton County also issued similar resolutions.³⁹

The one universal agreement among all of the county resolutions was the central importance of a convention of the people. Almost all of them pledged to “abide by the decision of that Convention” in determining Georgia’s course of action regarding the crisis.⁴⁰ Upson County declared in its first resolution, “That we approve of the call of a State Convention, the only legal and responsible organ of the people, whether they come ‘from the cross-roads’ or from the towns and cities—for it is the people at last who pay the taxes and do the fighting when the enemy is heard thundering at our gates.”⁴¹ Troup County made the most succinct statement of the perceived powers of such a convention. “That we believe the States forming this Confederacy are co-equal and sovereign, and as such, Georgia may rightfully resume her delegated powers, and assume the position of an independent State among the nations of the earth, whenever her people in Convention decide it necessary.”⁴²

Consequently, in weeks following the presidential election in 1860, Georgia communities spontaneously reacted and responded quickly with their own views. Even conservatives agreed that the election aggrieved the South and that redress from the North was necessary for the preservation of the Union. On 21 November, by authority of an unanimous act of the General Assembly, Governor Brown issued a proclamation for an election for delegates to a January convention. Two

³⁸ Ibid., 71-72.

³⁹ Ibid., 142, 151.

⁴⁰ Ibid., 60.

⁴¹ Ibid., 64.

⁴² Ibid., 94.

sections of this proclamation were especially important. Section 4 instructed the convention to “consider all grievances impairing or affecting the equality and rights of the State of Georgia as a member of the United States, and determine the mode, measure and time of redress.” Section 6 further empowered the convention “to do all things needful to carry out the true intent and meaning of this Act, and the Acts and purposes of said Convention.”⁴³ If there were any doubts of the powers and scope of the January convention, Brown had eliminated them.

Contemporaneous with these events, several Georgia statesmen used the excitement in the state’s capital to stage public addresses to defend their particular views on events. From 12 November to 19 November, five prominent politicians with competing ideas on measures that Georgia should adopt in response to the crisis spoke to spectators in Milledgeville during the evening legislative recesses. Former Governor Hershel V. Johnson, on 16 November, and Governor Brown, on 7 December, issued public letters stating their respective positions.⁴⁴ These addresses, like the county resolutions sent to the state legislature, revealed differing interpretations of Lincoln’s election among Georgia leaders.

The devoutly religious Thomas R. R. Cobb appealed for immediate secession, noting, “there is danger in delay.”⁴⁵ As president and commander-in-chief, Lincoln, he warned, would make federal appointments in the region to undermine the South. Moreover, he would have control over the military and use it if necessary to his Republican purposes.⁴⁶ Cobb ended his oration with

⁴³ “A Proclamation by Joseph E. Brown, Governor of Georgia,” dated 21 November 1860 in Candler, ed., *Confederate Records*, 209-210.

⁴⁴ Records of these speeches are in William W. Freehling and Craig M. Simpson, eds., *Secession Debated: Georgia’s Showdown in 1860* (New York: Oxford University Press, 1992).

⁴⁵ “Thomas R. R. Cobb’s Secessionist Speech, Monday Evening, November 12” in *Ibid.*, 26.

⁴⁶ *Ibid.*, 25.

an appeal to the state legislature to take Georgia out of the Union rather than trust it to the uncertainty of a convention of delegates from “the grog-shops and cross-roads.” Thus, he revealed a little-discussed anxiety among some of the state’s elites that handing Georgia’s fate to a popular assembly was too risky.⁴⁷ The next evening, 13 November, Robert Toombs gave another speech in favor of immediate secession. He argued that the northern states had profited immensely from the advantages of union, even at the expense of the South. Protectionist tariffs and government favoritism had spoiled the North. On the other hand, he claimed, the “South at all times demanded nothing but equality in the common territories, equal enjoyment of them with their property, to that extended to Northern citizens and their property—nothing more.”⁴⁸ Toombs also reiterated the importance of popular sovereignty in the territories as established by the Compromise of 1850 and the Kansas-Nebraska Act of 1854, which many deemed threatened by Lincoln’s election.⁴⁹

The next evening, Toombs’s estranged friend, Alexander H. Stephens, countered with a more cautious message for Georgia to heed. Although Toombs always had been a more affable and commanding presence, the often reclusive and sickly Stephens possessed a higher intellect and had a better grasp of constitutional principles. One historian has called Stephens, “a constitutional

⁴⁷ Ibid., 29-30. Alexander H. Stephens later remarked that one sentence uttered by Cobb during this speech had more influence “in carrying the State out [of the Union], than all the arguments and eloquence of all others combined.” That sentence was, “We can make better terms out of the Union than in it.” Stephens, speaking after the war, estimated that two-thirds of the delegates to the Georgia Secession Convention who voted for secession did so “with a view to a more certain Re-formation of the Union” and “could be better accomplished by the States being out of the Union, than in it.” See Stephens, *A Constitutional View*, Vol. II, 321. Also see T. Conn Bryan, “The Secession of Georgia” in *Georgia Historical Quarterly*, Vol. XXXI, No. I, 95.

⁴⁸ “Robert Toombs’s Secessionist Speech, Tuesday Evening, November 13” in Ibid., 37-39.

⁴⁹ Ibid., 40-41. An interesting twist to Toombs’s position was a letter he wrote on 13 December upon his return to Washington. In it, he backed away from his immediate secession convictions and admitted a willingness to wait at least until Lincoln took the presidential oath of office. See “Robert Toombs to E. B. Pullin and Others,” dated 13 December 1860 in Phillips, ed., *Correspondence*, 520.

hairsplitter par excellence.”⁵⁰ His motive, he said in the speech, was “not to stir up strife, but to allay it; not to appeal to your passions, but to your reason.”⁵¹ He emphasized the benefits that Georgia had traditionally enjoyed as a part of the Union and argued that constitutional checks and balances would prevent a Republican president from further encroachments on southern rights.⁵² More importantly, Stephens also addressed fears, expressly shared by Cobb and Toombs, over the calling of a convention of the people; fears not explicit in the county resolutions.

Though some in his audience remained unconvinced of his counsel for patience, Stephens continued to suggest that a special convention was the only legitimate assembly to contemplate and, if necessary, enact secession. The legislature, he said contradictory to Cobb’s speech, was “not the proper body to sever our federal relations, if that necessity should arise.” It did not have the authority to act. “Sovereignty is not in the Legislature.”⁵³ Citing two centuries of

⁵⁰ George C. Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill: University of North Carolina Press, 1994), 67.

⁵¹ “Alexander H. Stephens’s Unionist Speech, Wednesday Evening, November 14” in Freehling and Simpson, eds., *Secession Debated*, 53. I concur with Carey in his criticism of Freehling and Simpson for labeling these speeches as either “secessionist” or “unionist.” The terms are misleading in their contexts. All of these men believed that secession was a viable option and an alternative for consideration. However, they disagreed over the timing and the circumstances in which they should resort to it. Even the terms “immediate secessionist” and “cooperationist” (that is, those who preferred to act in concert with other southern states rather than act alone), preferred by Carey, do not suffice in capturing all the distinctions in their positions. See Carey, fn., 321. A better characterization for capturing the various points of view as established by these speeches, county resolutions, and opinions, though less creative, are the labels “radical” versus “conservative” constitutionalism. This is not to say that there were no strict “unionists” in Georgia. Thomas G. Dyer has demonstrated unequivocally that there was a definitive group of Georgians solely dedicated to the preservation of the Union in the Atlanta area. For example, Osborne Burson had commented that he would have voted for Lincoln had he been on the ballot in Georgia. Men and women like Burson reveal the breadth of conservative views, though these true unionists were few compared to the moderate conservatives who sought delay and southern cooperation. Moreover, Dyer has confirmed that the major partisan divide in Georgia following Lincoln’s election was not unionist versus secessionist, but rather between the immediate secession party and the cooperation party, which preferred the south to act unilaterally together against the anti-slavery north. See Thomas G. Dyer, *Secret Yankees: The Union Circle in Confederate Atlanta* (Baltimore: Johns Hopkins University Press, 1999), 40-43. For the ambiguities of the “cooperationist” label, see Emory Thomas, 42.

⁵² *Ibid.*, 59, 56-57.

⁵³ *Ibid.*, 72.

constitutionalism from the English Levellers through Radical Whig thought, he was emphatic that “popular sovereignty...is the foundation of our institutions. Constitutions are but the channels through which the popular will may be expressed. Our Constitution came from the people. They made, and they alone can rightfully unmake it.”⁵⁴ Despite Toombs’s sudden outburst, “I am afraid of conventions,” Stephens remained resolute and, just as the country resolutions had maintained, he pledged his support for whatever such a convention decided on Georgia’s course: “...though my views might not agree with them, whatever the result may be, I shall bow to the will of the people.”⁵⁵ At the end of his speech, the crowd gave him an ovation lasting for some time. Even Toombs, who had interjected commentary throughout the delivery, called for three cheers from the crowd for Stephens.⁵⁶

Benjamin H. Hill gave another cautiously conservative speech on the evening of 15 November. The pleas for patience from Stephens and Hill had been eloquent and persuasive. Any momentum that the conservatives had gained along with the public letter by Hershel V. Johnson, who also attacked radical secession, on 16 November, however, suddenly halted when the fire-eating Georgia Supreme Court Justice Henry L. Benning from Columbus took the podium on 19 November. Three days earlier, the General Assembly had appropriated the one million dollars requested by the governor for Georgia’s defense.⁵⁷ Benning, however, said that the North would never attack the South because southern secession would bankrupt the north. Furthermore, even if the north did attack, the south had more military resources, including military schools of training,

⁵⁴ Ibid., 73.

⁵⁵ Ibid., 75.

⁵⁶ Beck, 344.

⁵⁷ Ibid., 348.

that gave the region a sizeable advantage. Moreover, he claimed, England and France needed southern cotton so desperately that they would come to the aid of the south against the north.⁵⁸

The primary effect of these formal debates was that they prevented the legislature from attempting to enact secession. The campaign for delegates to the Georgia convention began immediately. Radical secessionists spread across the state and overwhelmed conservative efforts to control the convention. It was a period of ebb and flow of political emotions, reflected in the newspapers. Some agonized over the conflicting loyalties pulling at them. “It is natural,” remarked one Georgian, “that we should love the Union, but we cannot save it; I shall be a grief-stricken mourner at its grave; but...I will bury it and then *defend its principles with my life*.”⁵⁹ Many saw their struggles as akin to the American Revolution. “To declare our independence, to be free, to be released of our shackles, would be to make temporary sacrifices, to imitate the example of our Revolutionary fathers, who worshipped liberty...”⁶⁰

Georgians also kept an eye on developing events in Washington after Lincoln’s election. Members of Congress recognized that disunion was finally not a veiled threat by southern politicians. On 4 December, the House of Representatives established the Committee of Thirty-three, including one member of each state represented, to deliberate solutions for the escalating crisis. Republican opposition to the committee and to its proposals doomed it to failure. In response, on 15 December, twenty-three representatives and seven senators from the South, including Georgia Senator Alfred Iverson, drafted a manifesto asserting that secession and the

⁵⁸ “Henry L. Benning’s Secessionist Speech, Monday Evening, November 19” in Freehling and Simpson, eds., *Secession Debated*, 130-133.

⁵⁹ *Columbus Daily Times*, dated 14 November 1860, 2.

