

# In Praise of Rebellion: Constituent Power and Dissent in the American Revolution

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### Abstract

In the context of the American Revolution, alongside the influential notion of constituent power advocated, for instance, by the Federalists, emerged an alternative and potent perspective about this concept. This perspective, which was particularly strong in revolutionary Pennsylvania, had at least two distinctive features. First, rather than limiting constituent power to a sort of ante-room of constitutional authority, this view conferred primacy to the constituent process over the institutional machinery. Second, instead of exclusively assigning the exercise of constituent power to a few specialists, this perspective invented ways for the multitude to exercise its power directly. This article examines this particular vision of constituent power. This investigation, as I argue, can both assist in demystifying some common assumptions entrenched in the concept of constituent power and provide insights for contemporary reflection on the limits of representative democracy.

### Keywords

American Revolution, Pennsylvania, constituent power, constituted power, democracy

## I. Introduction

During the American Revolution, the notion of constituent power – that is the power of the multitude to create from below new democratic arrangements of social organization – was intensely present in political discourses.<sup>1</sup> For instance, influential political actors

1. For a historical presentation, comparative discussion, and conceptual examination of the notion of constituent power, see Martin Loughlin and Neil Walker (eds), *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Cambridge: Cambridge

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of the epoch repeatedly evoked the idea of constituent power to confer legitimacy to the newly drafted U.S. Constitution.<sup>2</sup>

However, the notion of constituent power was far from being univocal. On the contrary, this concept was strongly disputed by the social forces at play in the revolutionary period. In this respect, one can say that there was an intense quarrel over the concept of constituent power at the very core of the American Revolution, a quarrel that, as I claim, remains unresolved to the present day. This contention can be expressed in the following terms.

On the one hand, there is a perspective of constituent power, advocated, for instance, by the Federalists, essentially marked by the idea of containment of the multitude's political force.<sup>3</sup> The expression "power-to-command" can be seen here as a key-term. This tradition may recognize, to a certain point, the social benefits of a constituent moment, such as the overthrow of a tyrannical regime, but this same tradition considers such constituent moments dangerous if allowed to continue. "Every constitutional assembly must eventually be dismissed, every process of social experimentation must be closed down in a new constitutional order, every revolution must be followed by a Thermidor in order to hold off the threat of social disorder and chaos."<sup>4</sup> As a result, this perspective, on one side, maintains that constituted power should be the natural and continuous source of political innovation and historical movement, while, on the other side, this view corrals constituent power to the legitimating principle of the institutional order, to the ante-room of constitutional authority.<sup>5</sup> In sum, for this tradition, in terms of historical movement and political innovation, constituted power should be the norm and constituent power the exception. I use the term 'ephemerality' to refer to this perspective's attempt to corral constituent power to a brief episode. In addition, this perspective largely connects the exercise of constituent power to political representation. Here constituent power seems

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University Press, 2008), pp. 1–8; Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (Minneapolis, MN: University of Minnesota Press, 2009), Chapter 1; and Claude Klein, *Théorie et pratique du pouvoir constituant* (Paris: PUF, 1996).

2. See, for instance, James Madison's argument in favor of the legitimacy of the new federal Constitution, drafted by the members of the Federal Convention. Although he does not explicitly use the expression "constituent power," the concept is undeniably present in his writings. For instance, in the Federalist No. 40, quoting an excerpt from the Declaration of Independence, he evokes the idea of the right to revolt (or constituent power) to defend the authority of the Federal Convention and, consequently, of the new Constitution. James Madison, "Federalist No. 40," in Clinton Rossiter (ed), *The Federalist Papers* (New York: Signet Classics, 2003), p. 249. Hereinafter, I will cite *The Federalist Papers* as follows: Federalist author's last name, Federalist number, and page number.
3. For a discussion of this perspective of constituent power, see Negri, *Insurgencies*, Chapter 4; Jason Frank, "Unauthorized Propositions: The Federalist Papers and Constituent Power," *Diacritics* 37(2–3) (2007), pp. 103–20; and Benjamin Popp-Madsen, "Anti-Federalism and the Question of Constituent Power in the American Constitutional Debate," *Journal of the Nordic Society of the History of Ideas* 8(1) (2014), pp. 25–46.
4. Michael Hardt, "Foreword," in Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (Minneapolis, MN: University of Minnesota Press, 2009), p. viii.
5. Madison, for instance, supports this idea in the Federalist No. 49, pp. 311–12. See also Negri, *Insurgencies*, Chapter 4.

only to operate validly if exercised through representatives. In this respect, one should note that representation is not the second best after impractical direct democracy but, conversely, is the device best suited for the exercise of constituent power.<sup>6</sup> In a word, one can say that, for this theoretical framework, constituent power is really a representative (or *commissioning*) power. I call this view's attempt to necessarily couple representation with constituent power "delegation." With the ratification of the U.S. Constitution in 1787, this conception of constituent power would become hegemonic – a hegemony, one should note, not only circumscribed to the context of the American Revolution. Today, this vision of constituent power continues largely operative.<sup>7</sup>

I should finally add that this conception of constituent power had a profound impact on a model of democracy that, with time, would become globally predominant: representative democracy. This impact should not surprise us. That is because the notion of democracy is deeply connected, as some authors note, to the notion of constituent power.<sup>8</sup> One can actually say that the prevailing view of constituent power in a certain society has a decisive impact on the model of democracy experienced by that same community. In this light, the prominence of representation in today's dominant model of democracy is, for instance, deeply related to the aforementioned idea of constituent power's delegation.

However, alongside the notion of constituent power advocated by the Federalists, many revolutionaries produced an alternative and potent perspective about this concept. Particularly strong in revolutionary Pennsylvania, this alternative perspective represents, to a great extent, an inversion of the Federalists' vision of constituent power. In this sense, this view is essentially marked by the multitude's common desire for liberation. Among other things, this means that this perspective confers primacy to the multitude's constituent power over the institutional machinery. Here, the expression "power-to-create" can be seen as a fundamental idea. In this light, instead of corraling constituent power to a brief episode (such as the enactment of a formal constitution), they sought to

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6. Madison, for example, vehemently holds that constituent power should only be exercised by a few specialists. See Madison, Federalist No. 40, p. 249.

7. A brief examination of the functioning of most contemporary democracies would reveal, for instance, the ephemeral and confined role assigned to constituent power. In most of them, there is no such thing as, e.g., a "right to change" (a right to periodically reopen the constituent process). People do not have the right to give themselves a new constitution each generation. The notion of ephemerality is thus intensely present in contemporary political systems. For a critique of the low democratic character (and the low incidence of constituent power) in today's systems, see e.g., Wendy Brown, "We are all democrats now . . ." in Amy Allen (ed.), *Democracy in What State?* (New York: Columbia Press, 2011), pp. 44–57; Sheldon S. Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism* (Princeton, NJ: Princeton University Press, 2000), Chapter 1; and Joel Colón-Ríos, *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power* (London: Routledge, 2012), Chapter 1.

