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Description

An examination of the editing process of the Pennsylvania Declaration of Rights of 1776 and how this process reflects and influenced both Pennsylvania politics and the American government as a whole.

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A Transcription, History, and Analysis of the Pennsylvania Declaration of Rights and
Constitution of 1776
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Professor Peter Stallybrass and Professor Roger Chartier
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Part II: A History and Analysis of the Transcription of the 1776 Pennsylvania Constitution and Declaration of Rights

In the 21st century, historian Richard Beeman called the Pennsylvania Constitution of 1776 “the most radically democratic frame of government that the world had ever seen” (273). While arguably true, the excitement of a climactic historical event can often overshadow how it is the result of a gradual accumulation of sequential policies, arguments, and actions. The close examination of original documents reveals the complex processes that enable such notable events to occur. Such investigations often unveil how the very revisions themselves are just as vital as the final product. Similar to writing a novel, edits and rewritings are required before publication. The case is no different for the formulation of the very democratic ideals that serve as the foundation to the current American government. They are the accretion of a gradual development. The Pennsylvania Declaration of Rights in 1776, a part of the Pennsylvania Constitution of 1776, is no exception. Historian J. Paul Selsam wrote in 1936 that, “Although based upon existing documents, the Declaration of Rights was the true expression of the ideals of the American Colonists, and the guarantees contained therein were the product of long and severe experience.” In other words, the Pennsylvania Declaration of Rights was indeed unique in many regards but also the product of reflecting upon—both embracing and stepping away from—previous concepts. Vital to its cultivation, like most historical documents, was the editing process when additions and subtractions were made in order to produce what was considered the most accurate reflection of ideals. Included amongst the Pennsylvania Constitution of 1776’s edits are the suggestions made by Benjamin

Franklin, the convention's president. Analysis of Franklin's own corrections to the Pennsylvania Declaration of Rights in 1776 within a historical context discloses both his desired modifications to the original manuscript and when compared to the final document reveals approvals according to what he chose not to edit; thereby contributing to the process of developing radically democratic policies for both the state of Pennsylvania and the nation's political ideology as a whole.

The Second Continental Congress requested in May of 1776 for each of the colonies to establish governments at the expense of British rule. Some members of Pennsylvania were reluctant to join the rebellion; however, revolutionaries helped to formulate public meetings in order to try to gain support for representatives for a constitutional convention.¹ At the desire of the Continental Congress, the Pennsylvania Constitution of 1776 was formulated in Philadelphia from a meeting that convened on July 15, 1776. John Morris was the secretary, George Ross served as vice president, and Benjamin Franklin was unanimously elected president. The constitution was finally ratified on September 28, 1776. However, the document was not submitted to the people for ratification—a rather ironic concept for such a democratic document—but rather was called a *fait accompli*. It designated Pennsylvania, the “Commonwealth of Pennsylvania.” The Pennsylvania Constitution of 1776 was born out of arguments against legal and political thought with England in addition to rising philosophical principles of the time, including works from those such as John Locke, Thomas Paine,

¹ For more on a general historical background, see *West's Encyclopedia of American Law, edition 2*. S.v. "Pennsylvania Constitution of 1776." Retrieved May 3 2016 from <http://legal-dictionary.thefreedictionary.com/Pennsylvania+Constitution+of+1776>

John Adams, Milton, Hume, Montesquieu, and documents such as the Declaration of Rights of 1774, the Declaration of Rights of the Stamp Act Congress, and the Virginia Declaration of Rights (Selsam 170 and 176). Amongst those who worked on its drafting were David Rittenhouse, Timothy Matlack, Dr. Thomas Young, John Jacobs, James Cannon, and of course Benjamin Franklin. Although Benjamin Franklin was elected president of the committee that assembled, it has been stated that his role was more “passive” due to quantity of other projects he was working on at the time (Beeman 273). The meeting, at its greatest attendance, had thirty-six men which was not only much smaller than the Constitutional Convention of almost one hundred members, but was diverse compared to conventional criteria (Beeman 273). They broadened acceptance of men from previous customs of high economic and educational standing. Thomas Smith, an attendee who criticized the new approval of lower socioeconomic backgrounds during the constitution meeting stated, “seems to be this: that any man, even the most illiterate, is as capable of any office as a person who has had the benefit of education” (Beeman 273). It is likely that such diversity in the membership is reflected in the document’s ideals.