⁶⁰ *Ibid.*, dated 22 November 1860, 2.

subsequent creation of a southern confederacy was the only proper course. On the same day that a special convention in South Carolina seceded from the Union, the Senate appointed the Committee of Thirteen, whose members included Robert Toombs and Jefferson Davis, also to attempt sectional reconciliation. Out of this committee came the notable Crittenden Compromise. Kentucky Senator John J. Crittenden proposed was a combination of a constitutional amendment extending the Missouri Compromise to the Pacific to protect slavery south of the 36° 30' line and a continuation of popular sovereignty policy to decide the slavery issue in each of the new states below that line. The compromise failed when Republicans and key Democrats failed to support it.⁶¹ The momentum of radical northerners and southerners was too strong for compromise.

Still, Crittenden did not give up easily on saving the Union. He took the floor of the Senate on 7 January to continue the fight for his constitutional amendments. With the bulk of Republicans and a critical block of southern Democrats against him, the Kentucky statesman, in the tradition of another Kentuckian, Henry Clay, resorted to extraordinary measures to achieve a compromise that would heal a national crisis. Following in the state tradition that sometimes ignored the amending process set out in their constitutions, as revealed in the Georgia experience, Crittenden attempted to avoid the defeat of his amendments by less than a three-fourths majority of the House and Senate. Instead, he proposed submitting them to the people of the states by the approval of a mere simple majority vote in each branch instead of the three-fourths majority required by the U. S. Constitution. He rejected the move as unconstitutional stating,

⁶¹ Potter, 492-493. For a discussion of Toombs's role in these events see William Y. Thompson, *Robert Toombs of Georgia* (Baton Rouge: Louisiana State University Press, 1966), 148-152. Also see Flippin, 169.

...it is not forbidden by the Constitution, nor does it conflict with any principle of the Constitution, and it aims at nothing but what is entitled to influence here...It is simply an appeal to the people to aid us, their representatives, by giving us their judgment and their opinion upon the subject...The object to be obtained is a constitutional one. It is to ascertain the sense of the people, and necessary for the preservation of the country in all the circumstances which surround it.⁶²

Thus, he justified omitting constitutional procedure by appealing to constitutional principle. Nevertheless, despite his passion and his creative constitutionalism, Crittenden failed and, in that failure, revealed that enough northerners and southerners were determined to avoid moderate concessions and push the limits of pro-slavery and anti-slavery radicalism.

Although Crittenden was willing to excuse his loose construction of the Constitution to present new amendments to it, he was unwilling to extend the same interpretative latitude to southerners defending their right to secede. Secession, he said, was “not named in the Constitution. It has no name anywhere in all of our code of laws. If it means anything at all, it is revolution...[and] is nothing but a lawless violation of the Constitution.”⁶³ His argument revealed that although much may be tolerated to preserve the Union, there was no room for the idea of secession in the most generous of compromises.

The same day that Crittenden argued for the preservation of the Union on the Senate floor, Robert Toombs gave a speech that would be his farewell to the Senate.⁶⁴ He announced, “The Union...is dissolved.” Radical abolitionists, under the guise of the Republican Party, he asserted, “have for long years been sowing dragon’s teeth, and have finally got a crop of armed men” in the South. Crittenden’s concern that secession was not constitutional was moot, because “he will find

⁶² Congressional Globe, Senate, 36th Congress, 2nd Session, 264.

⁶³ Ibid., 267.

⁶⁴ Toombs did not indicate that it was a farewell speech, though it was, in fact, his last address as a Senator. See Thomas Ricaud Martin, *The Great Parliamentary Battle and Farewell Addresses of the Southern Senators on the Eve of the Civil War* (New York: Neale Publishing, 1905), 83-84.

out after a while that it is a fact accomplished.” Moreover, the right of secession, of course, was not in the Constitution, as it “is not the place to look for State rights.” Rights reserved by the states or the people and not ceded to the federal government naturally were not expressed in a federal Constitution. Toombs recounted, once again, the various complaints of the South against the North, the threat Lincoln posed the region as president, and insisted that southerners will stand against further constitutional repression. It was a speech filled with martial spirit. The intransigence of the north in refusing the southern states their equal constitutional rights had led to the only alternative left for the aggrieved states—disunion. Toombs pleaded, “let us depart in peace” or “you present us war.”⁶⁵ Less than a week later, Toombs left Washington for the last time as a member of Congress.⁶⁶

Immediate secessionists had the upper hand in the campaign for the convention in Georgia from the beginning. Herschel V. Johnson characterized the ambitious campaign run by the radicals noting, “They were more than zealous—they were frenzied.”⁶⁷ They touted phrases and slogans that appealed to the basest fears and strongest personal identities, such as white supremacy, inter-racial conflict, the honor of the white south, and the repression of militant abolitionism. On the contrary, conservatives could only offer security through carefully worded constitutional arguments. It had become too easy to characterize a unified south against a common enemy in the north. “We are all defeated [by Lincoln’s election] and can sympathize with each other. Let us

⁶⁵ *Congressional Globe*, Senate, 36th Congress, 2nd Session, 267-271.

⁶⁶ Thompson, 156.

⁶⁷ “From the Autobiography of Hershel V. Johnson, 1856-1867” in *The American Historical Review*, Vol. 30, No. 2, 334.

close up our ranks and march shoulder to shoulder to meet the common enemy.”⁶⁸ This was the voice characteristic of a growing new nationalism.

The secession of South Carolina on 20 December 1860 also emboldened Georgia’s radical secessionists. Finally, Mother Nature worked against the conservatives’ hopes. On election day, a chilly rain kept many Georgians away from the polls. If the candidates’ political identification were correct, the radicals barely won the contest with 44,152 votes to 41,632. There was a 20 percent decrease in turnout from the presidential election just two months prior.⁶⁹ The next day, under orders from Governor Brown, the First Regiment of Georgia Volunteers seized Fort Pulaski at the mouth of the Savannah River to prevent its reinforcement by federal troops.⁷⁰ By the time the Georgia Secession Convention assembled in its first session on 16 January, four states, including South Carolina, Mississippi, Alabama, and Florida, had already seceded from the Union.

South Carolina had sailed the maiden voyage of disunion for the slaveholding South. The state established a blueprint for the radical creation of a separate southern nation. One historian of the Confederacy, Emory M. Thomas, has called this the South Carolina Program. Written by Robert Barnwell Rhett, the plan proposed a southern convention in Montgomery, Alabama to create a constitution for the new nation. It also provided that South Carolina recruit and send commissioners, whom Thomas has referred to as “ambassadors of revolution,” to each slaveholding state to rally support for the Montgomery Convention.⁷¹ Consequently, weeks before the Georgia convention began, commissioners from other southern states had started to lobby

⁶⁸ *Milledgeville Federal Union*, dated 10 November 1860, 2.

⁶⁹ Carey, 242. Carey has provided a discussion of the regional votes and the ambiguities of their results.

⁷⁰ Phillips, *States Rights*, 201.

⁷¹ Thomas, 43.

Georgia for secession. William L. Harris, a commissioner from Mississippi, stood before a joint session of the Georgia General Assembly on 17 December 1860 to bolster the secessionist case.⁷² By 16 January 1861, commissioners from two more states descended on Milledgeville. James L. Orr from South Carolina and John G. Shorter from Alabama petitioned the convention to speak.⁷³ From the outset, conservative delegates to the Georgia convention had an uphill battle.

Three hundred and one delegates from 132 Georgia counties assembled in Milledgeville for the convention. On Wednesday, 16 January, the first day of the convention, they certified the delegations, opened the proceedings with a prayer by the Reverend James Williamson, a delegate from Telfair County, and elected George W. Crawford of Richmond County as its president.⁷⁴ The next day, it established the rules of the convention and permitted the two commissioners to present the secession ordinances passed by their respective states and address the Georgia delegates. The convention decided on Friday, 18 January to conduct closed-door proceedings henceforth and immediately accepted a set of resolutions for consideration from Eugenius Nisbet, a former conservative turned radical.⁷⁵ The secessionists had wasted no time in pushing their agenda.

The conservative delegates never achieved the energetic momentum necessary to counter the radicals in or out of the convention. An unexplainable inertia had plagued the conservative effort over the previous two months and they lacked the collective determination to organize effectively against the wave of secessionist sentiment before them, despite some assurances that a

⁷² Charles B. Dew, *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War* (Charlottesville: University Press of Virginia, 2001), 27-28.

⁷³ "Journal of the Public and Secret Proceedings of the Convention of the People of Georgia, Held in Milledgeville and Savannah in 1861 Together with the Ordinances Adopted" in Candler, ed., *Confederate Records*, 221.

⁷⁴ *Ibid.*, 218.

⁷⁵ *Ibid.*, 229.

substantial majority of Georgians opposed immediate secession.⁷⁶ Their lackluster efforts spilled into the convention. Hershel V. Johnson had deliberated with Stephens on the eve of the convention during which Johnson had left with the impression that the elder statesman would rally the conservatives against secession in the days to come. When they met at the convention, however, Johnson was surprised to learn that Stephens was not only unprepared to lead, but he was unwilling as well. Reluctantly, realizing “the awkwardness of our position,” Johnson assumed the head of the opposition to the immediate secessionists.⁷⁷ Such ineffective planning and tentative action suggested that their cause was lost even before it began.

After closing the convention to the public, Eugenius Nisbet immediately introduced two resolutions regarding secession. His first resolution asserted “the right and duty of Georgia to secede from the present Union.”⁷⁸ Next, he requested a committee to draft an ordinance of secession. Johnson quickly reacted with a substitute set of resolutions asserting principles and actions already familiar to the conservative plan. His resolutions pledged Georgia’s loyalty to the Union conditional upon federal constitutional amendments protecting slavery, popular sovereignty in new territories, and severe penalties for states violating federal laws on slavery. In addition, the state would support any seceded state should the federal government attempt to coerce it back into the Union. Johnson conceded a commissioner to attend the planned Montgomery Convention, but called for another southern congress of states that had not seceded to meet in Atlanta on 16 February to further deliberate⁷⁹

A debate ensued, which involved several prominent delegates including Nisbet, Johnson, T. R. R. Cobb, Alexander H. Stephens, Toombs, and Benjamin Hill.⁸⁰ The convention voted to consider Nisbet’s resolutions rather than Johnson’s and the first test vote on secession followed.

⁷⁶ In a letter from George A. Hall of Gainesville to Hershel V. Johnson, dated 7 January 1861, Hall claimed that three-fourths of the state was conservative on the issue of disunion. “...I tell you the masses do not sympathize [sympathize] with these extreme men or their measures,” he told Johnson. Such claims were doubtful and unverifiable, but they suggested that there were enough Georgians against immediate disunion to make an impression on interested observers. See quote in Flippin, 173-174.

⁷⁷ “From the Autobiography of Herschel V. Johnson,” 325. Also see, Beck, 355.

⁷⁸ “Journal of ... the Convention” in Candler, *Confederate Records*, 229.

⁷⁹ *Ibid.*, 230-235. Also see Beck, 356.

⁸⁰ “Journal of ... the Convention,” 236.