8. As Negri asserts, "To speak of the constituent power is to speak of democracy. In the modern age the two concepts have often been related, and as part of a process that has intensified during the twentieth century, they have become more and more superimposed." Negri, *Insurgencies*, p. 1.

promote the indefinite continuation of the constituent process – a vision, I should note, that explicitly confronted the Federalists’ idea of “ephemerality.”

Furthermore, by nurturing ways for the multitude to express constituent power directly, this perspective challenged the traditional idea of delegation. In this respect, in practice, when this view was not able to bypass political representation, the device was confined to a secondary role, keeping it, in any case, under intense democratic control.

This article focuses on this latter perspective about constituent power.<sup>9</sup> More specifically, it examines the particular vision of constituent power that emerged in revolutionary Pennsylvania during the late 1770s. This investigation, I claim, can both assist us in the demystification of some common assumptions entrenched in the concept of constituent power and provide us with some insights into contemporary reflections on the limits of representative democracy.

## II. The Backdrop of an Alternative Notion of Constituent Power

In order to better grasp the alternative notion of constituent power (and of democracy) that emerged in revolutionary Pennsylvania, it seems useful to provide a concise backdrop against which this concept is best seen. But first I should address an important question: of all the provinces, why choose Pennsylvania to examine here?

Besides the symbolic importance of this particular state to the American Revolution, several scholars agree that revolutionary Pennsylvania embodied the strongest alternative to the transcendent centralized form of rule that would dominate American political life after the US Constitution.<sup>10</sup> Terry Bouton, for instance, notes that Pennsylvania’s revolutionaries set the pattern for democratic innovation and “framed the debates over democracy that followed in the other new states, the vast majority of which refused to go as far.”<sup>11</sup> Thus, the choice to examine Pennsylvania here relates to the potent notion of

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9. For an approach similar to mine, but focused on the figures of some specific anti-federalists and on the particular context of the ratification debate of the U.S. Constitution, see Popp-Madsen, “Anti-Federalism.”

10. For instance, Pennsylvania is often called the “birthplace of American democracy.” It hosted the creation and signing of the “Declaration of Independence” in 1776 and the closed-door meeting that produced the U.S. Constitution in 1787. See Terry Bouton, *Taming Democracy: The People, the Founders, and the Troubled Ending of the American Revolution* (Oxford: Oxford University Press, 2007), p. 5. For an account of the history of Pennsylvania, see Randall M. Miller and William A. Pencak (eds), *Pennsylvania: A History of the Commonwealth* (University Park, PA: Penn State University Press, 2002); Joe W. Trotter and Eric Ledell Smith (eds), *African Americans in Pennsylvania: Shifting Historical Perspectives* (University Park, PA: Penn State University Press, 1997); and Jean R. Soderlund, *Lenape Country: Delaware Valley Society Before William Penn* (University Park, PA: Penn State University Press, 2016).

11. Bouton, *Taming*, p. 5. By “revolutionaries,” I mean all those who not only favored independence but, equally important, were committed to inventing, from below, new democratic forms of social organization.

constituent power (and of democracy) that, as this article demonstrates, emerged in this particular polity.<sup>12</sup>

Although Pennsylvania became an iconic site of the American Revolution, its official engagement in the struggle against Britain took some time.<sup>13</sup> Actually, it was only weeks before the signing of the Declaration of Independence in the summer of 1776 that Pennsylvania officially engaged in the struggle against England.<sup>14</sup> In short, the main reason for this deferment was the persistent alliance between the local oligarchy (composed of members of the provincial government and segments of the local gentry) with England. Despite its internal disputes, the local oligarchy feared that a break with England, by strongly appealing to popular enthusiasm, could unleash an unpredictable popular force.<sup>15</sup> More precisely, they feared the release of a popular force that would destabilize their dominance over governmental institutions hurting, consequently, their economic interests.<sup>16</sup> It is worth adding that the fact that the provincial assembly was pervaded by a Quaker culture (with its strong opposition to war) also made Pennsylvanians' engagement in the independence campaign much more difficult.<sup>17</sup> In this light, one can say that, during a considerable time, Pennsylvania's revolutionaries were not only involved in an external struggle against England, but also in an internal dispute against the local oligarchy.<sup>18</sup>

The local oligarchy's continuous attempt to undermine Pennsylvanians' engagement in resistance activities, notwithstanding, produced the opposite effect. Many discontented Pennsylvanians, from different ethnic-economic-religious backgrounds, began to gradually organize themselves. Among other actions, they began to progressively occupy

12. For a detailed account of revolutionary Pennsylvania, see Richard Alan Ryerson, *The Revolution Is Now Begun: The Radical Committees of Philadelphia, 1765–1776* (Philadelphia, PA: University of Pennsylvania Press, 1978), and “Republican Theory and Partisan Reality in Revolutionary Pennsylvania: Toward a New View of the Constitutionalist Party,” in Ronald Hoffman and Peter J. Albert (eds), *Sovereign States in an Age of Uncertainty* (Charlottesville, VA: University of Virginia Press, 1981), pp. 95–133; and Gary B. Nash, “Philadelphia’s Radical Caucus,” in Alfred F. Young, Ray Raphael and Gary B. Nash (eds), *Revolutionary Founders: Rebels, Radicals, and Reformers in the Making of the Nation* (New York: Alfred A. Knopf, 2011), pp. 67–86.

13. For a discussion of the reasons that led Pennsylvania to defer its engagement in the independence campaign, see Ryerson, *Revolution*, Chapter 1.

14. Nash, “Philadelphia’s Radical Caucus,” p. 76.

15. For an account of the factional dispute among the local oligarchy in the decade preceding the Revolution, see Ryerson, *Revolution*, pp. 16–23.

16. For a discussion of the local oligarchy’s fear of a popular uprising in Pennsylvania, see Ryerson, *Revolution*, p. 18.

17. For an account of Pennsylvania’s Quakers, see Barry Levy, “Quakers, the Delaware Valley, and North Midlands Emigration to America,” *The William and Mary Quarterly* 48(2) (1991), pp. 246–52.

