Introduction to the Ratification of the Constitution in South Carolina

Tradition and continuity were hallmarks of South Carolina government and politics in the seventeenth and eighteenth centuries and South Carolinians modeled their governmental institutions on earlier practices. Revolutionary legislator, physician, and historian David Ramsay claimed that when the state adopted a new constitution in 1776, "the policy of the rulers in departing as little as possible from ancient forms and names, made the change of sovereignty less perceptible."[1] Despite changes wrought by the Revolution, maintenance or appeals to old forms continued throughout the debate over the Constitution. In its first regular session after ratification, the state House of Representatives ordered a new gown for its speaker, "ornamented with velvet tassels, richly fringed" that was "an exact pattern of that worn by the speaker of the British house of commons."[2] Yet despite efforts to maintain "ancient forms and names," the legacy of the Revolution, the rapid growth of the upcountry, and the economic challenges of the postwar era slowly brought change.

Under the Lords Proprietors

The roots of South Carolina's institutions were planted in the West Indian islands of Barbados and Jamaica. Established as a proprietary colony in the 1620s, Barbados offered a few elite white men the opportunity to accumulate great wealth on sugar plantations worked by black slaves who, by 1652, constituted a majority of the island's population. In 1663, when King Charles II granted a charter for a new North American colony south of Virginia to eight Lords Proprietors, some of whom were investors in the Barbadian enterprise, they had a colonial model at hand that could readily be applied to the new mainland colony that became South Carolina.

Although the new colony encompassed what is now both North and South Carolina, the two colonies effectively were governed separately, a division that was formalized in 1712. Between 1670, with the first settlement of Charles Town (called Charleston starting in 1783), and the end of the eighteenth century, Barbadians were among the white settlers of South Carolina who brought their political, social, and economic institutions with them. In setting up Anglican parishes, which were the principal form of local government until after the Revolution, the colonists used the names of all but two of the island's eleven parishes, reusing names such as St. Michael's, St. Philip's, St. Andrew's, and Christ Church. Just as in Barbados, African slavery was a critical part of the plantation economy, and by 1708, South Carolina also had a black majority. When South Carolina adopted its first slave code in 1691 defining the role and treatment of slaves, it borrowed almost word-for-word from a 1684 Jamaican statute, another island colony with a growing black slave population.

In 1669, Anthony Ashley Cooper, one of the Lords Proprietors, and his secretary, John Locke, drafted the first of what would be five versions of the Fundamental Constitutions of Carolina. The white colonists refused to ratify any of the versions, and attempts at ratification stopped by 1705. Although the feudal manorial system envisioned by the proprietors never became a reality, nonetheless, significant elements of the Fundamental Constitutions influenced

---

[1] David Ramsay, *History of the Revolution of South-Carolina, from a British Province to an Independent State* (2 vols., Trenton, N.J., 1785) (Evans 19211), I, 128.

[2] For the House order, see Michael E. Stevens and Christine M. Allen, eds., *Journals of the House of Representatives, 1789–1790* (The State Records of South Carolina, Columbia, S.C., 1984), 286. For a description of the gown, see Charleston *City Gazette*, 18 January 1791.

future governance. The Fundamental Constitutions guaranteed the right of trial by jury in criminal cases, the secret ballot, and religious toleration. The 97th article provided that no one "shall use any reproachful, Reviling, or abusive language against the Religion of any Church or Profession, that being the certain way of disturbing the public peace,"[3] language that was repeated almost verbatim in the South Carolina constitution of 1778. Suffrage was restricted to voters with fifty acres of land with much higher property requirements for those elected to office, practices that continued past the American Revolution. The Fundamental Constitutions envisioned a bicameral legislature in which the lower house (parliament) could only accept or reject laws proposed by the upper house (grand council). The Fundamental Constitutions also assumed separate legal systems for black slaves, establishing that "Every Freeman of Carolina shall have absolute power and Authority over his Negro Slaves."[4] The first proprietary parliament met in 1671, with the lower house recognized by the Proprietors as a separate body in 1692, which came to be called the Commons House of Assembly. The Commons House soon claimed and won the right to initiate legislation and turned to England for precedent. According to one member, it conducted its business "imitating the House of Commons in *England*, as nigh as possible."[5]

Conflicts between local elites in the Commons House and the Proprietors led to a revolution in 1719. Conscious of forms and names, the Commons House declared itself a convention of the people, overthrew the proprietary government, and then reconstituted itself back into the Commons House.

As a Royal Colony

The Crown recognized South Carolina's status as a royal colony in 1720, which was followed by a period of stability and growing local control under an imperial policy of benign neglect. Executive power resided in the hands of the governor, who was appointed by the king. The royal Council, dominated by wealthy local planter families such as the Izards, Middletons, and Draytons, or by affluent Charleston merchants, served as an upper house of assembly, advisor to the governor, and court of chancery. As early as 1725, the Council claimed the same rights and privileges as the House of Lords, but the Commons House disputed the Council's claim to legislative power. In 1739, the Council agreed that only the Commons House could initiate or amend money bills, but retained the right of concurrence as was the case in the House of Lords. In the 1760s, due to growing conflicts between the Commons House and the governor and Council, the governor began to appoint placemen to the Council. Local elites, such as Ralph Izard and Rawlins Lowndes, either resigned or, in the case of Henry Laurens, refused appointment. Wealthy South Carolinians who formerly would have sat in the Council now began to serve exclusively in the popularly elected Commons House of Assembly. As a result, the prestige and power of the lower house rose.

The rise of the Commons House of Assembly in the 1760s and 1770s played a crucial role in sparking the Revolution in South Carolina, set the stage for the government established after independence, and created the constitutional arrangements used during the Revolution and

---

[3] Mattie Erma Edwards Parker, ed., *North Carolina Charters and Constitutions, 1578–1698* (Raleigh, N.C., 1963), 150.

[4] *Ibid.*, 164.