Nisbet's resolutions passed by a margin of 166 yeas to 130 nays. This vote demonstrated that the conservative faction had substantial backing on the third day of the convention. The next day, the committee charged with drafting the secession ordinance reported it to the convention. Before the final vote on the ordinance, Benjamin Hill motioned that the convention take a vote on Johnson's resolutions from the preceding day. The vote on Johnson's resolutions failed 164 against it to 133 in favor of it. Thus, on the fourth day of deliberation, the both factions had essentially maintained their support. That support, however, was temporary. The final vote on the ordinance of secession came on 19 January and passed 208 to 89.⁸¹ Interestingly, the ordinance did not immediately go into effect; rather, it became effective 3 March 1861 to provide adequate time for transitioning the government and implementing necessary changes.⁸²

It would not be an entirely clean break, however, as the convention at the time subtly indicated. Upon passing Georgia's Ordinance of Secession, the convention moved to adopt a resolution that was, at minimum, constitutionally ambiguous, and, at most, an usurpation of federal authority. It read, "That until otherwise ordered by this Convention, the Collectors of Customs and Postmasters and all civil Federal officers within this State, shall continue to discharge the duties of their offices, in accordance with the regulations heretofore governing them."⁸³ It was further notable that the resolution did not state "until otherwise ordered by the legislature." The convention had assumed, consistent with the long tradition of political thought, special extra-constitutional powers beyond regular federal and state legislative authority.

⁸¹ Ibid., 236-256.

⁸² Ibid., 256.

⁸³ Ibid., 262.

Just before the convention adjourned until Monday, 21 January, P. W. Alexander introduced more resolutions in hopes of still applying some conservative influence to the secession proceedings. He recommended, "That the people of Georgia would be willing that the Federal Union, now broken and dissolved, should be reconstructed whenever the same can be done upon a basis that would secure, permanently and unequivocally, the full measure of the rights and equality of the people of the slaveholding States." The convention never voted on Alexander's resolutions.⁸⁴ Whatever conservatism had survived the convention in its first days was fading quickly. In the following days, however, conservatives made their mark in the preamble to the Ordinance of Secession and into the official record of the convention's journal.

Nisbet introduced a preamble, which, according to Alexander Stephens had been prepared by his younger brother Linton Stephens, that struck a balance in the secession ordinance between the dissenting factions over immediate secession and presented a more unified political front.⁸⁵ "The lack of unanimity in the action of this Convention, in the passage of the Ordinance of Secession, indicates a difference of opinion amongst the members of the Convention, not so much as to the rights which Georgia claims, or the wrongs of which she complains, as to the remedy and its application before a resort to other means of redress." It further stated that all delegates would pledge to sign the ordinance as a sign of determined solidarity, "without regard to individual approval or disapproval of its adoption."⁸⁶ In the end, six delegates refused to sign it, but agreed to "yield to the will of the majority" and pledged "'our lives, our fortunes, and our sacred honor,' to

⁸⁴ Ibid.

⁸⁵ See Stephens, *A Constitutional View*, Vol. II, 315-316.

⁸⁶ "Journal of...the Convention", 269.

the defense of Georgia, if necessary, against hostile invasions from any source whatever.”⁸⁷ Consequently, in spirit if not in ink, the convention successfully achieved unanimous support from all attending delegates.

When the delegates had reconvened on Monday, 21 January, the convention began a series of actions over the next several days designed to make their secession ordinance an established fact and transition the state constitutionally and functionally. It passed various ordinances that upheld all previous court rulings and convictions, extended the federal laws on slavery, and assigned all of the powers to the President of the United States to the state governor.⁸⁸ In addition to passing resolves officially accepting the invitation to the Montgomery Convention on 4 February, it also rebuffed a move to reopen the African slave trade and established renewed authority over the military, previously ceded lands to the federal government, and began proposing amendments to the state constitution.⁸⁹ It quickly, therefore, without fanfare or announcement, transformed from a secession convention to a constitutional convention. If they perceived any difference, the record did not reflect it. The convention’s efficiency in retracting federal responsibilities to state authority and its meticulous attention to details were impressive compared to the comparative cumbersome operations of the state legislature. The legislature, with all of the traditional checks and balances, could not compete with the efficiency of a political assembly whose powers and authorities were unhampered by the normal regiments of governance. Thus, in relative terms, the convention made extraordinary progress in its first week of meetings.

⁸⁷ Ibid., 277.

⁸⁸ Ibid., 278-280.

⁸⁹ Ibid., 289-316. Michael Johnson has elaborated on this debate over the slave trade in the Georgia convention. See Johnson, 127-130.

There was one critical motion defeated by the convention that posed the dangerous potential of undoing all it had accomplished thus far. William Martin, from Lumpkin County, moved that the Ordinance of Secession “be published by proclamation of the Governor and submitted to the people of this state for ratification.” The journal did not record who voted for or against this motion nor by how many votes it failed. Fail it did, however, and the people never had the opportunity to sanction secession.⁹⁰ Moreover, the convention assumed the authority to elect the state’s ten delegates to the Montgomery Convention rather than submit ballots to the popular vote.⁹¹ To attempt to assign motives behind such acts by the convention is difficult for the historian. After all, when Georgia ratified the federal Constitution in 1788, it did so in convention and not by popular vote. It is tempting to state that a majority of delegates feared popular disapproval. However, the evidence is insufficient to make such a statement. It is equally as plausible to conclude that the delay of popular elections and their results would have prevented Georgia’s delegation to the Montgomery Convention from having sufficient influence in the creation of a new nation surrounding the state. If, as Alexander Stephens had maintained, most Georgians believed that secession was merely a temporary expedient, though an elaborate a process as it was, for bargaining the security of slavery in the Constitution, then popular ratification must have appeared unnecessary.⁹²

Hershel V. Johnson signed the Ordinance of Secession, but retreated from any other significant contributions to the convention. In reflection, he was poetic about the event. “And so

⁹⁰ Journal of...the Convention, 271.

⁹¹ Ibid., 283. The ten delegates composed of one from each congressional district and two at-large.

⁹² Stephens wrote after the war, “...had no war been waged against Georgia and the other States...I cannot permit myself to entertain the shadow of a doubt, that the whole controversy, between the States and Sections, would, at no distant day, have been satisfactorily and harmoniously adjusted...” See Stephens, *A Constitutional View*, Vol. I, 536. Texas was the only seceded state that required a popular vote to complete disunion. See Thomas, fn., 38.

the Rubicon was crossed and the State of Georgia was launched upon a dark, uncertain and dangerous sea,” he later wrote.⁹³ If Stephens and Johnson exhibited emotional defeat and lethargy, Toombs reflected the energetic mood of victory. As the session continued until 29 January, he remained intensely involved in the convention’s work. Before the convention temporarily adjourned in lieu of the Montgomery Convention, Toombs wrote the convention’s declaration of causes for secession, which the delegates adopted. “Our people,” he wrote, “still attached to the Union, from habit and National traditions, and averse to change, hoped that time, reason and argument would bring, if not redress, at least some exemption from farther insults, injuries and dangers. Recent events have fully dissipated all such hopes, and demonstrated the necessity of separation.” He continued, once again, to outline the historical threats to slavery by the North and concluded, “we resume the powers which our fathers delegated to the Government of the United States, and henceforth will seek new safe-guards for our liberty, equality, security and tranquility.”⁹⁴ The convention recessed later that day until it reassembled in Savannah on 7 March, three days after Lincoln’s inaugural.

The Georgia convention’s resolutions regarding the Montgomery Convention revealed certain contemporary views on revolutionary government. The mandates for Georgia’s delegation to the southern convention provided that they meet with delegates from other seceded states, “to unite with them in forming and putting into immediate operation, a temporary or Provisional Government, for the common safety and defense of all the States represented in said Congress.” That temporary government, it continued, could not “extend beyond the period of twelve months

⁹³ “From the Autobiography of Herschel V. Johnson,” 327-328.

⁹⁴ Journal of...the Proceedings, 350, 361.

from the time it goes into operation,” and must “be modeled as nearly as practicable on the basis and principles of the Government of the United States.” In addition to provisional measures, the delegates had the authority to participate in the construction of a permanent government for the seceded states. The permanent government, however, would not be binding on the people of Georgia until the state convention had ratified it on behalf of its constituents.⁹⁵ Once again, the Georgia convention assumed unto itself the “will of the people.”

The Montgomery Convention began on Monday, 4 February 1861. The event resulted in the Confederate Constitution, which was a grand and ambitious experiment to memorialize the mythic ideals of the 1787 Constitution as interpreted by the slaveholding South, or as historian George C. Rable has described, “to fulfill the shattered Union’s once bright and shining promise of liberty.”⁹⁶ Another prominent historian of the Confederacy, William C. Davis, has argued that the Montgomery delegates “were not going to repudiate the Constitution. They were going to save it, to resuscitate it, to help it rise phoenix-like from the ashes of the Union...”⁹⁷ Although the permanent Confederate Constitution owed much to the U. S. Constitution, it also had certain “remarkably innovative” features that reflected southerners’ concerns for protecting slavery.⁹⁸ Georgia sent the largest, most politically experienced delegation to the convention and attracted

⁹⁵ Ibid., 331.

⁹⁶ Rable, 46. For another view of the Confederate Constitution see Marshall L. DeRosa, *The Confederate Constitution of 1861: An Inquiry into American Constitutionalism* (Columbia: University of Missouri Press, 1991), 2. DeRosa, a political scientist, has argued that the historiography of the Confederacy has often ignored the relevancy of the Confederate constitutional principles to American constitutionalism more generally. DeRosa’s thesis is a conservative defense of the Confederacy and argues the importance of state rights to secession at the expense of slavery. Although his overt bias and subjective treatment diminishes the value of his work, this monograph is the only recent study dedicated solely to the Confederate Constitution..

⁹⁷ William C. Davis, *A Government of Our Own: The Making of the Confederacy* (New York: The Free Press, 1994), 225.

⁹⁸ Rable, 63.

much attention from the start.⁹⁹ Initially, six states began deliberating the construction of a new nation. Texas, which did not secede until 1 February, arrived only in the final days of the convention.¹⁰⁰ Eventually, fifty-two delegates, whom Emory Thomas has called “ambassadors of revolution,” officially attended the affair.¹⁰¹ As the fulfillment of the South Carolina Program, the convention became the intersection of southern ideology and southern nationalism.¹⁰² It was here that all of the southern ideals of sovereignty (state and popular) and the protection of slavery collided with a collective effort to build a nation committed especially to those principles.

The Montgomery Convention attracted delegates who attempted to act in the best interest of their state and only acted subsequently in the best interest of the South collectively. In the Georgia convention, delegates professed to act in the best interest of the state, thus practically dismissing their county constituents. Loyalty, in both the Georgia and Montgomery conventions, therefore, remained with state interests. Moreover, unlike the state convention, Georgia was not bound to abide by the acts of the Montgomery Convention until the state convention ratified them. In Georgia, the counties did not have to ratify the acts of the state convention. These differences were important in considering the differences in character, proceedings, and powers of these two distinct conventions in 1861. In his treatise on conventions, John Alexander Jameson derided the

⁹⁹ See William C. Davis, *Look Away! A History of the Confederate States of America* (New York: The Free Press, 2002), 48-50. Thomas, 54. Among Georgia’s delegates, seven had been Whigs before the party had dissolved, while the others had always been Democrats. In the Georgia convention, six of them had been immediate secessionists and four were conservatives. The delegates were Eugenius A. Nisbet, Francis Bartow, Howell Cobb, Thomas R. Cobb, Martin J. Crawford, Robert Toombs, Alexander H. Stephens, Benjamin H. Hill, Augustus H. Kenan, and Augustus R. Wright.

¹⁰⁰ Participating states were South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. See Thomas, 38.

¹⁰¹ *Ibid.*, 43.

¹⁰² *Ibid.*, 41-42. Also see Anne Sarah Rubin, *A Shattered Nation The Rise and Fall of the Confederacy, 1861-1868* (Chapel Hill: University of North Carolina Press, 2005), 1-15.

