7. The formal break with Great Britain did not come until 1776, approximately ten years after the events discussed in these excerpts. By that time, in the wake of the Boston Tea Party, Parliament had passed the infamous "Coercive Acts," closing Boston's port and severely restricting popular participation in the governance of Massachusetts. See, e.g. Gipson, supra note 5, at 223-225. These measures led directly to the convening of the Continental Congress which, following the failure of attempts at reconciliation, issued the Declaration of Independence. Compare the Declaration, supra note 5, at 223-225.

These measures led directly to the convening of the Continental Congress which, following the failure of attempts at reconciliation, issued the Declaration of Independence. Compare the Declaration, which follows, with Hutchinson's, Otis's, and Thacher's comments.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Providence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards. Colours; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. He has refused his Assent to Laws, the most wholesome and necessary for the public good. He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained: and when so suspended, he has utterly neglected to attend to them. He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inseparable to them and formidable to tyrants only. It has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. He has dissolved Representative Houses repeatedly, for opposing with manly firmness his
ren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denotes our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

8. Note, for example, that Thacher's pamphlet seems to be directed against parliament and the British government generally while Jefferson's Declaration singles out the King as the villain. Why? Note the reference in the beginning of the Declaration to the "Laws of Nature and of Nature's God" which are said to guarantee "separate and equal" stations to the peoples of the world. Note, as you probably have frequently, the ideas that "all men are created equal," that their "Creator" endows them with "certain unalienable Rights," that governments are instituted to secure these rights and that these governments derive "their just powers from the consent of the governed." Do these political premises have any bearing on the debate between Hutchinson and Thacher? Note also that while the King is accused of dissolving "Representative Houses repeatedly," the "Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise." How could this be? And why is it critical that Jefferson establish this point in the Declaration? See generally Carl Becker's little classic, The Declaration of Independence (1922), and see also the provocative treatment by the contemporary political commentator Garry Wills, Inventing America: Jefferson's Declaration of Independence (1978).

9. Part of what was ultimately at stake here, as American historians seem increasingly to recognize, was the idea of Constitutionalism, that there are certain fundamental principles or laws which are sacred, transcendent, and immutable, and which circumscribe the activities of the Government. How would Hutchinson have reacted to this idea? Does he suggest that there are any inherent limits on the powers of Parliament? Does Thacher? Does Jefferson? What about Hutchinson's ideas on the allegiance of the subject? Would Jefferson agree with these? Note that Hutchinson indicates toward the close of his dialogue that there could be no organ of government capable of declaring that the actions of the government are "unconstitutional." Why is that? Do you agree with Hutchinson?

10. We have now acquired some sense of how problems of legality and constitutionalism figured in the American Revolution. These were to become perennial American difficulties. In the next set of readings and in Chapter Two we will attempt to come to grips with some of the practical problems of Constitutionalism in the early American republic. One such problem of American constitutionalism is whether the Declaration of Independence, which you have just read, set forth principles or doctrines which of necessity were incorporated in other fundamental documents, such as the federal Constitution of 1789. On this question compare Scott Douglas Gerber, To Secure These Rights: The Declaration of Independence and Constitutional Interpretation (1996), and Michael P. Zuckert, The Natural Rights Republic: Studies in the Foundation of the American Political Tradition (1996) (suggesting that this was the intention of the framers) with Thomas B. McAffee, Inherent Rights, The Written Constitution and Popular Sovereignty: The Founders' Understanding (2000), and Thomas B. McAffee, "Does the Federal Constitution Incorporate the Declaration of Independence?"; 1 Nev. L.J. 138 (2001) (arguing that no such incorporation is proper).

SECTION E. TOWARDS POPULAR SOVEREIGNTY AND CONSTITUTIONALISM

We begin our examination of the political, constitutional, and legal philosophies in the early American republic with the Pennsylvania Constitution of 1776, generally believed to have been the most "democratic" or "radical" frame of government to emerge out of the American revolution. We will then compare and contrast the relatively "moderate" constitutional and legislative experience in Virginia, as described by Thomas Jefferson. Finally, in the beginning of the next Chapter, we will examine the "conservative" thought of the "Federalists," the political group which dominated the national government for twelve years after the adoption of the United States Constitution in 1789. As you examine these materials, see if you can discern some of the same concerns and themes to be found in the readings dealing with Hutchinson, Thacher, and the Declaration of Independence.