[5] Thomas Nairne, *A Letter from South Carolina; giving an account of the Soil, Air, Product, Trade, Government, Laws, Religion, People, Military Strength, &c.* . . . (London, 1710), 21–22.

thereafter. The Commons House also served as a training ground for the men who would lead the American Revolution in South Carolina. Participants in the ratification debate, such as Thomas Bee, Christopher Gadsden, Rawlins Lowndes, John Mathews, Charles Cotesworth Pinckney, and John and Edward Rutledge, all gained their initial political experience in the Commons House of Assembly.

Christopher Gadsden sparked the first major confrontation that led to more than a decade of intense conflict between the royal governors and the Commons House. Gadsden had won a seat in the Commons House in April 1762, but the election was marred by a technical error on the part of the election wardens. The Commons House certified the election, but Governor Thomas Boone refused to administer the oath of office to Gadsden, dissolved the Assembly, and called new elections. Nearly all the members of the old body were reelected, and the Commons House refused to conduct any business until Boone apologized, maintaining it was the House's right to determine the validity of its own elections. The stalemate continued until Boone departed for England in 1764 and was replaced by a new governor. Over the next decade, similar conflicts between the Commons House and the governor arose. An increasingly radicalized Commons House sent Gadsden, John Rutledge, and Thomas Lynch to the Stamp Act Congress in 1765. Three years later, Governor Charles Greville Montagu dissolved the Commons House because it considered a circular letter from Massachusetts protesting the Townshend duties. In 1769 the Commons House voted, against the wishes of the governor and Council, to appropriate £1,500 to support English radical John Wilkes. The House asserted that only it had a right to appropriate funds; the governor and Council argued otherwise. The result was a stalemate and no business was conducted for the next five years.

While conflicts deadlocked the government at Charleston, the rapid settlement of the upcountry created deep fault lines that would impact South Carolina politics over the coming decades. Prior to the 1740s, most of South Carolina's population lived in the low country along the Atlantic seaboard. Here one found parishes with large plantations containing a small white population and large black slave majorities. Less affluent settlers from Pennsylvania and Virginia began to move into the upcountry, where they farmed smaller tracts of land, owned fewer slaves, and brought their Presbyterian and Baptist churches with them. While the low country elite disputed the prerogatives of the Crown, the upcountry fought its own battles against the low country leadership.

The upcountry had no courts, no formal institutions of government, no schools, and few improved roads. The Church of England was the established church of South Carolina, and upcountry religious dissenters not only had to support their own congregations but pay taxes to support the Anglicans. The lack of government offices in the upcountry meant a citizen had to take a round trip that could be more than 200 miles to Charleston to file a suit or register land. Gangs of bandits committed robbery, rape, and murder, creating instability and unrest in the upcountry. Without law enforcement officials and courts, citizens took the law into their own hands and organized a vigilante militia called Regulators that provided its own form of rough justice. When colonial authorities attempted to arrest Regulator leaders, they met violent resistance. Just as service in the Commons House of Assembly provided a training ground for leadership for low country participation in the ratification debate, at least five prominent Regulators—Andrew Baskin, Samuel Boykin, John Cook, John Gray, and William Kirkland—were elected to the state Convention that ratified the Constitution. Without representation in the Commons House to argue their case, upcountry citizens petitioned the legislature for courts, jails, and schools. The legislature effectively deputized the Regulators as companies of rangers and in

1768 authorized circuit courts in the upcountry. The Crown disallowed the circuit court act because judges, according to this act, were to be appointed during good behavior. A new act, without the offending clause, was passed in 1769, creating courts, courthouses, and jails, although courts did not start to operate until 1772. With the demands for government institutions, upcountry leaders began to demand representation in the Commons House but were allotted only three of the forty-eight seats.

With the Commons House effectively shut down and with discord in the upcountry, the climate was ripe for the creation of extralegal bodies. These bodies shaped the revolutionary era governments and helped bridge the gap between the low country and the upcountry. In 1773 and 1774, self-styled general meetings and general committees directed resistance to the Crown and enforced nonimportation agreements. In 1774, the General Committee called for colony-wide elections to select delegates for a general meeting in Charleston in July 1774, but with elections in the upcountry as well as the traditional low country parishes. A total of 104 delegates were elected with all but three parishes and districts participating. The delegates elected John and Edward Rutledge, Christopher Gadsden, Thomas Lynch, and Henry Middleton to represent the colony in the First Continental Congress and created a Provincial General Committee of ninety-nine to serve as the movement's executive. In November 1774, the Provincial General Committee called another election for delegates to meet in Charleston in January 1775, which would lay the groundwork for the transfer of power to the revolutionaries but under the guise of old forms.

The Creation of a Revolutionary Government

When the delegates met, they named themselves the Provincial Congress and served as the principal legislative body in South Carolina. All but five members of the Commons House of Assembly sat in the new Congress, effectively replacing the old colonial lower house. The Provincial Congress had 184 seats compared to 48 in the Commons House and provided substantial representation for the upcountry. The Provincial Congress had thirty members from Charleston, six from each of the other low country parishes, and ten from each upcountry district, creating a model that largely served as the basis of the apportionment of representatives in the state's lower house until 1790 and for the state ratifying convention in 1788. The Provincial Congress told Governor William Campbell, who arrived in Charleston in June 1775, "That no love of innovation, no desire of altering the constitution of our government, no lust of independency has had the least influence upon our Councils."[6] Campbell refused to recognize the Provincial Congress, but agreed to meet with a delegation. Recognizing the weakness of his position, he departed the city in September 1775 after dissolving the last royal assembly. With no governor in the colony, the Provincial Congress appointed a Council of Safety made up of thirteen members to carry out executive functions.