Montgomery Convention equally with the state secession conventions. It sought to create an “imaginary commonwealth” among states that had created “equally fictitious Constitutions...that had no substantial basis either in law or in fact.” He argued that it had been “the dream for a third of the century of the States Rights School of politicians, and for four years the supposed realization of that dream on the banks of the James River.”¹⁰³ The entire episode of the Confederacy, for Jameson, was a tragic fantasy in which the states and the South collectively had deluded themselves into believing that the people of each state possessed the sovereign power to unmake and remake their governments.

Delegations to Montgomery disagreed over the purpose and limitations of the convention.¹⁰⁴ Louisiana thought the convention should erect a provisional government to establish a permanent constitution. Mississippi declared that the convention had no authority to establish a constitution. Instead, the delegations should agree on a new president to recommend to their respective states, adopt verbatim the U. S. Constitution, and await the election of new senators and representatives before proceeding toward other constitutional issues. Given its strong conservative element in its state convention, Georgia ironically proposed the most radical action.¹⁰⁵ Although Stephens said that their objective “was not to tear down, so much as it was to build up with the greater security and permanency,” his fellow state delegates sought immediate results.¹⁰⁶ The Georgia delegates lobbied for the convention to assume the powers of a special constitutional convention, not inconsistent with its state’s instructions, and create a provisional framework of

¹⁰³ J. A. Jameson, 257.

¹⁰⁴ Thomas has claimed that two-fifths of the delegates to Montgomery had been conservative cooperationists in their states. Thomas, 56.

¹⁰⁵ Davis, 50-51.

¹⁰⁶ Stephens, *Constitutional View*, Vol. II, 326.

government until they could more leisurely construct a permanent constitution, which would go into effect after ratification by the states. Despite objections by Robert Barnwell Rhett, the Georgia plan quickly won the acceptance of the other state delegations.¹⁰⁷

The confluence of radical and conservative nation-builders had certain unexpected results. Fire-eaters, like Georgia's Toombs and Robert Barnwell Rhett from South Carolina, had expected to ride the wave of state secession all the way to the top leadership of a new slave nation. Many of them left Montgomery more than a bit disappointed as they had watched the conservatives snatch the reins of power out of their reach.¹⁰⁸ Despite the initial radical pressure by Georgia's delegation, moderation prevailed in the convention. The constitutional measures adopted and the subsequent elections of its leaders reflected the turn away from fire-eating radicalism.

If many had intended secession as a temporary expedient to gain constitutional leverage against northern abolitionism, the Montgomery Convention dispelled that notion by establishing the foundations for a permanent government for the new nation. On 7 February, the Committee of Twelve created to frame a provisional constitution reported their proposal for a temporary government "to continue for one year from the inauguration of the President, or until a permanent constitution or confederation between the said States shall be put in operation, whichever shall

¹⁰⁷ Davis, 51-52.

¹⁰⁸ Thomas, 44. Thomas has gone so far as to describe the fire-eating radicals as "irrelevant" to the southern nation. Paul D. Escott has claimed that radical leaders were not ideologically equipped to unite the south into a nation, especially considering the strong moderate base in the upper south states. See Paul D. Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: Louisiana State University Press, 1978), 32-33.

first happen.”¹⁰⁹ The next day the delegates debated proposed changes and, before the end of the day’s business, adopted the temporary constitution.¹¹⁰

One of the main features of the convention that has earned almost universal attention in the historiography of the Confederacy has been the uncharacteristic unity the delegates desperately wanted to present to the watching world beyond Montgomery. Unity was a critical component of their plan to solicit the upper South to consider joining the new nation. Unity was also the key to their political psychology. The lower South had only succeeded with their plans for secession because the remaining states of the Union had not yet challenged them. A divided South was doomed to fail; therefore, unity was necessary to both legitimacy and survival. If there was a single moment when a unique politically developed southern nationalism emerged, it was the determination of the delegates in Montgomery to prepare for a permanent government.¹¹¹

The construction of the Confederate provisional constitution and government had proceeded surprisingly smoothly considering the previous tensions between conservatives and radicals. The convention adopted a temporary constitution modeled on the U. S. Constitution with a few, though significant, changes. The changes included a declaration of the sovereignty and independence of the states, limited the term of its president to one six-year term, and provided the president with a line-item veto.¹¹² It also prohibited the foreign importation of slaves.¹¹³ The

¹⁰⁹ *Journal of the Congress of the Confederate States of America, 1861-1865*, Vol. I, 25-39. Quote on pages 25-26.

¹¹⁰ *Ibid.*, 39.

¹¹¹ I would argue, however, that the zenith of southern nationalism was the period after the attack on Fort Sumter when Lincoln called for federal troops to attack the south. It was a historical moment in which the political nationalism created in Montgomery became infused with a militant nationalism to defend the region against a perceived “other.” Such a nationalism is consistent with Linda Colley’s theory of nationalism in early modern England. See Chapter 1 of this study.

¹¹² Copies of this constitution are variously available, including in the Appendix of Stephens, *A Constitutional View*, II, 714-722.

convention then immediately turned its attentions to electing its provisional officers. Many believed that the president should come from Georgia. Among those considered were Toombs, Stephens, and Howell Cobb. For various reasons, these men did not meet the standards necessary to win enough support and the position went to Jefferson Davis, a respected congressman and senator from Mississippi with strong credentials and a moderate outlook. They chose Stephens as his vice-president.¹¹⁴

After establishing its temporary constitution and officers, the convention morphed into the provisional Congress and began dual roles, conducting normal government functions and preparing a permanent constitution.¹¹⁵ A new committee took up the task of drafting it with Rhett, who hoped to steer it toward his more radical aims, at the helm. The constitution reported out of the committee and ultimately adopted, however, was a product of conservative leanings.¹¹⁶ The most contentious issue was the African slave trade. Radicals wanted to renew it while conservatives opposed it on several fronts, including their desire to create a constitution that appealed to the border states of the south. As the historian George C. Rable has emphasized, unity remained in the forefront of the minds of most delegates in Montgomery.¹¹⁷

The permanent constitution as adopted on 11 March 1861 by the convention was remarkably similar to the U. S. Constitution, but had important unique features that addressed the causes of secession. The document incorporated language to affirm the sovereignty of the states.

¹¹³ The final Confederate Constitution prohibited the Confederate government from abolishing slavery but did not specify that the states could not. See DeRosa, 70.

¹¹⁴ Thomas, 58-60.

¹¹⁵ This transformation mirrored events in the Georgia Secession Convention.

¹¹⁶ Rable, 50-51.

¹¹⁷ Ibid., 53-54.

The Preamble stated, “We, the People of the Confederate States, each State acting in its sovereign and independent character...” Yet, it also contained a supremacy clause for the national government, which appeared as ambiguous as the similar clause in the U. S. Constitution. Nevertheless, the Confederates were content that the language they used in the constitution was sufficient to the protection of state rights.¹¹⁸ The permanent constitution, of course, also explicitly protected slavery in Article I, Section 9. It also, much to the chagrin of radicals, left open the possibility of admitting free states to the new nation.¹¹⁹

Article V of the Confederate Constitution addressed the amending process. It required petitions of special conventions from three states for Congress to call a national convention. The recommendations of this national convention required ratification by two-thirds of the state legislatures or special state conventions as requested by the national convention. The final article concerned the process of ratifying the new permanent constitution. Five of the seven states must ratify it, at which time they would hold elections for the president, vice-president, and members of Congress. It left to the states whether special conventions were necessary to ratification, although Georgia’s secession-constitutional convention reserved this right.¹²⁰ On 11 March 1861, the seven southern states unanimously agreed on the final draft for ratification by the states. The Georgia convention ratified it on 16 March. The state, at least in strictly theoretical and constitutional terms, had been an independent nation for a mere fifty-five days.¹²¹

¹¹⁸ For an in-depth discussion of the supremacy of the state versus national government in the U. S. Constitution and the Confederate Constitution see DeRosa, 22-37.

¹¹⁹ Thomas, 64-66.

¹²⁰ Constitution of the Confederate States of America in Stephens, 722-735.

¹²¹ Saye, Constitutional History, 241.

The Georgia convention had reassembled in Savannah on 7 March 1861 to continue its construction of a new state constitution. The proposed constitution included twenty-eight provisions that became Georgia's bill of rights, which Thomas R. R. Cobb had written as his *Declaration of Fundamental Principles*. It also provided a new apportionment plan for the legislature and extended governor appointment power to the Supreme Court and Superior Courts. Article V, Section 6 declared, "This Constitution shall be amended only by a Convention of the people called for that purpose."¹²² Faith in special conventions had never been higher in the state.

The delegates debated the final draft for only two days. On 23 March, the convention adopted the new constitution and, for the first time in state history, submitted it for popular ratification by the people of Georgia. Only 22,203 voters went to the polls on the first Tuesday in July cast their ballot on the new constitution. They ratified it by only 795 votes and became effective on 20 August.¹²³

Secession represented the boldest application of constitutional conventions in American history. Georgia had wielded the convention as a sword to sever its ties to the Union. In none of the official records or private communications were there any indications of doubt about the convention's authority or ability to inaugurate such a revolutionary act. Radicalism had christened the process, but conservatives had taken control of it. Neither, however, doubted the power of a convention of the people because they had always believed in the ultimate authority of popular sovereignty—as long as it that sovereignty remained along state borders. It was an idea inseparable from their political souls. Ideas, to have meaning, however, must survive events. This one did not.

¹²² Georgia Constitution of 1861 in McElreath, 297.

¹²³ Total votes were 11,499 in favor to 10,704 against it. See Saye, 243.

CHAPTER 8

THE END OF CONVENTIONAL WISDOM IN GEORGIA

Seventeen days after the Georgia secession-constitutional convention agreed to submit the new state constitution to the people for ratification and adjourned, military forces under the charge of Confederate General P. G. T. Beauregard, acting on instructions by the Confederate President Jefferson Davis, began firing their cannons on the federal troops occupying on Fort Sumter in the Charleston Harbor. That attack on 12 April 1861 elevated American constitutionalism to its most dramatic transformation since 1787. A war of ideas became a war of men. The victor of men would be the victor of ideas. Such had always been the case in history and the Civil War proved no exception. The total war that developed between the North and the South settled permanently the threat of secession in America and, with that settlement, exploded the conflation of state sovereignty and popular sovereignty in the South. Whatever merits state rights constitutionalism had presented to American political developments, from the Kentucky and Virginia Resolutions to Calhoun's elaborate theories of federalism, ended abruptly in 1865. In addition, the primary impetus for state rights arguments in the 1840s and 1850s, slavery, also ended.

The historian Michael Les Benedict has written that constitutions do not have meaning separate from the cultures they govern. "It is a community's commitment to constitutionalism and principles of constitutional liberty," he wrote, "that gives meaning to a written constitution."¹ This

¹ Michael Les Benedict, "The Problem of Constitutionalism and Constitutional Liberty in the Reconstruction South" in Kermit L. Hall and James W. Ely, Jr., eds., *An Uncertain Tradition: Constitutionalism and the History of the South* (Athens: University of Georgia Press, 1989), 225.

commitment often depends upon those factors acting intrinsically and extrinsically within the community. When the intrinsic values of a community conflict with the extrinsic values successfully imposed upon it by force, as opposed to voluntary consent, the community must either comply or resist. The South resisted and lost. In defeat, it begrudgingly complied while passively resisting northern political values as the standard for American constitutional culture. Such was the case in the Reconstruction South. A defeated southern culture complied with federal constitutionalism because there was a military presence to enforce it. This extrinsic military factor remained at odds with Confederate southerners' intrinsic constitutional value of self-determination. Had these intrinsic and extrinsic factors been harmonious, of course, there would not have been a civil war or a forced reconstruction. War and reconstruction did happen and, as a result, a dramatically new constitutional era emerged in America.