Five other states developed constitutions but Pennsylvania’s was profoundly unique. Previously, the only people given the right of suffrage were men who owned land (or a large amount of moveable property), but the Pennsylvania Constitution of 1776 allowed any man who paid his taxes the ability to vote.² This notion is understandable within the spirit of William Penn who in the province’s first legal code said that men who

² For more brief information contextualizing how this was radical from previous requirements for voting, see McCurdy, John Gilbert. “The Origins of Universal Suffrage: The Pennsylvania Constitution of 1776”.

owned 100 acres of land or were residents who paid taxes were able to vote (McCurdy 2008). The mere requirement of twenty-one years of age, year-long residence, and tax paying, opened suffrage to include the current influx of German immigrants (McCurdy 2008). Some contemporary historians estimate that this allowed 75% of rural and 90% of urban men at the time to vote (McCurdy 2008). Interestingly, it also states that bills cannot be passed until they are published for the general public's reading. Perhaps most unique, new amongst the states, was that it formed a unicameral legislature. There was no longer an upper house of assembly. Furthermore, there was a twelve-member council (instead of having a governor) with a rotating president who needed council majority approval in matters. Judges could remain for seven years but also be revoked at any time. Thus, executive power was restricted. Historian Richard Beeman accredits a lot of this ideology as an accumulation of the "rapidly growing economic, ethnic, and religious diversity of both the colony and its capital city [which] were undermining their ability to keep that oligarchy in place" (274). Although the Constitution's proposed frame of government would go on to be vastly modified for the next constitution in 1790, the ideas stated in the Declaration of Rights would remain largely intact.

The 1776 Declaration of Rights would become influential for the federal bill of rights³ written by James Madison in 1791. Many aspects of the original 1776 document still remain in the current Pennsylvania Constitution today. "The reader may want to re-evaluate the common view that a Bill of Rights was the invention of George Mason and James Madison. One learns that such a listing went into Pennsylvania's Constitution in

³ For more information on how it contributed to the United States Bill of Rights, see "Pennsylvania's Contributions to the Bill of Rights" by Rodger C. Henderson in Crist et al. *Pennsylvania and the Bill of Rights*. 1990.

1776 and that Robert Whitehill in 1787 attempted to add a Bill only to be defeated by the nationalists. Madison was opposed in 1787 to that which he supported three years later. Pennsylvania's contribution was crucial; probably primary" (Crist vii). The Pennsylvania Declaration of Rights of 1776 was likely influenced both by Pennsylvania's historic Quaker ideals as well as the Virginia Declaration of Rights ratified in June of that same year.

By turning to the document itself, while simultaneously placing it into its historical context, one can see how innovative it truly was. The Pennsylvania Declaration simultaneously related, and also stepped away from, the famous Virginia Declaration of Rights which was written that previous May by George Mason. For example, the Pennsylvania Declaration of Rights does not mention cruel and unusual punishments, while the Virginia Declaration does. In Section Fifteen, the Pennsylvania Declaration of Rights states, "all men have a natural inherent right to emigrate from one state to another that will receive them," however, such a statement or recognition of emigration is absent from the Virginia Declaration of Rights. Virginia, unlike Pennsylvania, advocated for the distinct separation of the executive, legislative, and judicial powers (Selsam 179). Additionally, Pennsylvania did not mention excessive fines like Virginia did (Dumbauld 328). Pennsylvania, however, mentioned some rights that Virginia did not, including: the right of the people of the state to govern internal police in section Three, being head by counsel for crimes in section Nine, and the ability to forgo military service for payment (Dumbauld 328). Perhaps most different from Virginia's, is Pennsylvania's section Sixteen, which will be discussed further later.

Written in section Two of the Declaration of Rights is an allowance of religious freedom:

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 anyplace 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 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.

The above statement means that citizens do not have to take an oath of belief and can not be “deprived” rights due to their religion. This freedom of religion is not an entirely new idea, in that many of the same sentiments were expressed in William Penn’s Charter of Privileges written in 1701 (Selsam 180). However, it did require to “profess to believe in Jesus Christ” in order to serve the Government.⁴ Later the Constitution requires legislature members to declare belief in the Old and New Testament (Dumbauld 329). Other than Pennsylvania, only Delaware gave equality to Catholics too; moreover, Delaware and Rhode Island in regards to all Protestants (Selsam 181). Thus, Pennsylvania’s religious stance was exceptionally novel.

⁴ Transcription of Penn’s Charter of Privileges taken from:
http://avalon.law.yale.edu/18th_century/pa07.asp

The Declaration of Rights within the Constitution of 1776 expanded freedom of expression by declaring rights of speech and the press. This freedom is explicitly expressed in section Twelve, which states, “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.” This statement’s same spirit is maintained today in the 21st century. “Taken together these provisions made Pennsylvania the flagship of free expression in the early Republic,” and although notions of the free press preceded, Pennsylvania “was the first constitution to protect ‘freedom of speech and of writing’” (Kreimer 15).

Other notable rights included in the Declaration are sections Nine, Ten, and Thirteen. Section Nine establishes that a man has a right to a jury and “to be heard by himself and his council.” Section Ten protects peoples’ “houses, papers, and possessions free from search and seizure” without warrant. Section Thirteen laid the foundation for the “right to bear arms.” However, what is missing from the Declaration is equally important to consider. There is no mention of *ex post facto* laws or addressing attainder working corruption of blood, both of which are points subsequently addressed in the revised Constitution of 1790 (Selsam 182).

When one considers Franklin as a polymath and also that he presided over the Constitutional Convention of Pennsylvania, it is exciting that we have a copy of Franklin’s own handwritten corrections of the Declaration of Rights. In May of 1775, Franklin had just been elected as a delegate to the Second Continental Congress. In 1776, at seventy-years-old, Franklin remained extremely active. In June, the Continental Congress appointed Franklin to be a member of the organization to draft the Declaration of Independence. At the end of September, Franklin was appointed to serve as

commissioner to France by the Continental Congress from which point he traveled. This biographical context serves to demonstrate Franklin's dynamic and busy role outside of merely the Pennsylvania Constitution. However, his contributions via handwritten edits were nearly all incorporated into the final document.

Before even examining content, inspection of the physical document provides its own discernments. First, Franklin's edits are handwritten, typically in the margin or occasionally above the printed sentences. The sentences themselves have a small space in between the lines where edits can be denoted. Franklin chooses to cross out those lines that he does not agree with rather than other options, such as placing a box around them so that they can be read or possibly further revised later. There is approximately a one-inch margin on the right and left hand-side of the document where Franklin is able to place some of his notes. The margin's substantial yet comparatively smaller size to other documents in the process of being edited during the time period signifies that the Declaration was likely nearing completion. The fewer edits that are predicted to be necessary, then the smaller the margins are provided to accommodate them.

Examination of Franklin's own edits provides insight into the president of the committee's approvals and disapprovals. Overall, nearly all of Franklin's edits were maintained in the final Declaration of Rights. From the beginning, in section One—which lays the foundation for the right to life, liberty, property, and the pursuit of happiness—Franklin has no edits, and the sentence was maintained verbatim in the final copy. This lack of edits likely illustrates that both Franklin and the committee were in agreement about this opening statement.

Section Two, however, had multiple edits by Franklin, most of which are simple rewordings and everything was incorporated into the final edition. Franklin included the addition of “erect” to “no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship...” thereby expanding the notion of religious freedom not only to attendance of worship but the very physical establishment of building its institutions. Though not in section Two, all Assembly members had to give an oath to God, the Old and New Testament (Selsam 180). In a letter years later, Franklin reveals that he wishes this part were “omitted”:

[I] had opposed the clause; but being overpowered by numbers, and fearing more might in future times be grafted on it, prevailed to have the additional clause, ‘that further or more extended profession of faith should ever be enacted...the evil of it was the less, as no inhabitant, nor any officer of government, except the members of Assembly, was obliged to make that declaration (Selsam 180)⁵.

However, the Constitution was also termed in the 21st century as “one of the first enactments of the principle of religious liberty of this continent” (Selsam 179). William Penn was tolerant; however, Catholics could not hold office since they had to swear against transubstantiation, saints, and Popish Mass (Selsam 179). Nonetheless, now section Two opens up the freedom of worship.

Sections Three and Four are maintained verbatim without edits from Franklin. However, it is interesting to note that section Four outlining the right that “all power being originally inherent in, and consequently, derived from, the people” is the only of

⁵ Found in Selsam’s *The Pennsylvania Constitution of 1776*, who acquired it from Franklin’s *Works*, Sparks ed., X, 134. Letter to a friend in England, written in Passy, August 21, 1784.

Sixteen sections not to have a corresponding provision in a subsequent Constitution, namely the Pennsylvania Constitutions of 1790, 1838, or 1874.⁶

In section Five, Franklin edits “Majority” to “community,” so that it reads, “reform, alter, abolish government in such manner as shall be by that community judged most conducive to the public weal.” This change from the majority to the general community interestingly allows for more ambiguity surrounding the circumstances necessary to abolish or reform government. In section Six, Franklin takes away the sentence, “return them into that Body from which they were originally taken,” which would have allowed the people to not only reduce public officers’ station but also return them to their previous position. Franklin adds one simple word to section Seven, but it arguably drastically altered its meaning. What originally read, “That all Elections ought to be free, and that all Men having an evident and permanent and common Interest with, and Attachment to, the Community, have a Right to elect Officers, or be elected into Office,” became, “That all Elections ought to be free, and that all *free* Men having an evident and common Interest with, and Attachment to, the Community, have a Right to elect Officers, or be elected into Office.” This addition places a modifier to “men,” requiring that they have to be “free” in order to have a right to elect officers or be elected into office. However, by deleting the word “permanent” from the sentence, he enables individuals to have wavering “interest” with the community.

Section Eight contains some of the most substantial differences between Franklin’s manuscript copy and the final version. The final document states at the

⁶ According to my transcription of the 1776 transcription compiled by the Legislative Reference Bureau under the direction of Robert L. Cable (see works cited and provided copy).

beginning of section Eight: “That ever member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man’s property can be justly taken from him...” whereas Franklin’s version merely reads, “That all private Property, being protected by the State, ought to pay its just Proportion towards the Expence of that Protection, but no Part of a Man’s Property can be Justly taken from him...” While perhaps Franklin did approve of the final version, it was not his addition according to these edits. Moreover, the final version of section Eight requires more service of the citizen, to be willing to “yield his personal service when necessary.” Furthermore, Franklin added “justly” to “justly taken from him,” which was maintained in the final version but is a very subjective word as to what circumstances would constitute a “just” removal of one’s property.

Once again, in section Nine, Franklin makes a minor correction that has larger consequences upon further inspection. The original manuscript reads, “That in all Criminal Prosecution a Man hath a Right to be head by Council...” to which Franklin altered to, “That in all Prosecutions for Criminal Offences a Man hath a Right to be heard by himself and his Council.” Franklin’s edits were retained. His minor inclusion of “himself and his” means that the man has more agency in expressing his own voice when facing criminal charges, rather than merely being represented for.

Sections Ten, Eleven, Twelve, Thirteen, and Fifteen were barely (e.g. inserting “of”) altered by Franklin and the wording was upheld in the final Pennsylvania Constitution of 1776. However, even no edits reveal Franklin’s position. By not editing

these sections, it means that Franklin approved of these sections which include rights regarding warrants, trial by jury, freedom of speech and writing, freedom of press, right to emigrate, and even the right to bear arms.