18. As Wood notes in respect to the legislature, “In fact, the Pennsylvania Assembly was so detached from the Revolutionary movement that in the minds of many by 1776 it had become as much an enemy of the people, whom it presumably embodied.” Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, NC: University of North Carolina Press, 1998), p. 84.

and politically transform the existing urban extraconstitutional committees. Some of these committees, it is worth noting, were created in 1765 during the Stamp Act crisis in order to, among other things, enforce the boycott of imported British goods.<sup>19</sup> However, the revolutionaries did not limit themselves to occupying the existing urban committees for, as this topic shows, they also created new ones (both in the city and countryside). And because of the intense articulation between urban and rural committees, Pennsylvania became one of the few provinces to form a successful coalition between urban workers and small farmers.<sup>20</sup>

Especially from 1774 onwards, the revolutionaries began to increasingly transform the extraconstitutional committees (old and new) into a powerful instrument of politicization, radicalization, and intercolonial resistance. In this respect, it is worth mentioning that one of the most important committees was Philadelphia's Committee of Observation and Inspection, which, besides serving as a boycott reinforcement agency to English goods, incorporated by the late 1770s several governmental functions such as organizing provincial elections. In effect, drawing on the grievances of many Pennsylvanians against English officials, provincial authorities, and segments of the local gentry, the committees became "the strong right arm ... of popular sentiment that was taking control of the streets, setting control of prices of scarce commodities, and pushing the colony's legislative assembly to oppose British policies."<sup>21</sup> Actually, by the late 1770s, as I will soon demonstrate, the committee movement grew so impressively that it practically became an alternative source of government in Pennsylvania.

However, the revolutionaries did not organize themselves only in civilian committees. As the revolutionary crisis escalated and war landed on Pennsylvania's doorstep, they decided to organize military committees too.<sup>22</sup> In this respect, on April 25, 1775, after thousands gathered at Philadelphia's statehouse yard to, among other things, debate the

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19. For a discussion of the Stamp Act crisis, see e.g., Rebecca Starr, "Political Mobilization 1765–1776" in Jack P. Greene and J.R. Pole (eds), *A Companion to the American Revolution* (Hoboken, NJ: Wiley-Blackwell, 2003), p. 223.

20. Robert F. Williams, "The State Constitutions of the Founding Decade: Pennsylvania's Radical Constitution and Its Influences on American Constitutionalism," *Temp. L. Rev.* 62(541) (1989), p. 29. See also Nash, "Philadelphia's Radical Caucus," p. 73.

21. Nash, "Philadelphia's Radical Caucus," p. 72. Similarly, Ammerman asserts that, as the crisis deepened, the committees gradually took upon themselves responsibility for governmental policies such as "collecting taxes for the revolutionary governments and recruiting soldiers. Significantly, these committees acted not under the authority of the Provincial Assemblies or even the Provincial Congresses, but considered themselves enforcement agencies of the Continental Congress ... As provincial and local government ceased to function under the authority of King and Parliament, it was essential that some form of authority step into the void. That authority was most often the local Committee of Inspection." David L. Ammerman, "The Tea Crisis and its consequences, through 1775," in Jack P. Greene and J.R. Pole (eds), *A Companion to the American Revolution* (Hoboken, NJ: Wiley-Blackwell, 2003), p. 201. See also Ryerson, *Revolution*, pp. 2, 4.

22. The news from the battles of Lexington and Concord (Massachusetts, April 19, 1775) deeply influenced Pennsylvania's revolutionaries to form militia committees. These battles marked the outbreak of open armed conflict between Britons and Americans. See Ammerman, "The Tea Crisis."



escalating conflict between Americans and Britons, the revolutionaries decided to form several neighborhood militia companies. Unauthorized by the provincial legislature, they “enlisted most of the city’s able-bodied men, including apprentices and artisans who lived hand to mouth.” These neighborhood militia companies would later form the “Committee of Privates,” which elected its own colonels in a “democratic process that today is unimaginable.” Constituting Pennsylvania’s people in arms, this military committee would also gradually become an important instrument of politicization and radicalization. According to Nash, by the end of 1775, the Committee of Privates “had become a school of political education, much in the manner of Oliver Cromwell’s New Model Army in the mid-seventeenth-century English Civil War, where soldiers debated the future of the political system.”<sup>23</sup>

By 1776, the committee movement had gained prominence. To some extent, one can say that they became institutions of constituent power. Controlling many public functions (military, commerce, and the like), the movement became, in fact, a rival source of authority to the colonial government. For instance, from 1774 to 1776, approximately 1,300 men served on the committees, a sum that, during the same period, greatly outnumbered all officeholders in the province.<sup>24</sup> Here, I believe that the description of the unfolding of the two interconnected events in May of 1776 should be enough to provide a decisive account of the political weight acquired by the committee movement.

First: War comes to Philadelphia’s doorstep. As Benjamin Carp observes, “In the middle of May 1776, only four colonies of the thirteen in rebellion ... had not granted their delegates permission to vote for ... independence in the Continental Congress. Though Congress was meeting in Philadelphia, Pennsylvania’s own Assembly had instructed its delegates not to vote for independence.”<sup>25</sup> However, as war came to Philadelphia’s doorstep, the situation in the province shifted rapidly. On May 8–9, 1776, a dozen Pennsylvania row galleys dueled with two British ships within earshot of the city of Philadelphia.<sup>26</sup> Despite the Briton’s retreat from this duel, Pennsylvanians would learn that King George III enlisted tens of thousands of Hessian and Hanoverian mercenaries to put down the American rebellion. For most colonists, the impending arrival of mercenaries “could only mean that Britain was determined to subject them to brutal rapine and pillage by soldiers who would have no respect for the most minimal colonial, and human, rights.”<sup>27</sup> Confronted with this scenario, many began to consider the struggle for independence a matter of personal security. Moreover, it was becoming increasingly difficult for various colonists to imagine themselves as part of the British nation. Together, these sentiments encouraged many hesitant Pennsylvanians to support the independence campaign.<sup>28</sup>

23. Nash, “Philadelphia’s Radical Caucus,” pp. 72–3.

24. In this sense, Ryerson observes that “[b]y the spring of 1775, all provincial commerce was under its [the committee movement] control; by the fall, it was a power in Pennsylvania’s defense establishment. By the spring of 1776, it had become an alternative source of authority coequal with the established government.” Ryerson, *Revolution*, pp. 4, 177.

25. Benjamin L. Carp, *Rebels Rising: Cities and the American Revolution* (Oxford: Oxford University Press, 2007), p. 185.

26. Nash, “Philadelphia’s Radical Caucus,” p. 75.

27. Ryerson, *Revolution*, p. 208.

28. Nash, “Philadelphia’s Radical Caucus,” p. 75.

Second: Continental Congress's resolution of May 15, 1776. On this date, attempting to, among other things, persuade the recalcitrant colonies to join the struggle for independence, the Continental Congress approved one of its most important resolutions. The resolution of May 15, with an inflammatory preamble written by John Adams, urged all provinces to replace the crown's authority with local governments based on popular rule.<sup>29</sup> This instruction had a substantial impact on many colonies, especially in Pennsylvania, where, for instance, the resolution "was read aloud [before many city dwellers] at the London Coffee House, a popular gathering place [located in Philadelphia]."<sup>30</sup> More than that, one should note that the resolution of May 15 practically summoned Pennsylvanians to overthrow their recalcitrant government and create, from below, a new one (which, as we will see next, is in fact what they did).

Despite the numerous efforts of the provincial government and of the segments of the local gentry to suppress the revolutionaries' engagement in the independence campaign and their desire for a more democratic system of governance, especially after the aforementioned events (War at Pennsylvania's doorstep and Continental Congress's resolution), the situation became uncontrollable. Confronted with this turbulent scenario, the revolutionaries decided it was time to take matters into their own hands. More precisely, they decided it was time to, on the one hand, push Pennsylvania decisively into the independence campaign and, on the other hand, create a more democratic system of governance in the colony. At that point, the best way to achieve these ends, they figured, was to dissolve the old government and create a new one from below. On May 20, 1776, at Philadelphia's statehouse yard, approximately 5,000 people (nearly 15 percent of the city's population) gathered to demand the dissolution of the old provincial government and to call for a special convention to draft a new constitution for Pennsylvania.<sup>31</sup> And at this special convention, I should add, the revolutionaries denied any role to the old assembly's members.<sup>32</sup> As they argued, "the regular assembly had not been elected with a mandate to frame a new constitution and was consequently not authorized to follow the Continental Congress's recommendation."<sup>33</sup> Cornered by the revolutionaries, the by now weak provincial assembly had no other option than to vote its own dissolution. The resolutions of May 20 quickly spread across the province as, almost immediately after the

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29. The resolution reads, "The exercise of every kind of authority under the ... crown should be totally suppressed." Quoted by Nash, "Philadelphia's Radical Caucus," p. 76.

30. Nash, "Philadelphia's Radical Caucus," p. 76.

31. Nash, "Philadelphia's Radical Caucus," p. 76.

32. According to Donald L. Lutz, this was perhaps the first innovative feature of Pennsylvania's 1776 Constitution: "to use a specially elected rather than an already sitting legislature to write a constitution." Donald S. Lutz, "State constitution-making, through 1781" in Jack P. Greene and J.R. Pole (eds), *A Companion to the American Revolution* (Oxford: Blackwell, 2000), p. 272. In this sense, as some Law scholars argue, "[t]his is one of the earliest indications of an understanding of a constitution as distinct from ordinary legislation." Williams, "The State Constitutions," 29.

33. Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Lanham, MD: Rowman & Littlefield, 2001), p. 75.



massive gathering of that day the revolutionaries sent circular letters and delegates to the countryside in order to inform rural dwellers about the resolutions.<sup>34</sup>

Shortly after the May 20 resolves, the revolutionaries formed a provincial conference of the committees of Pennsylvania that would be responsible for organizing the election of the constitutional convention (i.e. the election of the framers of the new state constitution).<sup>35</sup> Deciding that Philadelphia and each of the province's seven counties should have eight seats at the constitutional convention the provincial conference elected the framers of the new constitution on July 8. According to Nash, their profile was such: "Most were farmers, a few were merchants and lawyers, and others were artisans, shopkeepers, and schoolteachers. A majority were immigrants or sons of immigrants . . . Many were in their mid-twenties. All but eight represented the rural counties outside Philadelphia. About half had joined up as militiamen . . . Nowhere in the world", Nash continues, "had such a plain-spoken, largely unschooled group of men with work-toughened hands been charged with such a portentous matter."<sup>36</sup> In short, most of these delegates were politically unknown before 1776 or, more precisely, they had been "firmly excluded from political power."<sup>37</sup>

The constitutional convention met in Philadelphia from July 15 to September 28 of 1776. After being approved by over three-quarters of the members, the constitutional convention proclaimed the Constitution on September 28, 1776.<sup>38</sup> As Nash observes, by shifting the center of political gravity downward, the Constitution was, on the one hand, a victory for small farmers, urban artisans (many of whom formerly could not vote because they owned no property), and radical reformers "who dreamed of holding the rich at bay in the interest of a more equitable society." On the other hand, the Constitution was, as he continues, "a heavy blow to wealthy merchants, large property owners, and assorted conservatives who wanted to retain the old political system, which they feared was slipping from their grasp." In short, while people of modest means regarded the new Constitution "as the dawn of a new era, conservatives and some moderates, both inside and outside Pennsylvania, looked at it with horror."<sup>39</sup>

Before examining some devices of the new constitution, it seems important to underline that the achievements of the "people at large" on May 20 and the enactment of a new constitution were deeply indebted to the political activity carried out by the committees throughout the years of 1765–1776. By functioning as powerful sites of politicization and by often acting in intense connection with the "people at large," these committees prepared the terrain for the resolutions of May 20. In this light, the committee movement was largely responsible for the political transformation that catapulted Pennsylvania from a late joiner of the independence campaign to the American Revolution's most iconic site.

34. The circular letter to the countryside reads: "Liberty and slavery is before you; take, then, your choice . . . For us, we are determined to be free, and invite you to partake of that freedom which all are entitled to." Quoted by Nash, "Philadelphia's Radical Caucus," p. 76.

35. Nash, "Philadelphia's Radical Caucus," p. 76.

36. Nash, "Philadelphia's Radical Caucus," p. 67.

37. Ryerson, "Republican Theory," pp. 99–100.

38. Ryerson, "Republican Theory," p. 109.

39. Nash, "Philadelphia's Radical Caucus," pp. 81–2.

Most important for my purposes here though is the notion that the revolutionary activity carried out by the committee movement helped to prepare the terrain for an alternative perspective of constituent power and of democracy. In this sense, it is worth noting that the revolutionary activity carried out by the committee movement remained intense in Pennsylvania until, at least, late 1790s – that is, long after the enactment of Pennsylvania’s “radical” Constitution of 1776.<sup>40</sup> The continuity of this activity, I argue, challenges the idea of ephemerality. In other words, it seems that the revolutionaries contested the idea of confining constituent power to a brief episode, such as the enactment of a Constitution (even if it was the enactment of a “radical” Constitution, as many considered Pennsylvania’s Constitution of 1776). Thus, one can say that their idea (and practice) of constituent power was that of a *continuous power*. Similarly, by nurturing the capacities of the multitude for self-government, the committee movement challenged the idea of delegation. That is, by creating a dynamic apparatus (the committees) that allowed people to exert government in a much more direct and active way, the movement questioned the idea of a necessary transfer of the exercise of constituent power to a few specialists.

Having said that, let us now examine some features of one of the most emblematic fruits of revolutionary Pennsylvania: The 1776 Constitution. This examination will continue both to assist us in dismantling some common mystifications entrenched in the notion of constituent power and to build an alternative path for this concept.

### III. Pennsylvania’s Constitution of 1776

This topic investigates two of the most potent provisions of the 1776 Constitution. They are: “check from below” and “right to revolt.” The examination of these devices, as noted above, will continue to help us build an alternative path for the concept of constituent power.

However, before examining them, I should note right from the start that, despite its democratic innovations, the Constitution of 1776 also had flagrant limits. These limits were especially related to race, gender, and economic condition. For instance, in revolutionary Pennsylvania, besides the infamous continuation of slavery, women, Native Americans, and the very poor could not vote.<sup>41</sup> As a result, several segments of society were inexcusably excluded from political rights and citizenship.

It would be misleading, though, to think that these excluded segments of society had no access to the political sphere, “or that they slavishly relied upon their social betters for such access.”<sup>42</sup> In fact, the disenfranchised, through intense “out of doors” politics,” such as crowd action and petition writing, constantly challenged and pushed, in different manners, the limits of the political system and, at a more fundamental level, of the constituent

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40. An analysis of Pennsylvanians’ revolutionary activity after the enactment of the Constitution of 1776 would exceed the scope of my dissertation. For an account of this theme, see Bouton, *Taming*, Chapters 7 and 9.

41. Bouton, *Taming*, pp. 53, 55–6.

42. For an account of the out of doors’ politics in Pennsylvania and in other states, see Carp, *Rebels Rising*.

process in Pennsylvania. And here it seems worth citing an example.<sup>43</sup> In 1776, during the selection of delegates for the constitutional convention, the very poor and the youth (both excluded from political rights in revolutionary Pennsylvania), aligned with the militiamen, attempted to push the limits of Pennsylvania's political system. They demanded that all those (of any age and social status) risking their lives for independence should enjoy voting rights. Although their demand did not pass, some scholars affirm that this kind of request (or intense pressure) from the excluded was fundamental in winning a significant, *for the epoch*, openness to the political system.<sup>44</sup> That said, let us now investigate two provisions of the 1776 Constitution.

### *I Check from below*

Constituted by seventy-two elected representatives, the framers of the 1776 Constitution provided a unicameral legislature. They believed that an apparatus such as an upper chamber, rather than promoting democracy, was actually a check on it. For them, if the lower house of a legislature was supposed to give voice to "the people," "then any check on [this] house – such as a senate or a governor with a veto – was a check on the will of the people by the rich and well-born."<sup>45</sup> The unicameral house was thus directed to avoid one of the things that the Pennsylvania's revolutionaries most abhorred: the aristocratic elements of society.

Imbued with a profound distrust of distant centralized forms of rule (as experienced during the period of the British domination), the framers provided some important features for the unicameral assembly, such as: annual elections for every representative; terms limited to four out of every seven years; an assembly with its door open to the public; and publication of a detailed record of all votes and debates.<sup>46</sup> By implementing annual elections for every representative, the framers mainly sought to rotate the largest number of people in and out of office, thus encouraging the participation of ordinary people in government.<sup>47</sup> By setting term limits, they tried to avoid promoting "career politicians who might develop interests apart from their communities."<sup>48</sup> Finally, "by keeping the doors of the assembly open to the public and by publishing a detailed record of votes

43. For a discussion of other excluded groups that confronted the limits of the political system of Pennsylvania and of the other new states as well, see: Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, MA: Beacon Press, 2013); Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, NC: University of North Carolina Press, 1997); Colin G. Calloway, *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities* (Cambridge: Cambridge University Press, 1995); and Alan Gilbert, *Black Patriots and Loyalists: Fighting for Emancipation in the War for Independence* (Chicago, IL: University of Chicago Press, 2012).

44. Nash "Philadelphia's Radical Caucus," pp. 76–8.

45. Bouton, *Taming*, p. 55.

46. Pa. Const. of 1776, Section 8.

47. As Nash observes, "This rotation of legislative seats jibed with the idea that many citizens were capable of performing well in public office." Nash, "Philadelphia's Radical Caucus," p. 81.

48. Bouton, *Taming*, p. 55.

and debates so people could read what their legislators had said and see how they had voted,” the framers not only wished to make the procedures of the unicameral legislature as transparent as possible, but also sought to increase the people’s chances of holding their representatives accountable.<sup>49</sup> One can say in short that all these provisions sought to establish the closest possible ties between constituents and their representatives.

However, the revolutionaries suspected that any representational schema – even a unicameral house fueled by devices that sought to hold representatives accountable to their constituents (such as annual elections, limited terms, and the like) – was susceptible to deviance and corruption. As noted elsewhere, the bitter experience under British domination (which subjected colonists to a centralized, distant, and corrupt form of rule) led many Pennsylvanians to deeply distrust the very idea of political representation. With that in mind, they sought through the people’s participation to “check it from below – with more democracy – rather than from above, with less.”<sup>50</sup> Here is how “check from below” reads in the 1776 Constitution: “all-bills ... shall be printed for the consideration of the people, before they are read in general assembly the last time for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws until the next session of assembly ...”<sup>51</sup> In simplified terms, all bills passed by the unicameral assembly, except those dealing with “emergencies,” had to be approved and printed for public consideration, “and then reapproved by the next session of the assembly before becoming law.”<sup>52</sup> In this sense, as Wood affirms, “The orthodox conviction that it was impossible to convene the people of a large state in the aggregate was ... being proved wrong by the Americans. The people themselves in their mobbings, in their district committees and conventions, and in their explicit directions to their elected deputies seemed in fact to be replacing their representatives in the legislatures as the deliberative bodies for the states.”<sup>53</sup>

Now I should note some aspects about the check from below resolution. First, this device, as I argue, nourished the expression of the multitude’s constituent power. More to the point, placing into the hands of the people the power to decide what becomes and what does not become law fostered their creative powers. Although it was not the people who created the bills (but political representatives), even so, the check from below provision conferred on the people the possibility to say *what laws representatives could pass* and, therefore, what could be created in the polity by the latter. And this is no small thing. In fact, it seems fair to say that the check from below provision somewhat incorporated the people out of doors into the legislative process as a sort of second branch. Also noting the incorporation of the people in the legislative process due to check from below, historian Staughton Lynd cleverly coined this provision as “bicameralism from below.”<sup>54</sup>

49. Bouton, *Taming*, p. 55.

50. Jesse Lemisch, “The American Revolution Seen from the Bottom Up,” in Barton J. Bernstein (ed.), *Towards a New Past: Dissenting Essays in American History* (New York: Random House, 1968), pp. 14–15.

51. Pa. Const. of 1776, Section 15.

52. Ryerson, “Republican Theory,” p. 109.

53. Wood, *Creation*, p. 367.

54. Staughton Lynd, *Intellectual Origins of American Radicalism* (New York: Pantheon, 1968), p. 171.

Secondly, provisions such as check from below indicate that in revolutionary Pennsylvania the people sought to retain the final say on the polity's most important matters. For them, it was not enough to establish the closest possible ties with their representatives through the aforementioned mechanisms such as annual elections, assembly's open doors to the public, and the like. In their view, the people themselves should have the final say in the legislative process. As Wood asserts, the idea behind this check from below provision was the following: "If law made by a legislature was not really a reflection of the will of the people, not the command of a superior sovereign, but only the act of the people's suspected agents, then some sanction other than consent would have to be emphasized in order to make law obligatory."<sup>55</sup> At a more fundamental level, provisions such as check from below suggest that the revolutionaries had come to believe that they could never be completely embodied or represented in any government institution. Many had come to believe, as Wood observes, that "they were the real legislators in the society and that they could take back at any time the power they had given to their representatives ..."<sup>56</sup> The ideas of delegation and ephemerality seem, once again, challenged. Through devices like check from below, the revolutionaries not only contested the inexorable transfer of constituent power to a transcendent apparatus of rule, but also confronted the confinement of this power to an ephemeral episode.

Similarly, the check from below provision also indicates that the prominence often enjoyed by the device of political representation in political systems (for example, as occurs in today's systems) was being seriously questioned. In a way, it seems correct to say that the revolutionaries sought to replace the prominence of representation with the people themselves. Although not proscribed from Pennsylvania's political system, representation became ever more secondary and, equally important, scrutinized by the people. In this context, representatives were viewed as "the people's suspected agents."<sup>57</sup>

## 2 Right to revolt

Following the Declaration of Independence (ratified on July 4, 1776), the framers of the 1776 Constitution also provided a right to revolt (or to revolution).<sup>58</sup> In terms of constituent power, this was the most important provision of the 1776 Constitution. That is because, as this topic shows, the right to revolt openly nourished the expression of the multitude's constituent power. Actually, authors like Negri argue that the articulation between the right to revolt and constituent power is so intense that they call the former

55. Wood, *Creation*, pp. 384–5.

56. Gordon S. Wood, "The American Revolution," in Mark Goldie and Robert Wokler (eds), *The Cambridge History of Eighteenth-Century Political Thought* (Cambridge: Cambridge University Press, 2006), p. 609.

57. Wood, *Creation*, p. 385.

58. According to the 1776 Constitution, "... government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or soft of men, who are a part only of that community, and that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal." Pa. Const. of 1776, Bill of Rights, Sec. V.

“the right to the expression of constituent power.”<sup>59</sup> But, one might ask, what exactly did the right to revolt mean in the context of revolutionary Pennsylvania?

First, it certainly implied, in a Lockean sense, a right to resist a tyrannical government. That is, a right to rebel against extremely dire circumstances imposed by rulers.<sup>60</sup> In fact, in revolutionary Pennsylvania, one can say that the right to revolt corresponded, above all, to a right to resist government’s deviation from its democratic foundation to an aristocratic mode of rule. But it was not limited to this. In revolutionary Pennsylvania, given the prominence of the people out of doors over the institutional machinery, the right to revolt was not only a mechanism of resistance but also, and equally important, a device of creation, one that enabled the people to invent from below new democratic forms of social organization whenever they wished. And, as a constitutional principle, this device did not require a last-ditch effort of a desperate people. “The people could properly amend whenever they deemed the status quo outdated or imperfect.”<sup>61</sup> In this sense, as Christian Fritz observes:

Increasingly, as Americans included it in their constitutions, the right of revolution came to be seen as a constitutional principle permitting the people as the sovereign to control government and revise their constitutions without limit. In this way, the right broke loose from its traditional moorings of resistance to oppression . . . The people could “alter, or abolish” government in Pennsylvania’s 1776 constitution in any manner “judged most conducive” to the public welfare. Some of these provisions justified the people’s acting outside governmental institutions. The people could alter written constitutions whenever and however they wished, even without strict compliance with existing procedures for change in the constitution.<sup>62</sup>

This new meaning given by revolutionaries to the right to revolt (of being a mechanism not only of resistance, but also of creation) is deeply interwoven, I should note, with the process of independency from England. In this light, when Americans finally decided to break with England, they precisely evoked the right to revolt in its primary resistance dimension (see, for instance, the list of abuses attributed to the King by the Declaration of Independence).<sup>63</sup> However, as the rupture with England evolved, the revolutionaries “assumed that the people themselves were the new and rightful sovereign, rather than a monarch. They would neither return to the colonial fold nor surrender their recently acquired sovereignty.” Thus, “in creating governments to replace those established under

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59. Negri, *Insurgencies*, p. 149.

60. See John Locke, *Two Treatises of Government* (New York: Hafner Press), p. 233. For an account of Locke’s right to resist, see: John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the “Two Treatises of Government”* (Cambridge: Cambridge University Press, 1969), pp. 165–86.

61. Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2010), pp. 12–13.

62. Christian G. Fritz, *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War* (Cambridge: Cambridge University Press, 2008), pp. 25, 24, respectively.

63. Thomas Jefferson, in Michael Hardt (ed.), *The Declaration of Independence* (London: Verso, 2007), pp. 16–19.



the authority of the king, Americans saw themselves as the sovereign.”<sup>64</sup> This new understanding produced a qualitative leap in the right to revolt: as noted above, in addition to its resistance dimension, the revolutionaries added a creative dimension to that device.

And here it seems worth adding that the right to revolt was not a rhetorical flourish lacking practical application. As several scholars observe, from the revolutionary period until the Civil War, there was a widespread sentiment among people that they were the real legislators in society and that they could at any time dissolve the political system and make their governments anew.<sup>65</sup> For instance, the so-called “Whiskey Rebellion” (Pennsylvania, 1791–1794) is one of the many examples that illustrate this sentiment.<sup>66</sup> Although an analysis of this event would exceed the scope of my work, I wish to underline the following. Starting as a tax protest by small farmers, the Whiskey Rebellion dramatically escalated into a movement of thousands of Pennsylvanians for independence from the newly formed federal government. The movement was eventually quelled by federal forces, which, determined to make an example out of Pennsylvania to the rest of the country, sent a federal troop of approximately 13,000 men to march on Pennsylvania. Despite its failure, one should note that the Whiskey Rebellion is one of several episodes in which the people out of doors sought to assert their right to revolt.

But what can the adoption of the right to revolt in the 1776 Constitution tell us about the relation between constituent power and the institutional machinery in revolutionary Pennsylvania? More to the point, what does this right say about the relation of constituent/constituted power in Pennsylvania? First, the right to revolt seems, once again, to attest to the primacy of constituent power over the constituted order in revolutionary Pennsylvania. Instead of adopting rigid institutional machinery, in which legislators and judges hold almost exclusively a monopoly on the political system and its Constitution, the revolutionaries sought to create a permeable system for the people’s creative forces. In a way, it was a system constantly open to constituent power or, to borrow Hardt’s expression, a polity continually moving from rebellion to democracy and from democracy to rebellion.<sup>67</sup> Hence, in revolutionary Pennsylvania, it does not seem an exaggeration to say that the term *Constitution* was much more a verb than a noun.<sup>68</sup> Equally, by nourishing the multitude’s constituent power, the right to revolt challenges (or really demystifies) the idea of “ephemerality.” That is, this device confronts the confinement of constituent power to a brief episode, such as the enactment of a constitution. On the contrary, devices like right to revolt suggest constituent power as a continuous power.

64. As Fritz notes, Americans did not discover the people’s sovereignty. They inherited this idea mainly from English radical thought. What was notable then in the American Revolution is that revolutionaries actually put this idea into practice. Fritz, *American Sovereigns*, p. 14.

65. Wood, “The American Revolution,” p. 609.

66. For an account of the “Whiskey Rebellion” and for other episodes in which the right to revolt was put into practice between the American Revolution and the Civil War, see Bouton, *Taming*, Chapter 10; and Fritz, *American Sovereigns*, Chapters 5, 6, 7.

67. Michael Hardt (ed.), introduction to *The Declaration of Independence* (London: Verso, 2007), pp. xxi, xxii.

68. Hardt, foreword, p. viii.

#### IV. Elements for an Alternative Notion of Constituent Power

The Constitution of 1776 lasted until 1790 when it was finally replaced by a conservative Constitution. Although an examination of this conservative shift would exceed the scope of this work, I should note the following.<sup>69</sup> In short, during its fourteen years of existence, the gentry (from within and outside Pennsylvania) performed several attacks on the 1776 Constitution. The democratic control provided by this document hindered the gentry's plan to turn government institutions into an instrument for their own benefit. By 1790, after gaining the majority in several government institutions, the gentry finally managed to replace the 1776 Constitution with a conservative Constitution – a Constitution that significantly favored the interests of the affluent classes. According to Nash, the new 1790 Constitution “ripped out some of the original's most democratic features.” For instance, the new Constitution “installed a strong governor with extensive patronage privileges and a veto power over legislation. Scrapping a unicameral legislature, the constitution sanctioned a two-house assembly with the upper-house members serving for four years.”<sup>70</sup>

This conservative shift in governance, which not only occurred in Pennsylvania but in virtually all other new states, had an impact on the notion of constituent power (and democracy) as well. After the ratification of the U.S. Constitution in 1787, the Federalist's perspective about constituent power would become hegemonic. In this light, the notion of constituent power would become nearly inseparable from two fundamental ideas: ephemerality (meaning that constituent power should be confined to an ephemeral episode, such as the promulgation of a formal Constitution); and delegation (signifying that constituent power can only operate validly if exercised through representatives). In fact, this perspective about constituent power would not only become hegemonic in the context of the American Revolution. In the current epoch, this view remains largely operative.<sup>71</sup>

Nevertheless, the revolutionary perspective about constituent power and democracy that, for instance, emerged in revolutionary Pennsylvania, like a specter, would continue periodically haunting the established powers of the new country and elsewhere too.<sup>72</sup> Even more, it can be said that this particular view of constituent power, considered the specificities of each apparition, would never cease to reappear.<sup>73</sup> In effect, this particular

69. For an account of the efforts to replace the 1776 Constitution, see e.g., Bouton, *Taming*, pp. 61–87, 171–96; and Ryerson, “Republican Theory,” pp. 122–30.

70. Nash, “Philadelphia's Radical Caucus,” p. 84.

71. As noted elsewhere, a short examination of the functioning of most contemporary democracies would reveal, for instance, the ephemeral and confined role assigned to constituent power. For a critique of the low incidence of constituent power in contemporary political systems, see Negri, *Insurgencies*, Chapters 1 and 7; Brown, “We are all democrats now ...” pp. 44–57; and Wolin, *Democracy Incorporated*, Chapter 1.

72. For instance, a similar perspective of constituent power would reappear on the other side of the Atlantic in the 1790s in the sans-culottes' movement during the French Revolution. See Albert Soboul, *The Sans-Culottes: The Popular Movement and Revolutionary Government, 1793–1794* (Princeton, NJ: Princeton University Press, 1980).

73. For instance, in the present decade, it seems fair to say that this notion of constituent power is experiencing a moment of strength. In this sense, the Spanish *15M* movement (“Indignados”)

view of constituent power can function as a potent tool to demystify some common assumptions entrenched in this notion. More to the point, the revolutionary perspective of constituent power can demystify ideas such as ephemerality and delegation.

A first aspect to note about Pennsylvania's constituent power is that the revolutionaries created a political context in which, so to speak, the true nature of the relation between constituent and constituted power became more visible. And here it is worth reminding that the hegemonic discourse, on the one hand, defends constituted power as the natural and continuous source of political innovation and historical movement, while, on the other hand, it considers constituent power a brief disruption of the institutional reality. As noted earlier, this tradition may recognize, to a certain point, the social benefits of a constituent moment, such as the overthrow of a tyrannical regime and the implementation of political rights, but this same tradition considers such constituent moments dangerous if allowed to continue. As a result, this view corrals constituent power to a legitimating principle of the institutional order.

However, the democratic movement that, for instance, erupted in Pennsylvania seems to challenge the traditional understanding of the relation between constituent/constituted power. In fact, it seems fair to say that Pennsylvania's revolutionaries demystify this view. By developing a political system and culture in which the people out of doors had prominence over the institutional machinery, they made more visible the true nature of the relation between constituent/constituted power. More to the point, they shed light on the fact that political creativity lies, in fact, much more on the side of constituent power than on the side of constituted power. Take, for instance, the very formation (and political inventiveness) of the committee movement and some of the constitutional devices implemented by the revolutionaries (the check from below and right to revolt, for example). These examples, among other things, indicate that the main "locus of social creativity, political innovation and historical movement" lies not in the fixity of the constituted order (not even in Pennsylvania's unicameral legislature) but in the constituent power of the people out of doors.<sup>74</sup> In a word, Pennsylvania's revolutionaries managed to expose

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and the Occupy Wall Street movement are two examples that illustrate this claim. For instance, one of the most recurring demands that erupted within these movements was that citizens should actively participate in the polity's decision-making process. For an account of constituent power in the Spanish 15M and in the Occupy Wall Street, see Raúl Sánchez Cedillo and Antonio Negri, "*La démocratie aujourd'hui est sauvage et constituante: L'exemple espagnol*," 59 *Multitudes* (2015), 17, 21; Raúl Sánchez Cedillo, "15M: Something Constituent This Way Comes," *The South Atlantic Quarterly* (2012), 573, 584; Marina Sitrin and Dario Azzellini, "*They Can't Represent Us!*": *Reinventing Democracy From Greece To Occupy* (London: Verso, 2014); and Paolo Gerbaudo, *The Mask and the Flag: Populism, Citizenism, and Global Protest* (Oxford: Oxford University Press, 2017).

74. Hardt, foreword, p. viii. According to Negri, we should invert the frame in which thinkers and politicians "give us the definition of constituent power ... It does not come after the political, as in a tormented sociological pause or in a suspension of institutional reality, nor can it be reduced to an extemporaneous *blitz* of the collective will in such a way that they would have to guarantee the limitation of its effects in the constitution of the political. No, constituent power comes first, it is the definition itself of the political, and where it is repressed and excluded, the political is reduced to pure mechanical nature, to being an enemy, and a despotic power." Negri, *Insurgencies*, p. 335.

that the power of the people out of doors is the primary motor of political novelty and social transformation.

I should add that constituent power has creative primacy over the established order not only in periods of revolutionary activity (such as the American Revolution) but also in periods of apparent institutional stability. In times of stability, although not so visible, constituent power “animates the constant activity of resistance and organization, of rebellion and political innovation that arises within and against the constituted order.”<sup>75</sup> Consider, for example, the functioning of the committee movement during the 1770s. Despite the atmosphere of apparent institutional stability, hundreds of ordinary Pennsylvanians were organizing resistance. In this light, “it may appear . . . that [in normal periods] constituent power is exhausted or extinguished in each revolutionary process, but really it is only temporarily blocked and mystified by the constitutionalism of the new ruling order.”<sup>76</sup>

At this point, it should be clear that I am, once again, challenging the idea of ephemerality. Rather than a brief interruption of institutional reality, constituent power, even in periods of apparent stability, constantly animates the movement of rebellion and political innovation that emerge within and against the established powers. Actually, one can say that, in times of stability, constituent power operates in a sort of subterranean (or low frequency) mode. And even when operating in this subterranean mode constituent power accumulates on past struggles, “like a battery storing up an electric charge in wait for its next release.”<sup>77</sup> This process of accumulating on past struggles eventually produces a revolutionary outbreak, a moment in which constituent power clearly emerges to the social terrain’s surface becoming then much more visible. This emergence of constituent power can be called “high frequency mode.” In effect, in times of revolutionary outbreak, constituent power can be compared, as Hardt and Negri note, to a thunderstorm. In revolutionary periods, constituent power constitutes events like “electrical charges that accumulate in the atmosphere until the moment when their tension is so extreme that they crash down on earth in a lightning bolt.”<sup>78</sup> The massive demonstration of May 20, 1776 in Philadelphia – where, as noted earlier, over 5,000 people demanded the dissolution of the old provincial government and called for a new constitution – can, for instance, be understood within this lightning bolt allegory. After a period of organizing resistance and accumulating on past struggles, the people out of doors’ power, like a lightning bolt, clearly emerged to the surface of the social terrain. In a way, one can affirm that a disruptive event like May 20 revealed what had been accumulated in the preceding period.

But if constituent power, as argued above, is the primary locus of social creativity and political innovation, what is then left of constituted power? For instance, as the deep suspicion of Pennsylvania’s revolutionaries toward the institutional machinery suggests, constituted power can be understood usually as a conservative and reactive force. More specifically, constituted power tends toward a “continual repetition of the same social

75. Hardt, foreword, p. viii. See also Michael Hardt and Antonio Negri, *Assembly* (Oxford: Oxford University Press, 2017) Kindle edition, pp. 36–7.

76. Hardt, foreword, p. viii.

77. Hardt and Negri, *Assembly*, p. 36.

78. Hardt, foreword, pp. viii, xii. See also Hardt and Negri, *Assembly*, p. 36.

divisions and hierarchies.” Thus, in a way, constituted power is “empty” insofar as the established powers stand from and above society. Empty in relation to the creative forces of constituent power. It moves forward almost only to fall back on, contain, and recuperate the political actions of constituent power.<sup>79</sup> In this sense, one can read Pennsylvania’s 1790 Constitution (and the institutional machinery created by it) within this framework. The new constituted order implemented by the local gentry sought mainly to fall back on, contain, and recuperate the constituent forces. Hence, the 1790 Constitution can be seen as an attempt to reimplement in Pennsylvania several of the social divisions and hierarchies of the previous decades. In a word, the new constituted order sought to tame Pennsylvania’s constituent power.

Another point that the revolutionaries demystified is the idea of “delegation.” As noted earlier, the traditional perspective defends an almost inseparability between the exercise of constituent power and political representation. For this view, constituent power seems only to operate validly if exercised through representatives. Similarly, representation occupies a central role in this perspective’s political project. According to this tradition, representation should intensely pervade the entire political system.

The revolutionaries, by contrast, provided an alternative path for the idea of delegation. By nurturing ways for the multitude to express constituent power directly, such as through the committee movement and through provisions like check from below and right to revolt, the revolutionaries challenged (or really demystified) the idea of delegation. Additionally, in their practices, where they were not able to circumvent the institute of political representation, they confined this device to a secondary role, keeping it, in any case, under intense democratic check.

Finally, I should note that the particular view of constituent power examined here could function as a potent tool to address several limits of representative democracy. For instance, the radical democratic process from below provided by this perspective calls into question the often hierarchical and centralized character of representative democracy. More to the point, this view of constituent power brings into question the low responsiveness and accountability of the institutions of representative democracy. And this is just one possible use of this particular conception of constituent power. In fact, at a more fundamental level, this perspective can call into question the very idea of “representative democracy.”

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79. Hardt, foreword, p. viii. In this sense, authors like Hardt, Negri, and Jacques Rancière provocatively affirm that what it is usually considered the field of politics – “the management of the established order to maintain social equilibrium” or, more directly, “the everyday intrigues of Westminster or Washington” – is, actually, not politics at all. Rancière, for instance, simply calls the constituted order “police.” For him, the police are the existing powers that designate certain individuals as equals while excluding others from this. The term entails a hierarchy between those who order and those who are ordered, and between active and passive citizens. In Rancière’s words, the “police” are the “set of procedures whereby the aggregation and consent of collectivities is achieved, the organisation of powers, the distribution of places and roles, and the system for legitimizing this distribution.” Jacques Rancière, *Disagreement: Politics and Philosophy* (Minneapolis, MN: University of Minnesota Press, 1999), p. 28. See also Illan rua Wall, “Notes on an ‘Open’ Constituent Power,” *Law, Culture and the Humanities* 11(3) (2015), 382.