This study has revealed one glaring feature in American constitutional history that had remained a staple characteristic of its development. Constitutionalism, whether viewed from the strict or loose constructionist perspectives, was always fluid. From its path through the English ancient constitutionalism and Whiggish critiques, to the organic constitutionalism of the American Revolution, constitutional theories and interpretations were always malleable to contemporary events.¹ The era of the Civil War and Reconstruction were no exceptions. In fact, these episodes prove the point. When traditional constitutionalism did not work to support the aims of men and states, they sometimes ingeniously and at other times callously invented schemes and arguments that stretched American constitutional legitimacy. War has often been the tragic manipulation of men and ideals. Secession and certain reconstruction plans were only two of the most overt episodes of high-jacked constitutionalism in this period. Ironically, self-serving principles and

¹ See Chapter 2 and Chapter 3 of this study.

structures were the very evils that Whig constitutionalism and its American progeny, in theory, had resolved to oppose. Practical problems, however, always get in the way of pure ideas. Americans expediently adapted their constitutionalism to its antithesis, war, while few pondered the intellectual paradoxes such adaptation created along the way. The use of conventions as mechanisms of reconstructing the Union demonstrated examples of these paradoxes, as this chapter will reveal.

The end of the Civil War also introduced a new era of nationalism. Local loyalties continued to prevail in the South, but the war had reduced them to sentiments only. No longer did southern identity evoke political power or influence as it had since the early republic era. Reconstruction marked what the historian Paul C. Nagel has termed the “Absolute Union.” “America was now one nation indivisible,” Nagel has said, “but only through force.”² National identity, in practical terms, was no longer a choice. Furthermore, the national ideals had become synonymous with northern ideals, which the South, at least superficially, had to embrace. A constitutionalism rooted in force was a major adjustment for the South and the nation.

One of the most dramatic consequences of this new constitutionalism was evident in the Georgia constitutional conventions during Reconstruction. These conventions were no longer the legacy of the congresses and conventions born in the American Revolution. They became mechanisms, at least temporarily, for the expansion of central state authority by the federal government. As Reconstruction passed from presidential to congressional oversight, constitutional conventions increasingly became alienated from their original formulation as forums for the deliberation of fundamental principles and organic law, legitimated by the notion that such

²Nagel, 287.

popularly elected special assemblies best approximated the people in their sovereign capacity. During Reconstruction, however, the federal government required this convention model as the mechanism to unmake the governments established by the secession conventions prior to the Civil War and to redesign new governing structures and laws in conformity to northern, and consequently national, interests. Premier among these interests were the expansion of federal authority and the protection of the rights of citizenship.³ The radicalization of Reconstruction gained powerful momentum after the assassination of President Lincoln on 14 April 1865.

Lincoln's changing views of the constitutional implications of the Civil War were barometers of the complex task of restoring the Union after the South surrendered. In his first Inaugural Address, Lincoln denied the principle of secession in America. He argued, "...no State, upon its mere motion can lawfully get out of the Union; resolves and ordinances to that effect are legally void."⁴ Still, Lincoln demonstrated a liberal willingness to extend a relatively easy plan to southern restoration to the Union. On 8 December 1863, he issued his Proclamation for Amnesty and Reconstruction, which became known as the Ten Percent Plan, offered full constitutional forgiveness to any seceded state when 10 percent of its 1860 voting population took an oath of

³ I do not mean to imply that all northerners were united in these policies. On the contrary, there were strong conservative views that remained committed to state rights in the North as pronounced as demands for radical constitutional change by other northerners. For a concise discussion of these conflicting views in the north during Reconstruction see Keller, 37-60. My point here is that after the Civil War, the political and economic fate of the South remained in the hands of northern political power. Since the radicals gained prominence in the Congress during Reconstruction, their ideals and visions for the South prevailed in the federal government's policies for the readmission of the southern states to the Union.

⁴ Andrew Delbanco, ed., *The Portable Abraham Lincoln* (New York: Penguin Books, 1992), 198. It is interesting to note that in his last public speech on 11 April 1865, Lincoln revealed that he had remained conflicted over the status of the seceded states in relation to the Union stating, "...my mind has not seemed to be definitely fixed on the question of whether the seceded States, so called, are in the Union or out of it...As it appears to me, that question has not been, nor yet is, a practically material one, and that any discussion of it while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends." See Fleming, *Documentary History*, 115.

loyalty and created a new state constitution abolishing slavery. According to a preeminent authority on Reconstruction, Eric Foner, neither Lincoln nor his critics saw this as the final blueprint for the restoration of the Union.⁵ A less forgiving Congress in 1864 passed its plan for restoration in 1864. Among the principal measures of the Wade-Davis Bill was a requirement for 50 percent of the voting population of a seceded state to swear a loyalty oath, as well as placing power to manage reconstruction with Congress. Though Lincoln killed the bill with a pocket veto, it revealed the distinct views between the executive and legislative branches of the federal government toward healing the nation.

The ambiguous constitutionalism employed to affect the reconstruction of the nation was evident in the early example of Louisiana.⁶ It also revealed the constitutional fine points on which many chose to disagree. Upon his farewell speech to the Senate in early February 1861, Judah P. Benjamin answered those critics who had denounced Louisiana's right to secession since the state had not been one of the original thirteen who had collectively formed the nation. Louisiana, Benjamin insisted, possessed the same rights as Virginia once it entered the Union.⁷ The state seceded on 18 February 1861. In April 1862, however, the Union forces had captured New Orleans and Baton Rouge, and then began a tumultuous federal rule of the cities and surrounding communities.

⁵ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Collins, 1988), 36. By the end of 1864, however, three southern states, Tennessee, Louisiana, and Arkansas, had established union governments under this plan.

⁶ Despite its obvious southern bias, a valuable resource for the reconstruction politics in Louisiana remains John Rose Ficklen, *History of Reconstruction in Louisiana* (Through 1868), Baltimore: Johns Hopkins Press, 1910). More recent scholarship on Louisiana's experience during Reconstruction include Joe Gray Taylor, *Louisiana Reconstructed, 1863-1877* (Baton Rouge: Louisiana State University, 1974) and Ted Tunnell, *Crucible of Reconstruction: War, Radicalism and Race in Louisiana, 1862-1877* (Baton Rouge: Louisiana State University Press, 1984).

⁷ Ficklen., 27.

From 1862 through 1863, Lincoln remained anxious to restore the state to the Union, yet was unsure how to accomplish this effectively. Louisiana became one factor in the development of his Ten Percent Plan. At the same time, a certain segment of the population, loyal to the Union, began their own efforts toward this end. One radical group called the Free State Party developed around New Orleans in 1863 and proposed a unique constitutional approach to the state's awkward relations to the Union. The party declared that Louisiana's secession convention had supplanted its previous 1852 state constitution. However, the state was not constitutionally justified, according to John Rose Ficklen's account, to commit "political suicide," and, thus, required state citizens loyal to the nation to meet in another constitutional convention to repair the damage done by secessionists. A more conservative party rose in opposition and proposed merely a return to acting in accordance with the 1852 constitution without a convention. Ultimately, this party sought to protect slavery by aligning Louisiana with the Union to avoid the application of Lincoln's Emancipation Proclamation in the rebellion states. In the end, Lincoln expressed more favor toward the radical party. This became especially clear in a letter from the president to General Nathaniel P. Banks, his commanding general in the Department of the Gulf, in the summer of 1863. Lincoln applauded the Free State Party's efforts to register citizens for an election to a state constitutional convention. "This, to me," Lincoln affirmed, "appears proper." He would not, however, "retract the emancipation proclamation." Beyond this, the president remained cautious on recommendations until revealing his Ten Percent Plan.⁸

The competing parties of these reconstruction ideas in Louisiana largely restrained their views within the bounds of traditional constitutional legitimacy, which essentially meant that

⁸ Ibid., 45-51. Lincoln's quote is in footnote on page 51. Also see Tunnell, 29-30.

governing processes must have sanction in a convention of the people or in a constitution formed in such a convention. The events that followed, nevertheless, ignored those bounds. General Banks short-circuited all constitutional processes and instituted a loyal government, displeasing both the radicals and conservatives in Louisiana. In February 1864, he called for elections for an executive branch of state government to begin functioning on 4 March, before establishing a new constitution. Elections for delegates to a constitutional convention would take place in April. The convention, he declared, would have only the authority to reinstate the state constitution of 1852, with the only exception being the abolition of slavery. Under the duress of military supervision, the convention accomplished its orders. Although Banks's reconstruction measures in Louisiana repeatedly drew criticism from radicals and conservatives, he maintained the support of Lincoln.⁹ This affair demonstrated the negotiation of constitutionalism and expediency during the Civil War and, furthermore, revealed that legitimate processes suffered a dramatic setback when compelled by external forces. The idea that a constitutional convention, as a reflection of the sovereign power of the people, was the ultimate refuge of political legitimacy was no match for military power determined to ensure its own political aims. Louisiana was only the first state to learn this lesson. Georgia's lesson was not far behind.

After the death of Lincoln, the presidency fell upon the shoulders of a man less capable of the leadership demonstrated by his predecessor. Andrew Johnson, a Tennessee senator who refused to resign his seat during secession, became Lincoln's Democratic vice president in 1864. Although his harsh criticism of secession and the Confederacy led some to believe that he favored Congress's reconstruction plan more than Lincoln's, he proved very sympathetic to the defeated

⁹Ficklen., 55-66.

white South and less so to the 4.5 million freed people in the region, as he enacted his plan in late May 1865 with Congress out of session. Presidential Reconstruction began with an uncharacteristic requirement for state constitutional conventions.

President Johnson demanded an oath of allegiance from all white male southerners who owned less than \$20,000 in property or who were not Confederate leaders. These southerners would then hold elections for delegates to special state constitutional conventions to establish new federally-sanctioned governments. Johnson, generally, had followed Lincoln's Ten Percent Plan. Although Lincoln did not specifically call for a constitutional convention, he endorsed the idea, as the example of Louisiana demonstrated. Johnson subsequently made the constitutional convention a requirement for reunion and restoration. He announced his formal plan for reconstruction in a proclamation to North Carolina on 29 May 1865. Accordingly, the provisional governor of the state, appointed by the president, would

prescribe such rules and regulations as may be necessary and proper for convening a convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the constitution thereof, and with authority to exercise, within the limits of said State, all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its constitutional relations to the Federal Government and to present such a republican form of State government as will entitle the State to guarantee of the United States therefore and its people to the protection by the United States against invasion, insurrection and domestic violence...¹⁰

In the immediate aftermath of the war in Georgia, the direction of the state politically, economically, and socially remained a mystery. People literally lived from minute-to-minute without any official clues to what lay ahead of them. Governor Joseph Brown, in early May, assumed a measure of leadership amidst the chaos and called the state legislature to meet on 22

¹⁰ "Appointment of a Provisional Governor" in Walter L. Fleming, ed., *Documentary History of Reconstruction: Political, Military, Social, Religious, Educational and Industrial, 1865 to the Present Time*, Vol. 1 (Cleveland: Arthur H. Clark Company, 1906), 172.