In section 14, Franklin added “Industry” to the list of “fundamental Principles, and a firm Adherence to Justice, Moderation, Temperance and Frugality [that] are absolutely necessary to preserve the Blessings of Liberty, and keep the Government free...” Justice and moderation or temperance fit into a larger historical context after Plato described them as virtues of the city in *The Republic* and are considered apart of the cardinal virtues. However, Franklin’s reasoning for the inclusion of “industry,” is interestingly more ambiguous. According to the Oxford English Dictionary, “industry” was utilized during Franklin’s time with meanings such as: “exertion, effort, hard work, diligence; productive work especially manufacturing; or a particular form or sector of productive work, trade, or manufacture” (only later used more generally for commercial enterprises or industry-wide). Thus, Franklin seems to believe that the inclusion of exertion, hard work, and production are “absolute necessary to preserve the Blessings of Liberty and keep a Government free.”

The last section to the 1776 Pennsylvania Declaration of Rights, section Sixteen, is the most crucial difference between Franklin’s copy and the final version. Franklin’s version reads without corrections:

That an enormous Proportion of Property vested in a few Individuals is dangerous to the Rights, and destructive of the Common Happiness, of Mankind; and therefore every free State hath a Right by its Laws to discourage the Possession of such Property.

However, section Sixteen of the final version reads:

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 remonstrance.

These edits, and lack thereof, demonstrate that Franklin approved of the original section Sixteen. Even if he may have later approved of the revised version, his lack of edits on the first copy reveals that he was in agreement with its tenants. Considering the content of the section, this fact illustrates a part of Franklin's thought process. The first section Sixteen quite shockingly states that the excess accumulation of property in a few individual's hands is destructive and therefore the State has the right to "discourage the possession of such property" by law. The implications of this statement could have allowed for the removal of property if the State believed that an individual acquired too large a portion; and furthermore, if grounded only on this statement then the removal could be executed on quite subjective terms. Furthermore, the finalized version of section Sixteen granted people the right to "Assemble together to consult...petition or remonstrance," which is a provision that is not given in the Virginia Declaration (Selsam 178). This explicit allowance for "grievances" and "remonstrance" highlights how the Pennsylvania Constitution embraced democratic principles.

Overall, Franklin did not add or subtract a lot from the Pennsylvania Declaration of Rights; nevertheless, the details of what he did not take away reveal as much, or more, about his positions. Additionally, most of his edits were taking away unnecessary phrases that allowed for a broader interpretation of freedoms that would have altered if the process had been more akin to adding detailed explanatory edits.

Although the Declaration of Rights was largely preserved over time, there was almost immediate backlash to aspects of the framework of government outlined elsewhere. Controversy over the document rose to such heights both within and outside the state, that the state ratified a new constitution in 1790. The people who supported the radical 1776 Constitution were termed “Constitutionalists,” in 1787 as “federalists,” and after defeat to the national constitution “Antifederalists;” meanwhile, the challengers were termed “Republicans,” in 1787 “nationalists,” and afterwards “Federalists” (Crist 1990 vii). The constitution, particularly in its majoritarian democracy, had its flaws (Beeman 275). However, the document of 1776 had an inarguably lasting impact in that it pushed the country towards where it stands today, long after further revisions. It has been argued that “the Pennsylvania Constitution pointed the way toward a democratic future, even if the path toward that future was not straight...But however imperfect the handiwork of the framers of the Pennsylvania Constitution of 1776, they had taken an important step in the right direction” (Beeman 275).

Overall, both Franklin’s changes and lack of alterations disclose a part of the process of formulating the Pennsylvania Constitution of 1776 and particularly the Declaration of Rights. The document itself would become referred in the 21st century as “the most liberal constitution adopted during the Revolutionary period, was the culmination of the growth of democratic thought in Pennsylvania during the Eighteenth Century...parallel developments were to be found in other states, but in Pennsylvania alone did the democratic forces become dominant” (Thayer 197). While this outcome is extremely important, it is also worth noting the means employed to derive such a

significant end because such an investigation of original manuscripts can only uncover more about the development of America's democratic ideology.

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