Delegates to the Second Provincial Congress were elected in August 1775 and met in November of that year and again in February and March 1776. On 3 November 1775, John Rutledge asked the advice of the Continental Congress on establishing a new government in South Carolina. The next day, Congress advised South Carolina to "call a full and free representation of the people" and "establish such a form of Government as in their judgment will best produce the happiness of the people, and most effectually secure peace and good order in the

---

[6] Address of the Provincial Congress, 15 June 1775, in William Edwin Hemphill and Wylma Anne Wates, eds., *Extracts from the Journals of the Provincial Congresses of South Carolina, 1775–1776* (The State Records of South Carolina, Columbia, S.C., 1960), 52.

colony, during the continuance of the present dispute between Great Britain and the colonies."[7] When the Provincial Congress reconvened in February 1776, it elected a committee of eleven to draft a constitution following the recommendation of Congress. A majority of the committee would later be involved in the debate over ratifying the new federal Constitution in 1788, including Charles Cotesworth Pinckney (chairman), John Rutledge, Henry Laurens, Sr., Christopher Gadsden, Rawlins Lowndes, Thomas Bee, and Thomas Heyward, Jr. After amending the work of the committee, the Provincial Congress adopted the constitution on 26 March 1776. It then adjourned and reconstituted itself later that day as the General Assembly under the new constitution, much as the revolutionaries of 1719 had done.

The constitution of 1776 replicated many of the forms of the royal government. It referred to South Carolina as a "colony," and officeholders took an oath to support and defend the Constitution "*until an accommodation of the differences between Great-Britain and America shall take place*" or released from the oath by the legislature.[8] The lower house was called the General Assembly, a name once claimed by the Commons House of Assembly. The legislature asserted that it had all "privileges which have at any time been claimed, or exercised by the Commons House of Assembly."[9] The upper house was called the Legislative Council, echoing the name of the royal governor's Council. The Provincial Congress defeated an attempt to replace "President" with "Governor." The naming practices, reflecting precedents under the royal government, were done quite deliberately. According to David Ramsay, "the inhabitants had long been in the habit of receiving laws from a general assembly and council. The administration of the government in times past, on the demise of the governor, had been uniformly committed to one of the council, under the title of president. The people felt themselves secure in their persons and properties, and experienced all the advantages of law and government. These benefits were communicated under old names, though derived from a new sovereignty."[10]

Although the forms and names remained the same as under the royal government, the constitution of 1776 represented substantive change. Elections were held biennially and the General Assembly's membership remained large and included representatives from all parts of the state. The thirteen-member upper house was chosen from the members of the lower house who would then vacate their seats. Both houses elected the president and vice president by joint ballot. Each chamber selected three members of the privy council, which was chaired by the vice president. The constitution provided for suffrage for adult white males, retaining the same qualifications found under the colonial act of 1721, which required ownership of fifty acres of land or paying a twenty shilling tax. It also provided exceptionally strong powers to the executive. While the president could not adjourn or dissolve the legislature, he could veto legislation without the possibility of a legislative override. The constitution provided no mechanism for impeachment, and the constitutionally fixed salary of the president gave him freedom unavailable to royal governors. The legislature chose judges who served during good behavior but could be

---

[7] JCC, III, 326–27.

[8] *South-Carolina. In a Congress, Begun and Holden at Charles-Town, on Wednesday the first day of November one thousand seven hundred and seventy-five, and continued, by divers adjournments, to Tuesday the twenty-sixth day of March, one thousand seven hundred and seventy-six. A Constitution or Form of Government, Agreed to, and Resolved upon, by the Representatives of South-Carolina* (Charleston, 1776) (Evans 15092), 8.

[9] *Ibid.*, 4.

[10] Ramsay, *History of the Revolution of South-Carolina*, I, 128.

removed by address, an alternative process for removing judges for offenses that did not rise to the level of impeachment. The constitution made no provision for term limits and did not prohibit dual office holding. Legislators who accepted offices would lose their seats but could continue to serve if reelected in a special election.

Four South Carolinians—Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., and Arthur Middleton—signed the Declaration of Independence in Philadelphia. On 5 August 1776, President John Rutledge along with the state's civil and military leadership marched down Broad Street in Charleston, where the newly arrived Declaration was publicly read for the first time in the state. With news of independence, soon there were calls for a new state constitution. Judge Henry Pendleton charged grand juries in the low country and upcountry with making recommendations for constitutional change. Presbyterians and Baptists, who heavily populated the upcountry, petitioned for disestablishment of the Anglican Church, protesting the taxes they paid for its support.

The Constitution of 1778

The General Assembly considered various proposals for constitutional revisions between the fall of 1776 and March 1778 when a new constitution was adopted. The new constitution recognized the changes that had taken place since 4 July 1776. It declared South Carolina a state, not a colony, and changed the names of the two legislative chambers to the House of Representatives and Senate while reserving the term General Assembly for the legislature as a whole. The president and vice president were now known as the governor and lieutenant governor, and the oath of officeholders required acknowledgment that "*the State of South-Carolina to be a free, independent, and sovereign State, and that the People thereof owe no Allegiance or Obedience to George the Third, King of Great-Britain.*"[11] On 5 March 1778, President John Rutledge surprised the legislature by vetoing the new constitution and then resigning. In his veto speech, he cited the popular election of the Senate and his oath to support the constitution of 1776 among the reasons for his opposition. He maintained that "the situation of publick affairs is in this respect the same as when the constitution was established; and though indeed, since the declaration of independence, the style of this country is somewhat altered, having been heretofore one of the United Colonies, and being now one of the United States of America; yet is exercised, and constitutionally, the same supreme power before as it has since that period. Such declaration therefore cannot make it necessary to change the form of government." Rutledge was also concerned about the democratic elements in the new form of government. He argued that the "people also preferred a compounded or mixed government to a simple democracy, or one verging towards it, perhaps because, however unexceptionable democratic power may appear at the first view, its effects have been found arbitrary, severe and destructive."[12] The General Assembly accepted Rutledge's resignation, elected Rawlins Lowndes to replace him, and Lowndes signed the new constitution into law on 19 March 1778.