May 1865. On 11 May, however, the military arrested Brown, sent him to Washington, and prevented the legislature from meeting. Finally, President Johnson on 17 June appointed an interim governor, James Johnson, a unionist lawyer from Columbus, and issued a proclamation similar to that in North Carolina. On 13 July, Johnson called for an election for delegates to a constitutional convention to meet on the fourth Wednesday in October in Milledgeville. There were certain restrictions to the franchise mandated by President Johnson's plan for Reconstruction. Only those who took the Amnesty Oath of 29 May 1865 could vote for delegates and participate in the convention. Confederate military officers above the rank of colonel and civil authorities were ineligible as were southerners whose wealth exceeded \$20,000, unless personally pardoned by President Johnson.¹¹ Despite the conditions and circumstances, there was little indication that this constitutional convention would not or could not assume any of the characteristic features of such assemblies in the past, although the delegates were mindful of the military oversight of affairs. In fact, the proclamation stated that

¹¹ Alan Conway, *The Reconstruction of Georgia* (Minneapolis: University of Minnesota, 1966), 42-44. C. Mildred Thompson, *Reconstruction in Georgia: Economic, Social, Political, 1865-1872* (New York: Columbia University Press, 1915), 123-136. Edwin C. Woolley, *The Reconstruction of Georgia*, (New York: Columbia University Press, 1901), 13-15. These three monographs are the only comprehensive treatments dedicated solely to Georgia's experience during Reconstruction. Woolley's work was a minimalist study that focused primarily on political aspects. Thompson's study, one of Columbia University's famous Dunning School contributions to the history of Reconstruction, was broader in scope and more inclusive of social and economic characteristics of the era. Her work, though sympathetic to the South, provided a surprisingly balanced view of Reconstruction than previous treatments in areas such as the work of the freedmen's bureau in the state. Nevertheless, her placidity toward the violent resistance by whites gangs such as the Ku Klux Klan has undermined much of her modern historiographical credibility. Conway, the latest of these broader treatments, attempted to undermine the concept of Reconstruction in Georgia as a "tragic era." Given the changes and expansion in historiography and resources since Conway's publication, the era deserves fresh scholarship that examines more detailed cultural and constitutional effects on a new kind of society in Georgia after the Civil War. One of the most biased treatments of events throughout nineteenth-century Georgia was by an editor of the *Atlanta Constitution* newspaper, I. W. Avery, *The History of the State of Georgia From 1850-1881, Embracing Three Important Epochs: The Decade Before the War of 1861-5; The War; The Period of Reconstruction, with Portraits of the Leading Men of this Era* (New York: Brown & Derby, Publishers, 1881).

the said convention when convened, or the Legislature that may be assembled thereafter assembled, will proscribe the qualification of electors, and the eligibility of persons to hold office under the Constitution and laws of the state—a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the Government to the present time.

Moreover, there was a certain consistency to this convention, which was charged “to restore said State to its constitutional relations to the Federal Government.”¹² The Georgia conventions in 1850 and 1861 had also met to define the state’s relationship with the Union. The difference in 1865, however, was that the federal government was affecting that defining.

The boundaries and responsibilities of governance by civil and military officers were blurred and sometimes arbitrary. Moreover, in his proclamation for elections to a convention, the provisional governor suggested that the war, “in its revolutionary progress deprived the people of the State of all civil government,” and it must remain so “until a State government shall have been organized by the convention.”¹³ Governor Johnson soon indicated during a speech in Macon that his sole role as provisional governor was to facilitate a new legitimate government in Georgia.¹⁴ There was as much disorder as order among the defeated whites and the emancipated freedpeople in this period.

On Wednesday, 25 October 1865, a convention of the people met in Milledgeville according to the proclamation by Provisional Governor Johnson. By the next day, delegates from every county attended, almost three hundred in all.¹⁵ On the surface, Georgia’s 1865 convention did, in fact, appear little different than those conducted in recent history. Yet, only twenty-two

¹² Ibid.

¹³ Candler, ed., *Confederate Records*, Vol. IV, 15.

¹⁴ Conway, 42-43; Thompson, 134; Woolley, 13-15.

¹⁵ “Journal of the Proceedings of the Convention of the People of Georgia, Held in Milledgeville in October and November, 1865, Together with the Ordinances and Resolutions Adopted” in Candler, ed., *Confederate Records*, Vol. IV, 131-141.

delegates had also been delegates to the 1861 secession convention. The most notable delegates were Hershel V. Johnson, who served as the president of the convention, and Charles J. Jenkins, both conservatives during the secession movement. Historian Alan Conway has described the bulk of the delegates as “conservative mediocrities” or men without much political merit who primarily had opposed secession on practical rather than constitutional terms.¹⁶ Usual procedures of certifying the delegates and organization of the convention proceeded without distinction. Much of the business of the convention mirrored the conduct of Georgia conventions in the past. For example, the convention adopted new apportionment regulations, authorized the organization of state militias loyal to the Union, adopted tax exemptions, and redefined duties and responsibilities for state agencies and officers.¹⁷

One of the first acts of the convention was an ordinance aimed at constitutionally repairing the damage done to the Union by Georgia secession. Specifically, it declared that the act of secession by the Georgia convention of 1861 and its subsequent ratification of the Confederate Constitution, “subversive of, or antagonistic to the civil and military authority of the government of the United States of America, under the Constitution thereof, and the same are hereby repealed.”¹⁸ A legalistic parsing of this language revealed the tepid willingness of a defeated citizenry to untie the Gordian knot of secession, and still defiant enough not to renounce the act in principle. The notable northern Civil War correspondent from the *New York Times*, Benjamin C. Truman, was especially critical of the convention.

¹⁶ Conway, 44-45. Also see Thompson, 134-135.

¹⁷ “Journal of the Proceedings...”, 146-168.

¹⁸ Ibid., 146.

Notwithstanding the fact that the people of this State seem determined to do what is required of them,...we have no proofs of this from the performance of their delegates in convention. This select body of old fogies and malignant demagogues did an abundance of mean, contemptible things, but failed to perform a single clean act.¹⁹

He was optimistic that the new General Assembly created by the convention would “be convinced of the error of the convention, and act accordingly.”²⁰ In her study of Reconstruction in Georgia, C. Mildred Thompson qualified the convention’s action against secession. “With characteristic steadfastness to the doctrine of states rights, the convention repealed, but did not nullify, the ordinance of secession.”²¹ Finally, the constitution provided for its amending and revision “only by a convention of the people, called for that purpose by act of the General Assembly.”²²

Despite this thinly disguised defiance, which in modern terms was passive-aggressive collective behavior, the convention lacked much of both the real and perceived authority enjoyed by past conventions.²³ The Presidential Reconstruction policies had restricted the electorate thereby

¹⁹ “Affairs at the South...” in *New York Times*, 10 December 1865. In the same article, Truman also wrote of a peculiar encounter with Hershel V. Johnson in Augusta whereby he described the Georgia politician most disparagingly. Johnson, he said, “possesses the most contracted mind of any Southerner I have met for some time...” He ridiculed Johnson for paradoxical defenses of the Confederacy and his assertion that the only “Southerner of influence” who was a traitor to the United States was Governor Joseph Brown, not Jefferson Davis. The conversation is of interest to any student of Georgia political history.

²⁰ Ibid.

²¹ Thompson, 136. Conway, 46-47. Though Eric Foner has claimed, “most conventions adopted language declaring secession null and void, although in Mississippi ‘repeal’ failed by only two votes,” Georgia did vote to repeal and not declare null and void its secession. Cf. Foner, 194 and Candler, ed., *Confederate Records*, 145.

²² Georgia Constitution of 1865, Article V, Section I.

²³ Paul Cimbala has implied that there was some opinion in Georgia that the 1865 convention retained much of its sovereign integrity. In particular, he has noted that Davis Tillson, head of the Georgia Freedman’s Bureau at the time, had sought approval by the convention for his plan to utilize the help of white Georgians as agents of the Bureau. If these agents could acquire the approval of the convention, Cimbala suggests, “and thus cloaked themselves in the authority of the provisional state government as well as the federal government, they would command a legitimacy... that the local courts could not disregard.” However, that they sought both federal and state sanction reveals that the convention indeed did not share the same sovereign integrity of such previous conventions. See Paul A. Cimbala, *Under the Guardianship of the Nation: The Freedman’s Bureau and the Reconstruction of Georgia, 1865-1870* (Athens: University of Georgia Press, 1997), 46.

affecting the natural source of a constitutional convention's mandate and effectively damaging its aura of legitimacy. The convention spoke, in practical terms, for a citizenry defined not by their state but by a presidential proclamation and enforced by federal troops with appointed provisional leaders in the state. Thus, the convention was an unprecedented act of American constitutionalism that embodied not the sovereign power of the people, but the coercion of constitutional agents created by that sovereignty. Consequently, this constitutional convention was an inverse to the principle of popular sovereignty and legitimate governance.

Nevertheless, beginning with Mississippi in August 1865 and ending with Texas in April 1866, the southern states had all followed either Lincoln's or Johnson's presidential plans for reconstructing the Union. All of the state conventions had accomplished the three primary requirements by the Johnson plan, which included the abolishment of slavery, a repudiation of the war debt, and the reversal of acts of secession. By the end of 1865, all of the new state legislatures, except Texas and Mississippi, had met and ratified the Thirteenth Amendment, abolishing slavery in the federal Constitution. The president's apparent leniency toward the South, however, afforded several states enough renewed confidence in their local sovereignty that they began passing Black Codes, a series of laws designed to restrict the rights of freedpeople. Even in those states that did not officially pass such laws, the treatment of the freedpeople by whites was systematically oppressive. The South, however, had not counted on Republicans in Congress to impose a new series of Reconstruction Acts.²⁴

²⁴ Foner, 193-199. The new Georgia General Assembly ratified the Thirteenth Amendment on 6 December 1865. The only states that passed legislation establishing official Black Codes were Alabama, Mississippi, South Carolina, and Louisiana. See Michael Perman, *Reunion Without Compromise: The South and Reconstruction, 1865-1868* (New York: Cambridge University Press, 1973), 80-81. Also see Conway, 55-56.

At the same time state constitutionalism was undergoing a profound transformation, a constitutional battle of momentous proportions was beginning on the national stage between the president of the United States and Congress over the proper course of reconstructing the Union. Suffice it to state here that Congress wrested control of events from President Johnson and embarked on an aggressive series of legislation enacted to undermine the constitutional, political, and social underpinnings of the Confederate South.²⁵ As a measure of their determination to secure fundamental constitutional change in the wake of emancipation, by the summer of 1862, Republicans had managed favorable majorities in both houses of Congress and sent the Fourteenth Amendment to the states for ratification.²⁶

The legislatures of all ten of the southern states that considered the Fourteenth Amendment from October 1866 to January 1867 rejected it by large majorities.²⁷ In the Georgia General Assembly, only two members voted in favor it; both served in the House.²⁸ The national off-year elections of 1866 resulted in the demoralization of Democrats, southern conservatives, and President Johnson as the Republicans gained more than a super-majority in both houses of Congress. The result was a more dramatic management of Reconstruction by the Congress and the subsequent further subversion of state constitutional authority.

²⁵ For a much appreciated overview of the conflict between President Johnson and the Congress see Foner, Chapters 5 and 6.

²⁶ The Fourteenth Amendment had several provisions. First, it guaranteed equal rights to all American citizens. Secondly, it provided punitive reductions in state representation in the federal process for any state that denied suffrage to its male citizens. The amendment also repudiated the Confederate debt and empowered Congress to enforce fully these provisions. See Foner, 253-254. It is somewhat curious to note C. Mildred Thompson's comment on the ratification process of this amendment. She stated that Congress had submitted the amendment "before the legislatures of the states that it said were not states." See Thompson, 150.