1. THE PENNSYLVANIA CONSTITUTION OF 1776

THE PROCEEDINGS RELATIVE TO THE CALLING OF THE CONVENTIONS OF 1776 AND 1790 * * *

WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people
have a right by common consent to change it, and take such measures as to them may appear necessary, to promote their safety and happiness. And whereas the inhabitants of this commonwealth, have, in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain, and the said king has not only withdrawn that protection, but commenced and still continues to carry on with unabated vengeance, a most cruel and unjust war against them, employing therein not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and absolute submission to the despotic domination of the British parliament; * * * whereby all allegiance and fealty to the said king and his successors are dissolved and at an end, and all power and authority derived from him ceased in these colonies. And whereas it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent states, and that just, permanent and proper forms of government exist in every part of them, derived from, and founded on the authority of the people only, agreeable to the directions of the honorable American congress. WE, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, * * * and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this state and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect or denomination of men whatsoever, do, by virtue of the authority vested in us by our constituents, ordain, declare and establish the following declaration of rights, and frame of government, to be the constitution of this commonwealth, and to remain in force therein for ever unaltered, except in such articles as shall hereafter, on experience, be found to require improvement, and which shall by the same authority of the people, fairly delegated, as this frame of government directs, be amended or improved for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

CHAPTER I

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OR STATE OF PENNSYLVANIA

I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent, nor can any man who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control the right of conscience in the free exercise of religious worship.

IV. That all power being originally inherent in, and consequently derived from the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That 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 set 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 conductive to the public weal.

VI. That those who are employed in the legislative and executive business of the state, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VII. That all elections ought to be free, and that all free men, having a sufficient evident common interest with and attachment to the community, have a right to elect officers, or to be elected into office.

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to yield his personal service when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him or applied to public uses, without his own consent or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto if he will pay such equivalent: nor are the people bound by any laws but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his counsel; to demand the cause and nature of his accusation; to be confronted with the witnesses, to call for evidence in his favor, and a speedy public trial by a impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself: nor can any man be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers and possessions free from search and seizure; and therefore warrants, without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be
commanded or required to search suspected places, or to seize any
person or persons, his or their property not particularly described, are
contrary to that right, and ought not to be granted.

XI. That in controversies respecting property, and in suits between
man and man, the parties have a right to trial by jury, which ought to be
held sacred.

XII. That the people have a right to freedom of speech, and of
writing and publishing their sentiments; therefore the freedom of the
press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of
themselves, and the state; and as standing armies in the time of peace,
are dangerous to liberty, they ought not to be kept up; and that the
military should be kept under strict subordination to, and governed by
the civil power.

XIV. That a frequent recurrence to fundamental principles and a
firm adherence to justice, moderation, temperance, industry and frugali-
ty, are absolutely necessary to preserve the blessings of liberty and keep
a government free. The people ought therefore to pay particular atten-
tion to these points in the choice of officers and representatives, and
have a right to exact a due and constant regard to them from their
legislatures and magistrates, in the making and executing such laws as
are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from
one state to another that will receive them, or to form a new state in
vacant countries, or in such countries as they can purchase, whenever
they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together to consult
for their common good, to instruct their representatives, and to apply to
the legislature for redress of grievances by address, petition or remon-
strance.

Chapter II
Plan or Frame of Government for the Commonwealth
Or State of Pennsylvania
[A. General Provisions]

Section 1. The commonwealth or state of Pennsylvania shall be
governed hereafter by an assembly of the representatives of the freemen
of the same, and a president and council, in manner and form follow-
ing:

Sect. 2. The supreme legislative power shall be vested in a house of
representatives of the freemen of the commonwealth or state of Pennsyl-
vania.

Sect. 3. The supreme executive power shall be vested in a president
and council.

Sect. 4. Courts of justice shall be established in the city of Philadel-
phia, and in every county of this state.

Sect. 5. The freemen of this commonwealth and their sons shall be
trained and armed for its defence, under such regulations, restrictions
and exceptions as the general assembly shall by law direct; preserving
always to the people the right of choosing their colonels and all commis-
sioned officers under that rank, in such manner, and as often as by the
said laws shall be directed.

Sect. 6. Every freeman of the full age of twenty-one years, having
resided in this state for the space of one whole year next before the day
of election for representatives, and paid public taxes during that time,
shall enjoy the right of an elector: Provided always, That sons of
freeholders of the age of twenty-one years shall be entitled to vote,
although they have not paid taxes.