The constitution of 1778 shifted power away from the governor to the legislature. The governor lost the veto power, the salary was no longer set by the constitution but subject to the will of the legislature, and the governor could be impeached. The governor now was limited to a two-year term and then became ineligible to hold the office for the next four years. The governor

---

[11] See Appendix I (RCS:S.C., 502).

[12] Ramsay, *History of the Revolution of South-Carolina*, I, 136–37.

had to be a Protestant, a state resident for ten years, and own an estate worth at least £10,000 free of debt. The apportionment of the House of Representatives remained the same as under the constitution of 1776, although reapportionment was required in 1785 and then every fourteen years thereafter. The Senate, which replaced the Legislative Council, no longer would be selected out of the membership of the lower house, but was to be popularly elected. The size of the Senate was increased from thirteen to twenty-nine, with one senator from each parish or district and two from Charleston. Only the House could initiate money bills, and the Senate could not amend them.

Although not spelled out in the constitution, the legislature enacted law in the form of acts, ordinances, and resolutions. (Acts had to be read on three separate days in each house, whereas ordinances could be read multiple times on the same day and could thus be passed more quickly.) Joseph Brevard, a South Carolina Supreme Court judge, wrote in 1814 that "in this state the difference between an act and ordinance consisted in this, that the first was passed with more deliberation than the latter; and required three several readings in each house, or branch of the legislature; whereas the latter might be passed by one or two readings in each house. Ordinances were usually passed concerning subjects of minor importance, and were temporary, or local, or private in their nature; but acts were generally permanent, and concerning subjects of consequences and high import."[13] Prior to 1778, acts and ordinances became law upon the signature of the president. Under the 1778 constitution, acts and ordinances became operative after a formal ratification ceremony, usually held on the last day of the session, when the speaker of the House and president of the Senate signed the engrossed acts. The legislature also could quickly pass legislation through a concurrent resolution, which required only a single reading in each house. The legislature used all three forms—acts, ordinances, and resolutions—to call a ratifying convention in 1788 and pay the delegates to it.

The constitution contained new restrictions on legislative membership. A senator had to be a free white male and a Protestant, thirty years old, and a state resident for five years, and have an estate of at least £2,000 free of debt in the district. (Nonresidents could also represent a district if they owned property in the district worth £7,000.) A House member had to be a Protestant, at least twenty-one years old, a state resident for three years, and own an estate of at least five hundred acres and twenty slaves or other property of at least £1,000 free of debt. (Nonresidents could sit in the House if they owned property in the district free of debt worth £3,500.)[14] Ministers of the Gospel were prohibited from service as governor or lieutenant governor or from seats in the legislature and privy council. Only free white males, twenty-one years old, who had been state residents for one year and had owned a freehold of 50 acres for six months before the election or paid a similar tax could vote. An individual could vote in the parish where he resided or in any other parish where he owned a freehold.

The legislature elected the state's judges and could also remove them by address. There was no prohibition on judges serving as members of the legislature, and it was common under the constitution of 1778 for most of the state's judges to also hold seats in either the House or Senate.

---

[13] Joseph Brevard, *An Alphabetical Digest of the Public Statute Law of South-Carolina* (3 vols., Charleston, 1814), I, 315n–16n.

[14] Eligibility provisions for membership in the House were established partly in the constitution of 1778 and partly in section 3 of the 1759 act amending the Election Act of 1721. See Thomas Cooper and David J. McCord, comps., *The Statutes at Large of South Carolina . . .* (10 vols., Columbia, S.C., 1836–1841), IV, 99.

The legislature also elected a variety of executive officers, such as commissioners of the treasury, attorney general, secretary of state, sheriffs, registers of mesne conveyances, surveyor general, powder receiver, and customs officers. These officials had the same term limits as the governor, and legislators had to relinquish their seats if elected to these posts. The governor with the consent of the privy council appointed all other officers.

The constitution of 1778 disestablished the Anglican Church, allowing all Protestant churches to share the benefits of the state's broad establishment of the Protestant religion. It allowed witnesses in court cases the right to affirm in place of swearing an oath and established the people's right to elect their own clergy and to refuse to support a church to which they did not belong. The constitution provided other civil liberties, such as the right to trial by jury in criminal cases and freedom of the press. The constitution also affirmed that the military was subordinate to civil authorities and laid out goals for the future by calling for reform of penal laws and the creation of counties and county courts. Unlike the 1776 constitution, the constitution of 1778 had an amendment process by vote of a majority of the legislature.

What remained unsaid in the constitution was that enumerated rights, such as the right to a jury trial, only applied to whites. By 1775 blacks constituted sixty percent of the population and were governed under the slave code of 1740. The law established a separate court system which required one or two justices of the peace and two to five freeholders to hear cases. The system not only tried slaves but also free blacks.[15]

One clause in the constitution was possibly aimed at the Rutledge family. In 1778, while John Rutledge was the state's president, his brothers Edward and Thomas sat in the General Assembly. Another brother Hugh was an admiralty judge and speaker of the Legislative Council. Article IX of the new constitution explicitly prohibited the "Father, Son, or Brother to the Governor for the Time being, be elected in the Privy Council during his Administration."[16]

Family ties were important in South Carolina political alignments. The principal elite families created alliances by blood or marriage, and many political leaders were related. For instance, in the final three years of the Commons House of Assembly (1773–75), 51 of 69 members had some familial relationship to at least one other member, and John Rutledge was related to eighteen percent of the Assembly by blood or marriage. The political leadership of South Carolina has been described as "a vast cousinage that extended to all levels of society."[17] To fully grasp the political dynamics of the state, one had to understand the ways in which leading families were tied to each other. Ralph Izard, Sr., the patriarch of an important political alliance in St. James Parish, Goose Creek, served in the state ratifying Convention with his son, Ralph, Jr., and his two sons-in-law, Gabriel Manigault and William Loughton Smith, and they voted

---

[15] Under the U.S. Constitution, three-fifths of the slaves were counted for the purpose of apportioning seats in the House of Representatives. In 1791, three free black men—a bricklayer named Thomas Cole and two butchers, P. B. Mathews and Matthew Webb—petitioned the South Carolina Senate, arguing that because the federal Constitution counted them as free persons toward representation, they and other free men of color should be entitled to testify and bring suit in the state's courts. They also argued that if charged with crimes, they should be tried by juries rather than the juryless magistrates and freeholders court. The Senate refused to accept the petition.

[16] See Appendix I (RCS:S.C., 495).

[17] Walter B. Edgar et al., eds., *Biographical Directory of the South Carolina House of Representatives* (5 vols., Columbia, S.C., 1974–1992), II, 5.

together on issues in the Convention. Henry Laurens, Sr., was the father-in-law of both Charles Pinckney and David Ramsay, and served in the ratifying Convention with them and his son, Henry Laurens, Jr. The Pinckneys were related by blood or marriage to the Middleton, Horry, and Laurens families. The Rutledges were similarly tied to the Mathews, Laurens, Kinloch, and Middleton families.

Postwar Challenges

Making the rules of a government was easier than managing it during a violent revolution. In South Carolina, the Revolution was as much a civil war as a rebellion against the British. In February 1780, the British fleet approached Charleston under the command of Sir Henry Clinton and on 12 May Charleston surrendered. Around two hundred Charleston citizens betrayed their fellow patriots by signing an address of congratulations to Clinton. Prominent low country leaders who switched sides and took British protection included Rawlins Lowndes and Colonel Charles Pinckney (the father of the Charles Pinckney who served in the Constitutional Convention of 1787). Patriots who refused to support the British, such as Charles Pinckney, son of the turncoat Colonel Pinckney, were held in abysmal conditions as prisoners-of-war on British warships in Charleston harbor. Some Patriot leaders were banished from the state and exiled to St. Augustine, Florida, or Philadelphia. Paroled citizens who failed to support the British occupiers were banned from their occupations, creating conflicts between artisans and mechanics who remained loyal to the Revolution and those who did not. Merchants who refused to swear allegiance to the Crown faced ruin from British merchants who set up shop in Charleston. The hard feelings from the era of the British occupation shaped political and family relations in the decade after the war. The divisions in the upcountry were even worse than those in Charleston. Loyalist and Patriot militias were formed, and old grievances were sometimes resolved through vicious treatment, torture, and plunder. Former Patriot soldiers, released from their parole, were forced to swear allegiance to the Crown, which made them liable to British military service.

By the summer of 1781, most of South Carolina, although not Charleston, was back in Patriot hands. Due to the British occupation, the legislature could not meet in Charleston in 1781 or 1782 and was called to meet in session in January 1782 in the tiny village of Jacksonborough, thirty-five miles west of Charleston. Due to the war, the election turnout was low. For instance, the election for British-occupied Charleston was held outside of the city and only fifteen voters showed up and elected thirty representatives and two senators. The election for St. Andrew's Parish had to be held in St. John's Parish, Berkeley, where four voters selected seven legislators. The Jacksonborough legislature took revenge on those who shifted alliances or supported the British. It passed laws confiscating the estates of 237 Tories, who were mentioned by name, and about 140 others, who fell into certain categories and were unnamed in the act. Other Tories were amerced (or fined) twelve percent of the value of their estates. A second confiscation act, providing for the seizure of additional estates, was passed in 1783. Relief from confiscation and amercement laws was a political issue in the postwar period. While some individuals obtained relief from confiscation, proposals for total repeal continued to be made unsuccessfully into the 1790s. Vigilantes meted out additional retribution against Tories. A mob lynched at least one Tory who returned to the state, while others were killed or driven from the state.

On 14 December 1782, British troops evacuated Charleston and later that afternoon Governor John Mathews, who had been elected at Jacksonborough, marched into the city and civil government in the capital resumed. Recovery from a devastating war occupied the attention

of the state's political leadership over the next five years. State government struggled to restore civil order in both Charleston and the upcountry and deal with a slumping economy, massive private debt, and the lack of a circulating currency.

The confiscation acts punished South Carolinians who were deemed disloyal in the war but did not deal with the more than four dozen British merchants who had come to Charleston during the two and a half year British occupation. Because Charleston merchants who refused to swear allegiance to Britain had been banned from practicing their business during the occupation and, unlike British merchants, had no access to new stores of goods, Charleston merchants rightly believed that they were competing at a disadvantage. After the British evacuation, British merchants were granted until 1 March 1784 to collect their debts and dispose of their stock, but many chose to stay in South Carolina and applied for citizenship. With the end of the war, low country planters spent heavily, borrowing to rebuild their plantations and replacing slaves lost in the war. British merchants were ready to supply their needs on credit. Patriot artisans and local merchants opposed the British merchants and formed the Marine Anti-Britannic Society under the leadership of Alexander Gillon. During 1783–1784 the city saw street demonstrations, which sometimes turned violent. Charleston had been incorporated as a city in 1783, and in the following year additional powers were given to the intendant (i.e., mayor) and wardens to help quell the unrest. Critics of incorporation believed that the city's powers blended legislative, judicial, and executive functions; wardens both enacted the laws and tried and sentenced violators without jury trials. While street violence eventually ended, strong democratic polemics and politics continued with verbal criticism of political elites. The Rutledges and their allies were referred to in the press as "the NABOBS of this State, their servile *Toad-eaters*, the BOBS,—and the servilely-servile tools and lick-spittles of Power to *both*, the BOBBETS."[18] Arthur Bryan, a Philadelphia merchant who set up shop in Charleston, saw 1784 as a turning point in South Carolina politics, with small merchants and artisans no longer deferring to the low country planters. "Before the year '84 the great people had an entire sway, the latter end of it, a violent opposition took place in this City, when all was confusion equal to the sacking of a town—but being an opposition without a head the great soon subdued it—it had however a Tendency to totally ruin the Aristocracy for if they now carry any thing in the assembly it is by deception."[19]

Outside of Charleston, bad harvests compounded problems caused by the closing of the British West Indies to American exports. Planters who had rebuilt their war-ravaged property on credit were unable to pay their debts. State revenues fell precipitously as citizens could not pay their taxes. Hard currency no longer circulated, and both small and larger planters faced ruin. Their property could be seized for debt, but when sold would rarely recover the value of the debt because of the lack of a circulating currency. The upcountry was marked by violence and disorder. Debtors forcibly closed the courts in Camden, halted sheriff's sales in Cheraw, and set the courthouse on fire in Winton. Violence was not restricted to upcountry districts. In 1784 a deputy sheriff tried to serve a writ for a debt in rural Charleston District on Hezekiah Maham, who had served in the state legislature and later in the ratifying Convention. Maham "took wrath and gave to the deputy the alternative of eating four Copies of the Writs or of being instantly put to death," a task that the deputy completed only after bystanders had obtained "some thing liquid to help him to swallow them."[20]

---

[18] *Gazette of the State of South Carolina*, 29 April 1784.

[19] Arthur Bryan to George Bryan, 9 April 1788 (RCS:S.C., 252).

[20] Memorial of Aedanus Burke, 1 March 1786, in Michael E. Stevens, "'Wealth, Influence or Powerful

The legislature responded to the financial crisis with various measures. Taxes on land had been previously assessed based on acreage rather than value, and so a tract of undeveloped upcountry land was taxed at the same rate as a profitable low country rice plantation. In 1784, the state replaced the flat rate with one based on assessed value. The collection of prewar debts was postponed by legislation passed in 1782, 1783, and 1784. As new debts were incurred in the postwar period, the demand for stronger legislation arose and a special session of the legislature was called to meet in late September 1785 to address the issue. A valuation act (or pine barren law) allowed debtors to offer property at three-quarters of its appraised value as satisfaction for debts. Because the land was often appraised at substantially more than it would fetch at a sheriff's sale, creditors declined payment and debtors received more time to pay their debt. The same session authorized the issuing of £100,000 in paper money to be loaned at seven percent interest with land or gold or silver plate as collateral. The loans were to be repaid by 1790.

In January 1787, the South Carolina Court of Common Pleas declared the valuation law inoperative, and the legislature responded by passing an installment act, which allowed debts contracted before 1 January 1787 to be paid in three annual installments starting on 1 March 1788. A moratorium on the African slave trade was included in the act, in deference not to moral concerns but to prevent more borrowing by overextended planters who wanted to buy more slaves. Finally, the law provided penalties for individuals, such as Hezekiah Maham, who interfered with state officials collecting debts.

The role of the upcountry and the need for constitutional reform also festered during the 1780s. During the years of royal control, low country elites blamed the lack of upcountry civil institutions on the Crown. During the Revolutionary War, the exigencies of survival could explain the slow pace of change. With peace, upcountry leaders demanded what they felt was their due with mixed results. The legislature created county government and courts in the upcountry in 1785. The following year, in a bitter fight, the legislature agreed to move the state capital from Charleston to the newly created town of Columbia in the center of the state, a move that low country leaders unsuccessfully tried to overturn. Although the provincial congresses and constitutions of 1776 and 1778 improved representation for the upcountry compared to the colonial period, the upcountry believed that, with almost eighty percent of the white population and only forty percent of the representation, the revolutionary solution was temporary. The constitution of 1778 called for reapportionment starting in 1785 and then every fourteen years thereafter. The failure to obtain reapportionment led to the introduction of legislation calling for a state constitutional convention. The House of Representatives approved legislation calling a convention in 1784, 1785, and 1787, but the Senate rejected it each time. In 1788, Charles Pinckney's effort to have the ratifying Convention serve as a state constitutional convention failed. The upcountry would not get constitutional reform until 1790 and would have to wait until 1808 for substantive reapportionment.

Efforts to Strengthen Congress

South Carolina's leadership supported efforts to strengthen Congress under the Confederation while regularly raising concerns about issues of race and slavery. On 5 February 1778, the state instructed its delegates to Congress to ratify the Articles of Confederation. It offered twenty-one amendments to the Articles, all of which were rejected by Congress. One of

Connections': Aedanus Burke and the Case of Hezekiah Maham," *South Carolina Historical Magazine*, 81 (1980), 167.

the state's concerns was the requirement in Article IV providing mutual recognition of the rights of citizenship granted by the states. Concerned that this might mean that South Carolina would have to recognize the rights of free black citizens of other states, the legislature requested that "between the words 'free inhabitants,' to insert, 'White.'" South Carolina's congressional delegates—Henry Laurens, Sr., William Henry Drayton, John Mathews, Richard Hutson, and Thomas Heyward, Jr., signed the Articles on 9 July.[21]

South Carolina supported efforts to provide Congress with an independent source of revenue. On 8 February 1781, Congress sent a proposal to the states to give Congress the power to levy a duty on imports. Because of the British occupation of Charleston, the legislature could not meet in 1781, but the legislature meeting at Jacksonborough ratified it on 26 February 1782. Congress submitted another plan to the states for providing an independent revenue for Congress on 18 April 1783, which South Carolina approved on 21 March 1784. In response to British restrictions on American trade in the West Indies, South Carolina, also on 21 March, granted Congress power to prohibit British ships carrying British West Indian goods from harboring and trading in the United States. Congress formally requested power to regulate commerce on 30 April 1784, and South Carolina ratified it on 11 March 1786, with the important proviso that "nothing shall be contained in any of the said regulations which may affect the slave trade."[22] South Carolina declined to send delegates to the Annapolis Convention. According to Pierce Butler, they declined, "Assigning for a reason, that as they had given powers to Congress to regulate all matters respecting Trade, it woud be inconsistant, and have an appearance of either revoking or infringing on those powers."[23]