²⁷ The exception was Tennessee, which had ratified in the summer of 1866. See Foner, 261, 269.

²⁸ Conway, 138.

As the First Reconstruction Act went into effect in March 1867, Congress divided the South into five military districts. Not only did it require a new round of state constitutional conventions under this act, the Congress asserted unprecedented constitutional powers over the people in the unreconstructed states. While it expanded the franchise male citizens, twenty-one years and older, who had one year of residency in the state, regardless of “race, color, or previous condition,” it disfranchised those who had participated in the Confederacy. Further, it required the framing of another state constitution, the second since the end of the war, ratified by the state’s qualified voters, and formally approved by the Congress. Once approved, it then directed the resulting legitimate state legislature to ratify the Fourteenth Amendment. Until each state had met these requirements, their governments were considered “provisional” and “subject to the paramount authority of the United States at any time to abolish, modify or control, or supersede” all state government.²⁹ Furthermore, the impetus of power and oversight was not a provisional governor, but the military officers on site.

Once again, this reflected an inverse principle to traditional American views of sovereignty. Not only did Congress demand and control the outcome of a state’s constitution, it assumed all manner of sovereign powers to itself. The state constitutional convention was now nothing more than an agency of the federal government. Moreover, it rejected the principle established by the ratification of the United States Constitution, which required special conventions to ratify it. Instead, the First Reconstruction Act commanded that the state legislature ratify the Fourteenth Amendment.³⁰ In effect, the sovereign power of the people in their state conventions had ceased to

²⁹ “First Reconstruction Act” in Fleming, *Documentary History*, Vol. I, 402-403.

³⁰ The Georgia General Assembly ratified the Fourteenth Amendment on 21 July 1868. Conway, 163.

exist as Congress, in practical if not theoretical terms, began dictating the goals and results of the deliberations of the people in those conventions in the South.

Elections for the Georgia convention proceeded from late October through 2 November 1867, and, for the first time, black males were eligible to vote. To ensure the broadest participation possible by all eligible voters, General John Pope, commander of the Third Military District that included Georgia, divided the state into forty-four districts and proceeded to create a registration board in each district. These boards consisted of two white males and one black male and received fifteen cents for every person they registered.³¹ Generally, white conservatives boycotted the election and thus ensured the convention's control by Georgia Republicans.³² Pope also had ordered the convention to meet in Atlanta because of suspected resistance by radical white elements in Milledgeville.

The convention gathered on 9 December 1867. Given the race-baiting and voter intimidation tactics of conservative whites, only thirty-seven black delegates attended out of the 169 total delegates. There emerged a division between moderate Republicans and more radical Republicans. Rufus B. Bullock, a carpetbagger from Augusta, and his followers led the latter faction.³³ A moderate sentiment prevailed, however, during most of the work of the convention as it passed sweeping measures for debt relief and liberally extended the franchise. The failure of Radical Republican goals was evident in the failure of providing an explicit right for freedpeople to

³¹ Conway, 145. According to Conway's figures quoted from the *Report of the Secretary of War, 1867*, 95,214 whites and 93,457 blacks registered for this election.

³² Ibid., 148-150; Thompson, 172-173.

³³ The definitive biography of Bullock is Russell Duncan, *Entrepreneur for Equality: Governor Rufus Bullock, Commerce, and Race in Post-Civil War Georgia* (Athens: University of Georgia Press, 1994). Russell attempts to rescue Bullock from his traditional historical reputation as a corrupt, self-serving governor during the military Reconstruction of Georgia.

hold elective office. Moreover, the new constitution gave the legislature greater powers of appointing state officials and, as a result, lessened the possibilities for blacks to achieve positions of political authority. With the declining value of special or constitutional conventions, the convention established amending provisions for the new constitution similar to those in the Constitution of 1798, which required “a two-thirds vote of two successive legislatures.” It also moved the state capital from Milledgeville to Atlanta. Finally, the convention required popular ratification of the constitution.³⁴ Though there was a conservative effort to oppose the ratification of the new state constitution, it passed by almost 18,000 votes.³⁵

The Georgia Convention of 1867-1868, which met in Atlanta from 9 December 1867 to 11 March 1868, was the last convention in the state during Reconstruction. Congressional Reconstruction, however, was not yet complete in the state. The residual defiance of conservatives in Georgia prompted further reprisals and requirements by Congress before the state could regain its pre-war status in the Union. Despite conducting a constitutional convention at the sharp end of a bayonet, the state possessed enough audacity to take advantage of the constitutional ambiguities concerning racial qualifications for serving in the General Assembly. This became a particular point of contention between the state and Congress. By the fall of 1868, the General Assembly had expelled all black delegates in both houses of the legislature.³⁶

The new Republican governor of Georgia in 1868, Rufus B. Bullock, added to the worries of conservatives in the state. He successfully petitioned to Congress that Georgia required further

³⁴ Georgia Constitution of 1868, Article XII.

³⁵ Conway, 149-161; Thompson, 173-187; Foner, 323; *Journal of the Proceedings of the Constitutional Convention of the People of Georgia, Held in the City of Atlanta in the Months of December, 1867, and January, February and March, 1868* (Augusta: E. H. Pughe, 1868).

³⁶ Conway, 165-168; Thompson, 193-198; Foner, 346-347.

reconstructing by noting its expulsion of its black state legislators, the frequent against blacks, the dozens of white members of the state legislature that were unqualified because they had not taken the test oath required by the Reconstruction Acts, and the refusal of the legislature to pass the Fifteenth Amendment.³⁷ Consequently, on 22 December 1869, Congress once again placed the state's government under military control and appointed General Alfred H. Terry as its commander. With counsel from his military board, Terry ousted the ineligible legislators and re-installed the black members previously expelled. The new legitimate General Assembly promptly passed the Fifteenth Amendment in February 1870. Finally, in July, Congress officially restored Georgia to the Union by formally seating its congressional delegations.³⁸ By late 1872, the Democrats had regained the governorship and the General Assembly, thus marking, in practical terms, the end of political reconstruction in Georgia.³⁹ With the election of Rutherford B. Hayes by the infamous Compromise of 1877, Reconstruction, in fact and in policy, ended.⁴⁰

Colonel Isaac W. Avery, in his apologia for Confederate Georgia, called the state Constitution of 1868 "the creature of bayonet reconstruction."⁴¹ The state had been consumed with investigating the charges of corruption by Governor Rufus Bullock during military occupation and with denying freedmen access to the polls after 1872. With federal troops no longer deployed as a reminder of Reconstruction in the state, the Georgia General Assembly posed the question of a constitutional convention to the people. In a relatively small turnout at the polls, the voters

³⁷ The Fifteenth Amendment federally protected the voting rights of citizens regardless of "race, color, or previous condition of servitude." Conway, 182-183; Thompson, 236-239. Also see Duncan, 56-97 for a detailed account of these events.

³⁸ Conway, 186-188; Thompson, 242-248.

³⁹ Thompson, 254.

⁴⁰ See Foner, 575-587.

⁴¹ Avery, 528.

approved the calling of a convention in June 1877. The interest in a new constitution to be formed by the white conservative majority of the state, finally free from any hint of coercion was strong among Georgia Democrats. Around two hundred delegates descended on Atlanta on 11 July 1877.⁴² The apportionment of delegates was one to eight per senatorial districts based on one for every six thousand inhabitants.⁴³ This would be the last constitutional convention conducted in Georgia. As in many pivotal moments in history, the record the delegates left behind did not indicate that they were aware of this significance.

There were clues, however, that the delegates did recognize the importance of the convention as the return of white, southern control of the constitutional life of the state. The men of this convention, however, did recognize the assembly as a milestone. It had been unusual for the temporary president of a Georgia convention to make any opening remarks. Under normal circumstances, the delegate assuming that role merely officiated over the permanent organization of the body until the body selected a permanent president to chair the convention for the duration of its existence. These were not normal circumstances, according to T. L. Guerrey, the temporary president. He took the podium and congratulated his colleagues for meeting together in such “an auspicious occasion.” The convention, he said, was “an indication...that the iron heel of despotism has been lifted from off this people, and that we are about once again to enter upon a new career of greatness and glory.” Though rarely noted in official records, a stenographer assigned to the

⁴² The number of delegates reported has varied. Albert Saye claimed there were 185 delegates whereas Avery noted there were 194. The first roll call vote, however, had 138 yeas and 74 nays, which totaled 212. The vote for Secretary of the Convention immediately following this roll call only recorded 186 votes. See Saye, *Constitutional History*, 280; Avery, 529; *Journal of the Constitutional Convention of the People of Georgia, Held in the City of Atlanta in the Months of July and August, 1877* (Atlanta: James P. Harrison & Co., 1877), 15.

⁴³ Saye, 279-280.

convention by the *Atlanta Constitution* newspaper, Samuel W. Small, inserted “[Applause]” following this statement, indicating the triumph of pro-Democratic, white politics in the audience.⁴⁴

In the wake of these brief remarks, the convention elected Charles J. Jenkins as its permanent president, a seventy-year-old delegate who also had the distinction of being the state’s first elected governor in November 1865, during Presidential Reconstruction. Jenkins’s opening remarks reflected his traditional views of constitutionalism as well as his moderate politics. He suggested that, “fundamental law should be in its nature, abiding, seldom subject to change.” Nevertheless, “in the onward march of civilization,” the people may learn that constitutional change is necessary. The circumstances before him and the convention, he noted, was one of those moments of necessity. The people of Georgia had charged them with the responsibility of revising or replacing the Constitution of 1868, whether because of “the authority by which and the circumstances under which it was constructed and adopted” or “by inherent defects of the instrument.” Whatever the reason, the convention possessed a powerful obligation to the people of Georgia to reform the constitutional foundations of the state’s government. His emphasis was on the state, noting, “It is unnecessary to speak of our federal relations...All right-minded men see and know that Georgia is observing strict fidelity to them, and therefore need make no new pledges, assume no obligations, upon that [federal] constitution.”⁴⁵

If any single statement captured the end of the antebellum character of Georgia conventions, which had assumed a role and power for defining the state’s relationship to the

⁴⁴ Samuel W. Small, *A Stenographic Report of the Proceedings of the Constitutional Convention, Held in Atlanta, Georgia, 1877, Giving Debates in Full on all Questions before the Convention* (Atlanta: Constitution Publishing Company, 1877), 1.

⁴⁵ Smalls, *Stenographic Report*, 2-5.

Union, there it was. Jenkins expressed what most already knew: now Georgia constitutional conventions were limited to considerations within the boundaries of the state and must conform to, or at least not contradict, federal authority. “Entirely outside of these [federal] relations Georgia has a reserved sovereignty and a government to maintain. This is the precise field of our labors...” Their work must not result in inconsistencies with the United States Constitution.⁴⁶ If the rest of the convention delegates concurred, however, they demanded a certain degree of constitutional defiance and autonomy. One delegate proposed a resolution for the convention to notify the governor officially that the body had assembled and would readily receive “any communication which he may deem it necessary to make to it connected with the objects of the convention.” The reaction was immediate and direct. “I have the highest respect for the governor,” one responded,” but I object to his invading this convention and giving any of his views. I prefer to leave him in his chamber to attend to his duties and let us attend to ours...”

Even President Jenkins objected. The governor, he maintained, “has nothing to do with this movement of the people, after the assembling of the convention; no more than the members of the judicial department—not one whit.” His traditional constitutionalism informed his opinion.