[B. The House of Representatives]

Sect. 7. The house of representatives of the freemen of this common-
wealth shall consist of persons most noted for wisdom and virtue, to be
chosen by the freemen of every city and county of this commonwealth
respectively, and no person shall be elected unless he has resided in the
city or county for which he shall be chosen two years immediately before
the said election, nor shall any member, while he continues such, hold
any other office except in the militia.

Sect. 8. No person shall be capable of being elected a member to
serve in the house of representatives of the freemen of this common-
wealth more than four years in seven.

Sect. 9. The members of the house of representatives shall be chosen
annually by ballot, by the freemen of the commonwealth, and shall have
power to choose their speaker, the treasurer of the state, and their
other officers; sit on their own adjournments; prepare bills and enact
them into laws; judge of the elections and qualifications of their own
members; they may expel a member, but not a second time for the same
cause; they may administer oaths or affirmations on examination of
witnesses; redress grievances; impeach state criminals; grant charters of
incorporation; constitute towns, boroughs, cities and counties; and shall
have all other powers necessary for the legislature of a free state or
commonwealth; but they shall have no power to add to, alter, abolish or
infringe any part of this constitution.

Sect. 10. A quorum of the house of representatives shall consist of
two-thirds of the whole number of members elected, and having met and
chosen their speaker, shall each of them, before they proceed to business,
take and subscribe as well the oath or affirmation of fidelity and
allegiance hereinafter directed, as the following oath or affirmation, viz.

I __________ do swear (or affirm) that as a member of this
assembly, I will not propose or assent to any bill, vote or resolution,
which shall appear to me injurious to the people, nor do or consent to
Sect. 17. As representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure the general assembly.

The treasurer of the state, treasurers of the loan-office, naval officers, collectors of customs or excise, judge of the admiralty, attorney-general, and such other officers as the legislature shall from time to time determine, shall be elected in such manner as the general assembly shall from time to time direct.

Sect. 18. Every member of the general assembly shall, at stated times, receive for his services compensation, which shall not be reduced during his term of service, and he shall, in addition thereto, be entitled to receive such compensation as shall be fixed by law for the attendance of the general assembly on its sessions, and for the performance of any and all duties required of him in his official capacity.

Sect. 19. The members of the general assembly shall be chosen annually by the joint ballot of the general assembly and council, of the members of the council. Any person having served as a member of the council shall be eligible to be elected as a member of the council for a term of six years.

Sect. 20. The sessions of the general assembly shall be annual, and held at such time and place as shall be determined by law. The assembly shall consist of twelve persons chosen in the following manner: The freemen of the city of Philadelphia, and of the counties of Philadelphia, Chester and Bucks respectively, shall elect one person for the city and one for each county aforesaid, to serve for three years and no longer. And the freemen of the counties of Lancaster, York, Cumberland, Northumberland, and Westmoreland respectively, shall choose by ballot one person for each county, to serve for two years and no longer. And the freemen of the counties of Northumberland, Bedford, Northumberland and Westmoreland respectively, shall serve as councillors for the time for which each councillor was chosen, and in the meantime shall elect a person to fill the vacancy, and to serve until the next general election of councillors.

Sect. 21. The members of the council shall be chosen annually, and by the joint ballot of the council and general assembly, of the members of the general assembly. Any person having served as a member of the general assembly shall be eligible to be elected as a member of the council for a term of six years.

Sect. 22. The members of the council shall, at stated times, receive for their services compensation, which shall not be reduced during their term of service, and they shall, in addition thereto, be entitled to receive such compensation as shall be fixed by law for the attendance of the council on its sessions, and for the performance of any and all duties required of them in their official capacity.

Sect. 23. The council shall meet annually, at the same time and place with the general assembly.
sheriffs and prothonotaries, shall not be capable of a seat in the general assembly, executive council or continental congress.