During the postwar years, Charles Pinckney, one of South Carolina's delegates to Congress, actively called for strengthening the national government. On 13 March 1786, Pinckney addressed the New Jersey legislature as part of a congressional delegation dealing with the state's refusal to comply with the congressional requisition of 1785. In his speech Pinckney argued that, if New Jersey was dissatisfied with the Confederation, she should "urge the calling of a general convention of the states for the purpose of increasing the powers of the federal government, and rendering it more adequate to the ends for which it was instituted."[24] While the Constitutional Convention was meeting, a revised version of Pinckney's speech appeared in the July 1787 issue of the widely circulated Philadelphia *American Museum.*

South Carolina and the Constitutional Convention

The Annapolis Convention adopted a report on 14 September 1786 calling for a convention "to devise further provisions as shall appear to them necessary to render the constitution of the Foederal Government adequate to the exigencies of the Union."[25] Virginia, followed by several other states, responded to the call, and on 21 February 1787 Congress passed its own resolution calling for a convention. The South Carolina legislature, unaware of Congress' action, ratified an

---

[21] CDR, 121.

[22] *Acts, Ordinances, and Resolve, of the General Assembly, of the State of South-Carolina. Passed in March, 1786* (Charleston, 1786) (Evans 19998), 16.

[23] Butler to Thomas FitzSimons, 30 May 1786 (1380 Sweet, ScHi).

[24] Smith, *Letters,* XXIII, 188.

[25] CDR, 184.

act on 8 March appointing delegates to a convention. News of the congressional resolution did not arrive in South Carolina until 14 March. The South Carolina act noted that the powers in Congress were "greatly inadequate to the weighty purposes they were originally intended to answer," that "other and more ample powers in certain cases should be vested in and exercised by the said united states in congress assembled," and that the Articles of Confederation should be revised. The act provided for "five commissioners" to be elected by joint ballot of the legislature to meet with the delegates of the other states "in devising and discussing all such alterations, clauses, articles and provisions as may be thought necessary to render the fœderal constitution entirely adequate to the actual situation and future good government of the confederated states." The act also provided that the delegates join in reporting "such an act to the united states in congress assembled, as when approved and agreed to by them, and duly ratified and confirmed by the several states, will effectually provide for the exigencies of the union."[26]

On the evening of 8 March the legislature elected John Rutledge, Charles Cotesworth Pinckney, Henry Laurens, Sr., Charles Pinckney, and Pierce Butler to serve as delegates. A week later the legislature learned that Laurens declined the appointment due to ill health. The House twice asked the Senate to elect a replacement for Laurens, but the Senate declined both times. The four delegates sent by South Carolina were men of wealth, had served in the state House of Representatives, were slaveholders, and came from the area near Charleston. Rutledge and the two Pinckneys were lawyers and born in South Carolina. Butler, a native of Ireland, was a former British Army officer who had resigned his commission in 1773 after becoming a wealthy planter by marrying into the Middleton family. Rutledge, at 47 the oldest of the state's delegation, had served as the state's wartime president and governor, while the other three delegates had served in the military during the Revolution. Charles Pinckney, at 29 the youngest of his state's delegates, had been a prisoner aboard a British prison ship in Charleston harbor. All but Charles Cotesworth Pinckney had served in the Confederation Congress. The four members shared common anxieties over the weakness of the Confederation government, a concern over popular unrest, and an insistence that slavery be protected. Charles Pinckney and John Rutledge first attended the Constitutional Convention in Philadelphia on 17 May 1787. The other two delegates attended beginning on 25 May, the day a quorum was obtained.

In the Convention, John Rutledge carried the heaviest load in terms of committee service, with membership on five committees, including the chairmanship of the important Committee of Detail. The other three delegates combined served on five. Pierce Butler and Charles Cotesworth Pinckney each served on two committees, and Charles Pinckney served on one. On the floor of the Convention, Charles Pinckney was the most frequent speaker in the delegation. He was also the one most likely to make or second a motion. Charles Cotesworth Pinckney was the least loquacious of the state's delegates, as well as the member least likely to offer or second a motion. William Pierce, a delegate from Georgia, described the speaking abilities of the delegates. Pierce found Rutledge to be "too rapid in his public speaking to be denominated an agreeable Orator"; Butler had "no pretensions" as "a politician or an Orator," though Pierce praised his "many excellent virtues"; and Pierce described Charles Cotesworth Pinckney as "an indifferent Orator." Pierce praised only the oratory of Charles Pinckney who "speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity."[27]

---

[26] "Act Authorizing the Election of Delegates," 8 March 1787, Appendix II (RCS:S.C., 508–9).

[27] Farrand, III, 96–97.

Despite being the fourth youngest member of the Convention, Charles Pinckney's age did not inhibit a display of self-confidence in the early days of the meeting. On 29 May, after Governor Edmund Randolph of Virginia submitted fifteen resolutions that became the basis of the Virginia Plan, Pinckney laid before the Convention an outline of a plan for a new government, which was referred to the Committee of the Whole. The original plan has never been found, although notes on it survive in James Wilson's papers and in an October 1787 pamphlet that Pinckney published containing his speech outlining the plan (RCS:S.C., 12–31n). According to Thomas Lowndes, a fellow South Carolinian, Pinckney's plan "agrees in a great measure with the one adopted."[28] Pinckney's proposal called for a bicameral legislature with both houses apportioned on white population plus three-fifths of blacks. The House would elect the Senate (as had been the practice in the South Carolina constitution of 1776), and both houses would elect a president (which also mirrored the South Carolina constitutions of 1776 and 1778). The president would serve seven years. Congress would retain the right to approve or veto all state laws, a feature that Pinckney pursued unsuccessfully with James Madison in the convention. On 25 June 1787, in a reply to Alexander Hamilton, Pinckney rejected modeling government on Great Britain, arguing that Americans had "fewer distinctions of fortune & less of rank, than among the inhabitants of any other nation," and divided citizens into three classes: professional, commercial, and landed. Pinckney's opening speech at the South Carolina ratifying Convention on 14 May 1788 repeated some of the same language and concepts.[29]

While denying the significance of distinctions of wealth and rank, Pinckney and his South Carolina colleagues believed that only men of great wealth should hold key positions in the new government. Charles Cotesworth Pinckney opposed compensation for members of the Senate, contending that the Senate "ought to be composed of persons of wealth; and if no allowance was to be made the wealthy alone would undertake the service."[30] On 10 August 1787, Charles Pinckney, seconded by John Rutledge, moved to insert property qualifications into the Constitution. Pinckney argued that "He was opposed to the establishment of an undue aristocratic influence in the Constitution but he thought it essential that the members of the Legislature, the Executive, and the Judges—should be possessed of competent property to make them independent & respectable. It was prudent when such great powers were to be trusted to connect the tie of property with that of reputation in securing a faithful administration. . . . Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the Natl. Legislature." According to James Madison's notes, the Pinckney motion "was rejected by so general a *no*, that the States were not called."[31]

In making their points in the Convention, the South Carolinians cited precedents from their home state. In opposing the popular election of the House of Representatives, Pierce Butler argued that "an election by the people [was] an impracticable mode."[32] Charles Pinckney moved that the members of the House of Representatives be elected by the state legislatures "contending

[28] Lowndes to Robert Goodloe Harper, 10 November 1787 (RCS:S.C., 38).

[29] Farrand, I, 398, 402–3. See "Opening Convention Speech of Charles Pinckney," 14 May 1788 (RCS:S.C., 326–28).

[30] Farrand, I, 426–27.

[31] Farrand, II, 248–49.

[32] Farrand, I, 50.

that the people were less fit Judges."[33] His motion was seconded by John Rutledge and supported by Charles Cotesworth Pinckney, who argued that "An election of either branch by the people scattered as they are in many States, particularly in S. Carolina was totally impracticable." He added that "A majority of the people in S. Carolina were notoriously for paper money as a legal tender; the Legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration."[34]

The South Carolinians opposed restricting the introduction of money bills to the House. John Rutledge argued "The experiment in S. Carolina—where the Senate cannot originate or amend money bills, has shown that it answers no good purpose; and produces the very bad one of continually dividing & heating the two houses. Sometimes indeed if the matter of the amendment of the Senate is pleasing to the other House they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every Session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make formal amendments; but to send down a schedule of the alterations which will procure the bill their assent." Indeed, Rutledge would have preferred giving the exclusive right to propose money bills to the Senate "being more conversant in business." "Having more leisure," the Senate would "digest the bills much better," which followed the model in the Fundamental Constitutions of 1669.[35]

Protection of the slave trade was critical to members of the state's delegation. All four delegates spoke strongly against proposed congressional power to tax or prohibit the African slave trade. Charles Pinckney defended slavery, arguing "South Carolina can never receive the plan if it prohibits the slave trade." He also noted that, in approving an amendment to the Articles of Confederation regulating trade, the South Carolina legislature "expressly & watchfully excepted that of meddling with the importation of negroes."[36] Charles Cotesworth Pinckney made it clear that South Carolina would not accept restrictions on slave importations. John Rutledge affirmed that North Carolina, South Carolina, and Georgia would never agree to restrictions on importation, noting that "The people of those States will never be such fools as to give up so important an interest."[37] He rejected arguments from morality, stating that "Religion & humanity had nothing to do with this question—Interest alone is the governing principle with Nations—The true question at present is whether the Southn. States shall or shall not be parties to the Union."[38]

The unity of the delegation on slavery was broken only by the compromise between the Northern and Southern states allowing bills dealing with the regulation of commerce to pass by a simple majority rather than a two-thirds vote in exchange for prohibiting Congress from stopping the importation of slaves before 1808. Southerners were generally wary of a Northern-dominated Congress enacting commercial measures favorable to Northern interests that were detrimental to the interests of Southern planters. On 29 August Charles Pinckney made a motion requiring a

---

[33] Farrand, I, 132.

[34] Farrand, I, 137.

[35] Farrand, II, 279–80.

[36] Farrand, II, 364.

[37] Farrand, II, 373.

[38] Farrand, II, 364.

two-thirds vote to pass bills regulating commerce, arguing that "States pursue their interests with less scruple than individuals."[39] His three fellow delegates made it clear that they had already accepted a deal with the Northern states. Charles Cotesworth Pinckney referred to his Northern colleagues and "their liberal conduct towards the views of South Carolina."[40] Pierce Butler indicated that he would vote against Pinckney's motion since he was "desirous of conciliating the affections" of the Northern States.[41] John Rutledge stated that he was "agst. the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused."[42]

In the end, the South Carolina delegation, like most of the other states' delegations, recognized the Constitution for what it was—a product of compromise in which groups sought common ground. When the delegates returned to South Carolina, they joined forces in defending their handiwork. When criticized for their compromises on slavery, Charles Cotesworth Pinckney referred to "a spirit of concession," adding "I confess I did not expect that we should have been told on our return, that we had conceded too much to the Eastern states." "In short, considering all circumstances," Pinckney argued, "we have made the best terms for the security of this species of property it was in our power to make." Although referring to slavery, Pinckney's remarks could have been said by nearly any of the delegates and could have been applied to the Constitution as a whole. "We would have made better if we could, but on the whole I do not think them bad."[43]

---

[39] Farrand, II, 449.

[40] Farrand, II, 449.

[41] Farrand, II, 451.

[42] Farrand, II, 452.

[43] House of Representatives Debates, 17 January 1788 (RCS:S.C., 121, 124).