This, sir, is a convention of the people of Georgia, and the only reason that they are not all here is that, while it is impossible, it would inconvenient for the purpose of making a constitution, but their delegates are here, and the moment they organize they have no sort of connection or communication with the different departments of government now organized under the existing constitution—none at all.

To pass such a resolution, he advised, would set a precedent for the state executive or legislature to interfere with such conventions and “to instruct them in what they should do.”⁴⁷

⁴⁶ Ibid., 5.

⁴⁷ Ibid., 12-13.

Hence, in Jenkins, there was the confluence of the traditional constitutionalism that defined conventions as an expression of the sovereign people and the new American constitutionalism forged in the Southern defeat during the Civil War that limited that sovereignty to conformity with the Union. In traditional theoretical terms, they were irreconcilable. In fact, however, the new constitutionalism kept the rhetorical principles of tradition, but made the power of its practical application in state conventions effectively obsolete and impotent. The Georgia Constitutional Convention of 1877 resulted in an overhaul of the former constitution. It was one of the most efficiently organized conventions in the state's history. Its tedious deliberations over virtually every paragraph of the proposed changes often agitated delegates and excited tempers. Moreover, the convention had overspent its budget by the end of July and the State Treasurer refused any further funds to it. The body only proceeded with the donation of its most prominent delegate, Robert Toombs, in the amount of \$20,000, later repaid by the state.⁴⁸ Nevertheless, at its adjournment on 25 August 1877, the convention had proposed the most detailed and extensive constitution ever presented in Georgia.

The Constitution of 1877 marked the “redemption” of Georgia from the oversight of Reconstruction. It reduced senatorial terms from four to two years and restricted the governor to serving only two two-year terms. It also limited the taxation powers of the General Assembly in response to the charges of fraud by the state government during Reconstruction. The new constitution included support for public elementary education, but, importantly, authorized the establishment of a black college. In addition, it decided to re-submit to the people a choice between

⁴⁸ Saye, *Constitutional History*, 282. The final costs of the convention totaled \$45,000.00.

Atlanta and Milledgeville as the capital of the state.⁴⁹ The amending process changed in the new constitution. A two-thirds majority of both houses of the state legislature could present amendments for ratification by a majority of voters in a general election. The new constitution left open the possibility for the General Assembly, by two-thirds majority vote, to call a convention of the people, which they never did.⁵⁰ On 5 December 1877, the people of Georgia voted in favor of the new constitution by 110,442 in favor to 40,947 against and chose to leave the capital in Atlanta.⁵¹

The delegates to the Convention of 1877 had inserted so much detail and constructed so many restrictions on governing power that subsequent Georgia legislatures eventually added 301 amendments to the document before adopting the new constitution written by the Constitutional Commission in 1945.⁵² In 1930, Orville A. Park, a former president of the Georgia State Bar Association and professor of law at Mercer University, wrote an insightful critique of the work of the 1877 convention. He placed the convention in a broader historical perspective and argued that, in light of the constitutional tradition, both in Georgia and the United States generally, the delegates constructed a constitutional aberration. The convention delegates, he claimed, “great men though they were, seem to have overlooked the fact that a constitution is a living organism, a vital breathing thing, instinct with life, which must grow or shrivel and die and be cast aside an ‘outgrown shell by life’s unresting sea.’” The effects of the Civil War and Reconstruction had pressed upon the consciousness of the members of that body and had been largely to blame for

⁴⁹ The Constitution of 1868 had moved the state capital from Milledgeville to Atlanta.

⁵⁰ Georgia Constitution of 1877.

⁵¹ Saye, *Constitutional History*, 283.

⁵² Saye, *Constitutional History*, 393; Melvin B. Hill, Jr., *The Georgia State Constitution: A Reference Guide* (Westport: Greenwood Press, 1994), 11.

their lack of foresight. They “had been in part active participants and in part distressed witnesses and agonized sufferers,” Park said. In their experienced distrust of all government, they had proposed a constitution “so restricted, so hedged about limitations, given so little liberty of action,” that it left the state constitutionally burdened.⁵³

The enormous number and specific, often local, character of amendments to the Constitution of 1877 had tragically devalued the constitutional process, Park argued. “The constitution as an instrument of government is no longer seriously considered.” The complexity and the expansion of the state government by both amendment and legislative statute had “so outgrown the narrow limits of the constitution as to be unrecognizable.” The state constitution, he bemoaned, had become “a lifeless thing whose mutilated remains lie in the path of progress.” A new constitution was necessary, but he doubted that the people would agree to a new convention. The local, provincial interests that the Constitution of 1877 had empowered would prevent the crafting of a new constitution by delegates accountable to those interests and which threatened local power in the interest of the state at-large.⁵⁴

Park’s views in 1930 gave important clues to the end of constitutional conventions in Georgia. First, they indicated, in retrospect, the failure of the convention in 1877 to focus on the initial purpose of constitutional conventions, which was the establishment of fundamental principles more broadly rather than managing the minutiae of routine governmental functions. In the wake of Reconstruction, the convention sought extraordinary restrictions on all governmental departments and agencies, preferring them accountable to the people than to the checks and

⁵³ Orville A. Park, “The Passing of the Constitution of 1877” in *Bulletin of the University of Georgia*, Vol. XXX, No. 11b (August, 1930), 2-4.

⁵⁴ *Ibid.*, 8-12.

balances among the branches. Such departure from basic principles made the convention appear to be little distinctive from the normal legislative process. Secondly, the constitution and the enormous number of amendments attached to it made it less revered as an expression of organic law than an ongoing process of adding and deleting rules of the political game—even making them up as they deemed necessary. Another plausible factor was the immense costs incurred by the convention in 1877, which by 1930, could have been even more prohibitively expensive to the state.

By 1943, most interested Georgians agreed that a new constitution for the state was long overdue. Governor Ellis Arnall sponsored a resolution in the General Assembly that created a twenty-three member commission to propose constitutional revisions. According to Albert Saye, there were strong arguments supporting such a commission. The county unit system in Georgia gave the rural counties an unfair advantage in the General Assembly. Fears of representative reapportionment led rural delegates to defeat attempts to call a convention.⁵⁵ According to the resolution creating it, the constitutional commission's work required the approval of the General Assembly before its popular ratification by the people. Thus, the commission provided a means of revising the constitution without a convention or by simply adding more amendments. The most vocal argument against the commission was that the members of the commission required appointment by the governor, who also chaired the commission. The commission prevailed and, on 7 August 1945, the people of Georgia ratified the new constitution by a vote of 60,065 to 34,417.

⁵⁵ For a concise explanation of the county unit system in Georgia and its end in 1962 see Scott E. Buchanan, "County Unit System" in *The New Georgia Encyclopedia* at <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-1381> (last accessed 12/7/07). Also see Albert B. Saye, "Georgia's County Unit System of Election" in *The Journal of Politics*, Vol. 12, No. 1, 93-106; William G. Cornelius, "The County Unit System in Georgia: Facts and Prospects" in *The Western Political Quarterly*, Vol. 14, No. 4, 942-960; Louis T. Rigdon, *Georgia's County Unit System* (Decatur: Selective Books, 1961); Calvin Kytte and James Mackay, *Who Runs Georgia?* (Athens: University of Georgia Press, 1998).

Georgia was the first state to have a constitution constructed by a commission instead of a convention, which met popular approval.⁵⁶

While Georgia lawmakers had remained content for many years to merely amend its Constitution of 1877, other states in the late nineteenth and early twentieth centuries continued to debate the powers and scope of their state constitutions. These theoretical, often scholarly, discussions had no impact on constitutional events in Georgia. In the end, a number of factors contributed to the end of constitutional conventions in Georgia. The population growth of the state had made them too inefficient and costly; local and county interests had trumped state interests. The Civil War and Reconstruction had undermined the ideals which the convention process had revered—the right and possibility for a people to remake their government without the interference of external forces. Although these ideals continued to be embodied in the U. S. Constitution, the states rights theory of local sovereignty had informed much of the political energies in Georgia during the antebellum period. It was an energy directed at negotiating and defining the constitutional boundaries between the state and the nation. After the Civil War and Reconstruction, the fundamental questions of state and federal relations were firmly resolved. Georgia leaders had nowhere to direct those energies except within the state, where the convention was less necessary because Reconstruction had neutralized the broader constitutional implications of conventions. It was also less necessary because the antebellum convention had been a mechanism by which Georgians united in defining its role in the Union, but war and restoration had permanently decided those issues. For a brief moment in 1877, white Democrats in Georgia had reinvigorated the convention and grandly celebrated the state’s “redemption” from Radical Rule. It was a bittersweet

⁵⁶ Saye, *Constitutional History*, 393-397; Also see Albert B. Saye, “American Government and Politics: Georgia’s Proposed New Constitution” in *The American Political Science Review*, Vol. 39, No. 3, 459-463.

celebration, however, because while the Redeemers had regained the reigns of state government from the Republican Party, the constitutional foundations remained beholden to the national principles, thus ending the real or imagined sovereign powers of the state constitutional convention process in Georgia.

This study has traced the historical development of the ideas and practices of the state constitutional convention in Georgia. The transformations of ideas into practice are often imperceptible and require subjective interpretation and conclusions by the historian. This is especially the case when so many ideas inform so many inconsistencies in practice, such as the case of constitutional conventions in Georgia. Nevertheless, what is clear above all other indications in this study is the transformative effect that the Civil War had upon a constitutional concept that was so deeply rooted in an ideological past. The idea of a sovereign people, as manifested in the practice of state conventions, did not die with the Civil War, but became effectively irrelevant, except procedurally, because it fundamentally conflicted with the idea of a perpetual union. If a sovereign people retain the right to make and unmake their government, the American Union was not necessarily permanent. The Civil War, however, confirmed its permanence and redefined the essential meaning of sovereignty for many Americans.⁵⁷ Although the concept retained some significance to American constitutional thought, in Georgia that significance quickly diminished before the dawn of the twentieth century.

⁵⁷ Fritz, 234

By 2005, America had experienced more than 230 state constitutional conventions over a 229-year span.⁵⁸ Although Georgia was among the first to end the practice in 1877, the state's twelve conventions were the second most of any state in American history, superseded only by New Hampshire's seventeen total conventions.⁵⁹ American constitutionalism before the Civil War was characterized by energies and activities in the states. The war effectively transformed American constitutionalism into a national conception by denying state's a role as the final arbitrator of popular sovereignty. As historian Daniel T. Rodgers has said, "the tension between state prerogatives and federal power helped keep alive the notion of the convention as a revolutionary committee of the people, ready to spring to life to enact a constitution, to state the people's will, to interpose, nullify, perhaps to secede."⁶⁰ With the practical resolution of those tensions, Georgians saw little need in resorting to popular conventions to resolve constitutional issues.

⁵⁸ G. Alan Tarr, "State Constitutional Politics: An Historical Perspective" in G. Alan Tarr, ed., *Constitutional Politics in the States: Contemporary Controversies and Historical Patterns* (Westport: Greenwood Press, 1996), 3; John J. Dinan, *The American State Constitutional Tradition* (Lawrence: University Press of Kansas, 2006), 7.

⁵⁹ Louisiana is tied with Georgia for second most state conventions. Other southern states had significantly fewer. For example, Alabama (6), Florida (5), Kentucky (4), Maryland (5), Mississippi (7), North Carolina (6), South Carolina (5), Tennessee (8), Texas (7), and Virginia (9). See Dinan, 8.

⁶⁰ Rodgers, *Contested Truths*, 97.

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