Sect. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, judge of the admiralty, attorney-general and all other officers, civil and military, except such as are chosen by the general assembly or the people. They are to correspond with other states, and transact business with the officers of government, civil and military, and to prepare such business as may appear to them necessary, to lay before the general assembly. They shall sit as judges, to hear and determine on impeachments, taking to their assistance, for advice only, the justices of the supreme court. And shall have power to grant pardons and remit fines in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder shall have power to grant reprieves, but not to pardon, until the end of the next session of assembly, but there shall be no remission or mitigation of punishment on impeachments, except by act of the legislature; they are also to take care that the laws be faithfully executed; they are to expedite the execution of such measures as may be resolved upon by the general assembly; and they may draw upon the treasury for such sums as shall be appropriated by the house. They may also lay embargoes, or prohibit the exportation of any commodity, for any time, not exceeding thirty days, in the recess of the house only. They may grant such licences as shall be directed by law, and shall have power to call together the general assembly when necessary, before the day to which they shall stand adjourned. The president shall be commander in chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof.

[D. The Judiciary]

Sect. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for misbehaviour at any time by the general assembly; they shall not be allowed to sit as members in the continental congress, executive council or general assembly, nor to hold any other office, civil or military, nor take or receive fees or perquisites of any kind.

Sect. 22. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal for mal-administration. All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

Sect. 25. Trials shall be by jury as heretofore, and it is recommended to the legislature of this state to provide by law against every corruption or partiality in the choice, return or appointment of juries.

Sect. 26. Courts of sessions, common pleas and orphans' courts shall be held quarterly in each city and county, and the legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the state; all courts shall be open, and justice shall be impartially administered without corruption or unnecessary delay. All their officers shall be paid an adequate but moderate compensation for their services, and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this state.

[E. Other]

Sect. 29. All elections, whether by the people or in general assembly, shall be by ballot, free and voluntary: And any elector, who shall receive any gift, or reward for his vote, in meat, drink, monies or otherwise, shall forfeit his right to elect for that time, and suffer such other penalty as future laws shall direct. And any person who shall directly or indirectly give, promise or bestow any such rewards to be elected, shall be thereby rendered incapable to serve for the ensuing year.

Sect. 30. Every officer of the state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal for mal-administration. All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

Sect. 32. The penal laws as heretofore used, shall be reformed by the future legislature of this state to provide by law against every corruption or partiality in the choice, return or appointment of juries.

Sect. 33. As every freeman, to preserve his independence, (if without a sufficient estate,) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for nor use in establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors and expectants, faction, contention, corruption, and disorder among the people: but if any man is called into public service to the prejudice of his private affairs, he has a right to a reasonable compensation: And whenever an office, through increase of fees, or otherwise becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

Sect. 35. The future legislature of this state shall regulate entailts in such manner as to prevent perpetuities.

Sect. 36. The penal laws as heretofore used, shall be reformed by the future legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.
Sect. 39. To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital, wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons. And all persons at proper times shall be admitted to see the prisoners at their labour.

Sect. 41. No public tax, custom or contribution shall be imposed upon, or paid by the people of this state, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised, ought to appear clearly to the legislature to be of more service to the community than the money would be, if not collected, which being well observed, taxes can never be burthens.

Sect. 44. A school or schools shall be established in each county by the legislature for the convenient instruction of youth, with such salaries to the masters paid by the public as may enable them to instruct youth at low prices: And all useful learning shall be duly encouraged and promoted in one or more universities.

Sect. 45. Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy or could of right have enjoyed under the laws and former constitution of this state.

Sect. 47. In order that the freedom of this commonwealth may be preserved inviolate for ever, there shall be chosen, by ballot, by the freemen in each city and county respectively, on the second Tuesday in October, in the year one thousand seven hundred and eighty-three, and on the second Tuesday in October, in every seventh year thereafter, two persons in each city and county of this state, to be called THE COUNCIL OF CENSORS, who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree, and whose duty it shall be to inquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of govern-
Judiciary, Council of Censors. Which do you regard as the most important? How are representatives to the Continental Congress to be chosen?

5. Note that the Executive powers (Section 20 of Chapter II) are vested in a council, originally to consist of twelve persons elected to represent respectively the counties of the state and the city of Philadelphia. Why do you suppose the Pennsylvanians thought it wise to place executive powers in plural hands? Do the provisions for rotation in office of the members of the Executive Council (Section 19 of Chapter I) give you any clues?

6. In connection with the philosophy behind the concept of a plural executive, consider several other bold provisions in Chapter II. Section 36 discourages "offices of profit." What are these? Section 37 discourages "entails." Why? What about the philosophy of crimes limned in Sections 38 and 39? Do you suppose that the resolution of criminal matters in Pennsylvania was to follow the same course as in England?

7. Finally, consider this body to be called the "Council of Censors," created by Section 47. Why is there a need for such a body? What institution would today perform their function of scrutinizing the Constitutionality of the activities of the other branches of government?

8. The Pennsylvania Constitution of 1776 lasted only fourteen years. Why do you suppose it had such a short lifespan? The Constitution of 1790, which replaced the document which you have just read, was exceedingly reactionary and undid much of the work of the early framers. In the new Constitution the legislative, executive, and judicial powers were distinguished and defined according to the now classic American method. Provision was made for a governor, an assembly, and a senate. A judiciary serving during good behavior was also established—an ideal strongly opposed in the Convention of 1776 as entirely too aristocratic.

J. Paul Selsam, The Pennsylvania Constitution of 1776: A Study in Revolutionary Democracy 299 (1971). The United States Constitution of 1787 (reproduced as an Appendix to this book) has been labelled by some historians as a "counter revolution" or "a revolution of conservatism." Can something similar be said of the revised Pennsylvania Constitution?

For a very provocative mediation on the meaning of the short-lived Pennsylvania Constitution of 1776, and, in particular, its creation of the Council of Censors, see Matthew J. Herrington, "Popular Sovereignty in Pennsylvania 1776-1791," 67 Temple L.Rev. 575 (1994). Herrington seeks to present events in Pennsylvania as a case study in "constitutional politics," extraordinary political activity of a kind posted and described by Bruce A. Ackerman in his We the People: Foundations (1992), and by Akhil Reed Amar in "Philadelphia Revisited: Amending the Constitution Outside Article V," 85 U.Ch.L.Rev. 1043 (1988). Ackerman’s and Amar’s important works explore the interaction between popular politics and constitutional meaning and order. There has been an increasing interest in state-constitution making in recent years, as scholars have sought to compare the constitutions in the states with developments regarding the federal constitution. See, for two such notable efforts, Marc W. Krumen, Between Authority and Liberty: State Constitution Making in Revolutionary America (1997), and, for the slightly later period, Laura Scalia, American’s Jeffersonian Experiment: Re-making State Constitutions 1820-1859 (1999).

9. As you read the excerpts from Jefferson’s Notes on Virginia which follow, see if you can determine to what extent he favors the political philosophy behind the Pennsylvania Constitution of 1776. You should also try to determine how closely the government of Virginia in 1776 corresponds to the Pennsylvania institutions.

2. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (1781)

[Thomas Jefferson was admitted to the Virginia bar in 1767 after graduating from the College of William and Mary and studying law under George Wythe. He was a young man of 33 when he served as a Virginia delegate to the Second Continental Congress and drafted the Declaration of Independence in Philadelphia in the summer of 1776. Like John Adams, he had a scholarly bent and gravitated quickly to the "whig" or "American" side of the dispute over the nature and extent of British colonial rule in the 1770s. He served in the Virginia House of Burgesses, where he interacted with Patrick Henry and other rising patriots in the colony. He was a brilliant writer although more convincing in his written than spoken advocacy. He wrote “A Summary View of the Rights of British America” in 1774, an early and radical statement challenging the necessity of loyalty to Parliament.

From 1776 to 1779 he was a representative in Virginia’s House of Delegates, and in 1779 was elected governor, serving until 1781. He was responsible for the eventual abolition of an established (Anglican) church in the new state. He also was instrumental in ending Virginia’s English-based system of primogeniture (where land was inherited entirely by the eldest son) and entail (which required that property be kept in the family), the foundation in England of patriarchy and landed estates. From 1783 to 1784 Jefferson was a member of the Continental Congress, and at that time drafted the decree for the system of government in the trans-Appalachian Northwest Territory that became the basis of the Northwest Ordinance of 1787.

During the Philadelphia Convention of 1787, Jefferson was living in Paris as the American minister to France (1784-89). He was in regular communication with James Madison during this time, and was a proponent of the proposed new national government though he wished to see the addition of a “bill of rights.” A first-hand observer of the unfolding events leading up to the French Revolution, he became a quick friend of that cause that he saw as inevitable and necessary, albeit bloody.

He assumed the position of Secretary of State in President George Washington’s first administration. The differences among the “Federalists” (supporters of Washington who coalesced around Treasury Secretary Alexander Hamilton) and a faction of national “Republicans” that began organizing around Jefferson and Madison put a strain on relations in the new national government. In 1793 Jefferson resigned his position: