ESTABLISHING A REPUBLIC:

THE SOUTH CAROLINA ASSEMBLY, 1783-1800

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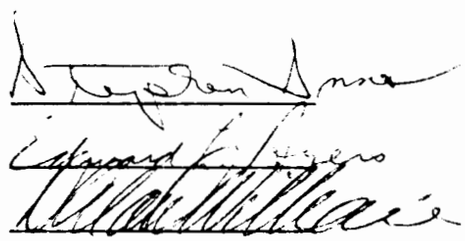

ABSTRACT

This study examines how South Carolina--the most aristocratic American state--created republican government in the wake of the American Revolution. In 1783, state authorities confronted enormous problems--debt, a ravaged economy, and the legacy of internecine guerilla war. In addition, long-standing conflicts between lowcountry and backcountry awaited resolution. Finally, a representative government had to supersede a monarchical one. Solving these problems was the task, and the accomplishment, of the General Assembly between 1783 and 1800.

Acting mostly in response to citizen's petitions, the Assembly addressed everything from slave behavior and lawyers' qualifications to legal structure and debt. An expanded judicial system for the first time gave people throughout the state convenient access to the courts. A modified tax structure reduced disproportionate levies on the backcountry. The postwar Assemblymen improved transportation to allow the backcountry equal access to markets. They established a dozen colleges and seminaries to educate essential to a virtuous republican citizenry. The result was that, by 1800, white men throughout the state believed that they all stood on equal terms before

the law, and that the laws favored no one section or interest. Over rather formidable odds, the Assembly had succeeded in establishing a republic.

Yet, the republican vision was limited in South Carolina. Dominated by the elite of the slave society, the Assembly sought gradual, controlled change that would protect property rights and maintain order. Thus, fiscal measures sought to restore the state's economy and credit. Legal changes gave all citizens equal access to courts but rarely implemented new rules. The Assembly showed interest in economic growth and development, but only so long as it did not interfere with existing property rights. So, too, the parsimonious legislature, while chartering schools and espousing the value of an educated citizenry, never appropriated public funds to support education. Eventually, the republicanism which the Assembly implemented would influence all of America, for in 1861, South Carolina became the state that determined the fate of the nation.

For Jean

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CONTENTS

ABREVIATIONS:

House Journal	Micheal E. Stevens, et al., eds., The Journals of the House of Representatives, 1783 . . . ., The State Records of South Carolina (Columbia, S.C., 1979-).
Senate Journal	"Journal of the Senate of South Carolina, 1783 . . .," Early State Records Series, Microfilm Ed. A.1a Reels 6-9, 21. Citations are identified by year and folio number. For years in which there were more than one session, the opening month of the session is given. In 1793, the folios were not numbered so the date is given.
Statutes of South Carolina	Thomas Cooper and David J. McCord, eds., The Statutes at Large of South Carolina (Columbia, S.C., 1835-1841).
Session Laws	South Carolina Session Laws, 1783 . . . in the Readex Microprint Edition of Early American Imprints. This includes the reports and resolutions of the Assembly.
Petitions	General Assembly Petitions, South Carolina Department of History and Archives, Columbia, S.C.

CHAPTER I

INTRODUCTION

I

This study explores the ways the citizens of South Carolina, acting through their elected representatives, restructured their society in the wake of a successful revolution. In the last two decades of the eighteenth century, Americans from New England to Georgia faced the difficult task of establishing national and local governments that would be both stable and popularly based. To date, most historians of the period have studied national affairs rather than those of the states. They have done so for several reasons. The seeming permanence of the federal experiment of 1787 (as it was called); the final determination, during the Civil War, of the subordinate status of the states; and the expansion of federal power in the twentieth century all combine to suggest the comparatively limited importance of the states in the federal system. In the eighteenth century, however, all this was less apparent, and the custom of calling one's state one's country did not die until long after 1787. Some historians have recognized that the states constituted an important arena in which

Americans grappled with the implications of revolution, but to date have primarily used that insight only to explore the origins of the Federal Constitution and national political parties.[1] Thus each state's experience in the post-Revolutionary world remains underexplored, especially with regard to what Americans thought their revolution meant.

For nearly a century, historians have argued over whether conflict or consensus among the colonists best explains the American Revolution and its aftermath. The consensus view--which emerged in the nineteenth century, was largely supplanted in the early twentieth century, and then reappeared forcefully after World War II--emphasizes the solidarity among the elite before and during the war and the success of the Federal Constitution. Conflict theorists, such as the Progressive historians of the early twentieth century, question the putatively high-minded motives and actions of those elites among whom the consensus existed. In recent years, scholars have drawn on both of these approaches and, in addition, have interjected the concept of ideology into the debate. A brief discussion of a few of the most important works on the period will outline the millieu of this study.

John Fiske's 1888 monograph, The Critical Period of American History, 1783-1789, epitomizes the consensus interpretation and established the sobriquet for the 1780s.[2]

Although the volume is so one-sided that it could almost be read as a parody, it still provides a trenchant presentation of the consensus position. If one ignores the deification of Washington and the canonization of the rest of the Founders, the argument is not unreasonable. Its consensus approach emphasizes the ideas of the Revolutionaries and is implicitly teleological. According to Fiske, after the Peace of Paris ended the Revolutionary War, the national government constituted by the Articles of Confederation proved unable to solve the nation's problems. Crises in foreign affairs, Indian relations, western lands, and especially debt all resisted solution. At the same time, the state legislatures demonstrated a marked inability to handle their own affairs. In particular, Fiske argued that the states incautiously and unjustifiably issued large quantities of paper money and that this revealed their unworthiness to govern. The crisis, which he believed was more serious than the Civil War, evaporated when the Founders, led by the noble Washington, established a central government which was sufficiently removed from the people to exercise good judgment. In short, Fiske's view has been uncharitably, but not incorrectly, characterized as "chaos and patriots to the rescue."[3]

It is easy though unprofitable to lampoon Fiske, who wrote before the study of history became a profession and in an era when the problems of historical methodology were

scarcely perceived. His approach is elitist and one-sided, but many individuals of the Revolutionary era, even so perceptive a participant as James Madison, might well have accepted the substance of his account. His book contains few errors of fact, and the only area seriously distorted is the discussion of paper money, where Fiske unfairly used the atypical actions of Rhode Island, the only state with a long history of fiscal incompetence, as an illustration. Still, Fiske presented only part of the picture.

On the other hand, Merrill Jensen, a neo-Progressive historian, spent a distinguished career attempting to disprove Fiske's critical period hypothesis and to replace it with an interpretation emphasizing the ways he believed a conspiring group of elite nationalists perverted the localist and democratic foundations of the nation.[4] Unlike Fiske, Jensen was a painstaking researcher who attempted, insofar as possible, to let the facts speak for themselves. His extensive research into conditions in the states in the 1780s led him to doubt the existence of a crisis at all. While economic conditions were bad in the mid-1780s, he determined to his satisfaction that conditions were improving by the time of the Constitutional Convention. Furthermore, he conclusively demonstrated that Fiske's view of the way the states handled their paper money (Fiske's only tangible evidence that the states were incompetent) was simply wrong. Most states managed their money reasonably

well. This led Jensen to question the motives of the elite, whom he came to suspect of manufacturing a crisis atmosphere. They did so, he argued, in order to further their private schemes designed to circumvent the democratic tendencies he believed implicit in the Revolution.[5]

Jensen and Fiske each reflected his intellectual heritage. In Fiske's time, contemporary national politics increasingly centered around questions of currency. Fiske was a hard money man confronted by Populist greenbackers, so it is scarcely surprising that he "discovered" that paper money had been the great threat of the 1780s. Jensen, who was born on the Dakota prairies in the fevered atmosphere of the Populist ferment, belonged to the other side, and he too never escaped his roots.[6] Throughout his work, he exhibited an anti-elite bias that sharply contrasted to the balanced way in which he handled other questions.

Neither Jensen nor Fiske can be fully convincing because neither looked at the whole picture nor allowed for the subtle ways in which ideology affects behavior. Fiske was too quick to accept the legitimacy of one side and ignored much popular discontent. But even Jensen failed to refute Fiske's position that the Confederation government faced serious problems which it could not remedy. Jensen's contention that problems could simply have been turned back to the states is unconvincing. On his part, Jensen demonstrated a remarkable inability to grant any legitimacy to

the elite. It seems clear that they, at least, believed that the crisis was real. Because perceptions can be as important as reality, his economic statistics are unconvincing. Even more to the point, Jensen and Fiske were arguing past one another. To Jensen, the real meaning of the Revolution was that it unleashed democracy. To some extent it did, but only within controlled parameters. Fiske accepted the view of the elite, which prevailed for a time, that an excess of democracy was as bad as tyranny. Each view reflects a different aspect of the time, and a balanced picture must encompass both.[7]

Finally, both Jensen and Fiske were too quick to accept the establishment of the Federal Constitution as the end of an era, for in the states no sudden break occurred. Nowhere did people generally believe that their state had surrendered its sovereignty to the federal government, and so, in all states, the local government went ahead with most of what it had been doing. Thus, in the states, the period beginning in 1783 extended to 1800 and beyond. The general historiography does not reflect this at all. In many works, after 1789, the states simply disappear.[8]

II

Gordon Wood's Creation of the American Republic, 1776-

1787 (1969) introduced an explicable republican ideology as a motivating force in post-1776 America.[10] The pre-Revolutionary crisis forced Americans to define their grievances against the British system. The ideas the Revolutionaries articulated to justify resistance, Wood shows, prompted them to examine the very foundations and nature of government. Independence required them to replace the old system with something more acceptable, to transform ideas into action, and in the process, to redefine their science of government. Wood identifies major interrelated changes in Americans' understanding of sovereignty, constitutions, representation, and consent. Each contributed importantly to the development of a uniquely American version of republicanism.

In English political thought, sovereignty, the final, absolute power in a society, rested in the King-in-Parliament, although this sovereignty was recognized to have been derived (in some ill-defined fashion) from the people at large. In the 1760s, Americans who attempted to justify resistance to Parliamentary taxation tried unsuccessfully to devise an intellectually justifiable system of divided power which would allow the colonies the degree of freedom they desired. The shared belief in indivisible sovereignty, however, proved to be an insurmountable obstacle to any defensible constitutional division of powers. Thus Americans, of necessity, eventually rejected

all British claims to sovereignty and asserted that, in the case of tyranny, sovereignty reverted to the people.

The doctrine had unsettling and unforeseen consequences. When Americans turned from monarchy to republicanism, they had to set up new governments, whose powers had to be defined. Beginning in 1776, the custom of having written constitutions evolved quickly. But when the time came to grant powers to the governments, the citizens, who now, in theory, possessed their own sovereignty, proved unwilling to relinquish final and absolute power. In a revolutionary reversal of previous doctrine, these written constitutions came to spell out limited powers for the government, rather than reserving specific rights to the governed and otherwise simply granting sovereignty to the state. Because theory required sovereignty to be located somewhere, it eventually was explicitly recognized as having remained with the people at large.

In time, these changes altered the role of legislators. In eighteenth-century English theory, each member of Parliament represented the entire nation and was bound only to act as he saw fit, for he represented no one's views directly.[11] In America, partly because representation was such an important issue in the Revolutionary crisis, voters began to instruct their representatives on how to vote and to remove them if they did not follow these instructions. Consent of the people, which originally had

been thought of only as a generalized consent to the form (but not the actions) of the government, came to mean that the people must approve of the actions of the legislature. These changes in thought were so pervasive that, by 1787, it was almost inevitable that the Federal Constitution should reflect them.

Nonetheless, republicanism was more than a blueprint for a type of government; it also had a moral dimension. As students of history, the Revolutionaries knew that few republics had endured for a prolonged period, and that none had been large. A republic, they believed, could not endure without a virtuous citizenry willing to sacrifice their individual interests for the common good. This virtue restrained the self-interest of the citizens for the good of the whole. Therefore, to a great extent the Revolutionaries depended upon the peculiar virtue of the American people to sustain the republican experiment. This call for virtue appealed to the Calvinist tradition in New England and to a nascent sense of American superiority throughout the colonies. Thomas Paine's Common Sense enjoyed its tremendous popularity in all the colonies because it fused the Enlightenment and the widespread belief that America was a chosen nation.

For awhile after independence, Americans seemed to have sufficient virtue, even to habitual skeptics like John Adams, but as the war wore on, virtue apparently flagged.[12]

Whether or not virtue actually declined, the perception of declension is what Wood identifies as the heart of the crisis of the 1780s. To the elite, American virtue seemed incapable of stemming the riotous self-interest best exemplified by the state governments, which threatened order and society itself. Rulers had abused their power before 1776; the people abused their liberty after 1783. Thus Wood, like Fiske and Jensen, sees the Federal Constitution as a conservative reaction to revolutionary change, but he also recognizes that the changes were both more fundamental and more ambiguous than they imagined.

In 1975, J. G. A. Pocock's The Machiavellian Moment broadened Wood's presentation of American republicanism by placing it in the context of the European republican tradition.[13] Pocock's densely written, 500-page volume virtually defies brief summary. One particularly insightful review of it runs some thirty pages itself.[14] Still, while the following comments do not begin to explain Pocock fully, a few points need to be made. To the Renaissance mind, he argues, the fundamental problem with a republic was stability. In the late medieval period, men perceived no order in temporal events. Therefore, a temporal form of government like a republic could have no assurance of longevity; indeed, there was not even a coherent strategy for prolonging it. The randomness of fortuna, the mindless sequence of events in the world,

guaranteed eventual destruction. Only a monarchy, which mirrored the cosmic monarchy of God, could provide a source of political stability.

In Florence, however, a group of theorists, including Niccolo Machiavelli, carefully considered the classical literature on republics and hammered out a new theory which explained how republics could survive. A republic could endure, claimed Machiavelli, so long as its citizens possessed and used virtu. Virtu is the quality that enables individuals to overcome fortuna, the random nature of temporal existence, and to impose order on a disorderly world. To Machiavelli, virtu corresponded as much to manliness as it does to our modern word virtue. In practice, the citizen of a republic displays his virtu by denying his own interests and standing out boldly for the good of the state. Pocock traced virtu and the ideas that accompanied it as they moved to seventeenth-century England. There, they fused with indigenous English ideas and became one of the roots of the English Radical Whig thought that demonstrably influenced American Revolutionary thought.[15] In the process, the concepts changed repeatedly. As eighteenth-century Europeans assimilated the significance of the scientific discoveries of Newton and others, they no longer believed that the natural order was random. The old tension between virtu and fortuna increasingly became irrelevant and its place in republican theory devolved on

new antitheses: virtue and corruption, or virtue and commerce. What survived from classical republicanism was a group of concepts: that republican government was possible, that it should be based on independent, virtuous citizens, that republics were fragile, and that balance provided the source of governmental stability.

At this point it becomes possible to offer some tentative definitions. One should bear in mind, however, that republicanism changed over time and even at any one time meant different things to different people. A republic is a self-constituted political entity run by agents of the citizens for the collective benefit of all. Renaissance republicanism was an attempt to maintain a republic over time by means of virtu. American Revolutionary republicanism began as modified Renaissance republicanism, but became increasingly an attempt to maintain a republic across time by constructing mechanistic protections against governmental encroachment of power (e.g., constitutions) and by making the government responsive to the will of the virtuous people at large.

Postwar republicanism proved difficult for the elite to implement because of an inherent paradox: their views about the ends and means of government differed. Their goal was a self-constituting, self-regulating government which would protect the existing order without becoming tyrannical. Unfortunately for them, their political science led

them further than they wanted to go. Just as Radical Whig ideology pulled them into a revolution they never intended, the changes in political science that Wood describes left them face to face with popular government. To many members of the elite, however, popular government seemed to be unstable and threatening to property, and thus appeared to subvert the ends for which it was formed. Nevertheless, it was the only form of government they believed in because American Revolutionary thought located sovereignty in the people. Therefore a continuing struggle in the post-Revolutionary era was how to reconcile the accepted principles of the Revolution, which emphasized broad popular control of legislation, with the need for order, which could not allow the wild pursuit of self-interest.

Although Wood asserted that classical politics ended with the adoption of the Federal Constitution of 1787, other historians have extended the examination of republicanism into the national period. Wood argued that the old conception that politics could reflect "in an integrated, ordered, changeless ideal, the totality and complexity of the world" lay hopelessly shattered.[16] But others argue that the connections to classical republicanism could not be easily broken. Lance Banning has demonstrated that the rhetoric of the 1790s replayed the early eighteenth-century debates in England over the development of a modern fiscal system. John Murrin has explored Pocock's suggestion that the

conflict between the Federalists and their opponents corresponded to the court and country split in Augustan England. Drew R. McCoy, in a sensitive study full of nuances, has explained some of the contradictions inherent in Jeffersonian economic thought and had shown how Jefferson and James Madison sought to resolve them. Collectively, these and other works reveal the myriad of ways in which republican ideology helped shape the early United States.[17]

The importance of the republican thesis is under attack on two fronts. First, some scholars reject the consensual view it promotes. Wood's own evidence, if carefully read, suggests that a democratic radicalism existed alongside rather than within the Whig view of the Revolution.[18] Historians concerned with the broad social picture have explored these democratic ideas and probed the conflicts of the period. The result, for the postwar period, is interpretations that emphasize sectional strife. Jackson T. Main's work over two decades, for example, posits two distinct world views among Americans. Cosmopolitans had an acquaintance with the larger world whether through the army, business, or education, and they tended to reside in commercial areas. Localists had little experience outside their home locale, tended to favor local control, and had little sympathy with larger issues.[19] Others have also concentrated on the conflict between the frontier and the seaboard. Together these studies convincingly demonstrate

that republican ideology cannot explain everything.[20]

The other major attack on the republican thesis comes from historians, most notably Joyce Appleby, who believe that liberalism--not republicanism--was the fountainhead of American ideology and better explains postwar America.[21] Liberalism emphasizes that individuals are beings capable of rational choice and stresses personal liberty. As explicated by Thomas Hobbes and John Locke, it derived more from abstract reasoning based upon generalizations about human nature and government, than from the study of history. According to Appleby, once Adam Smith explained the market economy in liberal terms, that is, as result of rational human nature, liberalism foretold the wave of the future. She thus sees liberalism as the philosophy which undergirds the Jeffersonian-Republican movement of the 1790s.

The champions of liberalism and the proponents of republicanism have engaged in a protracted debate. As Banning puts it, "the specialists seem so at odds that general readers must be sorely puzzled and historians are faced with an imposing barrier to further study."[22] As Appleby frames the question, we must make a choice. Did the Founders believe in a classical republicanism emphasizing the fragility of society, the lust for power among men, and the need for a balanced government, or did they believe in individualism, self-realization, the free market economy,

and the self-regulation implicit in liberalism? To her, a choice is necessary and clear: no one as confident about progress and the future as Jefferson could have been "encapsulated" in a constrictive republican ideology.[23] But she is too strident. Most of the proponents of the republican thesis have not taken such an all-or-nothing view. No one has entirely denied the influence of Locke or suggested that classical republicanism as an "encapsulating" ideology can completely explain postwar America.

Republicanism cannot simply be dismissed, for it speaks to too many issues. First, Locke devised his liberal theories to justify the Glorious Revolution of 1688, which instituted a government based on republican principles. Also, liberalism, per se, offered no way to keep a government from degenerating into a tyranny. Republican theory did. In America, classical republican theory was modified, but it still constituted the origin of most of the Revolutionaries' beliefs about government. Second, Americans consistently called themselves republican rather than liberal or any term signifying the same. Third, one should never forget that the theorists of the Revolution showed a remarkable ability to pick and choose what they wanted from their sources.[24] Thus, they were as comfortable drawing from Bolingbroke's Tory thought as from the Radical Whig thought of Trenchard and Gordon's <u>Cato's Letters.</u> As men of the Enlightenment, American theorists sought to under-

stand by reason and observation, rather than by blindly encapsulating themselves. Quite simply, it was possible for them to be simultaneously part liberal and part republican. Still, many questions remain to be answered. What kind of liberty did Americans seek: liberty to accomplish, as Appleby emphasizes, or classical liberty from oppression? Was American society communal or individualistic? Was government enabling or restraining, popular or oligarical?

The resolution of the debate will not be based on better knowledge of what was said, but rather on a clearer understanding of what Americans actually did. The reason that Bernard Bailyn's work on the ideological origins of the American Revolution has been immensely influential is that he explained the formerly inexplicable: why rational, intelligent persons would revolt against a regime that seemed so moderate. For the postwar period, the question is not so easily framed. For the 1780s and 1790s, we have at best a rudimentary knowledge of what happened. Until recently, a few issues--the development of the Constitution, political parties, and foreign policy--shaped the historiography of the period. None of them throw much light on the question at hand. The goal of this study is to add to our knowledge of what actually happened after the war in one specific locality. I propose to investigate the actions of the South Carolina Assembly and to use that knowledge to

begin to explain what South Carolinians really meant when they called themselves republicans.

III

South Carolina constitutes a particularly good place to examine how one state implemented republican government because, in many ways, civil government began anew there in 1783. No state suffered more during the War for Independence. British, loyalist, and American armies crisscrossed the land time and again, and an internecine guerrilla war raged. Military operations disrupted the population and ravaged the state's agricultural economy. Furthermore, after Charleston surrendered to the British in 1780, civil government collapsed. The war debt nevertheless continued to mount--through interest, Continental requisitions, and impressment of supplies by American armies. At war's end, therefore, South Carolina authorities confronted enormous problems. The state is an excellent place to investigate republican government in action partly because so much action was necessary.

In addition to the legacies of war, tensions and problems dating from the colonial period remained unresolved as of 1783. Most pressing was the conflict between the lowcountry and the backcountry. Before the war, the lowcountry

planters who dominated the state politically, economically, and socially formed a sort of proto-aristocracy. Unlike a true aristocracy, they had no legal privileges or mandate to govern, but this mattered little. Their governance satisfied their own constituents, but the colonial Assembly had a poor record for meeting the needs of the citizens outside the lowcountry. The colonial backcountry was laid off in vast jurisdictions, and whites poured into the region until they outnumbered lowcountry whites by four to one. Even so, the backcountry had no courts, virtually no justices of the peace, and little representation in the Assembly, all of which fueled the Regulator movement and also bred hostility to the lowcountry elite. For their part, the planters of the lowcountry felt little affinity for backcountry settlers. Reluctant to share power, the elite were particularly averse to equal apportionment in the legislature because it would vest control of the Assembly in the backcountry. As of 1783, the backcountry still awaited establishment of local governmental institutions as well as integration into the market economy of the state.

Among the forces that shaped political behavior during the postwar period, none was more important than slavery. Although the influx of whites into the backcountry and the loss of slaves during the war gave the state a white majority for the first time in living memory, the lowcountry

remained predominantly black. Because of their dependence on slavery, the politically dominant lowcountry planters upheld a conservative order: change was possible, but to be scrutinized carefully because order must be maintained at all costs. This conservatism made men skeptical about the democratic thrust of the Revolution, but was in no way antithetical to republicanism. In a classical republic, citizenship and the political power that went with it were limited to independent persons, those whose property allowed them to be independent of the influence of others. Dependent persons--blacks, women, children, Indians, and the propertyless--were assumed to be incapable of shouldering a portion of the load of governing. To some extent, this emphasis on responsibility must have made the members of the lowcountry elite question the qualifications of many backcountry whites for full citizenship. Still, slavery could cut both ways. Should the slaves revolt--a specter of terrifying immediacy during the 1790s because of the bloody slave revolt in Santo Domingue--only the backcountry whites could save the lowcountry planters from the fate of the whites of Santo Domingue. Thus the lowcountry had at least one good reason to placate the backcountry.

The logical place to confront the diverse problems of postwar South Carolina, and to mold republican institutions, was the Assembly, the premier political body in the state. Although the South Carolina Constitution of 1776 was the

only one in America that year to give the governor a veto over legislation, successive constitutions in 1778 and 1790 reversed that policy and vested ultimate governmental power in the Assembly.[25] Virtually all officials, from the governor and presidential electors down to the justices of the peace and sheriffs, were legislative appointees. The Assembly explicitly repudiated judicial review and, on occasion, it ignored the constitution itself.

The structure of postwar politics in South Carolina was not conducive to party development. There were no state-wide candidates for any state political position before the Civil War. And few issues were broad enough to support party rather than factional division. By far the most divisive issue was the backcountry's underrepresentation in the legislature. Because the lowland elite judiciously used its power in the Assembly to promote backcountry interests, however, the political effects of the issue were muted. As the backcountry obtained greater strength in the Assembly, its representatives found little policy to change. In sum, then, neither the electoral system nor political issues encouraged party development. The net effect of this was that issues tended to be treated on their own terms.

IV

The Assembly forthrightly met the challenges of the period. The period saw the greatest burst of lawmaking in South Carolina before the Civil War. Between 1783 and 1800, the average yearly volume of new laws doubled the colonial average and nearly tripled the average of the quarter century prior to the Revolution.[26] These laws addressed everything from slave behavior and lawyers qualifications to legal structure and debt. For the most part, this legislation originated in citizens' petitions to the Assembly.

The South Carolina of 1800 differed considerably from the South Carolina of 1765, in no small part because of the work of the postwar Assembly. The demeanor of the legislature, long independent and self-willed, came to exhibit a confidence born of its representative character, as its treatment of the governors--politely but without deference--attests. An expanded judicial system, enacted largely in response to citizens' requests, was intended to best answer the needs of the people throughout the state. A modified tax structure reduced the disproportionate levy on the backcountry. Perhaps most importantly, the postwar Assembly instituted policies designed to make the state as a whole a functioning republican entity. They established a dozen colleges and seminaries to provide the education essential to a virtuous citizenry. They regulated society

so as to protect property and maintain order. They provided roads and cleared rivers to allow the backcountry equal access to markets. The result was that, by 1800, white men throughout the state believed that they all stood on equal terms before the law and that the laws of the state favored no one section or interest. Over rather formidable odds, the Assembly had succeeded in establishing a republic.

This government should properly be characterized as republican, rather than liberal, because it was founded on what can only be described as republican principles. Based on the consent and support of persons of property, defined by a written constitution, and governed by a directly elected legislature, in structure it closely resembled Wood's description of the political theory of the American Revolution. Liberalism could not support the emphasis on government-imposed order that repeatedly appeared in South Carolina.[27] This is not to say that liberalism did not exist, only that it was outside the political realm. Some individuals surely followed liberal economic principles and certain governors recommended liberal reforms, such as penitentiaries, to the Assembly. Consistently, however, the Assembly refused to enact such bills.[28]

The Assembly could institute the republic not only because of a broad popular consensus about the role and form of government, but also because it deliberately limited the scope of its action. Most actions were

designed to equalize existing systems rather than to innovate. For example, fiscal measure sought to restore the state's economy and credit. Legal changes gave all citizens equal access to courts but rarely implemented new rules. The Assembly showed interest in economic growth and development, but only so long as it did not interfere with existing property rights. So far as the Assembly was concerned, liberty was much more the liberty to hold property undisturbed, than the liberty to be free from restraint. The government was well equipped to maintain the status quo, but not much interested in directing change.

A comparison with Massachusetts, which experienced similar problems of debt and division, is instructive. According to Oscar Handlin and Mary Flug Handlin, the postwar government there promoted the vision of a commonwealth, a state that was more than the sum of individual interests, an entity in its own right. "The Revolution had left to Massachusetts a conception of government prominent in the direction and management of productive enterprise. The aspiration of a weak young state for economic independence had given shape to a positive program; a narrow purse and the obsession of debt had channeled activities through grants of privilege."[29] While the state had little money for economic development, it promoted growth by distributing franchises and other special privileges that encouraged development. In South Carolina, by contrast, the state did

not see itself in the same terms. Activist government was mistrusted, and protection of existing property rights, central to the preservation of slavery, meant that new development could only be along lines that did not interfere with existing ones. Without sufficient legislative encouragement, individuals attempts at economic diversification in South Carolina died aborning in the cotton boom of the early nineteenth century.

As a direct result of the lowcountry elite's acceptance and institution of republican governing principles, its power was diminished. During the postwar period, the proto-aristocracy never became a full aristocracy because its members had come to believe in the republic. In the course of separating from Britain, they had embraced a rhetoric whose radical implications they had not fully suspected. As Wood shows so well, these ideas drew them from one conclusion to the next until the only form of government which they could intellectually support was a republic. Thus, on the immensely important questions concerning the backcountry, the postwar elite did not lack the power to fight, they lacked the intellectual underpinnings. Addressing backcountry problems in a way that was wholly new to them, they demonstrated a remarkable willingness to listen to the majority and to implement its wishes. Certain issues, particularly apportionment, caused heated debates, but the system never broke down because the

elite, ever sensitive to the need for order, accepted the revolutionary changes in political theory, and the concept of popular republics which came with them. Giving up power proved to be difficult, and reapportionment did not come easily. It was one thing to enact republican legislation, but quite another to trust someone else to do so. That they completed the process as early as 1808 shows the grip that Revolutionary principles had gained. As experience soothed the fears of the elite, what seemed so reasonable could no longer be refused.

NOTES

CHAPTER I: INTRODUCTION

[1]In particular, Merrill Jensen and Jackson T. Main have studied the states. See especially Jensen, The New Nation: A History of the United States During the Confederation, 1781-1789 (New York, 1950), and Main, Political Parties before the Constitution (Chapel Hill, N.C., 1973).

[2]John Fiske, The Critical Period of American History, 1783-1789 (Boston, 1888).

[3]Jensen, The New Nation, xiii. Jensen also describes Fiske's work as "a book of vast influence but of no value as either history or example." Ibid. xii.

[4]Ibid.; Merrill Jensen, The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781 (Madison, Wis., 1940).

[5]Merrill Jensen, "The Idea of a National Government During the American Revolution," Political Science Quarterly, LVII (1943), 356-379, provides a brief statement of the Jensen thesis.

[6]A description of Jensen's origins and life can be found in the introduction to James Kirby Martin, ed., The Human Dimensions of Nation Making: Essays on Colonial and Revolutionary America (Madison, Wis., 1976).

[7]For an old, but still important review of the literature of the period, see Richard B. Morris, "The Confederation Period and the American Historian," William and Mary Quarterly, 3d Ser., XIII (1956), 139-156. For a discussion of the the themes a unified presentation must encompass, see Gordon Wood, "Rhetoric and Reality in the

American Revolution," ibid., XXIII (1966), 1-32.

[8]Even Jackson T. Main, who has studied the states as closely as anyone, has not continued on into the 1790s.

[10]Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N.C., 1969). Wood extends the analysis begun by Bernard Bailyn, Ideological Origins of the American Revolution (Cambridge, Mass., 1966). For the literature on republicanism, see Robert E. Shalhope, "Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography," William and Mary Quarterly, 3d. Ser., XXIX (1972), 49-80.

[11]For the English view of representation, see Bailyn, Ideological Origins, 166.

[12]See Charles Royster, A Revolutionary People at War (Chapel Hill, N.C., 1982).

[13]J. G. A. Pocock, The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton, N.J., 1975).

[14]J. Hexter, "Review Essay," History and Theory, XII (1977), 301-332.

[15]See Caroline Robbins, The Eighteenth-Century Commonwealthmen: Studies in the Transmission, Development, and Circumstance of English Liberal Thought from the Restoration of Charles II Until the War with the Thirteen Colonies (Cambridge, Mass., 1959).

[16]Wood, Creation of the American Republic, 606.

[17]Murrin, "The Great Inversion, or Court versus Country: A Comparison of the Revolution Settlements in England (1688-1721) and America (1776-1816)," in J. G. A. Pocock, ed., Three British Revolutions: 1641, 1688, 1776 (Princeton, N.J., 1980), 368-453; Lance Banning, The Jeffersonian Persuasion (Princeton, N.J., 1974); Drew R.

McCoy, The Elusive Republic: Political Economy in Jeffersonian America (Chapel Hill, N.C., 1980). This literature is discussed in detail in Robert E. Shalhope, "Republicanism and Early American History," William and Mary Quarterly, 3d. Ser., XXXIX (1982), 334-356.

[18]Wood, Creation of the American Republic, especially 83-90.

[19]Main most fully explores these ideas in Political Parties before the Constitution.

[20]See, for example, Thomas Slaughter, "Liberty, Order, and the Excise: The Origins of the Whiskey Rebellion in Early America" (Ph.D. diss., Princeton University, 1983). This literature is also discussed in Shalhope, "Republicanism and Early American Historiography."

[21]Joyce Appleby, Capitalism and a New Social Order: The Republican Vision of the 1790s (New York, 1984); John Patrick Diggins, The Lost Soul of American Politics: Virtue, Self-Interest, and the Foundations of Liberalism (New York, 1985). For a particularly insightful review of Diggins, see Gordon S. Wood, "Hellfire Politics," New York Review of Books, Feb. 28, 1985.

[22]Banning, "Jeffersonian Ideology Revisited: Liberal and Classical Ideas in the New American Republic," William and Mary Quarterly, 3d. Ser., XLIII (1986), 3-19. This article provides a balanced review of the current debate over republicanism. The quotation is from page 3. Appleby, "Republicanism in Old and New Contexts," ibid., 20-34, responds to Banning.

[23]Appleby, "Republicanism in Old and New Contexts," and Capitalism and a New Social Order: The Republican Vision of the 1790s (New York, 1984).

[24]See Bailyn, Ideological Origins.

[25]The Constitution of 1776 ostensibly looked for reconciliation between the colonies and Britain and therefore did not reduce the governor's powers as other

state constitutions did. It was replaced in 1778.

[26]The volume of laws, measured in published pages, does not provide a very accurate measure of legislative activity, but does suggest that the postwar period was a busy time for the Assembly.

Period	Average number of pages per year
before 1712	15
1712*	266
1713-1749	30
1750-1775	21
1776-1782	41
1783-1800	57
1801-1814	38
1815-1838	45

*In 1712, the Assembly adopted the portions of British statute law which seem appropriate for the colony.

Source: Statutes of South Carolina, II-X.

[27]Paternalism also fails to explain this style of government. It was not paternal because it insisted on the equality of the white male citizens and enunciated no view of hierarchy and reciprocal obligation among the citizens. Although paternalism was not a political ideology, it seems inconceivable that it was not the dominant ideology within families, and it may well explain the relationship between large planters and their slaves (at least from the master's point of view). For a good short discussion of paternalism and liberalism among slaveowners, see James Oakes, The Ruling Race: A History of American Slaveholders (New York, 1982), especially ix-xvi. Oakes briefly summarizes the views of Eugene D. Genovese that are developed in his numerous works, most particularly Roll, Jordan, Roll: The World the Slaves Made (New York, 1975).

[28]See Chapter III below.

[29]Oscar Handlin and Mary Flug Handlin, Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861 (revised ed., Cambridge, Mass., 1969), 242.

CHAPTER II

THE ISSUES IN POSTWAR SOUTH CAROLINA

I

To date, studies of conflict have dominated historical writing on South Carolina in the Revolutionary and post-Revolutionary eras. Dichotomies--Assembly versus royal governor, Whig versus Tory, debtor versus creditor, democrat versus aristocrat, Federalist versus Republican, and especially lowcountry versus backcountry--have provided the framework within which South Carolina's history has been interpreted. The story that these conflicts collectively reveal is the struggle of the prewar proto-aristocracy to remain dominant. This self-conscious group possessed power after the war, but the legitimacy of their rule was threatened by ideas about liberty, justice, and equality which gained wide acceptance, even among members of the elite themselves. Under pressure, they managed to protect their interests well, and for a while they were able to avoid giving up power except on their own terms.

The continued emphasis on conflict nevertheless obscures the real accomplishments of the Revolutionary generation. Conflict arises in many different ways. It

may result from clashes between irreconcilably opposed groups and can only be resolved by the victory of one side or the other. But it can also be part of a Hegalian process where thesis and antithesis interact to produce synthesis. In this way, conflict can be useful and creative. This is what happened in South Carolina. The conflict was real and is well documented. What is less often seen is that the process resulted in a consensual synthesis among propertied whites. The Assembly, which is the focus of this study, contributed importantly to that synthesis as it both influenced and responded to events in South Carolina between 1783 and 1800. This chapter explains the context within which the Assembly acted by exploring how historians have understood South Carolina after the Peace of Paris. To date, they have emphasized the struggle between rival groups to gain power and to achieve their own ends.

II

Almost before the war was over, South Carolina historians began to record what happened there during the Revolution. In 1785, only two years after the Peace of Paris, Dr. David Ramsay published his brilliant History of the Revolution of South Carolina from a British Province

to an Independent State.[1] Although Ramsay was partisan in his beliefs, he attempted to be objective, with considerable success, and his work remains an important source for historians, particularly those interested in vignettes about individuals and events.[2] Other South Carolinians followed in his footsteps, and by the mid-twentieth century, South Carolina could boast several major histories of the state in general and the Revolution in particular.[3] These works concentrate on anecdotal and familial material that appeals to a popular, local audience, and although some are quite well done, they seldom probe the questions that interest most modern historians. Since 1950, a number of works have offered deeper insight into the problems and triumphs of the era at both the state and national levels. Taken together these works provide a coherent picture of South Carolina from 1760 to 1800.

Before the Revolution, South Carolina was a colony of contrasts. The lowcountry was probably the most prosperous region, for whites, anywhere in the mainland British colonies.[4] In the swampy areas that extended as much as 100 miles inland, rice was an exceptionally lucrative crop. In the drier parts of the lowcountry, indigo was profitable, despite its generally low quality, because of the bounty that the British government paid because it did not want to depend on French indigo. These

crops, and the slave labor that produced them, supported the opulent planters of Charleston and allowed merchants like Henry Laurens and lawyers like John Rutledge and Charles Pinckney to accumulate collateral fortunes.[5] Lowland white prosperity stood in stark contrast to the conditions under which the slaves suffered. Many slaves worked long hours at rigorous work on meager rations in an unhealthy climate. The prosperity of lowcountry whites also concealed the plight of the backcountry settlers who had no cash crops and eaked out a meager existence in isolated settlements where Indian attacks were a fearful reality.[6]

Although the wealthy planters of the lowcountry appeared to be unlikely revolutionaries, the structure of politics and a series of events led them increasingly to reject British authority. Power had been inequitably distributed in South Carolina throughout the colonial period, but by the Revolution a steady yet tense equilibrium had been reached. The colonial Commons House of Assembly, which the Charleston and lowcountry elite dominated, had acquired control of the purse and resolutely guarded it. Checking this power, however, was the ability of the royal governors to veto legislation and prorogue the Assembly. If both sides were unmoving, as they were in the early 1770s, government ground to a halt.[7] The governor's Council, which might have mediated between the

sides, had become dependent on the governor for tenure, and so had lost its independence and prestige. After 1760 many notable South Carolinians repeatedly refused to serve on the Council.[8] The situation, therefore, encouraged the planters to trust their own strength, while it undermined their faith in the reasonableness of the British government.[9] In the end, revolution developed easily and with a strong degree of elite solidarity.

Occasionally forces from below threatened the pre-Revolutionary elite's dominance. While the "out of doors" activity of the Charleston artisans dismayed many conservatives, a larger threat arose in the backcountry. Well before 1776, the majority of whites lived in the backcountry, yet the Assembly was very slow to incorporate them into the political and legal life of the colony. No courts existed in the backcountry before 1769, and the citizens there had virtually no representation in the legislature. Indian raids and banditry gave rise to the Regulator movement, in which posses of backcountry citizens, calling themselves regulators, imposed martial law on the frontier. Their excesses led to the organization of a counter group who called themselves moderators. The moderators quieted the frontier but provided no long-term solution. Ultimately something would have to be done.

Yet the colonial Assembly proved incapable of

addressing the frontier demands. Conflicts with the governor meant that little business was transacted; Parliamentary restrictions required that the size of the Assembly remain static; and, finally, coastal powerholders' concerns about the nature of the frontier electorate produced a widespread reluctance to entrust coastal interests to persons who for the most part were not slaveholders, Anglicans, or native South Carolinians. Two Revolutionary constitutions in 1776 and 1778 broadened western representation but still kept final power firmly in the hands of the coastal elite.[10]

This elite consisted of a mixture of planters, lawyers, and merchants. Often these roles overlapped, so little overt conflict arose between segments of the elite even though their interests were not entirely synonymous. Although these classes were open to outsiders, increasingly leadership roles were reserved for those with deep roots in South Carolina society. In the 1780s and 1790s the Rutledge and Pinckney families, along with their friends and relatives, dominated the lowcountry political scene, albeit not without opposition.[11] The elite constituted a relatively large group. In and around Charleston in 1790, the top 20 percent of the population was considerably better off than the comparable group in and around Boston.[12]

This social order centered in Charleston, which many

considered the grandest city in America. Josiah Quincy of Massachusetts expressed wonder at its magnificence. To him, "the city, made a most beautiful appearance, and in 'grandeur, splendeur of buildings, decorations, equipages, numbers, commerce, shipping, and indeed in almost everything' it surpassed all he had ever seen or expected to see in America."[13] John Lamb, an Irishman in the British Army, recorded less enthusiasm. "They boast of their town as the most polite place in America; but it is far exceeded by several others, in riches as well as convenience."[14] In any event, many lowcountry planters maintained homes in Charleston as well as on their plantations. Common residence in Charleston for much of the year facilitated a stronger cohesiveness among the provincial elite than was possible in North Carolina and Virginia.[15] The members of this elite group knew each other well and worked together before the Revolution to keep a firm control over their own interests. One scholar has characterized the process as follows: "As the eighteenth century advanced, the Charleston aristocracy became more and more conscious of its superiority, more and more confident of its ability to rule, until finally, in 1776, it threw off the one remaining trammel to its power and stood supreme over the life and government of South Carolina."[16]

The war changed the political situation, subtly at

first but in the long run dramatically. While the same elite group that had controlled affairs so thoroughly before the war retained power, wartime changes had eroded the foundations of their authority. Change begat the expectation of still more change and demolished the old myth of the sanctity of the status quo. Furthermore, the rhetoric of the Revolution injected new ideas about equality and representation into a formerly staid political system. The theoretical call for republican government had practical consequences. Not only did the people at large begin to expect to have a say in government policy, the elite also accepted their right to do so (although not without grumbling). These changes did not produce instantaneous results, and their effects are sometimes difficult to discern, but they provide the themes most historians have used to interpret the 1780s and 1790s.[17] Most commonly, historians have conceptualized the struggle for change as an attempt by the citizens of the backcountry to wrest their rightful political power from the lowcountry.[18]

III

The prologue to South Carolina's postwar history was the 1782 meeting of the state legislature, which occurred while the British still occupied Charleston and several

adjacent lowcountry parishes. In order to allow the Assembly to meet for the first time in two years, Governor John Rutledge called a special election and designated locations for the balloting for areas that were still occupied. The resulting legislature was exceedingly unrepresentative, even by South Carolinian standards. A mere fifteen voters elected the thirty-two representatives from Charleston, and some of those elected elsewhere in the state were imprisoned at St. Augustine or were as far away as Philadelphia.[19] The representatives who could attend assembled at Jacksonborough, a small town southwest of Charleston, and heard Governor Rutledge deliver a hawkish address attesting to the need to punish the many British sympathizers in the state.[20] The major result of the session was the enacting of laws to banish certain loyalists and confiscate their property and to amerce (fine) others (usually 12 percent of the value of their estate) for failing to support the war effort.

The confiscation and amercement acts have been interpreted in various fashions, but all writers agree on their capriciousness and the existence of backstage maneuvering to add or delete certain names.[21] Whatever the motivation of the participants--and a number of possible motives have been advanced--the effects of these acts reverberated for years. Most of the persons named on the lists later petitioned the legislature for exemption, and

most received it, but the lenience of the legislature in this regard led to severe dissatisfaction in the backcountry and among the artisans in Charleston.[22]

The treatment of the British merchants in Charleston became an even greater source of discontent. When the British Army evacuated Charleston in 1783, a number of British merchants asked Governor John Mathews for permission to stay behind so that they could sell their large inventories rather than face the cost of reshipping them.[23] Having received permission to stay for six months, they petitioned the legislature for leave to stay longer or even to become citizens. The local artisans, who in some cases produced the same type of goods as the merchants sold, loudly complained about the presence of British competitors and formed the Marine Anti-Brittainic Society to foster conviviality and to express their discontent. The artisan faction, which was led by Alexander Gillon, the controversial commodore of South Carolina's wartime navy, disseminated inflammatory pamphlets and sometimes rioted in the streets. Historians often describe the riots as mild, but they profoundly disturbed members of the elite. Fortunately, cooler heads on the Privy Council persuaded Governor Benjamin Guerrard not to call out the militia against the rioters.[24] Lacking tangible opposition, the rioters created a good deal of noise but then dispersed. After 1784 the disruptions quieted, but

discontent with the British merchants remained.

This discontent was only one manifestation of the economic malaise that gripped South Carolina in the 1780s. Much property was destroyed during the war and perhaps as many as 25,000 slaves, representing another substantial amount of South Carolinian wealth, escaped with the British or were killed.[25] Although the war severely weakened the financial base in the state, after 1783 many South Carolinians purchased large amounts of consumer goods, which were unavailable during the conflict. Others replaced destroyed supplies and implements. Because most local merchants either failed or retired during the war, the planters hurried to buy from the resident British merchants, often at exorbitant prices and always on credit. They believed that a few harvests would bail them out. Unfortunately, the market for agricultural goods was not as good outside the British Empire as it had been within it. The bounty for indigo was gone, and the West Indian and Portuguese markets were closed. Even more importantly, the crops of 1783 and 1784 failed. The net result was that South Carolinians of all stations found themselves unable to pay their debts.

In 1785, somewhat reluctantly but firmly, the legislature intervened to protect debtors from their creditors.[26] According to the legislature, the fundamental problem was the lack of sufficient currency of any sort in the state.

Therefore, sheriff's sales for debt reputedly raised only about a quarter of the true value of the property sold, and a person might lose his or her entire estate because of relatively modest debts. Legislative relief was two-pronged. First, the state would loan up to £100,000 of paper money, at 7 percent interest, to citizens with sufficient security in land or plate. Each citizen was to be limited to £250 in notes so that a minimum of 400 borrowers would be assured. While the notes were not legal tender, they were acceptable for state taxes. The other relief offered was the "Act for regulating Sales under Executions . . . ," which allowed debtors to offer land or other property directly to their creditors, thus bypassing the sheriff's sales. Local landowners were to appraise the land, and it was to be accepted at three-quarters of that valuation. The act could not be invoked, however, if the creditor was willing either to extend further credit or to accept the state's new paper money.

Critics roundly denounced the first law as unwise and the second as unjust. Asserting that debtors offered only worthless land, overvalued by their fellow debtors, to close their accounts, opponents christened the valuation law the Pine Barrens Act. Furthermore, they reported that formerly unwanted land now changed hands at relatively high prices so that it could be passed on to creditors. No historian has ever substantiated these

charges. Presumably some poor land was occasionally presented with a high valuation, but we simply do not know if this was in fact a common occurrence.[27]

Critics tended to ignore the positive aspects of the acts. Prior to their passage, riots closed the courts in Camden, and the state seemed to be on the verge of what later would be called a Shaysite insurrection.[28] Certainly when Shays's Rebellion did break out in Massachusetts, South Carolinians congratulated themselves on avoiding the type of incident which so alarmed conservative northerners, and believed that the Assembly's debtor relief program caused this happy circumstance.[29] Moreover, the debtors' complaints were not unreasonable. The volatile nature of the currency during the Revolution made it impossible to settle all debts equitably, even though the legislature promulgated depreciation tables. Local merchants as well as planters faced difficulty. Many had been forced to accept depreciated currency during the war but now found themselves pressed by creditors (who were often British) for payment in specie. Finally, complaints that the sheriff's sales consistently failed to produce the true value of the property were grounded in fact. Creditors argued that a debt was a debt, but debtors were understandably unwilling to allow a charge which had represented only a portion of their estates when acquired, later to consume them entirely.

Wherever truth and justice lay, the debtors controlled the legislature. They sought, with more restraint than some have supposed, to find an even-handed solution which did not destroy their own interests.[30] They quickly discovered that the two 1785 acts did not fully answer their purposes. Therefore, over the next several years they passed a series of installment acts designed to spread the payment of debts out over several years. These kept the citizens of the state solvent until the assumption of the state debt by the federal government and the commercial boom of the 1790s rescued all parties and re-established the strong economic base of the state.

While pro-debtor laws continued to be the focus of considerable debate, intrastate differences became increasingly important in the late 1780s and 1790s. Taxation, apportionment of the legislature, and the relocation of the state capital were the main points of contention. Before the Revolution, land taxes in South Carolina were based upon acreage, without regard to the quality of the soil. Naturally this led to great inequity because the poorest backcountry farm was taxed at the same rate as the best lowcountry rice land. Beginning in 1784, an ad valorem land tax of 1 percent took effect. Town lots and merchants' stock were also taxed on an ad valorem basis. Every slave and carriage wheel was still taxed at a flat rate. Obviously the new tax laws significantly benefited

the frontiersmen whose share of the tax burden dropped precipitously. Still, they had not forced its passage, for they did not yet have the representation to push such a bill through a hostile legislature. Most probably the measure passed for a combination of reasons. First, it may have been a concession to the backcountry as a part of a trade-off for acceptance of some other legislation--quite possibly the quashing of the call for a constitutional convention, which might have reapportioned the legislature in favor of the backcountry. Alternately, it is conceivable that the measure garnered some support simply because it was, in fact, more fair than the old system. More cynical observers have noted a final important consideration. Some members of the lowcountry elite held or sought to buy significant quantities of land in the backcountry for speculative purposes. High taxes would have rendered vast holdings unprofitable. Unquestionably, the boom in South Carolina land speculation began after this measure passed and was certainly the result of it.[31] Whatever complex assortment of motives fully explains passage of the tax bill, South Carolinians thereby successfully managed to avoid letting sectional disputes get out of hand.

Apportionment of the legislature was another issue that the Assembly eventually resolved through compromise. In three successive state constitutions--in 1776, 1778,

and 1790--and in a constitutional amendment in 1808, representation became increasingly proportional to the white population. Nonetheless, change did not come easily. During the 1780s, the House endorsed petitioners' requests for a constitutional convention to consider reapportionment, but the Senate rejected the proposal. In 1794, a determined, but unsuccessful, petition campaign brought the Senate within one vote of endorsing reapportionment. Rachel Klein and others argue that proportional representation became increasingly palatable to lowcountry aristocrats as it became apparent that the emerging backcountry society would be led by men of wealth who supported and relied upon slavery.[32] Such men could be counted on to protect lowcountry interests on the vital question of slavery. Ultimately, the constitutional amendment of 1808 accorded representation in the legislature according to wealth and population, a compromise that virtually guaranteed that lowcountry interests would be maintained. Until this compromise was reached, however, the battle, while controlled, often raged bitterly.

A related long-term bone of contention was the location of the state capital. Some scholars believe that moving it to Columbia was the price the lowcountry elite had to pay to maintain their apportionment advantage in the legislature under the 1790 constitution. If so, this was a major concession for the issue was not simply the

convenience of lowcountry legislators who did not want to travel to the backcountry. Jerome Nadelhaft has suggested that it was not unusual for a rump session of Charleston legislators to pass important legislation at the end of a session after many of the backcountry delegates already had gone home.[33] Similarly, on issues that were hotly contested it sometimes made a significant difference whether all of the backcountry delegates were present. While the legislature met in Charleston, lowcountry delegates who for some reason were not attending could usually be rounded up for the crucial votes, but the same did not hold true for backcountry delegates.

A final sectional issue was the adoption of the Federal Constitution. The citizens of the backcountry opposed ratification, apparently because they feared the power of the new government.[34] On the other hand, the lowcountry and particularly the Charleston area strongly supported adoption. This reflected concern with debt and trade. During the war, South Carolinians poured an enormous amount of money into the Continental treasury, and they accumulated large state debts to pay for the army in the South and the largely useless South Carolina navy.[35] Not surprisingly, they struggled mightily in the Confederation period to manage their debts. These fiscal problems not only made money scarce in South Carolina and exacerbated the state's other economic woes, they also

made the Federal Constitution quite palatable in the lowcountry.[36] Many believed that the new federal government would help the states pay their debts. The monetary factor, when considered along with the guarantees for slavery that Charles Pinckney extracted at Philadelphia, assured the adoption of the document so long as lowcountry delegates dominated the ratifying convention.[37]

Whereas scholars have depicted the 1780s largely in terms of local issues, they have typically used national ones to interpret South Carolina in the 1790s. Lowcountry South Carolina entered the national period strongly Federalist in sympathy, while Anti-Federalists predominated in the backcountry. Because the emergence of national parties offers a clear conceptual scheme for understanding the decade, historians have concentrated on them to the virtual exclusion of other factors. Therefore events such as the French Revolution, the Jay Treaty, and the XYZ Affair have been considered central because they built or strengthened parties within the state.

In South Carolina, as in much of the rest of the country, the French Revolution initially was greeted with approbation.[38] The French had helped America during the Revolution, and now the American spirit of liberty could be seen moving the French. As the excesses of the new revolution mounted, however, many prominent South

Carolinians, like their counterparts elsewhere, began to fear for the stability of their own society. Other factors, including slavery, complicated the issue. The enthusiastic spirit with which the local artisans embraced the French cause alienated the pro-British faction which coalesced around the British merchants allowed to remain in Charleston. This group believed, like Alexander Hamilton, that the young nation could best serve its own interest by attaching itself as closely as possible to Britain. Enthusiasm for France threatened this policy, and so this faction worked to keep sympathy for France within bounds.[39] Although the excesses of the French Revolution played a role in discrediting the gallican party, still more instrumental was the slave insurrection in Santo Domingue. The revolt, which was seen as the direct result of the rhetoric of the French Revolution, raised the terrifying spectre of a servile uprising at home--a fear rarely absent in that society since the Stono Rebellion of 1739.

These concerns helped shape party politics. The developing national parties--the Federalists and the Republicans--were, of course, respectively somewhat pro-British and pro-French. Charleston was staunchly Federalist, but the dominant Federalist faction there was more closely related to the group that supported the Federal Constitution than to the emerging party of

Alexander Hamilton. Thus, many of the Federalists did not see themselves as "party men" and, although they supported Washington, were not necessarily tied to Hamilton's economic schemes or foreign policy views. In time, the Charleston Federalist leaders divided. Washington's patronage policies had cemented the allegiance of some, but had alienated others.[40] Moreover, questions of foreign policy split the Federalists into one faction allegedly orchestrated by the British merchants and another led by the more nationalistic Rutledges and Pinckneys.[41] The split deepened as the High Federalist-dominated United States Senate rejected John Rutledge's appointment as chief justice of the United States Supreme Court, largely because of his opposition to the Jay Treaty (which the merchant faction supported).[42] Within Charleston itself, the merchants' group was apparently the stronger because their candidate for the House of Representatives, William Smith, managed to retain his seat despite the active opposition of the Rutledge-Pinckney faction. In the lowcountry outside the city, however, the strength of the merchant party sharply diminished.

While the Federalists squabbled, the Republicans gained strength. In the early 1790s the Democratic Society of Charleston recruited a strong following among the artisans, and Charles Pinckney abandoned the Federalist camp and emerged as a forceful and able leader. When

Edmund Genet, the French ambassador, landed in Charleston in 1793, pro-French sentiment reached its height, particularly in the backcountry. Even though Genet's imprudence caused embarrassment, the Republican party continued to gain strength and by the late 1790s dominated much of the state outside Charleston and the surrounding areas.[43]

The national Federalist party made a concerted effort to keep South Carolina in the fold. In 1796 and again in 1800, it offered the vice-presidential position to one of the Pinckney brothers, but in neither year did the candidate, who in both cases refused to electioneer, carry the state for the party's presidential candidate. Had John Adams been able to ride on Charles Cotesworth Pinckney's coattails in South Carolina in 1800, he would have defeated Jefferson for the presidency.[44] Thus, the Federalist party in Charleston, while it appeared vigorous, suffered a failure of leadership and became increasingly moribund. In 1798 William Smith retired from the House of Representatives to become ambassador to Portugal and thus deprived the pro-British faction of its most effective leader and pamphleteer. By Jefferson's inauguration, John and Edward Rutledge were dead, and the Pinckney brothers, who were each to live another quarter-century, offered no leadership. The next generation produced no Federalist leaders to replace them.[45] The Republicans at times

seemed to offer little more, except enthusiasm. Charles Pinckney, their most able leader, had already started down the road that led to Calhoun, nullification, and ultimately secession. In the period after 1800, Charleston lost its cosmopolitan worldliness and increasingly turned inward.[46]

III

Undoubtedly, genuine conflict existed in postwar South Carolina, but it is only a part of a much larger whole. In particular, the emphasis on parties in the 1790s seems misdirected, for party conflict left no lasting legacy in the state. The actions of the Assembly, on the other hand, shaped the course that South Carolina would follow into the nineteenth century. Although scholars have examined, to some extent, how the state government responded to riots, pressure for reapportionment, and fiscal crisis, the nature of governmental decisions in less pressing, but nevertheless crucial, matters has to date scarcely been discussed. Agreement can be as informative as conflict. For example, the way the Assembly modified the court system during the period demonstrates that they were concerned with providing equal access to law and reveals the type of courts that the citizens desired. Because this reorganization of the

judicial system spawned little conflict, it has gone unreported, yet it dramatically altered the dissemination of justice in the state. Other questions await attention. How did the legislature deal with the requests contained in the thousands of petitions that it received in the 1780s and 1790s? What issues repeatedly came before it? Did the government foster economic growth within the state and, if so, how? Did a conservative Senate block popular House actions, as happened elsewhere in America? Only by studying all aspects of the Assembly's actions does it become possible to discover the Assemblymen's goals for the state.

It is worth remembering that the prewar conflicts in South Carolina led to revolution and the postwar ones to accommodation. The pattern of legislation that emerges from the Assembly's actions reveals that the Assembly consistently favored compromise over any raw show of power. Only a very few issues, most notably apportionment of the legislature and moving the capital, provoked protracted resistance, and even on these issues compromise eventually won out. Close examination of the collective actions of the Assembly reveals that the process of accommodation within South Carolina resulted from the Assembly's self-conscious implementation of their republican values. This is not to say that the dominant elite lightly abandoned their position of power, but

rather, that their post-Revolutionary understanding of the nature and process of government led them to be concerned with implementing, within the bounds of their own judgment, the expressed will of the people and with using their governmental powers to further the best interest of the republic.

NOTES

CHAPTER II: THE ISSUES IN POSTWAR SOUTH CAROLINA

[1]David Ramsay, History of the Revolution of South Carolina from a British Province to an Independent State (Trenton, N.J., 1785).

[2]Gary D. Olson, "Dr. David Ramsay and Lt. Colonel Thomas Brown: Patriot Historian and Loyalist Critic," South Carolina Historical Magazine, LXXVII (1976), 257-267, concludes that although Ramsay was partisan, he was less biased than one might expect.

[3]For example, Edward McCrady, The History of South Carolina in the Revolution, 1775-1783 (New York, 1901-1902); David D. Wallace, The History of South Carolina (New York, 1934-1935); and Wallace, South Carolina: A Short History, 1520-1948 (Columbia, S.C., 1951).

[4]Alice Hanson Jones, Wealth of a Nation to Be (New York, 1981), Appendix A, part II, 352-362. Jones found the Charleston area to be at least twice as wealthy as any other area she tested. Nine of the ten richest decedents in her study died in Charleston. In part, this is because most of the wealthy citizens of South Carolina lived in Charleston even though the source of their wealth was elsewhere. For a description of South Carolina on the eve of the Revolutionary crisis, see Lawrence Henry Gipson, The British Empire Before the American Revolution, II (New York, 1958), 127-151. The terms lowcountry and backcountry are consistently used here to divide South Carolina. Others prefer a tripartite division into lowcountry, middle country, and upcountry, but neither nomenclature is precise or consistently useful. The actual configuration probably resembled a spectrum ranging from strongly pro-mercantile interests in Charleston to frontier self-sufficiency and distrust of authority. The scale is not exactly related to geography; persons of all persuasions could be found in nearly all areas.

[5]The number of Charles Pinckneys in colonial South Carolina often creates confusion. The Charles Pinckney referred to here is the middle Charles Pinckney (1731-1782), the father of the Charles Pinckney (1757-1824) who attended the Federal Constitutional Convention. Whenever Charles Pinckney appears below without explanation, it will refer to the youngest of the name, the Republican cousin of Federalist Charles Cotesworth Pinckney, who will always be called by both of his given names.

[6]By the time of the Revolution, not all backcountry inhabitants were poor. See Rachel Klein, "The Rise of the Planters in the South Carolina Backcountry, 1767-1808" (Ph.D. diss. Yale University, 1979).

[7]For South Carolina politics, 1760-1776, see Richard M. Brown, The South Carolina Regulators (Cambridge, Mass., 1963); Richard Walsh, Charleston's Sons of Liberty: A Study of the Artisans, 1763-1789 (Columbia, S.C., 1959); and Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies (Chapel Hill, N.C., 1963), 35-39, 49, 53-65, et passim. A brief description of the events of the Revolutionary crisis is found in Robert M. Wier, "A Most Important Epocha:" The Coming of the Revolution in South Carolina (Columbia, S.C., 1970). More general works on the colonial period include M. Eugene Sirmans, Colonial South Carolina: A Political History, 1663-1763 (Chapel Hill, N.C., 1966); Robert M. Wier, South Carolina: A History (Millwood, N.Y., 1983); and Wallace, South Carolina: A Short History, 1520-1948.

[8]For information on the Council, see Jackson T. Main, The Upper House in Revolutionary America, 1763-1788 (Madison, Wis., 1967), 11-20, 43, 114-123, 198-199, and Richard Stone, "The South Carolina Privy Council: A Study in Shared Executive Power" (Ph.D. diss, University of Tennessee, 1967).

[9]Presumably, Radical Whig thought fueled their mistrust. See Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Mass., 1967).

[10]For information on the backcountry, see Brown, South Carolina Regulators; Klein, "The Rise of the Planters in the South Carolina Backcountry"; and D. Huger

Bacot, "The South Carolina Up Country at the End of the Eighteenth Century," American Historical Review, XXVIII (1923-1924), 682-698. For a discussion of the personal estates of wealthy citizens of the backcountry, see Mary K. Davis, "The Featherbed Aristocracy: Abbeville District in the 1790s," South Carolina Historical Magazine, LXXX (1979), 139-155.

[11]Biographical works about South Carolina's leaders are relatively rare. The only published Rutledge biography is Richard Barry, Mr. Rutledge of South Carolina (New York, 1942). Its portrayal of John Rutledge is marred by the author's elitism, racism, and a worshipful attitude. Edward Rutledge, despite his undoubtable importance, has proven even more elusive. The only full-scale work, Richard Brent Clow's "Edward Rutledge of South Carolina, 1749-1800: Unproclaimed Statesman" (Ph.D. diss. University of Georgia, 1976), assesses him only in terms of his superficial accomplishments and activities and fails to present his complexities. The Pinckneys have fared somewhat better of late. Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (Chapel Hill, N.C., 1967), and Frances Leigh Williams, A Founding Family: The Pinckneys of South Carolina (New York, 1978), are useful, if limited. Biographies and articles on Christopher Gadsden and Henry Laurens exist, but neither was particularly important after the war. The best biographical work for South Carolina in this period is George C. Rogers, Jr., Evolution of a Federalist: William Loughton Smith of Charleston (1758-1812) (Columbia, S.C., 1962). It ranges far beyond the bounds of conventional biography and is enormously helpful.

[12]Lee Soltow, "Socioeconomic Classes in South Carolina and Massachusetts in the 1790s and the Observation of John Drayton," South Carolina Historical Magazine, LXXXI (1980), 283-305.

[13]Quoted in Frederick Bowes, The Culture of Early Charleston (New York, 1942), 1.

[14]Quoted in Thomas Clark, The Grand Tour: 1780-1865 (Columbia, S.C., 1973), 12. Lamb observed the city during the British occupation and therefore did not see it at its best.

[15]While Williamsburg filled some of these functions for Virginia, it failed to provide a cohesive center, largely because of the lack of a resident gentry class. See Louis B. Wright, South Carolina: A Bicentennial History (New York, 1974), 103.

[16]Bowes, Culture of Early Charleston, 115.

[17]The most recent monograph on the period, Jerome J. Nadelhaft, The Disorders of War: The Revolution in South Carolina (Orono, Me., 1981), 216-217, finds the decline of deference and the increased sense of worth of the common people to be the most important legacy of the Revolution.

[18]For a summary of the progression of constitutional changes involved, see D. Huger Bacot, "Constitutional Progress and the Struggle for Democracy in South Carolina Following the Revolution," South Atlantic Quarterly, XXIV (1925), 61-72.

[19]Only one-half of the thirty-two elected could attend. Nadelhaft, Disorders of War, 73-74.

[20]The address is printed in A. S. Salley, ed., Journal of the House of Representatives of South Carolina, January 8, 1782--February 26, 1782 (Columbia, S.C., 1916), 9-13.

[21]This matter is discussed in Charles Gregg Singer, South Carolina in the Confederation, (reprint of 1941 ed., Philadelphia, 1976), Chapter VI; Nadelhaft, Disorders of War, Chapter IV; and Walsh, Charleston's Sons of Liberty, 111.

[22]Walsh, Charleston's Sons of Liberty, 113-116. For more information on confiscation and amercement, see Chapter X below.

[23]For a detailed account of these proceedings see Nadelhaft, Disorders of War, Chapter V, and Rogers, Evolution of a Federalist, Chapter VI.

[24]For the governmental reaction to the riots, see Stone, "The South Carolina Privy Council," Chapter V. For details on Gillon's controversial career and the story of the ship South Carolina, see Berkeley D. Grimball, "Commodore Gillon of South Carolina, 1746-1794" (M.A. thesis, Duke University, 1951); D. E. Huger Smith, "Commodore Alexander Gillon and the Frigate South Carolina," South Carolina Historical and Genealogical Magazine, IX (1908), 189-219; and Aileen Moore Topping, "Alexander Gillon in Havana, 'This Very Friendly Port,'" South Carolina Historical Magazine, LXXXIII (1982), 34-49. The clearest short account of the South Carolina's saga is in Stone, "The South Carolina Privy Council," Chapter IV. He concludes that "Gillon had: (1) leased in Europe on unfavorable terms an enormously expensive vessel of doubtful value to his state; (2) cruised in her with moderate success but at a net loss; and (3) turned the ship over to [Captain John] Joyner who had lost her irretrievably" (p. 143). The accounts for the ship were not closed until 1855.

[25]Philip D. Morgan, "Black Society in the Lowcountry, 1760-1810," in Ira Berlin and Ronald Hoffman, eds., Slavery and Freedom in the Age of the American Revolution (Charlottesville, Va., 1983), 83-141.

[26]Favorable interpretations of these acts can be found in Rogers, Evolution of a Federalist, Chapters IX and X; Nadelhaft, Disorders of War, Chapter IX; and Robert A. Becker, "Salus Populi Suprema Lex: Public Peace and South Carolina Debtor Relief Laws, 1783-1788," South Carolina Historical Magazine, LXXX (1979), 65-75. Singer, South Carolina in the Confederation, Chapter V, is opposed to such "irresponsible" policies.

[27]It is worth remembering that most planters habitually lived on credit from year to year, and many, perhaps a majority, could not afford to develop a reputation for avoiding payment of just debts.

[28]Becker, "Salus Populi," makes this point strongly.

[29]David Ramsay, while opposed to pro-debtor legislation, did believe that the state was "much more quiet" than the northern ones as a result. Still, he realized that the solution was only temporary. "Much of

our quiet arises from the temporizing of the legislature," he informed Thomas Jefferson. In the long run the solution had to lie elsewhere. Ramsay to Jefferson, Apr. 7, 1787, in Julian P. Boyd, ed., The Papers of Thomas Jefferson, XI (Princeton, N.J., 1955), 279. See also Nadelhaft, Disorders of War, 172.

[30]This does not imply that the legislators were all agreed. The fight was bitter, but the pro-debtor majority won.

[31]For land speculation, see Klein, "The Rise of the Planters in the South Carolina Backcountry," Chapter IV, and Ronald E. Bridwell, "The South's Wealthiest Planter: Wade Hampton I of South Carolina" (Ph.D. diss., University of South Carolina, 1980), Chapters VII and VIII, especially 283-290, 304-309.

[32]Klein, "The Rise of the Planters in the South Carolina Backcountry," passim.

[33]Nadelhaft, Disorders of War, Chapter VII, especially 142. This interpretation has been called into question by the research done in conjunction with the publication of House Journals for the period. See Micheal Stevens, ed., The Journals of the House of Representatives of South Carolina, 1791, The State Records of South Carolina (Columbia, S.C., 1986), xxv-xxvi. I am grateful to Dr. Stevens for providing me with the introduction to this volume in advance of publication.

[34]See Jackson T. Main, The Antifederalists: Critics of the Constitution, 1781-1788 (Chapel Hill, N.C., 1961), 215-220.

[35]See W. Robert Higgins, "The South Carolina Revolutionary Debt and Its Holders, 1776-1780," South Carolina Historical Magazine, LXXII (1971), 15-29.

[36]See George C. Rogers, Jr., "South Carolina Ratifies the Federal Constitution," Proceedings of the South Carolina Historical Association, LXI (1960), 41-62.

[37]See Main, The Antifederalists. Most accounts rely on a colorful letter from Aedanus Burke to John Lamb, June 23, 1788, Lamb Papers, New York Historical Society. Rogers, Evolution of a Federalist, 156-157, quotes the letter at length.

[38]See Michael Kennedy, "Le Club Jacobin de Charleston en Caroline Du Sud (1792-1795)," Revue d'Histoire Moderne et Contemporaine, XXIV (1977), 420-438.

[39]See Rogers, Evolution of a Federalist, passim.

[40]Lisle A. Rose, Prologue to Democracy: The Federalists in the South, 1789-1800 (Lexington, Ky., 1968), 102-103, argues that lack of patronage drove Charles Pinckney into the hands of the Republicans.

[41]The best discussion of the Federalist factions is in Rogers, Evolution of a Federalist, Chapters X, XI, XII. More general accounts dealing with South Carolinians include James Broussard, The Southern Federalists, 1800-1816 (Baton Rouge, La., 1978), and Rose, Prologue to Democracy. All of these works demonstrate the fragmented nature of the Federalist efforts in the state. Also see Ulrich B. Phillips, "The South Carolina Federalists," American Historical Review, XIV (1908-1909), 529-543, 731-743, and "South Carolina Federalist Correspondence, 1789-1797," ibid., 776-790.

[42]A complicating factor was Rutledge's increasing mental instability. Exactly what his condition was in 1795 and how well this was known in Congress is conjectural. For some information on the subject, see Rogers, Evolution of a Federalist, 282-283.

[43]John H. Wolfe, Jeffersonian Democracy in South Carolina (Chapel Hill, N.C., 1940).

[44]See Arthur Scherr, "The Significance of Thomas Pinckney's Candidacy in the Election of 1796," South Carolina Historical Magazine, LXXVI (1975), 51-59.

[45]The second generation leaders in South Carolina,

such as John Rutledge, Jr., failed to mobilize popular support in the manner of their northern compatriots. See David H. Fischer, The Revolution of American Conservatism (New York, 1965).

[46]This is the thesis of George C. Rogers, Jr., Charleston in the Age of the Pinckneys (Norman, Okla., 1969).

CHAPTER III

THE GOVERNORS' MESSAGES

I

No single set of documents reveals more about the Assembly's world view, plans, and priorities than the governors' annual messages to the Assembly. The governors, who had all served in the Assembly and were elected by it, used their messages to report on the state of the state, to identify specific areas where legislation was needed, and on occasion to explain their understanding of the nature of the republic. Although the high property requirement mandated in the constitution and the de facto need for the executive to live in the capital effectively guaranteed that every governor would come from the lowcountry, they did not invoke parochial goals. A self-consciously consensual tone permeated their messages because they saw themselves devoted to the good of the entire state.

In the 1780s, the messages focused on the need to solve the pressing issues caused by the war. Public and private debt predominated, but the Assembly also needed to restructure the institutional base of the government. The form of the messages and the Assembly's replies reveal the

initial tension between the two branches of government. Over the course of the 1780s, however, the governors and Assembly developed a republican style of dealing with each other. The governors learned not to demand, and the Assembly ceased to defer to them, even verbally.

In the 1790s, when the Assembly had resolved most of the postwar difficulties and firmly established its control of the government, the governors began to discuss new themes about the nature of their society. By the end of the decade, the chief executives were overtly spelling out what they saw to be the needs of a republican society. Most of the issues they raised were directly or indirectly aimed at protecting republican government. Repeatedly they carefully explained how education, improved laws, better courts, and the militia system all strengthened a good popular government.

The responses of the Assembly, both in word and deed, suggest the extent to which these views were shared, and offered the Assembly a chance to show its deference or its independence. In word, the Assembly jealously protected its prerogatives and insisted that the governors defer to its rights. Once that principle was firmly established, the Assembly was less inclined to assert its prerogative at every turn. In action, the legislators showed that they shared many of the concerns that the governors articulated. They restructured the court system three times and passed

dozens of laws relating to specific procedure. They established schools, regulated the militia, and constantly adjusted their fiscal program. The need to maintain republican liberty and good order provided the rationale for all of these measures.

II

In the period covered by this study, ten elections yielded seven different governors, but these men represented a very small group. Two of them, Charles Pinckney (served 1790-1792, 1797-1798) and William Moultrie (1785-1787, 1793-1794), together served half the time. Fully 60 percent of the time either a Pinckney or a Rutledge filled the office.[1] To realize the dominance of this family connection, one should note that John Rutledge served as governor for five of the six years immediately prior to this study, and in the later stages of the war the Assembly named him dictator with the power to do anything necessary to prosecute the war except take the life of a citizen. For two years, he was the government of the state. His brother, Hugh Rutledge, sometimes served as Speaker of the House, and another brother, Edward Rutledge (governor, 1799-1800), was recognized as the the most important power broker in the lower house throughout the postwar period.

By any reckoning, the governors comprised a palpably elite and cohesive group. All of them resided in Charleston. The constitutions of 1778 and 1790 required not just economic security, but great affluence as a precondition for election. The former set the property qualification at £10,000 currency, while the latter required £1,500 sterling. Most of the postwar governors also had military experience. Moultrie proved his courage in 1776 by commanding the palmetto log fort on Sullivan's Island which repelled the British fleet and gave the state its nickname. Thomas Pinckney (served 1788-1789) spent the entire Revolution on active duty in the Continental Line, rose to the rank of major, and was seriously wounded at Camden.[2] Arnaldus VanderHorst (served 1795-1796), Charles Pinckney, and Edward Rutledge all were militia colonels, and the former served as a captain under Francis Marion, the famous Swamp Fox. Somewhat surprisingly, it was only the first two postwar governors, John Mathews (served 1782-1783) and Benjamin Guerrard (served 1784-1785), who had not fought in the Revolution.

Revolutionary constitutions throughout the United States tended to limit governors' power because experiences with royal and proprietary governors, as well as the imperial crisis, led men to fear executive power. Pennsylvania went so far as to have an executive council rather than a single governor.[3] Although the South

Carolina Constitution of 1776 gave the governor broad powers, including an absolute veto over legislation, the Constitution of 1778, like those in the other states, significantly weakened those powers. In the postwar period, the governors had administrative rather than appointive or legislative powers. The Senate and House in joint session elected the governor by ballot, and he served for two years. After 1790, he was not eligible to succeed himself.[4]

Custom and the constitution compelled each governor to send a report to both houses of the Assembly at the beginning of each legislative session, and this offered him his best chance to shape the course of legislation. Occasionally a governor provided only a minimal message. In 1788, for example, Thomas Pinckney sent three sentences. He opened with a formal preamble, and then announced that he would send relevant messages as the occasion arose. Finally, he singled out the need to act on the proposed Federal Constitution as the most pressing pending business.[5] But Thomas Pinckney was the exception. His fellow governors crafted longer messages (up to twenty large folio pages) that revealed their views on specific issues, their conceptions of the needs and nature of society, and their beliefs concerning the appropriate functioning of government. Charles Pinckney was most verbose, but all of the governors, even Thomas Pinckney, used their opportunity to try and influence the actions of

the legislature. These messages reveal the issues facing the Assembly, the changing relationship between the two branches of government, and the governors' understanding of the nature of their own society.

III

John Mathews, the first postwar governor, was not particularly typical. Others possessed more wealth, boasted more distinguished military records, and cultivated national reputations. Moreover, Mathews was a second choice. His election in 1782 came after Christopher Gadsden refused to qualify for the office.[6] Nonetheless, like all the others, Mathews had substantial qualifications. While his military career had ended with the 1760 war with the Cherokee Indians, he actively participated in Revolutionary politics, as a member of the first and second provincial congresses, Speaker of the House of Representatives in 1778, and then delegate to the Continental Congress. After his term as governor, he became state chancellor.

Mathews's activities while in the Continental Congress might have suggested that he would prove to be a headstrong and arbitrary executive. While attending Congress (accompanied by his wife), he met and apparently

fell madly in love with a girl many years his junior. Although she did not return his affections, he wrote her a series of extravagantly phrased letters which reveal a decided lack of restraint. His official activities in Congress suggest similar impatience and willfulness. He served on the committee of the army in 1780 and traveled to camp to investigate circumstances there. When his two colleagues left camp, he became the sole representative of Congress present, and his reports to that body began to demand certain actions. After Congress failed to act as he suggested, Mathews wrote a series of intemperate, insulting letters to them. The situation nearly led to a duel, and his fellow congressmen understandably received him coolly when he returned.[7]

Surprisingly, as governor, Mathews consistently demonstrated restraint and good judgment. Whether because he learned his lesson in Congress or for some other reason, he showed a marked ability to work with the legislature, and his actions reveal that he understood well the tension that existed between the two branches of government at a time when their relationship was not yet firmly established. Under British rule, the executive and the Assembly consistently were at odds, and often they accomplished little, even in the face of dire need. Mathews's achievement lay in raising the important issues, yet not dictating to the legislature what it must consider and act upon.

Mathews's address to the Assembly immediately after the British evacuated Charleston is a model of its genre. Structurally it epitomizes the tripartite nature of these messages. First came a formal greeting which served an important ceremonial function by establishing the importance of the gathering and the work at hand. Then the governor related the actions he had taken and the messages he had received during the Assembly's recess. Finally the messages offered leadership: suggestions--not commands--about what needed to be done. Within this framework, Mathews revealed the nature of the many problems facing the state and, if one looks carefully, strove to show that he was not attempting to usurp any of the legislature's powers and prerogatives.

Mathews began by acknowledging the need for a long session--the "country having been so long deprived of your deliberations"--but hastened "Before I proceed[,] . . . to offer you my sincerest Congratulations on the repossession of our Capital." He quickly moved on to business. First he detailed and explained the actions he had taken. After failing to raise troops by offering a bounty of slaves taken from confiscated estates (the method the 1782 legislature authorized), he turned instead "by Advice of the Privy Council" to selling the slaves and using the money to pay a thirty-guinea bounty to each man who enlisted. Later he had to suspend this method because the

"great Scarcity of Money in the Country, soon caused the Prices [of the slaves] to be so reduced." At that point the governor decided to wait until "I knew whether it met with your Approbation." He had also allowed British merchants to remain and sell their goods after their army left Charleston, paroled the other British citizens who remained behind, and apprehended all banished persons who were found.[8]

The final section of the address advanced proposals for consideration. In the crux of his remarks, Mathews attempted to draw the Assembly's "very particular attention, to a matter of the first consequence," debt. Mathews was right. Debt and related problems--accounts, taxes, and the Continental quota--threatened to destroy the state's already battered economy. Nonetheless, other matters also needed attention. He therefore presented the dispatches he had received from various persons, offered a brief account of the prospects for a peace treaty, and pointed out the need to remain prepared for war. Continental General Nathanael Greene had offered to help rebuild Charleston's defenses, so Mathews begged "leave to refer you to his Letter to me on this Subject." In short, "I have endeavoured to compress several Matters, I had to communicate to you, in as narrow a Compass as possible knowing that every moment of your time is precious."[9]

As a blueprint for legislation, the message had

several facets. First, Mathews suggested an agenda. By singling out fiscal matters as of overriding importance, he ignored some important areas of legislation which the Assembly eventually addressed. For example, of equal importance was the need to reestablish the legal system in the state by continuing lapsed laws, setting up courts, and appointing new justices to replace those unable to serve. Other matters, such as the problems arising from the confiscation and amercement acts, also demanded the Assembly's attention. But Mathews had not intended to provide a complete package, and surely one would have been resented.

Second, in reporting his actions, the governor stressed on no fewer than seven occasions that he had acted with "Advice of the Privy Council." Although the phrase was formulaic and taken directly from the constitution, it undoubtedly was intended to emphasize that the governor was not acting arbitrarily. The point deserved particular emphasis to distinguish Mathews from arbitrary royal governors and to signify that the wartime conditions that gave rise to John Rutledge's dictatorial powers were at an end. As the chief executive of a republican state, Mathews was making his own commitment to the system of non-personal rule.

Finally, while stressing the need for legislation in certain areas, Mathews never dictated to the legislature.

"The first object for your Consideration will be, the utility of passing a Tax Bill," he wrote, "and Secondly, the devising of some efficacious plan in aid thereof, for the regular and Substantial support of the Government, and satisfying the demands of the United States." The need was made clear, but "How far the resources of the State can be applied to answer these great ends, is the matter proper for your enquiry."[10] All in all, the message accomplished it ends adroitly.

The formal response from the House of Representatives proved equally interesting. Although more than a thousand words long, it said nothing of any substance. Consider, for example, the following statement: "With every possible Heart felt pleasure, we receive the earnest Congratulations of your Excellency, on the Re-Possession of our Capital, and the Country of this State, and the present prosperous situation of our Affairs; and beg leave Sir to return you our Sincerest Tokens of Joy on an Event, which must enliven the Heart of every true Lover of his Country and every Friend to Virtue and Liberty." In alluding to particulars, however, the House implicitly asserted its authority as surely as the governor had earlier deferred to it. Thus, while approving the measures Mathews had taken to provide recruits for the Continental Line, the House stated that "we shall take care to provide such further Means as will be necessary." The remainder of the message answered the

governor point by point, but vaguely. For example, provisions for the Continental quota "shall be taken into our early Consideration, and the most effectual means provided, for settling those demands."[11]

Obviously, neither side was entirely certain what the new ground rules were. Structurally, they were following the pattern developed under royal government, but the circumstances had changed dramatically. The governor wished to lead and offer direction but wisely did not force his position, and the House chose to respond formally but not to say much. The next year the House adopted a much shorter way to respond to a longer message: "The great variety and importance of the Several matters recommended in your Excellency's speech merit in the highest degree our earliest and closest attention," which they promised to provide.[12] Note that the statement implies that the House will consider the proposals because of their inherent merit, rather than because of their origin. Every year these responses grew shorter until 1786 when the House did not respond at all to Governor Moultrie's message, but simply parceled it out to the appropriate committees.

Nothing better reveals the skill of Mathews than the career of his successor, Benjamin Guerrard, whose overbearing tactics precluded an effective working relationship with the Assembly. As governor, Guerrard first presided over a special session he called in the

summer of 1783 to consider "divers Weighty and important affairs" and because of the "Particular Request of Congress to summon you." At first, he demanded that they move with celerity. Anxious "that no time be lost by the usual ceremonies, I open the session with this short message."[13] A few days later, after presenting a half dozen proposals, the governor dropped a bombshell. Although aware "the season of the year [will] not admit . . . of a long session," he proposed eighteen new areas where legislation was needed.[14] This was, by any measure, a preposterous amount of legislation for a special session. During the entire session only eleven bills were introduced, some of which were on different subjects than those the governor proposed. Had all the measures been important or necessary, Guerrard probably would have fared better, but in many cases the gratuitously inconsequential nature of the proposals proved insulting to the Assembly. One of them epitomizes the trivial nature of some of his suggestions: "I recommend to your Consideration before you rise, an ample Provision for defraying the expenses of Country Members from their leaving to their return home."[15] In this case, the content of the message was benign, but it was none of the governor's business. If ever there was an issue about which the legislature should need no reminding, this was it. At the close of the session, the House simply informed him that "we are Sorry

that the necessary shortness of the Session wou'd not permit us to give that due Consideration" to the other matters he had proposed.[16]

In the regular legislative session of 1784, Guerrard attempted even more firmly to asset his leadership. His opening speech laid out over twenty-five major areas for legislation, but, more importantly, he failed to defer to the Assembly. In places, he was almost patronizing in the manner of the royal governors, as when he stated, "I am well pleased . . . [to see] so handsome a number of the people's representatives attending." At other points he ventured dangerously near the legislature's toes. When he stressed the need "to reconsider the Ordinance for Setting a Depreciation Table," he implicitly criticized the Assembly's actions of the previous year.[17]

Interestingly, nearly one-half of the message was an attack on the Society of the Cincinnati. "We seem, at present," he reported, "to be society-mad. . . . Societies sometimes all at once start up from very disingenuous, mysterious, artful and Sinister motives in their promoters."[18] Guerrard's complaints were properly republican. Although voluntary societies grew rapidly in this period, the Society of the Cincinnati was something of a special case since membership was to be limited and hereditary.[19] The society was widely feared as the prelude to a military aristocracy and denounced for promoting inequality between citizens.

Its members, however, who apparently had no ulterior motives, tended to discount the sincerity of their opponents and dismissed the objections. In attacking the society, Guerrard had something more than republican principles in mind. He was challenging head-on the strongest elite faction in the state, for Thomas and Charles Cotesworth Pinckney promoted the society in South Carolina and later served successively as the third and fourth president of the national organization, from Alexander Hamilton's death in 1804 until Thomas's death in 1828. It must have been difficult for their friends and acquaintances in the Assembly to envision them as the voluptuous effeminates that Guerrard portrayed.[20] Moreover, it was not clear what action he expected the Assembly to take.

In his address, Guerrard had revealed himself to be insensitive and overbearing, but worse was to follow. Upon receiving the usual formal response to his address from the House, he replied, "In behalf of my Country, I thank you."[21] He seemed to be verging upon seeing himself as the personification of the state. It is not particularly noteworthy that the legislature eventually addressed many of the issues which the governor identified as crucial, because almost any knowledgeable public official would have produced a similar list. What is noteworthy are the ways in which the Assembly expressed their hostility, which undoubtedly

intensified as he pummeled them with bombastic messages. On February 19, the governor forwarded a letter from the state's delegates in Congress, which he said required immediate attention. The Senate promptly postponed consideration of it for four days and then sent it to a committee.[22] At the end of a week Guerrard asked if he should delay the express rider any longer in hope of getting a response from them. The Senate retorted that this "House cannot determine [that]," implying that since the governor had unilaterally decided to detain the rider (perhaps in an attempt to force the Assembly's hand), he must decide whether to release him.[23]

Sharper rebuffs were in the offing. Guerrard's proposal to receive taxes in indents as well as specie was summarily rejected as an invasion of legislative right.[24] When he asked for the power to appoint delegates to the Continental Congress should a vacancy occur during the recess of the Assembly, he remarked, "I flatter myself that this recommendation will not be deemed improper."[25] He was wrong. After a two-week delay, the Senate responded that "it would be highly improper to vest in the Executive at any time an authority to elect delegates to Congress. . . . Such a power belongs solely to the Representative Body of the People, and to delegate it . . . would . . . be repugnant to the Spirit of the Constitution."[26] Similarly, when Guerrard recommended people for vacant positions, they

were not appointed. But the most amazing message from the Governor arrived on March 3, 1784. "If for secret purposes I had the management of some public money," he began, in only one year, he "could double it for the state." The Senate retorted that "the Legislative Body of this State cannot consistent with the Laws now in existence put into the hands of the executive any sum of money for secret purposes."[27]

After the rebuffs of 1784, Guerrard changed his tactics. The next year he reduced his opening speech to three sentences explaining that "As the Dispatches received in your Recess will now be laid before you, it were therefore needless to take up Your time with an enumeration of the main Objects worthy of the Legislative consideration."[28] Three days later the Master in Chancery appeared in the House with "Twenty Six Messages from his Excellency the Governor."[29] As promised, the messages contained the dispatches received during the recess, but Guerrard could not resist inserting his opinions on the need to revamp the militia law, to install juries in the chancery courts, to pay foreign creditors, and to forgive all amercements.[30] The most egregious (and least elegantly worded) of these proposals was number thirteen. "Having heard it was intended to propose to the Legislature in the present Sessions an emission of paper money, to impart my thoughts thereon to them I conceive to be my duty, which will be

found on the paper herewith."[31] The House disposed of these measures by ignoring them. Only seven of the twenty-six messages were even sent to a committee, and only one of the governor's concerns, one relating to the roads and militia, was ever directly addressed by the legislature. Guerrard was undoubtedly a trial for the Assembly, but during his tenure the legislature clearly defined its independence of the executive. No later governor would ever attempt to act like his royal predecessors.

After the ordeal of dealing with Guerrard, the Assembly elected an entirely different type of leader, the bluff and unpretentious William Moultrie, whose fame derived from his military rather than his political career. From the time of the Cherokee war of 1760, Moultrie was acknowledged as one of South Carolina's premier soldiers. Twice during the Revolution he personally made decisions that saved Charleston from the British, and he emerged from the war as a Continental major general and the highest ranking officer in the state. Despite his military orientation, he remained genial and easy going, not at all the martinet. No doubt Guerrard was considerably discomfited by the selection, for Moultrie presided over the state chapter of the Society of the Cincinnati. In short, the election of Moultrie completed the legislative repudiation of Guerrard and his programs.

Like Guerrard, Moultrie began his tenure with a

special session, arguably the most important single session in the period. Again like his predecessor, he recognized the inconveniences of the season, but in stark contrast to Guerrard he limited his attention to the urgent business at hand--the need to stop foreclosures. He stated the need succinctly: "Sorry I am, and extremely so, for the Causes and do much lament the necessity which obliges an interposition of the Legislature in private Contracts, but Gentlemen such has become the situation between Creditor and debtor, that the fate which awaits the latter if allowed to take place, will fall little short of ruin. It is not particular . . . but exists throughout the State, a few, very few excepted." He explained that the problems resulted from bad harvests and the lack of circulating medium, and emphasized that debtors would willingly pay if only the sale of their estates would raise reasonable amounts of money. His concluding comment highlights the differences in the tone between Moultrie and his pretentious predecessor. "I cannot expect that you will enter largely into Business in this Session," he wrote, "And I therefore rest Satisfied you will employ the Moments of the present meeting in deliberation and Concluding upon such Means as may restore harmony and Good Government again throughout all ranks and in every Part of the State."[32] Clearly Moultrie knew that his role was to state the problem, which he did succinctly, rather than to dictate the solution,

which was in the hands of the legislature.

In the more normal atmosphere of the regular sessions, Moultrie continued to exercise restraint. His message opening the regular session of 1786 encompassed only four major points: the need to allow Congress the power to regulate trade; the need to pay the Continental quota; the need for a new militia law; and referral to the Assembly of matters which had come up during the recess. The low-key approach continued in 1787 despite widespread concern about the economy, pro-debtor legislation, and the national government. Although he believed that "since the commencement of our Revolution to this Crisis, there has not perhaps, been a period where the Legislative body was more required," he limited his role to taking "the liberty of pointing out a few [measures for] . . . your first & most serious attention." The contrast with Guerrard could not have been plainer. "Among the public papers received by me . . . I humbly conceive those marked No 1 & 2 . . . are of such importance as to induce you to enter on their merits as soon as possible."[33] The measures he referred to were the calling of the Federal Constitutional Convention and the need to enlarge the Continental Army. The Assembly approved the convention with little debate.

Moultrie's plain-spokeness proved effective. His communications contained no hidden meanings, for the old soldier never hesitated to speak his mind. Moultrie did

offer concrete proposals, but he did so diffidently, as when he suggested, "Permit me Gentlemen humbly to propose to your consideration the alteration [of] the present mode of taxation." He proposed an impost and excise combination so that "each individual [would] contribute in such sort as not to be sensible of it." This coupled with a "very moderate Tax on Land, Negroes and other property as usual [would] soon sink the public debt."[34] The legislature passed the impost as the governor requested, although it did not provide a solution for the state's fiscal woes.

Thomas Pinckney, like Moultrie, had been a line officer during the war and manifested strong continental sympathies.[35] His messages remained brief and were devoted to his constitutional task of designating certain primary areas of concern. "Considering the federal Union as an object of the first magnitude, I have selected the [proposed new] Constitution . . . as the subject of the present communication."[36] With that pregnant statement, the message ends. It did nothing to sully Pinckney's reputation for taciturnity. His second message was a little more verbose. He identified three areas needing attention, but offered no suggestions as to how the legislature should act. First, "the formation of such an arrangement of our finances as will provide for the Support of Civil Government, and form an efficient fund for discharging our Public debt, will undoubtedly occupy

your most serious attention." Second, he stressed the need to satisfy foreign creditors. Finally, he referred to the Assembly an address from the Virginia legislature suggesting amendments to the Federal Constitution.[37]

By the time Thomas Pinckney left office in 1790, several transitions in the governor's role were complete. Most importantly, Guerrard's highhanded tactics, so reminiscent of the royal governors, had been completely repudiated. Although later governors would cajole and wheedle, none would so artlessly try to wield the prerogative. Also, the messages themselves had changed. As late as 1788, the opening of Thomas Pinckney's message recalled the formulaic ritual of the monarchy. "The importance of the various businesses which will require your attention during the present sitting of the General Assembly renders the punctuality you have manifested in meeting at the time of your adjournment essentially beneficial to your Country as no doubt can be entertained but that you will exhibit equal zeal [etc. etc.]"[38] Each previous governor had expressed similar sentiments. The following year, however, Pinckney abandoned the patronizing practice, and no later governor resumed it.[39] In this minor but telling manner, the Assembly was adjusting to the transition from royal government. The sonorous phrases which had been appropriate when addressed to the direct representative of the King seemed increasingly unsuitable

in a republic and were quickly discarded.[40] Other related practices had also disappeared. Instead of referring the message to a single committee appointed to draw up a formal response, the House and Senate, by 1790, consistently parceled out the messages to appropriate committees and sent no answer at all.

Colonial precedents has proved inappropriate and unrewarding. So long as the governor and the Assembly each had the power to stymie legislation, the two branches of government treated one another with careful deference. Now the governor was the agent of the Assembly, which was itself the agent of the people. As long as he behaved in a manner acceptable to the Assembly, he was treated cordially but not deferred to. As the power of government increasingly was vested in the representatives of the people, the governors had to conform or be ineffectual.

IV

By the 1790s, economic, fiscal, and governmental conditions in the state had improved dramatically. Since the state's major postwar problems appeared to be under control, the decade represented a chance for South Carolinians to catch their collective breath a bit and to consider their situation. The governors' messages reflect

this. By 1790, with legislative and gubernatorial powers fully understood, this ceased to be an issue. Because the question was settled, the governors eventually became free to offer their views to the Assembly again. The nature of this progression is best illustrated by Charles Pinckney's messages, since he was governor for two different periods in the nineties (1790-1792, 1797-1798). While Pinckney was never reticent, only in his later messages did he abandon the practice of frequently deferring formally to the Assembly. By 1797, however, it was clear that the Assembly would ignore him if it wanted to.

The messages of the nineties continued to deal with concrete pending measures, but also, on occasion, laid out the governors' views of the condition of the state and their hopes for its future. The unsettled conditions in Europe, which resulted from the French Revolution, required South Carolina to maintain its defenses. The disastrous experiences of the state during the War for Independence were not easily forgotten. Apprehension over foreign affairs, and their potential impact on South Carolina, in turn helped bind the state to the federal government. As the messages reveal, each governor was a firm nationalist. Particularly Charles Pinckney and Arnaldus VanderHorst also were visionaries. They believed that the republic could and would flourish so long as the Assembly enacted the laws that would maintain order and promote virtue

among the citizenry.

Charles Pinckney made an appropriate governor for the 1790s, for he personified the new American man--able, devoted to his state and the nation, and unfettered by the past. In some respects, he typified the elite, mixing wealth with strong family connections. As a lawyer, he earned the princely annual income of £5,000 sterling, and he was generally conceded by all (not excepting himself) to be brilliant. Although the proceedings of the Federal Constitutional Convention remained secret during his lifetime, "Constitution Charlie," as he came to be known, did nothing to dispel the popular idea that he was the principal architect of the United States Constitution. Unquestionably, he drafted the South Carolina Constitution of 1790. Yet despite his connections with the state's elite, Pinckney proved to be something of a maverick. Belonging entirely to the Revolutionary generation (he was born in 1759) and educated entirely in South Carolina (despite his registration at the Middle Temple in London), he lacked some of the conservatism so evident in his cousins, Thomas and Charles Cotesworth, who grew up and were educated in England. By the mid 1790s, Charles Pinckney had rejected the Federalism of the Charleston elite and embraced the party of Jefferson.

Pinckney's messages to the Assembly in the early 1790s reveal that the crises of the 1780s had passed. As

tension declined, the messages became routine. At the first meeting of the Assembly in the new capital in 1790, Pinckney suggested that his role was to facilitate its deliberations. "I shall continue, Gentlemen, to make you such communications as shall appear to me necessary for your information, or such as should at this time engage your attention."[41] Some of the issues he addressed, such as debt and the relocation of the capital, repeated earlier themes, but he also broached two new topics that would become staples of the 1790s, the relationship between the state and federal governments and the need to maintain the state's defenses.

Moving the capital and implementing the new state constitution both proceeded smoothly. In 1790, a full third of Pinckney's message was devoted to detailing the progress of the capital's relocation. At the two 1791 sessions (one under the old, the other under the new constitution), Pinckney discoursed on the need for positive acts to do such mundane matters as change the time of the Assembly's meetings to conform to the new frame of government. Similarly, he noted that major tasks such as "the regulation and establishment by law of all the respective Courts and Officers" also needed attention.[42]

During Pinckney's terms in office, the longstanding problem of the state debt ended when the United States agreed to assume $4,000,000 of South Carolina debt.

Before assumption officially occurred, however, Pinckney tried to keep the debt accounts in order. He instituted a requirement that the officers of the treasury provide the legislature with a report on the current fiscal condition of the state, and complained about the "most impoverished condition" of the state treasury. He also commented sorrowfully that state accounts which had been approved by the Assembly still went unpaid, year after year. Nonetheless, by 1791 he realized that the state's fiscal problems were easing, for he suggested "that in the Tax Act ample provision should be made for building suitable Gaols."[43] The problems with inadequate jails had plagued the state for years, but only after assumption did money become available to complete the work authorized as early as 1783. The transition symbolically marked the end of the crisis mentality of the 1780s.

Like the other governors of the nineties, Pinckney reflected approvingly on the federal government. During his terms, the institution of the national government required numerous small actions on the part of the Assembly, but also relieved the state of some significant burdens. Each year, Pinckney forwarded acts and letters from Congress to the Assembly relating to such matters as amendments to the Federal Constitution, the assumption of state debts, a treaty between the United States and the Cherokee Indians, the fugitive slave act, and the need to

elect presidential electors.[44] The difference between these matters and the national affairs of the 1780s is striking. Before the Constitution went into effect, the state granted powers to the national government; after 1790, federal actions often released the state from heavy responsibilities. For example, the governor informed the Assembly in 1791 that Congress, "having at their present Session directed that a Bill should be brought in, establishing an uniform mode of applying for and delivering Fugitives from Justice, it will now be unnecessary for your Honorable House to proceed on the communication submitted to you on that subject at the last Session, as the mode they suggest appears to answer all the ends I wished to produce."[45] In a similar fashion the assumption of most of the state's debt and the treaty with the Cherokee Indians ended major long-term problems.

Two hundred years later, when we know that no war broke out in America in the 1790s, the continuing concern with the militia seems a little strange. It was not so at the time. Never in the eighties and nineties was it clear that peace would be lasting. Problems with France as well as Great Britain caused deep concern. But in South Carolina, the deepest fears were sparked by the slave revolt in Santo Domingue. Pinckney reported the moral to the Assembly: "While we sympathize with our friends [the whites of Santo Domingue] and lament their sufferings,

they very strongly prove the policy of having our Militia always in a situation to act with promptness and effect."[46] Thus even while waiting for the United States Congress to establish uniform militia standards, South Carolina passed interim acts.[47] Pinckney could not see the irony inherent in his statement that "a well regulated militia being the most natural and safe defense of a free people" when it was contrasted with his earlier description of the purpose of that institution. Throughout the messages, the governors consistently dealt with slaves strictly as property rather than as persons.[48]

These matters comprised the heart of Pinckney's messages. While he echoed Guerrard in calling for specific legislation, he adhered closely to the Mathews tradition of restraint. In one instance he forwarded a letter from the governor of North Carolina because "I did not think it proper to proceed, without having previously submitted it to the Legislature."[49] By the end of his terms, Pinckney viewed the state of the state with satisfaction. "I believe there is no Country in which there are less complaints of the administration of Justice as it respects the rights of property, and from my situation I have an opportunity of knowing that for some years there have been fewer persons tried for capital offenses than in most Countries of equal extent and population. These are pleasing signs of the goodness of our Laws and

the happiness of the people."[50]

In 1793 the Assembly returned William Moultrie to the governor's chair. Although well into his sixties, the old soldier remained vigorous and proved a more appropriate choice than the legislature might have suspected when they elected him. For during his term, military matters absorbed the executive's attention. "Since the last meeting of the Legislature," he reported, "the political affairs of Europe have undergone a very considerable change, nearly all the European powers are leagued against France. Not knowing how the War might affect us, I thought it advisable . . . to cause a small, but respectable Battery to be raised on the spot where Fort Johnson stood." In the face of military necessity, Moultrie had easily assumed power, "not choosing to convene the Legislature at a time, when the private business of the members required their presence at home, and the Contingent fund being quite insufficient for the purpose, I have made some drafts on the treasury, not doubting that it would meet with your approbation."[51]

In 1785, Guerrard had proved mistaken when he assumed such legislative approval, but in this case the Assembly backed Moultrie, for two reasons. First, his action lay within the purview of the executive department. One reason for having a governor was to provide someone who could initiate just this sort of action during

legislative recess. Secondly, a decade of legislative dominance had assuaged the fears of an earlier time. By 1793, the Assembly knew from experience and custom that the executive could not ride roughshod over them. Moultrie had acted as a responsible republican official rather than as an arbitrary royal one.

When Moultrie suggested other measures, the Assembly acted on some and rejected others as a matter of course. He recommended a change in the law prohibiting the importation of blacks; pointed out the need to reimburse "expenses incurred for conveying criminals to Gaol;" and discussed the need to provide relief for the refugees from Santo Domingue.[52] The legislature rejected the first suggestion, but endorsed the others. By this time, their confidence was unshakable.

When Arnaldus VanderHorst succeeded Moultrie in 1795, new themes emerged in the messages. Because the state had emerged triumphant over the problems of the war, VanderHorst could creditably enunciate a new view of the republic based on the goals of the Revolution. Before the mid-nineties, the uncertainties of the new federal system had encouraged both the governors and the legislature to opt for stability whenever possible: avoiding civil strife, paying debts and collecting taxes, and setting up courts and other administrative units. By the mid-nineties, despite the threat of European war, VanderHorst

saw bright prospects for both liberty and order. South Carolina, he believed, was poised in a doorway opening onto a new era. Leaving behind the entangling alliances of the Old World and the "gothicism and barbarity" of its laws, the legislature could rewrite the statutes and educate the youth in order to continue and improve a free society. Nevertheless, he warned the legislature to be cautious. "I need not more than remind you that on the abrogating or altering of old systems or laws, great care and circumspection are requisite, and that innovations are frequently full of dangers and seldom to be produced without disorder."[53] He feared "rashly attempted" change and sought to encourage the stability that had quickly developed within the new Union.

Although VanderHorst addressed traditional concerns, such as epidemics and European war, he reserved his enthusiasm for improving society.[54] To do this, he proposed a multifaceted plan. Starting with the accepted premise that "to be prepared in peace is the best means of avoiding war," he suggested the construction of "a very strong fortress on Shule's Marsh, as necessary to the maritime defense of Charleston." This proposal contained a unique twist, however. "Should the Legislature think proper to revise the penal laws of this state (as I trust they will) and instead of indiscriminate punishment of death . . . inflict a long or short term of solitary

confinement on the offenders in some measure proportionate to their crime, this fortress might be a very proper place of confinement." This naturally led to VanderHorst's next topic. "Altho' it is necessary for the Legislature to make laws for the punishment of crimes, it is [better] . . . to make such laws as will have a tendency to reduce the number of offenders. This I am most thoroughly persuaded can be best obtained by attending to the education of our youth, for laws without morals will ever prove inefficacious." In short, the Assembly needed to provide "Schools in every part of the state."[55] Thus, in a single sweep. VanderHorst moved from defense to penal reform to education, all for the good of society. Such was the breadth of his social vision.

The reforming zeal that VanderHorst displayed in 1795 burst its bounds the next year. "Entertaining no expectation of having the honor of addressing the Legislature in my official capacity at the opening of any other than the present session, I conceive it more especially my duty to embrace the present occasion of submitting such matters as have occurred to me."[56] Penal reform remained his passion, and now he elaborated on his proposal at great length. "A sanguinary system still prevails among us," he insisted, "impregnated with the gothicism and barbarity of the rude ages in which it originated."[57] In detail he explained the problems

created by too strict punishments. Juries refused to convict or made "recommendations to the mercy and pardon of the Executive, not because the malefactor was free from guilt, but because in their eyes, he merited not so severe a doom as that which the Law ordained."[58] This in turn created a moral dilemma for the governor. If he pardoned, he did not enforce the law; if he did not, the juries would begin to acquit outright. Milder punishment, VanderHorst concluded, would solve the problem. In particular, he recommended a "prison there [in Charleston] on a similar plan to that of Philadelphia," for prisoners from throughout the state. Charleston did not, at that time have a "public Gaol" and a city would be the appropriate place for a penitentiary "on account of [its] furnishing the means and material to employ their labour."[59]

These were not original or eccentric ideas. VanderHorst's fascination with prisons reveals his involvement in American social thought of the period. He drew upon the most up-to-date sources of the day. Prison reform had already begun in Pennsylvania, and the new ideas implemented at the Walnut Street Prison of Philadelphia were soon to gain international attention.[60] In the early nineteenth century, many Europeans, including Alexis de Tocqueville, came to America to study the prison system. Despite strong efforts from VanderHorst and others, however, South Carolinians chose not to establish

penitentiaries before the Civil War.

VanderHorst fully accepted the state's role in the federal system. He warned that the state should try to reduce taxes so as to be prepared should the Federal government "call for other resources . . . and more direct taxation" to support a war. Seeming to draw heavily from Washington's Neutrality Proclamation and Farewell Address, the governor warned of the need to maintain "freedom from all foreign influence."[61] He likened the relationship of the general government and the states to the sun and the planets. As he moved to more specific proposals, his extravagent style remained unchanged.

VanderHorst's demonstration proved acceptable because the governor's relative impotence had been assimilated. Once it was clear that the governor could not impose a legislative agenda on the Assembly, he became free to argue for his proposals because the Assembly knew it was free to reject them. In his 1795 message, the longest one up until that time, VanderHorst became the first governor since Guerrard to proselytize for his ideas. His speech contained fewer major points than Guerrard's 1784 speech, but VanderHorst supported his points in a way unlike all his predecessors. In 1789, Thomas Pinckney had said "the formation of such an arrangement of our finances as will provide for the Support of the Civil-Government, and form an efficient fund for discharging our Public debt will

undoubtedly occupy your most serious attention." That was all he said. VanderHorst, at a time when the public debt was a much less serious matter, used more words to discuss this matter and to offer his opinion on it than Pinckney used in both of his formal speeches together. VanderHorst explained "the great pleasure I have" that the debt had been reduced as much as it had been and expressed satisfaction that South Carolina's actions would "convince the world that the procrastination which has hitherto happened did not proceed from the want of disposition, but from the deprivation of means and resources by various intervening casualties and calamities."[62]

Charles Pinckney, who succeeded VanderHorst, felt compelled, either by the tenor of the times or the precedent set by VanderHorst, to unleash a torrent of advice upon the hapless legislature. In many respects, the governor's comments on these topics echoed VanderHorst's thoughts of the previous year, yet Pinckney stressed more fully the relationship between the republican form of government and the need for laws which promoted republican virtue in the citizens. "The strict and regular administration of Justice being the basis of a Republic, you will I am convinced feel it your duty to examine the laws of the state." In particular, he singled out "trial by Jury [as] . . . one of the most valuable ingredients of a free government." Yet, although this practice remained second

in importance only to "a fair and unbiased election of the Legislature," he saw the institution in danger. Because of the "inadequate fines and the little attention paid to compelling the attendance of Jurors . . . almost all who could afford to pay them [the fines] have neglected to perform this necessary duty."[63] More virtue was needed.

Next he reiterated VanderHorst's plea to let the punishment fit the crime. Buttressed by the presentments of the Charleston grand jury (which complained of the severity of the laws), he agreed that "punishments ought to be selected as will make the deepest and most durable impressions on the minds of the people and at the same time with the least cruelty to the criminal." As this comment suggests, Pinckney focused more on deterrence than had VanderHorst. To support his position, he generalized but did not reveal his sources. "Experience proves that in those Countries where confinement and labour have been substituted, they have operated with more efficiency upon the minds of the citizens than the most severe punishments have in other places."[64]

Education was another republican issue. "However favorable Republican governments certainly are to equal liberty, justice, and order, no real stability can be expected unless the minds of their Citizens are enlightened and sufficiently impressed with the importance of the principles from whence these blessings proceed."

Thus state-financed free schools, for white boys, were crucial to avoid "burying in obscurity those who might have proved its [i.e. the state's] most distinguished ornaments." The Assembly approved of education but did not believe that the state should pay for it. During the 1790s, they chartered but did not fund a number of schools and colleges.[65] Therefore, they did not respond to these pleas, even though Pinckney reiterated them the following year.

Like the other governors, Pinckney had to consider the possibility of war with France. "Small predatory vessels" had forced the governor to take active measures to fulfill his "indispensable duty to repel by force every attack within our own territory." Although these attackers were apparently French, Pinckney demonstrated his preference for avoiding confrontation. "While we can do it with honor, it is to our Interest to be upon the most friendly terms with France."[66] He noted approvingly the appointment of commissioners "of known Character and talent," including Charles Cotesworth Pinckney, to settle differences with France. Unfortunately, the XYZ Affair ended this hope. The next year, therefore, Pinckney more carefully considered the situation with regard to France and detailed the extensive preparations he had made to ready the state militarily. By now a proponent of Jeffersonian politics, Pinckney's position corresponded to

official Republican policy at the national level. He no longer advocated a pro-French position. Rather he held out for the advantages of a strong neutrality. "Our commerce is too lucrative and our ports and supplies too convenient and important to the powers possessing valuable islands in the West Indies to render our friendship or hostility indifferent to any of them."[67]

Of all the postwar governors, only Pinckney chose to consider slavery at any length, and he always limited his discussion to the need to protect property. "It is essential to your peace and security," he reported, "that the laws respecting the government of Slaves should be carefully revised." Slave property was "of the first importance to our wealth" and needed protection. In particular "the danger of suffering, on any pretense, either free persons of color or Slaves to be introduced from the West Indies, is so extremely great," that it must be prohibited entirely, lest the rebellion on Santo Domingue spread to the mainland. Similarly, when a federal court decision dictated that "no existing Law or Regulation . . . [required] all outward bound vessels to stop [at] . . . Fort Johnson," Pinckney expressed his fear that this would make it easier for runaway slaves to escape the state. He considered this a matter of the utmost importance because "slaves . . . are of such importance to our wealth and commercial consequence."[68]

Here Pinckney was voicing the same type of concerns about slavery that he had expressed in the Federal Constitutional Convention a decade earlier. Still, in South Carolina in the late 1790s, these concerns reverberated only modestly. Apparently few South Carolinians yet feared for the future of slavery. Pinckney got his prohibition of imports, but the legislature did not increase the patrols at all.

Edward Rutledge, the last governor in the period, was less emphatic in his messages but continued the tradition of VanderHorst and Pinckney. Although he did not expound his views as extensively as his immediate predecessors, his ideas are particularly important because he was so influential in the House throughout the postwar period. Perhaps as a result of debilitating illness (he would die in office), his messages contain little of Pinckney's dynamism. They nevertheless continue familiar themes. He reported that peace with France seemed likely, but warned the Assembly "to keep constantly in view the Military system of this State." Like every other governor in the 1790s, he emphasized the importance of the federal government, arguing that the Assembly should not complain about the direct tax levied by Congress to support a navy. "The necessity for imposing it cannot be questioned." He hoped the legislature would "severally recommend it to your [their] constituents, for if we continue . . . to cooperate heartily with the federal government . . . we

shall, I hope be able to extend to the persons and property of our fellow citizens upon the Ocean as ample protection as they now enjoy within the territory of the United States."[69] Finally, he endorsed the same sort of judicial reforms as Pinckney had. Rutledge explained that in a free society "the organization of the system by which Justice is to be maintained and enforced, will always [be] . . . an object of the first importance."[70]

V

Collectively the governors' messages and the Assembly's responses reflect the transition from a royal to a republican government. By 1800, the introduction from the message of 1783 would have sounded silly, inappropriate, and even offensive. The messages also identify the recurring areas of legislative concern. Debt was the most important issue until the early 1790s. In that same period, governors expressed repeated concern about the central government, the militia, and the tax system. Late in the period, the messages increasingly focused on the need to develop a republican society. For the most part, however, the governors' harangues were not the only, and usually not the major, stimulus for action. Throughout the period, the actions of the Assembly were

more likely to be prompted by petitions from the people than by the governors' requests. This properly befitted a republican state.

Anyone whose knowledge of South Carolina was limited to the contents of the governor's messages would likely anticipate a bright future for the state by 1800. The republic seemed finally to be established: the governors recognized their limited role and supported legislation that would improve the good qualities of the citizens. The almost unmentioned millstone of slavery, however, dragged the vision downward. Because of the implications for slavery, the Assembly drew back from VanderHorst's liberal plans for penal reform. If criminals could be improved, could slaves? If so, could they then be kept in bondage? These are questions that the Assembly did not want to have to answer. Thus, while they eagerly approved advances in the jury system, they held back from other types of reform. The result was the conservative style that permeated the Assembly's actions. They sought to preserve existing rights, particularly property rights, more than anything else. The governors' vision of progress would always be viewed through the spectacles of conservatism.

Notes

CHAPTER III: THE GOVERNORS' MESSAGES

[1]This computation includes John Mathews as a member of the Rutledge family. In 1798, he married the sister of John, Hugh, and Edward Rutledge, thus making a long-term political bond familial as well. One should note that Charles Pinckney was estranged from his cousins by 1796.

[2]Although Thomas Pinckney eventually became a general in the militia, he always was referred to as Major Pinckney to distinguish him from his older brother, [Continental] General [Charles Cotesworth] Pinckney.

[3]See Gordon Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N.C., 1969), 132-155.

[4]The constitutions are printed in Statutes of South Carolina, I.

[5]Senate Journal, 1788, fol. 5.

[6]See Jerome Nadelhaft, The Disorders of War: The Revolution in South Carolina (Orono, Me., 1981).

[7]I am indebted to Ronald Gephart of the Library of Congress for this information on Mathews. The letters discussed above will be published in a forthcoming volume of Paul H. Smith, et al., eds., Letters of Delegates to Congress, 1774-1789 (Washington, D.C., 1974-).

[8]House Journal, 1783, 31-32.

[9]Ibid., 33-34.

[10]Ibid., 33.

[11]Ibid., 55-57.

[12]House Journal, 1784, 413.

[13]Ibid., 313, 317.

[14]Ibid., 332.

[15]Ibid., 326.

[16]Ibid., 368.

[17]Ibid., 401-402.

[18]Ibid., 404. It is both ironic and instructive that Guerrard chose to assault the Cincinnati as "self-created," for that is the same charge that George Washington, president of the Cincinnati, hurled a decade later at the Democratic-Republican societies. Apparently self-created societies were only bad if one disliked or disagreed with their particular orientation.

[19]For a discussion of the importance of voluntary societies in the postwar era, see Robert Gross, The Minutemen and Their World (New York, 1976), 171-191.

[20]House Journal, 1784, 405.

[21]Ibid., 445.

[22]Senate Journal, 1784, fol. 119.

[23]Ibid. fol. 169.

[24]Ibid. fol. 122.

[25]Ibid. fol. 169.

[26]Ibid. fol. 249.

[27]Ibid. fols. 197, 254.

[28]House Journal, 1785, 5.

[29]Ibid., 15.

[30]Ibid., 17-20.

[31]Ibid., 18

[32]House Journal, 1785, 313-315.

[33]Senate Journal, 1787, fol. 7.

[34]Ibid. fol. 8.

[35]Service in the Continental Army tended to make one more sympathetic to national causes. See Charles Royster, A Revolutionary People at War (Chapel Hill, N.C., 1980), and Jackson T. Main, Political Parties before the Constitution (Chapel Hill, N.C., 1973).

[36]Senate Journal, 1788, fol. 5.

[37]Senate Journal, 1789, fols. 8-9.

[38]Senate Journal, 1788, fol. 9.

[39]Senate Journal, 1789, fol. 5.

[40]It is possible, but unlikely, that this change resulted from the adoption of the Federal Constitution.

It seems more likely that it simply evolved over the course of the 1780s.

[41]Senate Journal, 1790, fol. 13.

[42]Ibid. fol. 8.

[43]Senate Journal, 1790, fols. 13, 15; Senate Journal, Jan. 1791, fol. 9; Senate Journal, 1792, fol. 3.; Senate Journal, Dec. 1791, fol. 14.

[44]Ibid., Senate Journal, Jan. 1791, fols. 8, 9; Senate Journal, Dec. 1791, fols. 13-14; Senate Journal, Nov. 1792, fol. 3.

[45]Senate Journal, Dec. 1791, fol. 14.

[46]Ibid.

[47]Senate Journal, 1792, fol. 3. Later governors echoed this concern. Moultrie's 1794 message dealt almost entirely with military matters, even though "nothing material has occurred to disturb the peace and harmony which pervade our whole state." Senate Journal, 1794, fol. 5-6.; Senate Journal, 1796, fol. 12-13.

[48]VanderHorst warned that plagues were dangerous to health and property. "Our own situation and that of a most valuable part of our property require us to pay every attention to so important a concern." Senate Journal, 1795, fol. 8.

[49]Senate Journal, 1792, fol. 4.

[50]Ibid., fol. 3.

[51]Senate Journal, Nov. 30, 1793, n.p.

[52]Ibid.

[53]Senate Journal, 1796, fol. 8.

[54]Senate Journal, 1795, fol. 8.

[55]Ibid., fols. 8-9.

[56]Senate Journal, 1796, fol. 5.

[57]Ibid., fol. 8.

[58]Ibid.

[59]Ibid., fols. 9-10.

[60]See David J. Rothman, The Discovery of the Asylum: Social Order and Disorder in the New Republic (Boston, 1971); Edward L. Ayers, Vengeance and Justice: Crime and Punishment in the 19th-Century American South (New York, 1984); Micheal Stephen Hindus, Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878 (Chapel Hill, N.C., 1980).

[61]Ibid., fol. 5-7.

[62]Senate Journal, 1789, fol. 8.; Senate Journal, 1796, fol. 5. Pinckney's specific ideas with regard to changes in the judiciary system will be discussed later in the context of the judicial reform bill the Assembly passed in 1798.

[63]Senate Journal, 1797, fols. 5-6.

[64]Ibid., fols. 6-7.

[65]Ibid., fols. 13-14. For more on the educational policy the Assembly did adopt, see Chapter VII below.

[66]Ibid., fols. 14, 16.

[67]Senate Journal, 1798, fol. 20.

[68]Senate Journal, 1798, fols. 11-12.

[69]Senate Journal, 1799, fol. 11.

[70]Ibid., fol. 14.

CHAPTER IV

THE ASSEMBLY

I

Although the postwar Assembly had roots reaching deep into English history, it was, in many ways, a new creation. In the colonial period, the Assembly had governed the colony subject to the authority of king and Parliament. After independence, it governed subject to the people. Under the former system, the Assembly defined itself through conflict with Britain. By stridently insisting on its right to support John Wilkes, for example, the Assembly demonstrated its independence and power.[1] Under the new system, though, such posturing made little sense, and the Assembly had to redefine itself as the centerpiece of a popular government. Before considering the actions of the postwar legislature, it is important to understand its basis in political theory, its organization, its self-conception, and finally, its relationship to both the people it represented and governed, and to the United States. The Assembly provides an ideal laboratory in which to study postwar South Carolina because it both governed and responded to the larger society while linking that society to the outside political world, and

because it left abundant documentation of the process.[2]

Disputes over sovereignty triggered the fundamental changes Americans made in political theory. According to the traditional definition, sovereignty--absolute authority in a society--was indivisible and (ordinarily) located in the government, whether in the person of a king or in a legislature. Americans' determination to resist Parliamentary sovereignty ultimately forced them into rebellion. Independence left them with a fear of absolute government, but without an immediate alternative. Constitutional government solved the dilemma and provided the first great American contribution to western political thought. Written constitutions, which at first simply described the shape of government, eventually were seen to be limited delegations of power from the sovereign people to their rulers. By the late 1780s, constitutions normally were framed by specially elected conventions and ratified by the people. The resulting view of government--that it arose from and depended on the people--restructured Americans understanding of representation. In England, it was understood to be virtual; that is, each legislator virtually represented the whole nation. As such, he was bound to look to the good of the whole as he saw it, not to pursue parochial interests.[3] In America, however, where government embodied the will of the people, citizens began to instruct their representatives on how to vote and to elect others should incumbents

refuse to follow instructions. Direct, not virtual, representation became the American pattern.[4]

South Carolina, although it fit this paradigm less well than some other states, nevertheless reflected the major developments in Revolutionary political thought. The state's 1776 constitution, which allowed an executive veto, more closely re-created the workings of colonial royal government than any other American constitution. Subsequent charters in 1778 and 1790, however, followed developing American practice more closely. In 1790, for example, South Carolinians called a special convention to frame a new constitution. Even so, none of the documents was submitted to popular ratification and none fairly apportioned the legislature. Still, the state accepted limited constitutional government based on popular sovereignty and direct representation.[5]

Because members of the elite dominated South Carolina politics, Revolutionary thought created tension between egalitarianism and elitism. While influential South Carolinians believed that government was instituted by, for, and of the people, they were also accustomed to having their own way and receiving deference. Ultimately, as their actions demonstrate, they chose to respond to the people as best they could, but they still exhibited a sense of self-importance which was not entirely consonant with their status within a republican frame of government.

II

In 1776, 1778, and again in 1790, South Carolinians defined the structure of their government in written constitutions. Overall, these documents reveal the impact of Revolutionary ideology, while also suggesting the tension between elitism and egalitarianism in the state. To some extent, South Carolina practice lagged behind that of other states in that none of the constitutions were ratified by the people, none of them even attempted to define the meaning of representation, and only the last identified the people as constituent power and was not written by the legislature.[6] Still, the framers chose to institute the same type of republican provisions--bills of rights, rotation in office, a limited executive, and a powerful legislature--which Americans elsewhere adopted. Throughout the period, the franchise remained relatively broad. Anyone with roughly the equivalent of a fifty-acre freehold could vote.[7] Moreover, government under the constitutions was representative, and representation became more equitable with each succeeding revision. In contrast, the constitutions successively raised the property qualifications of officeholders. In 1776, the president, counsellors and Assemblymen all had the same qualifications as voters. By 1790, no one could serve in the House without a *p*150 sterling estate free of debt, and the governor needed a

£1,500 estate. These provisions evince a determination on the part of the later constitution-makers to insure that only well-propertied individuals governed the people.

When the Revolutionary Provincial Congress of South Carolina enacted the 1776 constitution, its members sought to preserve as much of the existing system as they could, while eliminating a number of perceived abuses. Therefore, just as in Britain, a composite group--the president, legislative council (upper house), and Assembly--shared legislative power. This arrangement--which mimicked the King-in-Parliament--required a strong executive, so the constitution established the strongest one in any of the new states. Although he could not prorogue the legislature, he had an absolute veto over legislation, explicit power to reject the advice of his Privy Council, and shared appointive powers with the Assembly. As in the colonial period, the voters elected only the lower house. It, in turn, elected the upper house, the president, and the Privy Council. In other areas, colonial grievances were redressed: multiple officeholding was prohibited, admiralty courts were restricted, and rotation in office for sheriffs became the rule.[8]

The full implications of Revolutionary ideology remained unexplored. Compared to later American constitutions, the 1776 document appears a deficient instrument for establishing popular government. It never discussed

sovereignty, it had no bill of rights reserving certain powers to the people, and it was never ratified by the people. And, because of the indirect elections, it established a restricted kind of representative government. Dedicated to the status quo and without experience in constitution-making, the Revolutionary leadership of South Carolina wrote a charter of government that only dimly anticipated the emerging republican order.

In 1778, the Assembly drafted a new constitution reflecting changing ideas about how government should be organized. Most obviously, it greatly expanded the legislature's power by abolishing the executive's legislative veto and eliminating his appointive powers. Consequently, increased property requirements for legislators seemed appropriate so that only independent (and therefore responsible) citizens served. Procedures for impeachment of malfeasant officials improved accountability. The Anglican church was disestablished so that all Christians stood on an equal footing. A short but significant bill of rights guaranteed liberty of the press, jury trials, and subordination of the military to civil authorities. Finally, the constitution ordered the founding of county courts to disseminate equal justice.[9] Because the constitution was, like its predecessor, a legislative act, President John Rutledge could, and did, veto it on the grounds that he would not properly exercise his office if

he submitted to being shorn of his powers. To prevent an impasse, though, he immediately resigned and his successor approved the measure.[10]

This constitution established the basic framework of the Assembly during the postwar period by defining who was elected and how. Both the 1776 and 1778 constitutions maintained the colonial voting requirement: all white males over twenty-one who paid an annual tax equal to the tax on a fifty-acre freehold could vote. Both also maintained the lowcountry advantage in legislative apportionment, although each reduced the colonial imbalance. As of 1778, the Assembly consisted of a twenty-nine-member Senate and a 202-member House. Although senators had shorter terms than the members of the House--which reversed the usual American practice--they had to meet higher property and age requirements--which paralleled practice in the other states. A South Carolina senator had to be at least thirty years old, a five-year resident of the state, and possessed of an estate worth *p*200 currency. Representatives had to be at least twenty-one-years old, three-year residents, and possessed of a fifty-acre freehold.[11] All Assembly members were required to be protestant, but interestingly no one apparently thought it necessary to specify that they, like the voters, must be white and male. A member of the Assembly had to vacate his seat if he accepted "any place of emolument, or any commission,

(except in the militia or commission of the peace)," but could be re-elected if his constituents wished.[12] "Ministers of the gospel . . . [who] ought not to be diverted from the great duties of their function," were prohibited from sitting in the Assembly.[13]

The Constitution of 1778 placed few limits, other than those contained in the bill of rights, on the authority and activities of the Assembly. It enjoyed "all privileges which have at any time been claimed or exercised by the commons house of assembly." Each house could elect its "respective officers, by ballot, without control," but the authors of the constitution did not presume to suggest what the offices should be. The only constitutional restrictions were that rejected bills could not be brought "again that session, without leave of the house, and a notice of six days," and that all money bills should originate in the House and "shall not be altered and amended by the senate." The Senate, as it turned out, routinely flouted this last provision. In all other cases, the two houses were equal and any action they both passed had "all the force and validity of a law."[14]

After the adoption of the Federal Constitution, South Carolinians again modified their charter of government to bring it more in line with American constitutional thought. For the first time, a special convention framed the document, thereby affirming that it was fundamental law,

superior to that of the legislature.[15] Local circumstances outweighed constitutional developments elsewhere, however: the South Carolina document was not submitted to the people lest it be rejected by the backcountry because it continued, to a lesser extent, the lowcountry advantage in apportionment. Otherwise, the constitution conformed closely to American practice. For the most part, the Constitution of 1790 codified existing thought and practice rather than breaking new ground. In particular, it had a stronger bill of rights, clarified the governor's powers, raised the property qualification of Assembly members, and codified legislative procedure.

For the first time, the new bill of rights spelled out the basis and ends of republican government. "All power is originally vested in the people; and all free governments are founded on their authority, and are instituted for their peace, safety, and happiness." In addition, the bill of rights prohibited excessive bail, bills of attainder, ex post facto laws, and the impairment of contracts. Like the 1778 constitution, it subordinated the military and guaranteed trial by jury. The guarantee of freedom for the press, however, had disappeared.[16]

The governor continued to be dwarfed by the Assembly, even to the point that the constitution required him to reside at the capital (Columbia) whenever the legislature was in session. His functions were expanded, but only

modestly. For example, the governor received power to pardon criminals, and "to prohibit the exportation of provisions for up to thirty days" in emergencies.[17]

The Constitution of 1790 also raised the property qualifications for legislators and gave them longer terms, which balanced the modest reapportionment simultaneously enacted.[18] After 1790, the House was elected biannually and the Senate every four years. The size of the House decreased substantially from 208 to 124 members while the Senate grew slightly from 31 to 37.[19] While the foundation of the government, the voters, remained substantially the same, increasingly the superstructure became more elite. Whereas the qualifications for house membership had been the same as those for voters, a representative now needed "a settled freehold estate of five hundred acres of land and ten negroes" or a *p*150 sterling estate. For persons not residing in the district they represented, the requirement was *p*500 sterling. For the Senate the values were respectively *p*300 and *p*1,000 sterling. These high qualifications made sure that only those with a strong financial stake in the political and social order would serve in the Assembly.[20]

Finally, although the new constitution was more specific about Assembly powers than its predecessors, the changes merely codified existing procedure. Each house received the right to "determine its rules of proceedings,"

which it presumably had always done anyway, and the right to punish members upon a two-thirds vote (although no member could be expelled twice for the same cause). In a similar vein, the constitution abandoned the provision forbidding the Senate from altering and amending money bills, thus tacitly approving the Senate's assumption of that power, and it constitutionalized the "Rutledge rule" allowing either house to imprison any non-member "who shall be guilty of disrespect to the house."[21]

Taken together, the three constitutions show how their framers assimilated American constitutional thought, but also how they increasingly desired to insure elite control of the governing process. By 1790, constitution-making had become an established art. The ambiguities and omissions of 1776 had been clarified and corrected. The 1790 document explicitly and carefully explained what the government was and how it was to work. While the government was acknowledged to be founded on the authority of the people, it was to be run by an elite segment of them.

III

As the Assembly evolved during the postwar years, it inarguably conceived of itself as a representative institution. As early as 1783, for example, the Senate

adopted rules that secured the right of constituents to have their representatives present. Thus, it voted to compel attendance, if necessary by sending for absent members at their own expense, and to fine members who failed to attend at the hour of adjournment. By 1787 the Senate allowed roll call votes to be recorded when requested by at least two members, and also allowed members to enter protests in the journal.[22] Both measures helped inform the electorate of their legislators' behavior.

Yet defining what representation meant involved far more than laying down legislative procedures. The dominant members of the Assembly stood at the apex of South Carolina society. Every day they experienced their social and economic superiority, not just over the slaves they exploited, but also over poorer whites, from whom they expected deference. To these men, therefore, political equality among white males did not necessarily extend beyond equal votes and equal protection of the law. Three key issues--the relationship between the Senate and the House, the power structure within the House, and the relationship of the Assemblymen to the people at large--reveal legislators' prevailing assumptions about their role in government. In the first case, the Senate quickly adopted the position that, notwithstanding the higher property qualifications required of its members, it was fully as representative of all the people as was the lower

house. Within the House, however, inequality between members characterized at least the 1780s. As for the people at large, the Assembly retained an aristocratic sense of its own importance. Repeatedly it insisted on privileges that set its members apart from ordinary citizens of the republic. These aristocratic attitudes exposed the tension between the Revolutionary rhetoric to which the members subscribed, on one hand, and their social and political experience, on the other.[23]

After the 1778 constitution took effect, the South Carolina Senate needed to justify its existence as something other than a miniature House of Lords. Since it lacked any defensible claim to superior wisdom or legislative powers, it simply abandoned any such pretensions. Comparison with the indirectly elected Senate of Maryland, which contested the will of the lower house and many citizens, is instructive. The Maryland Senate, protected by long terms and indirect election, fought popular demands for paper money and explicitly denied any obligation to follow instructions from its constituents.[24] Its South Carolina counterpart, on the other hand, quickly embraced the concept that it truly represented the people, and for several reasons. Not least of them, senators faced annual popular elections. Second, they scarcely identified with the thoroughly unrepresentative colonial upper house, the Governor's Council. No senator had served on it. Nor,

since it had less prestige than the Commons House of Assembly, were senators disposed to regard it as a model for their own standing. Furthermore, the postwar Privy Council, which advised the governor and served as the chancery court, seemed to have inherited the old Council's role. Finally, the Senate never had an issue where it badly wanted to thwart its constituents' wishes.[25] All of which meant that the South Carolina Senate never held to a position its constituents strenuously opposed, and never considered itself as anything other than an equal partner with the lower house.

Senators did more than propound equality with the House, they demanded it, even to the point of refusing to abide by the constitutional provision against interfering with money bills. In 1784, the Senate also took exception to House arrogation of the sole duty of auditing state accounts. "It is the opinion of this House," the Senate asserted, "that the Accounts audited by the Auditor General should be laid before this House as well as the House of Representatives for their inspection before they are passed. . . . The omission of it during this Session shall not be considered as a precedent."[26] In subsequent years the senators did go over the accounts and make a few changes, although they continued to leave the bulk of this tedious duty to the more numerous house.

In 1795, the Senate again deemed it necessary to

assert its equality with the House, and did so in no uncertain terms. "It is the sense of the Senate, that they are equally the Representatives of the people of South Carolina, with the members composing the other branch of the Legislature, and that no opinion, Legislative or otherwise, can constitutionally go forth to the public, until after it has been deliberated upon, and received the sanction of the Senate and House of Representatives." This resolution derived from the furor over the Jay Treaty. The House had resolved to praise United States Senator Pierce Butler's opposition to the treaty, a resolution that the Senate rejected only by the casting vote of President David Ramsay.[27] Indeed, the matter seemed so important and the issue so much in doubt that Henry Laurens, Jr., author of the Senate's resolution declaring its representative equality, offered a further resolution. "Whereas the President of the Senate is as much a representative of the freemen of the State of South Carolina, as any other member of this branch of the legislature, . . . on questions of magnitude, his sentiments should be known, and his vote taken . . . ; Therefore . . . when a casting voice shall become necessary, or a tie be made [by it]; it shall be considered as a duty incumbent on the President to give the casting vote, or to make the tie . . . first declaring his sentiment." The journal records that the Senate rejected this last resolution, "whereupon the President declared

that his right of voting was founded on obvious and essential principles of representative government, and could not be taken from him, by any act or vote, . . . and he should most certainly vote, and insist on it being counted whenever he thought proper." After this outburst, the journal merely notes that "the House . . . proceeded on business."[28] Although the Senate was reluctant to let Ramsay vote when an important divisive measure loomed, it eventually endorsed his position. In 1797, at a time of relative calm, the Senate changed its rules to allow the president the privilege Ramsay had demanded.[29]

Equality between the houses did not necessarily mean that equality existed within each house, even though each member was equally representative of his constituents. The least equitable feature of the Assembly was the committee system of the House, which discriminated against the backcountry representatives at least until the 1790s. The speaker controlled all committee assignments, and in the 1780s every speaker proved reluctant to appoint backcountry members to a proportionate share of committee seats. Instead, a handful of important lowcountry legislators headed all major committees, thereby insuring that only "safe" bills were reported.[30] Of course, the full House could overrule this system on occasion, but only with difficulty. In practice, however, the committees usually produced bills acceptable to backcountry delegates, whose

complaints therefore were personal rather than related to unfair treatment of their constituents. In the smaller Senate, such maneuvering was uncommon because the upper house tended to debate important measures in the full group.[31]

When the Assembly viewed itself in relation to the people at large--the font of its power--it did not perceive full parity between the governors and the governed. Although the Assembly consistently attested in word and deed to the importance of implementing the will of the people and specifically invoked "the principles of the revolution," meaning popular control of legislation, the members also insisted that they occupied an elevated status in the body politic. In some situations, the legislators acted to secure the respect befitting representatives of the people. Thus, the House ordered a robe for its speaker, which was allegedly an exact copy of the robe worn by the speaker of the House of Commons in London, whereupon, the Senate provided a robe for its president and a gown for its clerk.[32]

In other situations, it was not entirely clear whether the Assembly was demanding recognition of the dignity due elected representatives, or whether it was indulging in aristocratic license. The "Rutledge Affair" in 1783 and a smallpox epidemic in 1787 offer instructive examples. The first incident raised the question of how

far legislative privilege extended. At at time of popular strife in Charleston, Captain William Thompson, a radical innkeeper, hit representative John Rutledge's slave who, Thompson believed, was spying on him. The House construed this as a breach of legislative privilege, jailed the unfortunate innkeeper, and threatened to banish him. Thompson defended himself in a pamphlet decrying the aristocratic mien of the Assembly and asserting his full equality as a citizen. The Constitution of 1790 endorsed not Thompson but the legislature, by affirming that the Assembly could indeed jail citizens during legislative sessions for anything they construed as disrespect. The measure specifically prohibited citizens from making threats against the property of members, which, of course, included slaves.[33] In the second episode, the Assembly refused to allow inoculations during a smallpox epidemic in Charleston because several members and their families had not been inoculated. Lest the treatment spread the disease, the Assembly ordered "the several physicians and surgeons . . . to forbear to inoculate any person during the present sitting of the General Assembly, and that they take care to prevent the spreading [of] that disorder, until the adjournment of the Session."[34] Presumably once the session ended the doctors were free to let the disease spread.

If the Assembly wished to maintain the dignity it claimed as the representative of the people, grievous

improprieties could not be tolerated, as an election for secretary of state in January of 1787 demonstrated. When the votes were tallied, the House reported to the Senate: "it appearing that twenty five votes were drawn more than the number or voters, the Speaker[,] according to the sense of the House, declared the Election to be void."[35] This attempted fraud shook both houses. The House resolved that in future elections all members would have to hand in their ballots in order "and that the elections be conducted in the day time." The Senate responded by requesting a joint committee to consider the matter, and by warning that "if they were to pass over in silence the attempt to procure the Election of the Secretary of the State by the means of surreptitious ballots, they would be justly and highly censurable." The joint committee recommended and the Assembly agreed that, in the future, the speaker of the house would personally deposit each ballot in the box and that the chambers be cleared of all non-members before balloting.[36] Unfortunately, the election woes were not over for the year. In a subsequent election, a dispute arose because the clerk tallied the votes with a pencil, which left a light mark that was difficult to read. Thereafter the clerk was required to use ink.[37]

IV

Despite its elitist orientation, the Assembly consistently proved ready to institute popular legislation. Responsiveness is the word that best characterizes the interaction between the Assembly and its constitutents, with parsimony a close second. As the first term suggests, the Assembly seldom took great initiative. Rather, crises and problems were addressed as they arose. Citizens expressed themselves through petitions and elections; the Assembly responded with laws, services, officials, commissions, and panels of freemen. Almost uniformly, however, the Assembly avoided public expense on anything that did not affect the whole community equally.

The most important way in which the legislature affected people's lives--the extent of their liberties and security of their property--was through laws enforced by the courts. Throughout the postwar years, procedures for enacting laws remained virtually unchanged and tended to promote the interchange of ideas as well as compromise. Legislation arose from one of three sources: citizens' petitions, governors' recommendations, and the motions of individual members. In both houses, a measure that was not summarily rejected or tabled (which ordinarily amounted to the same thing) was referred to a committee. If it reported favorably and the house agreed, then the committee

usually drafted an appropriate bill. A negative report, however, did not necessarily kill a measure. In such cases (and they occurred frequently in both houses), new members usually were added to the committee and it was ordered to report again. Each bill or ordinance had to be read three times in each house before becoming law. In the process, the pending measure frequently was modified, and problems ignored in the originating house were detected in the other.

To encourage equal imposition of the laws, the Assembly promulgated them. Thus it established the legality of notices in the state gazette in Charleston, in part because it was inexpensive and in part because the old system of reading legal notices in the Anglican churches now seemed inappropriate.[38] Also, the Assembly annually printed all session laws. The Senate angrily rejected a House resolution "to consider and discriminate what laws shall be printed," and held that all laws needed to be publicly announced, even though the only motive of the House was to save money by not printing private bills.[39] The Senate also took the lead in a major postwar effort to codify and disseminate the laws. In 1783, the Senate formed a committee (which sat between the sessions) whose members were directed "to deliberate . . . on the greate change in our political Establishment from a monarchial to a republican Form of Government, and to adopt their code to the spirit and principle of Civil Society under this

Form." The project dragged on throughout the 1780s because the task was difficult. When, in 1790, John F. Grimke's compilation of the laws finally appeared, the Assembly ordered copies distributed throughout the state.[40]

Some of the laws passed and promulgated by the Assembly established--or at least permitted--services deemed beneficial to the public. Often in such matters, the Assembly acted in response to petitions, although it usually was parsimonious in voting public funds to support those services. In spending money, the Assembly drew a line between services that were essential to the entire body politic--such as construction of courthouses and jails--and others that were highly useful or merely convenient, such a construction of lighthouses and instituting inspection of agricultural commodities.

State inspection of agricultural commodities fell into the highly useful category. Inspection guaranteed quality and improved staple prices. Therefore, in response to numerous petitions, some of which were signed by more than 300 persons, the Assembly established inspection stations for hemp, bread, flour, pork, and especially, tobacco.[41] Whereas a dozen bills for tobacco inspection came before the legislature, it seems clear that, in the 1790s, South Carolinians did not realize that their economic future lay in cotton production. The only request for cotton inspection in the period received no action.[42]

Providing these services cost the state nothing, for the users paid the inspectors. One man, in fact, offered to build a tobacco inspection station at his own expense, if he were allowed "to demand and receive every legal perquisite and emolument which may arise thereon."[43]

With the notable exception of courthouses and jails, the Assembly routinely avoided capital outlays for public services and, instead, ordinarily shuffled the expense off on the users. For example, when the Assembly provided a lighthouse in Charleston and marker buoys at Georgetown and Beaufort, a three pence per ton duty on shipping paid for them.[44] When it decided that an accurate map of the state would benefit the people, it characteristically found a way to avoid any cash outlay (the Senate bill which resulted in this act was titled a "Means to obtain without expense to the state a more accurate Survey and Map thereof"). The act appointed Joseph Purcell state geographer with authority to conduct a survey of the state. In payment, he received a twenty-year copyright on the map he would produce. Prudently, however, the law left the door open for others to do their own surveys and maps.[45]

Such legislative parsimony extended even to education, notwithstanding its crucial role in producing the virtuous citizens that, in republican theory, were the bulwark against corruption and political degeneration. Perhaps the Assembly's position was plausible when

requested educational funds would not be spent in South Carolina. Thus, in response to a request for a donation to help support a school in the Southwest Territory, the Senate replied that, although the measure seemed worthwhile, they could not spend their constituents' money on it.[46] But the same logic prevailed even when the youth of the state were the intended beneficiaries of public largess. The legislature did charter many schools during the period, but never once granted them any public money because it would be spent for the benefit of individuals.[47]

Consistent refusal to support education financially, notwithstanding its importance in republican ideology, contrasted sharply with the Assembly's generous funding of courthouse and jail construction. In fact, the legislature spent more money on public buildings than on anything else except salaries (one of the few things it did pay for). Support for these measures seems to have been almost unconscious; surely, there is little evidence that they aroused controversy. In fact, the perceived need for courthouses and jails was so great that in 1784, when money was so scarce that the Assembly was not paying accounts it already had approved, it appropriated cash from the treasury for courthouse construction because artisans would not accept certificates for their work.[48]

Ordering each locality to erect its own public buildings would have been more in keeping with usual Assembly

procedures. Of course, in that case, few buildings would ever have been finished, given the extent of local jealousies, controversies, and objections to local taxes. Courts could have met in taverns or private homes (they surely did on occasion), but such settings bespoke a kind of personal rule rather than the rule of law upon which republican institutions rested. And so, in spending public money to pay for courthouses and jails--but not schools--the Assemblymen once again displayed the limits of their republican vision, a vision that easily included institutions essential to the rule of law and administration of justice, but which stopped short of more far-reaching reforms.

Even though the legislature appropriated more money for salaries than for any other category of public expenditure, there were few paid officials other than those mandated by the constitution, and those who collected customs fees and taxes. Wherever possible the Assembly used existing officials rather than creating new offices, which may have reflected determination to avoid the proliferation of placemen that many Americans objected to during the last years of British rule. For example, when the legislature wanted a census, militia officers were required to take it.[49] In newly settled counties which lacked some officials, others had to fill in. Thus, in 1791 the Assembly ordered the tax collectors of newly formed Lexington County to grant liquor licenses because

there was no county court.[50] Once appointed, officials were to perform their public duties responsively and effectively. To insure these ends, the Assembly prescribed oaths, fines, forfeitures, and ways of collecting them.[60] In addition, because it was "inconsistent with the good of the state," senior officials could not leave South Carolina without surrendering their office.[51]

Salaries also were a sensitive matter, as one might expect in a state that was so demonstrably reticent about appropriating public monies to fund public services. In 1787, the Assembly called for austerity. "By reason of the large debt incurred by the Revolution, and the consequent great distress of the State, it behooves every good citizen to step forward in the duty required of him by his country on terms less burdensome to the public than heretofore."[52] Despite the suggestion that the salary cuts enacted that year were draconian, the Assembly cut them even more in 1794. The highest salaries were cut most.[53]

Because of both its frugality and its republican attitudes, the Assembly often turned to ad hoc commissions as an effective link between legislature and citizenry. Such commissions were free, and they were in a position to understand and respond to local conditions. Virtually no area of legislation failed to beget a commission of some sort. There were commissions to build roads, magazines, courthouses, and canals; commissions to improve navigation,

to implement confiscation of loyalist property, and to adjudicate reparations. Commissioners oversaw the poor, valued land, and audited accounts. Some commissioners were appointed by the Assembly or local judges and others were elected by the freeholders. Most faced fines if they refused to serve, because service was demanded as the price of citizenship.

Panels or juries of disinterested freeholders constituted another inexpensive yet reasonably effective way in which the Assembly responded to public needs. As an example, the Assembly reported in 1797 that "the most adequate method of determining the damages sustained by the said petitioners, or whether they are entitled to any redress or not, will be by verdict of a jury."[54] But this system could break down. In 1799, the Assembly had to transfer the duty of valuing certain properties from a panel of freeholders to a commission because the "appointed freeholders . . . being uninterested in the issue of the undertaking and amenable to no penalty, have refused to fulfill the duties prescribed."[55]

By 1800, South Carolinians had grown used to a government which responded to citizens' concerns. Before the war, most whites had little contact with the government or courts, to their great dissatisfaction. By the end of the postwar period, though, they expected the Assembly to provide courts, transportation improvements, produce

inspection, and to respond to any other concerns they expressed. Overall, despite its elitist orientation, the Assembly consistently demonstrated a commitment to establishing a government which responded to the collective needs and desires of the voters.

V

In addition to governing the state, the Assembly linked it to other legal entities--Indian nations, other states and nations, and the central government. Overall these matters absorbed little of the Assembly's time; a scant two measures a year related to them. Even a low level of activity, however, affirmed the legislature's role as mediator between the people of South Carolina and others. In that role, the attitude of the Assembly remained confident, as befitted a sovereign state, but not overbearing. Relationships with the central government seem to have been notably cordial.

Foreign affairs and Indian relations took little time because the United States government conducted most such negotiations. For instance, in 1783 the Senate produced a bill stressing the need for a treaty and trade regulation with the Indians. Although it was explicitly a stopgap measure intended to serve only until Congress could take

action, the bill never even passed. In 1786, the Assembly set aside land for the Cherokee, and two years later appropriated *p*2,000 to help settle disputes with the Indians.[56] Then, as soon as the Federal Constitution was adopted, the Assembly left Indian affairs to the central government. Foreign nations received equally short shrift. Although the Assembly sent money to Santo Domingue to help crush the slave rebellion there in 1791, this was seen primarily as emergency aid rather than foreign policy. In other cases, the Assembly extended what we now call diplomatic immunity to foreign ministers and their servants and also exempted French ships from the duty supporting an infirmary for seamen because "the reasons [for the tax] . . . do not prevail with regard to . . . French [shipping]."[57] Presumably the French succored their ailing seamen.

Two issues--land boundaries and deeds--inspired all intrastate legislation in the period. The definitive location of the state's southern boundary defied resolution for years. At one time, the matter was crucially important because South Carolina's claims to any western land were at stake. The state claimed all land west to the Mississippi, north of its southern border, and south of a certain latitude. Should the Georgia border extend north of that latitude, South Carolina had no western land. The issue's importance lessened as the state prepared to cede its western land to the nation, and by the time it was determined

that the state had none, it already had formally completed the cession.[58] The other intrastate issue concerned how to determine which deeds were valid in areas where both Georgia and South Carolina had granted land. An equitable solution was finally reached whereby an older patent took precedence regardless of which state issued it or within which state the land eventually lay.[59]

Interaction between the state and the central government was comparatively frequent and much more varied. Relations with the Confederation government remained cordial, in part because South Carolina desired what the central government had to offer. The war showed how vulnerable the Deep South was to a foreign adversary; hence South Carolinians were eager to share their military burden. Moreover, the state accumulated a tremendous war debt and sought eventually to share that also. Though South Carolina, like all other states, failed to pay its full quota to the central government, the legislature made a strong attempt to do so even when in local distress. In other matters, South Carolina complied with recommendations from the Continental Congress better than most other states. The Assembly authorized Congress to regulate trade with the West Indies and foreign nations; agreed to change the basis of war debt apportionment between the states from land to population; gave Congress power over the western lands; prohibited the importation of convicts, as Congress

requested; and established the court of piracy and felonies on the high seas which Congress desired.[60] Although it passed, in one form or another, every bill of this type which came before it, the Assembly often attached riders which voided the acts if other states chose not to act upon congressional requests. By 1787, all of South Carolina's grants to the central government were contingent on comparable compliance from the other states.[61] The Assembly valued national unity in shouldering national burdens.

The constant interaction between the state and the Confederation government during the 1780s contrasts starkly with the quiet of the post-Constitution era. Except for South Carolina's implementing the new federal system by ratifying the first constitutional amendments and regulating federal elections, little happened.[62] The Assembly quickly accepted the view that the national government was independent of the state legislatures, for in 1789 the state Senate resolved that "the legislature have no control over a Senator or a Representative of the federal Congress after he or they have been elected."[63] Thus, in this period, the state never tried to interfere with Congress. The only actions involving the United States were minor. It took the Assembly three tries to cede land for a lighthouse to the United States because Congress would not allow any restrictions on the gift. The Assembly also gave

the United States authority to purchase up to 2,000 acres of land for an arsenal and magazine.[64]

V

The Assembly, rather than the United States Congress, constituted the governing body of the state of South Carolina. In the postwar years, elected representatives developed procedures that emphasized order within the legislative process and responsiveness to the people at large. They governed by means of law and the judicial system, by paid officials chosen to execute certain duties, and by unpaid commissioners and panels who attempted to resolve specific problems as a matter of public duty. The Assembly also connected the state with other political bodies.

Judged strictly within the framework of republican ideology, the Assembly appears elitist and unrepresentative, but in context, what is surprising is the extent to which republican practice held sway. Given the social and political reality in the state--a stratified society, elite dominance in government, and the need to protect slavery--one would scarcely have expected the Assembly to respond as readily as it did to popular desires. In South Carolina, elite government did not mean unresponsive

government, even though the Assembly and constitutions hardly pushed the meaning of representation to its theoretical limits. From a less than promising institutional base, the Assembly inaugurated a responsive legislative program that modified in varying degrees the state's judicial, fiscal, social, and economic systems so that South Carolina whites would have a republican society.

NOTES

CHAPTER IV: THE ASSEMBLY

[1]See Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776 (Chapel Hill, N.C., 1963), 402-410. Wilkes was an Englishman repeatedly expelled from Parliament and equally repeatedly re-elected by his constituents. Many Americans, engaged in their own struggle with Parliament, supported his cause.

[2]The Assembly's journals and papers, along with the published laws, provide the sources for this study. The laws, of course, offer excellent detail about the outcome of the Assembly's deliberations. The journals and other papers reveal the whole scope of the Assembly's activities, for they record, at least briefly, every measure that came before the legislature. Thus, these records yield information about bills that never passed, and record unsuccessful attempts to pass bills that later were accepted. Unfortunately, this last type of information is fragmentary and usually consists of no more than the name of a bill or the number of a deleted section. The journals demonstrate the importance of petitions in the process of lawmaking. Most laws arose in response to petitions, and they are crucial to understanding the actions of the Assembly. For most sessions the Senate journal is the primary source for this study largely because it contains abstracts of petitions. Time constraints prohibited extensive use of the House journals. The Senate journals comprise over 5,000 manuscript pages, and those for the House are even longer. In most cases the information in the two journals is redundant. Unfortunately, the Senate did not routinely record the votes. Only in case of ties or in the rare roll call votes, can the totals be discerned. In practice this is little loss, for the bald totals sometimes given in the House Journals are actually not very informative. Unless you know who voted which way and why, little knowledge is gained. Overall, despite their limitations, the laws, journals, and legislative papers taken together, provide a coherent view of government in South Carolina.

[3]Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Mass., 1967), 161-165.

[4]For the classic discussion of this transformation, see Gordon Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N.C., 1969).

[5]For a comparative study of the early state constitutions, see Willi Paul Adams, The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era, trans. Rita Kimber and Robert Kimber (Chapel Hill, N.C., 1980).

[6]Most other state constitutions of the 1770s addressed these questions. See Ibid.

[7]The franchise requirement, while higher than that of some states, was not atypically high. Ibid., 295-311.

[8]South Carolina Constitution of 1776, Articles VII, IX, XVII, XXI. The constitutions are printed in Statutes of South Carolina, I.

[9]South Carolina Constitution of 1778, Art. XII-XIII, XXI, XXIII, XXXVIII, XLIX-LIII.

[10]Jerome J. Nadelhaft, The Disorders of War: The Revolution in South Carolina (Orono, Me., 1981).

[11]South Carolina Constitution of 1778, Art. II, XII-XIII. No reason was given for the decision to elect senators annually. Senators and representatives who did not reside in their districts needed estates valued at *p*7,000 and *p*3,500 currency free of debt, respectively.

[12]Ibid., Art. XX. Several positions were specifically excepted from this policy: "secretary of the State, a commissioner of the treasury, an officer of the customs, register of mesne conveyances, a clerk of either of the courts of justice, sheriff, powder-receiver, clerk of the Senate, house of representatives, or privy council, surveyor-general, or commissary of military stores."

South Carolina was the only state in 1776 to let officeholders sit in the legislature under any circumstances. Wood, Creation of the American Republic, 158.

[13]South Carolina Constitution of 1778, Art. XXI. The governor, lieutenant-governor, and members of the Privy Council were also ineligible to sit in the Assembly.

[14]Ibid., Art. XVI-XVIII.

[15]The convention, although specially elected, was apportioned like the legislature and, predictably maintained the lowcountry dominance in the constitution.

[16]South Carolina Constitution of 1790, Art. IX. The prohibition of impairment of contracts undoubtedly aimed at curtailing the state debt relief program.

[17]Ibid., Art. II.

[18]Nadelhaft, Disorders of War, 273n-274n, states that property requirements for House membership were not changed in the 1790 constitution, they were simply expressed in sterling. This does not seem to be correct since the 1778 qualifications were the same for House members and voters, while in 1790, voting required a 50-acre freehold, but membership in the House required a 500-acre estate and ten negroes.

[19]South Carolina Constitution of 1790, Art. I, Sec. 1, 3. The Senate had added two members and the House had added six in 1789.

[20]Ibid., Art. I, Sec. 8.

[21]Ibid., Art. I, Sec. 12-13.

[22]Senate Journal, 1783, 25; Senate Journal, 1787, fol. 13. See also House Journal, 1787, Bill 15, for House attempts to control absenteeism and Senate Journal, Apr.

14, 1794, n.p., for comparable measures.

[23]See Wood, Creation of the American Republic, 206-214 and passim.

[24]For details on the Maryland controversy, see Melvin Yazawa, ed., Representative Government and the Revolution: The Maryland Constitutional Crisis of 1787 (Baltimore, Md., 1975).

[25]The Senate did block reapportionment in the 1780s, but presumably this was not unpopular in the lowcountry districts which most senators represented.

[26]Senate Journal, 1784, fol. 465.

[27]Ibid., fol. 243. The resolution thanked Butler "for the particular firmness which he manifested in the federal Senate, in the opposition, which he gave to the [Jay] treaty."

[28]Ibid., fol. 220. Laurens was Ramsay's brother-in-law and, in this case, it is reasonable to assume that he was acting on his behalf.

[29]Senate Journal, 1797, fol. 7.

[30]For a discussion of House procedure, see the introduction to each volume of House Journal.

[31]Senate committee assignments became even less important in the late 1790s as the Senate increasingly favored using a committee of the whole on important matters, a distinct change from earlier practice. See, for example, Senate Journal, 1798, fols. 125-127, 134.

[32]Senate Journal, 1791, fol. 198. See also House Journal, 1791, i.

[33]See Wood, Creation of the American Republic,

482-483. South Carolina Constitution of 1790, Art. I, Sec. 13-14.

[34]Senate Journal, 1787, fol. 195.

[35]Senate Journal, 1787, fol. 87. The secretary of state controlled land patents. Therefore land fraud probably provided the motive for the attempt to tamper with the election.

[36]Ibid., fols. 88-89, 107.

[37]Ibid., fol. 203.

[38]Statutes of South Carolina, V, 1-2; Senate Journal, 1787, fol. 113.

[39]Senate Journal, 1789, fol. 268.

[40]Senate Journal, 1783, fol. 139.

[41]Statutes of South Carolina, IV, 604-607, 681, 749; V, 113-121, 133, 196-197, 215, 267; Senate Journal, 1789, fol. 124; Senate Journal, Jan. 1791, fols. 27, 69, 71; Senate Journal, Dec. 1791, fols. 27, 69, 71; Senate Journal 1792, fols. 11, 56; Senate Journal, 1794, fols. 24, 40, 124, 139; Senate Journal, 1795, fols. 23, 130, 171; Senate Journal, 1796, 23, 158; Senate Journal, 1798, fols. 56, 90; Senate Journal, 1799, fols. 41, 48, 62, 71, 87; Petitions, 1790-7-01.

[42]Senate Journal, 1796, fol. 97.

[43]Senate Journal, 1789, fol. 59. Users fees were the accepted method of funding inspection stations in Maryland and Virginia as well.

[44]Senate Journal, 1795, fol. 250.

[45]Statutes of South Carolina, IV, 655-656.

[46]Senate Journal, 1794, fol. 57.

[47]See Chapter VIII below.

[48]The refused certificates would have been receivable for taxes and good at sheriffs' sales. This was considered so important that, for one of the few times in the period, the Senate read the bill twice in a row so that it could be passed before the session ended. Senate Journal, 1784, fol. 351.

[49]Statutes of South Carolina, V, 75, 142, 144.

[50]Session Laws, 1797, 171-172.

[51]Statutes of South Carolina, IV, 704-706; V, 50, 57, 126, 307, 330-331.

[52]Ibid., 20.

[53]Ibid., 242. See Chapter VII below.

[54]Statutes of South Carolina, V, 316.

[55]Ibid., 356.

[56]Senate Journal, 1783, fol. 124. Statutes of South Carolina, IV, 747-748; Session Laws, 1788, 64.

[57]Statutes of South Carolina, IV, 660-661; V, 400.

[58]The issue is discussed in detail in Charles Gregg Singer, South Carolina during the Confederation (Reprint of 1941 edn., Philadelphia, 1976), Chapter Five.

[59]Statutes of South Carolina, I, 411; IV, 753-754. The only measure involving North Carolina occurred when the Catawba Canal Company, which was incorporated in South Carolina, also sought a charter from North Carolina so it could extend the canal northward. The North Carolina government wanted assurance from the Assembly "that this state should declare that they will not lay any restriction, duty, or impost, on any commodity, which is the growth produce, or manufacture of the State of North Carolina, brought through the Catawba Canal or rivers, for sale or exportation." Apparently North Carolina was not willing to trust the constitutional prohibition on such a tax, and the Assembly granted the request. Senate Journal, 1795, fols. 40-41.

[60]Statutes of South Carolina, IV, 596, 720, 759; V, 5, 6, 87; Senate Journal, 1784, fols. 62, 83, 95-96, 199, 261.

[61]Statutes of South Carolina, V, 12. The Assembly went back and forth on the tariff, passing it, repealing it, and passing it again. Ibid., IV, 560, 594.

[62]Ibid., 84, 146, 202, 212.

[63]Senate Journal, 1789, fol. 56.

[64]Statutes of South Carolina, V, 147, 255, 259, 280, 309.

CHAPTER V

THE DEVELOPMENT OF REPUBLICAN COURTS AND LAWS

I

"I hope," said Governor Charles Pinckney in 1798, "it will hereafter prove a blessing to the people of this State, that the management of their Judicial [system] has been so long under consideration. It has given us an opportunity of observing, and I trust with attention, the advantages and defects of other systems."[1] Pinckney was resolutely attempting to construe favorably the Assembly's failure to agree on the provisions of the judicial reform bill that had been pending for several years, but his words struck a larger truth. From one perspective, the entire post-Revolutionary period had constituted a "consideration" of the proper form for the state's legal system--that is, the judicial structure and process.

South Carolina, as a republic, seemed to need a particular kind of judiciary. "A monarchy," Pinckney intoned, "is a species of government which requires much stricter discipline to maintain than a Republic; their Judges have great prerogatives of the King to protect, and to guard them effectively they must have extensive

authorities."[2] Indeed, as Lawrence Friedman notes, the star chamber court had existed in England because "high state policy could not safely be entrusted to a system so chancy as English law."[3] Citizens of a republic like South Carolina, on the other hand, required a different judicial system. In Pinckney's view, it should "be so constructed as never to be inaccessible to any of your Citizens, or to oblige them to pay exorbitantly for the assertion of their rights; that it shall avoid every species of confusion, delay or uncertainty; . . . [it should] measure to everyone compleat and exact justice, and . . . [should] subdue the wills and passions of the Citizens into obedience and the rules of reason."[4] In short, a republican system must be available, inexpensive, and efficient, and it must dispense equal and effective justice. This was crucial in a republic because inappropriate laws or excessively cumbersome administration of justice undermined citizens' moral qualities and their faith in their government. To Pinckney, the jury system provided an essential link between citizens and the judicial system because juries both reflected communal values and taught their worth to the public. Juries, however, could not correct defects in laws and procedure. This task fell to the legislature.

After the war, the Assembly faced three major tasks regarding the legal system: reestablishing courts; modifying English laws, such as primogeniture, to fit a

republican state; and simplifying or replacing common law procedure. In the hectic years of the 1780s, the Assembly managed to establish courts in the state but did not have the time to do more. Then, in 1791 and again in 1798-1799, the Assembly revamped the entire court system so that it would better respond to the needs of the citizens. They established and disestablished courts in response to pressure from the electorate, increased the number of potential jurors, and eliminated cumbersome procedure as much as possible. They also modified the common law to encourage more widespread distribution of land and to make the ownership and transfer of property more secure.

These reforms made the society more equalitarian, but mostly among white propertied males. Because blacks and, to a lesser degree, women lay outside the republican vision, it was possible for the aristocratic elite to view equality before the law among white males with equanimity. This perception gave them the freedom to reshape their legal system without fear.

II

Throughout the postwar period, Americans sought to discover an appropriate form for their judiciary. Although the construction of the judicial system engendered

comparatively little debate during the constitution-making of the Revolutionary era, Americans' evolving theories of sovereignty and balanced government allowed the concept of an independent judiciary to emerge. Sovereignty of the people, after all, entirely removed the idea of sovereignty (which had always been a legal fiction anyway) from the active realm of government and eliminated the need for a fully hierarchical political and legal system. Thus, the judicial dependence required in English theory no longer was a foregone conclusion in America. Simultaneously, development of the theory of balanced rather than mixed government made logical the use of the judiciary as an independent force in government.[5]

For some, particularly the elite, the prospect of judicial independence was particularly attractive. In the 1780s, many members of the elite feared the tumultuousness of the democratic part of the state governments (the popularly-elected legislatures) and sought to curb it any way they could.[6] One of the major failures of the elite of the Confederation period--J. G. A. Pocock identifies it as their most significant problem--was their inability to find a rational base for the institutionalization of a natural aristocracy.[7] The judiciary might well prove to be such a home. Even so democratic a thinker as James Wilson of Philadelphia believed that judges should act independently, although he also believed that they must ultimately retreat

if the people, through their elected representatives, insisted.[8] At the time of the Federal Constitutional Convention, thinking along these lines remained embryonic, and so the Constitution did not stipulate whether or not judicial review was constitutional. Instead, it left the question of judicial independence up to the wisdom of Congress. Although this may have been a tactical maneuver, it more probably reflected lack of consensus.[9]

A second and entirely different debate centered on lawyers and legal process. Many Americans exhibited a strong dislike for legal formalism in general and lawyers in particular. According to Daniel Boorstin, "The ancient English prejudice against lawyers received new strength in America."[10] This predilection resulted from a variety of factors. First, legal procedure could be difficult to use. Courts were often distant, and the English common law could be unintelligible to the uninitiated. Although common law special pleading was designed to reduce a case to a single decisive point for the jury or judge to decide, in practice this was difficult to do. In America, cases were more often argued on the general issue, meaning that the special writ structure was bypassed. But even this process could be confusing. To some it seemed unreasonable that a person who pleaded "not guilty" instead of "never promised" should thereby lose his or her case.[11] In other cases, such as tangled land claims, common law rules did

not fit American conditions.[12] Then, too, in a contest between rural people and outsiders, legal complexities could well work to the advantage of the side with the best lawyer. As the outsiders often had access to more sophisticated legal advice, they often won, whereupon a suspicious frontiersman or farmer might conclude that the common law promoted injustice.[13]

Finally, Revolutionary ideas about sovereignty undercut the rationale that made the common law almost sacred in England. Although Blackstone claimed the King-in-Parliament could, in theory, do anything they pleased, whether just or unjust, in practice they were restrained by the liberties and privileges ensconced in the common law.[14] To English people the antiquity of the system merely proved its suitability and guaranteed its observance.[15] In America after the Revolution, this justification became meaningless. If the citizens (not subjects) were the source of all legal authority (through their legislatures), many expected that they could make law reasonable, inexpensive, and efficient. They would need no ancient safeguards. The most famous statement of this complex of ideas came from John Dudley, a former farmer who somehow ended up on the New Hampshire Supreme Court. He delivered the following charge to a jury. "You've heard what has been said by the lawyers, the rescals; but no I wont abuse 'em. 'Tis their business to make out a good

case. But you and I, gentlemen, have sumptin' else to think of. They talk about law--why, gentlemen, it is not law we want, but justice. They want to govern us by the common law of England; trust me for it, common sense is a much safer guide for us. . . . A clear head and an honest heart are wuth more than all the law of the lawyers. . . . 'Be just and fear not.' That's the law in this case, gentlemen, and law enough in any case in this court. It's our business to do justice between the parties; not by any quirks of the law out of Coke or Blackstone--books that I never read and never will--but by common sense and common honesty between man and men. That's our business, and the curse of God is upon us if we neglect or turn aside from that. And now, Mr. Sheriff, take out the jury; and you Mr. Foreman, don't keep us waiting with idle talk--too much o' that a'ready, about matters that have nothin' to do with the merits of this 'ere case. Give us an honest verdict common sense men needn't be ashamed on."[16]

While ordinary people might well have applauded Dudley's performance, many members of the elite viewed the matter differently. They saw more clearly the advantages (at least to them) of uniformity in law and legal decisions, and they thought that predictability was worth protecting. Because they had greater experience, they also felt more comfortable with the complexities of the English legal system. Moreover, they believed that in certain

areas, especially the frontier, popular "common sense" was often unjust to the claims of outsiders and minorities. Richard Ellis holds that these contrasting concepts of the legal system derived from two distinct world views. Thus, in the early national period a provincial, anti-intellectual, agrarian democracy which favored legislative supremacy and "simple justice" conflicted at almost every point with a "highly rationalized, elite directed, commercial society."[17] According to this schema, laws that provided for local courts, many magistrates, few fees, local valuation, and simplified forms may be assumed to be the work of the popular group. Laws emphasizing training for lawyers, multiple appeals, the common law tradition, and at least some judicial independence would represent the elite group.

In South Carolina, the Assembly apparently saw no significant conflict between the two sets of goals. They favored local courts, many magistrates, low fees, and simplified forms, but also trained lawyers, some appeals, substantial portions of the common law, and a modest amount of judicial independence. Ellis's typology appears inadequate in South Carolina for two reasons. First, he underestimates the extent to which republican ideology strengthened the popular position. The elite agreed that a republic needed simple, effective justice, and everyone was willing to weed out arcane, archaic forms with no relevance

to the American experience. Second, the cases Ellis studied were complicated by the actions of Federalist judges who flagrantly abused the independence of their tenure after Thomas Jefferson's election. Such actions tended to force the two groups apart. In South Carolina, in contrast, few such centrifugal forces were operative, and the two views proved compatible and reinforcing. Throughout the period under consideration, the legislature regularly modified the judicial system in response to pressure from the citizens so that the courts could provide the type of justice desired by the people without sacrificing the legal framework needed by the commercial interests of the plantation society.

III

As the three state constitutions of the period disclose, South Carolinians did not know exactly what type of legal system would best answer their needs. The constitutions tended toward curbing certain abuses rather than specifying the shape of the court system. For example, the 1778 constitution carefully controlled the tenure of officeholders, particularly judges and sheriffs, yet did not even discuss the structure of the common law courts. Rather oddly, the constitutions also juxtaposed a

concern with rotation in office--reflecting republican fear of arbitrary, entrenched power--with a gradual move toward greater judicial independence. Despite this independence, the constitutions made no effort to use the judiciary as an autonomous balancing force in government. On balance, even though the state constitutions were vague about a judicial system for South Carolina, they nevertheless envisioned one that would be superior to the colonial courts.

The colonial judicial system had been patently inadequate. Before 1769, "neither a proper courthouse nor an adequate jail [existed] in South Carolina." Until that year, no court met outside Charleston except for justice of the peace courts. The circuit court act of 1769 provided some relief, but even so, no local courts met in the backcountry where three-quarters of the whites lived, and the chancery court still met only in Charleston. No county courts existed, and only a few justices of the peace were appointed outside the lowcountry.[18]

The Constitution of 1776, which was explicitly intended to be temporary, instituted few new practices. Courts remained firmly under the legislature's control, and judges had restricted independence. The existing court structures, as well as all laws then in force, were retained. Explicit provisions regarding judicial matters were few and noncontroversial. The governor's Privy Council was to act as a court of chancery, just as the

colonial Council had done.[19] Jurisdiction of the admiralty courts (whose constitution was not explained) were limited to maritime cases, thus curtailing a prewar grievance.[20] All suits then on the docket could be continued at the request of either party without having to start anew, a measure that benefited patriot suitors.[21] The General Assembly was to nominate, and the governor to select, justices of the peace and sheriffs. The justices were to serve at pleasure without fee (except in felony cases), and were not entitled to any magisterial privileges while not "acting in the magistracy." They received no salary. The Assembly was to elect all other judicial officers, who were to serve during good behavior but were removable upon address of the legislature.[22] Thus the Constitution of 1776 largely continued existing South Carolina practice.

The Constitution of 1778, which represented the first attempt to provide a specifically republican state government, reveals that South Carolinians did not believe it necessary to restructure the fundamentals of the colonial legal system. They did, however, want to extend and adjust that system. The most important provision was a call for the establishment of county courts throughout the state, which for the first time would provide comprehensive court services to the backcountry. Other changes affected officeholders. Justices of the peace were now allowed to receive fees, which enriched officeholders but also opened

the position to men of lesser means. The governor yielded the appointment of sheriffs and justices to the popularly elected Assembly, and the sheriffs became obliged to rotate out of office for four years following each two-year term.[23]

In some ways the Constitution of 1790 represented a slight backlash against the more democratic thrust of its predecessor because it more thoroughly insulated judges and sheriffs from the people. No doubt this conservatism reflected elite concern about the increased strength of the backcountry under the apportionment provisions of the new constitution.[24] The legislature still established all courts. Judges, however, henceforth were to serve during good behavior, rather than at the pleasure of the Assembly, and no longer could sit in that body. In place of fees, judges were to receive a salary that could not be changed during their term of office.[25] Sheriffs were still ineligible to succeed themselves but could serve for four years before rotating out of office. The only legal reform called for in the constitution was the abolition of primogeniture.

Despite these provisions, the judiciary remained by design something less than independent. In particular, the constitutional convention of 1790 chose not to institute a state supreme court that might be thought to rival the Assembly, although the constitution did not preclude such a court. The language of the relevant article of the

Constitution shows that it was patterned after the Federal Constitution. Compare "the judicial power shall be vested in one supreme court and such inferior courts as the Congress shall from time to time ordain and establish" with "the judicial power shall be vested in such superior and inferior courts of law and equity as the legislature shall from time to time direct and establish."[26] The decision was left to the Assembly, which did not establish a supreme court. Thus, neither in the constitutional convention nor in the legislature did South Carolinians envision the judiciary as a balancing force in government, although they were, as the tenure provision shows, moving toward a meaningful judicial independence. Perhaps this suggests that their confidence remained in individuals rather than in systems. Similarly, the concept of judicial review received short shrift. Judges themselves had quashed attempts to establish the process during the colonial period, and Charles Pinckney, who essentially wrote the 1790 constitution, later spoke out strongly against it.[27] In South Carolina, the courts remained subservient to the legislature.

The constitutions of the period reflect considerable give and take between the popular and conservative views of the legal system. While judges received firm ground for independence in 1790, earlier provisions to eliminate fees, rotate sheriffs, and establish county courts were moves in

the popular direction. Still, the constitutions only set the terms of the debate. They offered no more than general guidelines. The first two were legislative acts which the Assembly could overturn. And although the 1790 document was framed in a specially called constitutional convention, that document was never submitted to popular ratification. Given wide discretion under the state constitutions, the Assembly determined both how the courts were organized and staffed, and what laws they would enforce. And it was largely with the Assembly, therefore, that citizens lodged their comments and complaints about the legal system.

IV

Resurrecting a judicial system loomed as one of the most important, if least controversial, of the tasks facing the Assembly at the end of the war. In 1783 and 1784, it established superior court systems for law and equity, which endured with modest changes until the Assembly completely reorganized the state's court system in 1798 and 1799. The 1783 "Act for Continuance of Process, and Judicial Proceedings in this State" revived the Court of Common Pleas (often called the circuit court) which the Assembly had created in 1769 in response to the Regulators' complaints.[28] These circuit courts thereafter were the

basic common law courts in South Carolina, with cognizance of "all causes, civil and criminal." The justices of the Charleston court rode the circuit, presided over the courts, and at the end of the circuits, met at the capital to hear appeals and agree on procedure. The 1783 act stipulated that no suit should be discontinued because the courts had failed to meet at the normal times during the war; denied that suits could be abated because of the death of one of the parties; and carried over all written and other processes until the courts could resume functioning. These sections of the act obviously were designed to protect citizens from common law practices that could have invalidated cases that had lapsed during the war. The remainder of the act set times for courts to meet, attended to reconstructing jury lists, and emphasized that the state courts "shall have all and every the powers, jurisdiction and authorities . . . as any such courts have at any time or times heretofore held, used or exercised."[29]

It attests to the success of the circuit courts that the Assembly did little that affected their operation in the 1780s except transfer some of their power to the newly established county courts. That the circuit courts were widely accepted seems certain on the basis of negative evidence: the Assembly received almost no citizens' petitions concerning these courts. In the aftermath of the Constitution of 1790, they underwent some slight changes,

but, in general, legislation in 1791 and 1792 merely continued the status quo.[30]

The other superior court system, the Court of Chancery, required considerably more attention. The Constitution of 1778 called for the Privy Council to serve as the chancery court for the state, but by 1784 this arrangement proved unsatisfactory. The official explanation--that "many inconveniences arise from so frequent a rotation of the members who compose the said court, as is required by the constitution in the office of Privy Counsellors"--certainly stated part of the problem, but the difficulty of finding competent persons who would fill such a demanding office for little recompense was probably a larger problem.[31] The establishment in 1784 of a separate court, with well-paid judges, overcame these difficulties and, coincidentally, was justified by the evolving theory of separation of powers. The new court consisted of three judges appointed by the Assembly to serve for good behavior or until recalled by address of both houses. They were to meet in Charleston and to receive £500 sterling per year. This court was to exercise "all the powers and authorities which have been at any time vested in, or exercised by a Court of Chancery in this state" and "finally to determine" (i.e., no appeal) all cases brought before it.[32]

Several measures in the chancery act represented

attempts to guarantee the accessibility and equitability of the court. "The said court shall be considered as always open" so that any one justice could issue injunctions as necessary. A person seeking relief from an unjust common law judgment no longer had "to deposit the sum for which such verdict or judgment was obtained, before an injunction can [be] issue[d] to stay execution." Instead, posting bond for the amount, with sufficient security, henceforth would be sufficient. Other provisions made it possible to obtain actions against persons who refused or were unable to appear in court, something which had previously been difficult. In such cases the defendant had two or four years (depending on whether he or she was in or out of the United States at the time) to appear and appeal before a judgment made in absentia would become final.[33]

The qualification process for chancellors was the most interesting provision of all. Each judge was required to swear that he would "do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience, and the laws and usages of South Carolina, without respect of persons, according to the best of my knowledge, skill and ability." The penalty for failing to take this oath before acting as a chancellor was the almost unbelievable sum of £10,000 sterling, the equivalent of twenty years' pay.[34] This unusual provision reflected deep-seated American fear of

chancery courts.[35]

The chancery bill passed only after a protracted battle between the upper and lower houses. More than the House, the Senate wanted to curb traditional, broad, and loosely defined chancery powers. Hence, it was the Senate that insisted on the oath, penalty, and most of the special measures designed to assure the court's equitability. The Senate, nonetheless, also favored a considerable amount of judicial independence and therefore insisted that the chancellors' tenure be changed from pleasure to good behavior and that fees be eliminated in favor of substantial salaries.[36]

Disagreement between the two houses of Assembly over the chancery bill led the Senate to articulate its concerns. The bill originated in a joint conference committee, which was unusual in itself because such committees ordinarily were used only to hammer out compromises on extant bills. The senators on the committee, reporting on the bill, admitted the necessity of chancery legislation but insisted that this bill should be rejected. The Senate agreed and did so, but the House sent it back unchanged. Thereupon, the Senate restructured the bill by striking several clauses and adding the oath and penalty, and then recommitted it.[37] The new committee report made explicit the Senate's objections to the bill. "It appears . . . that the general Powers and Authority

given to the court by the said Bill comprehend those formerly exercised under a monarchial Government which may prove incompatible with our present Constitution, and the Legislature would thereby vest Powers and authorities unknown in their Extent . . . . Your committee are of opinion that the Powers and authorities of the said Court should be defined, as far as human Foresight can reach."[38] Thus, the Senate's position was very much in keeping with the tenor of the times: powers of the judiciary should be defined, not vague, and such powers should be compatible with a representative form of government. Ultimately the Senate could not budge the House from its traditional interpretation of the powers of the court and so had to settle for the specific limitations discussed above.

Later minor modifications in the structure of the Court of Chancery increased the equitability and availability of the system. They allowed recovery of chancery judgments in common law courts, required the court to meet in Cambridge and Columbia as well as Charleston, eliminated the need for a lawyer in equity proceedings, and allowed the delay of common law cases where the defendant was too distant from the equity courts to get a stay before execution would be made.[39]

V

While the superior courts of South Carolina underwent only gradual changes after the war, the Assembly transformed local justice in the state by establishing county courts and then modifying them in response to popular pressure.[40] In the mid-1780s, the Assembly received a number of petitions complaining about the problems of the state, and most of these mentioned the need for county courts. The Constitution of 1778 had ordered such courts established "as soon as proper laws can be passed for these purposes," but the Assembly had not managed to organize them before the fall of Charleston ended judicial process in the state. In 1785, after an abortive attempt the previous year, the Assembly created county courts with the explanation that "experience hath proved the utility of courts of inferior jurisdiction for the more expeditious determination of suits and controversies, and the recovery of debts."[41] These new courts were to meet every three months, and to be presided over by at least three of the seven justices of the quorum whom the Assembly appointed for each county. Like the chancellors, they had to swear to "do equal justice," on pain of forfeiting £200 sterling, and they were empowered to hear all cases of common law and debt up to fifty pounds sterling and all personal actions to twenty pounds where

land was not at issue. These courts could not hear cases where the punishment might involve loss of life or member and/or corporal punishment. At the other end of the spectrum, the courts were not to hear "small and mean" cases of less than twenty shillings because these could be brought before a single magistrate.[42]

In sharp contrast to the chancery bill of the previous year, "An Act for Establishing County Courts" was extremely specific and therefore fifteen times as long. This specificity reflected not so much an acceptance of the Senate's call to "define as far as human Foresight can reach" the powers of the courts, as it revealed the Assembly's awareness that they were setting out guidelines for a diverse group of persons, not all of whom had any legal training. This diversity of experience was exacerbated by the fact that at no time did the county justices all come together to establish procedure as the superior court judges did at the end of each circuit.

The Assembly patiently explained exactly what the county courts would do, even to the point of specifying the form of writs. In addition to defining the courts' common law and debt jurisdiction, the Assembly required the justices to license taverns (which were, among other things, "to keep wholesome meat and drink"), and to function as commissioners of the high roads.[43] The justices also were to survey the lists of taxpayers, select

"the most respectable and independent" for the grand jury list, and remand the remainder to the petit jury box.[44] Finally, justices of the peace were individually empowered to attach the property of debtors who appeared likely to abscond (which protected creditors), and were required to record all deeds, mortgages, marriage settlements, and other actions affecting land values or titles within the state.[45]

With similar attention to detail, the Assembly carefully defined the role and responsibilities of clerks and sheriffs. They were required to post substantial bonds (£1,200 and £1,500 sterling, respectively) and were to be paid according to an explicit fee table.[46] In addition, the clerks were enjoined to write with a fair hand; use words at full length (except that numbers could be expressed as numerals); read aloud the order book at the close of each day's sessions, to allow the judges to make corrections; and post conspicuously a "fair table of all fees."[47] All of these provisions were intended to reduce the possible grounds for dispute.

Other provisions designed to prevent abuse of the system demonstrate that the lawyers who presumably wrote the act were concerned about justice. Fraud, frivolity, and unnecessarily cumbersome or expensive procedures would not be tolerated. For instance, a plaintiff who had a justice of the peace attach a defendant's property before

his or her case came to court, allegedly to prevent absconding, had to post double bond to pay the defendant's costs should the plaintiff lose the case. This provision lessened the likelihood that anyone would exploit the attachment system for nuisance value. Similarly, all cases between twenty shillings and five pounds were to be presented by petition and decided by the justices without jury, to keep court costs down and expedite procedure. Should any plaintiff, in the opinion of the justices, attempt to evade the foregoing procedure by artificially raising the value of a suit so as to put it over the five pound limit, he or she would "be non-suited and pay costs."[48] To prevent "causeless and vexatious suits" for assault and battery, the Assembly decreed that in all cases where the jury returned a judgment under two pounds, the plaintiff could not recover costs.[49] Nor were appeals to higher courts to be undertaken lightly. Although one could appeal any judgment over ten pounds sterling to the circuit court, the appellant risked paying all costs and had to post bond for them in advance.[50] Then, too, one could request a writ of certiorari to transfer a case to the superior court before trial, but only after notifying the other litigant ten days in advance and allowing him or her the chance to persuade the county justice not to issue the writ. Finally, the Assembly limited attorneys' fees to one pound, one shilling, nine pence for actions at law and

fourteen shillings for a summons and petition judgment. Any lawyer who charged more than these amounts was to forfeit fifty pounds sterling to the informer.[51] All told, the county court act went a long way toward producing the kind of legal jurisdiction that the frontier areas allegedly desired. Certainly it sought to protect individuals from rapacious lawyers and from legal tactics designed to circumvent the intent of the law.[52]

Despite the Assembly's good faith effort to make the county courts acceptable, some people almost immediately began petitioning for their abolition.[53] That must have come as a surprise since, before the Assembly established the courts in 1785, none of the petitions received on the subject opposed such courts. At first the Assembly did not respond in the belief that the protests were not "the wish of the majority of the inhabitants." By 1789, however, they took the complaints seriously.[54] Significantly, some legislators wanted to seek the advice of their constituents. Thus, the Senate committee investigating the matter recommended "that a Bill be brought in to suspend the jurisdiction of the County Courts under certain restrictions, that the said Bill be read a first time and printed for the information of the public, and that further consideration thereof be postponed . . . to give time to all parties who may be affected by the measure to be heard."[55] That measure was postponed but the people

responded anyway. The major problem seems to have been that the county courts by their very existence created litigation which cost money and required tedious service from jurors and witnesses.

Citizens stated their grievances in a number of ways. Inhabitants of Winton County pleaded with the Assembly to "suspend the Court of the said County . . . until the Inhabitants are better able to bear the hardship thereof," a curious view of the administration of justice.[56] People of Lincoln County wanted to limit the courts' jurisdiction to "such causes as may safely be entrusted to an association of magistrates." Others averred that the raison d'etre for the courts had ended when the Assembly made the circuit courts more available.[57] Still others complained that the Assembly had established "County Courts among us contrary to our wishes and against the Happyness and Interest of the honest and industrious part of our Community."[58] A final petition mimicked (perhaps intentionally) the opening language of the act that erected the courts. "We have Experienced the Utility of County Courts and conceive them to be a grievance instead of a Benefit."[59] Almost 400 persons signed this petition.

Opinion was not unanimous, however, for the Assembly received a number of counterpetitions asking for continuance of the courts. From the same county as the

last petition came one claiming "that we have experienced the [positive] utility of the County Courts."[60] The petitioners argued that the local courts were closer, the courthouse was already built and paid for, lawyers fees were lower, property sold for judgment would be sold locally, and witnesses did not have to travel far. Others professed "astonishment" upon learning of the movement to abolish the courts, or asserted that the petitions against them were obtained "in a Clandestine manner."[61]

Inhabitants of the counties were divided, and no general lines can be drawn. In at least one case, the gentry of a county were accused, somewhat curiously, of machinations against the court. "Perhaps our leaders discountenanced the Scheme in the first Instance--perhaps because it would be somewhat inconvenient to themselves, or because their Judgments as single Justices (without that establishment) was final and would neither be subject to control nor reprehensions after they had passed their Solemn decree. The influence of our Leaders operated upon many of the Ignorant and Unwary Multitude which raised a popular clamor against the Establishment."[62] Most often, however, the petitions against the courts garnered considerably more signatures than those in favor of them, and those in favor were more likely to rail against the rabble.

The Assembly responded as best it could. For

example, it prohibited instituting suit in a court higher than the lowest one allowed, a move intended to strengthen the county courts.[63] To deter abuse, the justices were empowered to take summary action against malpractice by sheriffs and clerks, each sheriff was prohibited from holding sales in "any private or retired part of his county," and individual justices of the peace were barred from taking cognizance of any tort action. Still, the ultimate proof of the legislature's responsiveness to popular pressure came not in measures to strengthen the courts, but in their willingness to abolish them when and where appropriate. "And whereas the majority of the inhabitants of the counties . . . within the districts of Orangeburg and Beaufort are desirous that the said [county] courts not be continued among them . . . the said courts be and they are hereby suspended."[64]

VI

Although the assemblymen might have been content to rest on their laurels once the major courts and their jurisdictions were defined, they continued throughout the 1790s to try to make the courts better fit a republican system. Complaints and suggestions arrived from both governors and citizens. Although Governor Charles Pinckney

carefully refrained from dictating policy to the Assembly, he did not hesitate to express strong convictions. "Whatever may be the principles you adopt with respect to the Judiciary, or whatever may be the form it may hereafter assume, it appears to me essential that some alteration should take place in your Laws, respecting the attendance of jurors and the punishment of crimes."[65] Pinckney's concern was that the republic should have laws that, in addition to being just, also encouraged proper behavior. On a more down-to-earth level, citizens complained that the equity courts were unavailable. From 1795 to 1798, the Assembly discussed the provisions of an omnibus judicial reform bill. Ultimately they chose not to implement the most liberal reforms, such as penitentiaries, but they did further rationalize the system in judiciary acts passed in 1798 and 1799. All told, these acts defined the court system of South Carolina for some time to come.

No doubt the "Act to establish a uniform and more convenient System of Judicature" of 1798 failed to meet all of the governor's expectations, but it represented a important step in the further development of the court system. The act was primarily structural. It swept away the entire existing criminal and civil court systems--both the old circuit courts and the county courts--and in their stead established new district courts organized in four circuits. For the most part the boundaries of the new

districts followed county lines. Thus, at the local level, South Carolinians now had recourse to one, not two, judicial bodies.[67]

The other major provision of the 1798 act aimed at insuring that men did not neglect jury duty. Pinckney adamantly supported the use of juries. To him, the extent of their use distinguished a republican judiciary from other kinds. "That no man should be deprived of his life, his liberty or property, but by the judgement and decision of his equals, is so excellent a guard against the inroads of arbitrary power or inordinate influence that next to a fair and unbiased election of the Legislature it is to be considered as of the highest importance." Unfortunately, the unwillingness of substantial citizens to serve on juries had, he claimed, "essentially injured the administration of Justice." Thus, he insisted, some means must be found to "convince them that in a government like our own, no one should be inattentive to the important privileges of suffrage and attendance on Juries."[67] The Assembly effectively responded to such concerns by making the fine for non-attendance proportional to the delinquent juror's state taxes. An absent grand juror had to pay thirty dollars and 5 percent of his state taxes for the previous year. This surely provided incentive for the well-to-do to attend.[68]

The 1798 judiciary act provoked both negative and

positive responses. Some adamantly opposed the measure. People from Pendleton, Pinckney, and Chester counties called for its repeal. In a curiously guarded statement, they expressed preference for county courts. "We think men still exist among us capable with the assistance of a Jury of Discharging this trust with Tolerable Propriety." Then, rising to a crescendo, they attacked the district court on the grounds that it "wold be a steady Tax and a growing eville, and withall have a Te[n]dency to destroy Equality and stifle the Diffusion of knowledge--the parent and nurse of aristocracy--and the fair Republic of South Carolina may ultimately Dwindle Down into a State of vassalage and Slavery under the Iron hand of Despotism for which reason with many others makes us unwilling to parte with our Courts of Inferior Jurisdiction."[69] Other citizens were more optimistic. Inhabitants of Marlborough County desired "to testify their approbation of the [new court system] . . . and deem it certain that these arrangements must contribute to our ease and happiness. They thought that the district courts would combine the advantages of the old county and circuit courts.[70] Still others suggested that more innovation, such as increasing the availability of the equity courts, was needed.

Once again the Assembly responded to popular pressure, this time with two more acts relating to the judiciary. The first significantly democratized the

juries. To begin with, it repealed provisions of the 1798 act which limited jurors to men who had paid at least three dollars in taxes the previous year. More importantly, the 1799 law abolished the practice of dividing the jury list into grand and petit lists. Henceforth all jurors could serve in either capacity. Furthermore, it changed the penalty for non-attendance to twenty dollars and 7 percent of the previous year's taxes.[72] These changes clearly were intended to increase the influence of common folk on the juries. Other provisions re-established the fifty pound fine for lawyers who overcharged their clients; gave the Assembly members representing each district the right to nominate their district's court clerk; finished the abolition of the county courts (which had been retained for some administrative purposes); and made minor changes in court meeting times and places.[73]

The other act of 1799 completed the reorganization of the judiciary by establishing an equity circuit similar to that of the district courts. In the late 1790s the Court of Equity ceased to function because one chancellor resigned, another died, and the remaining one did not constitute a quorum. In 1795, the Assembly had postponed choosing a new chancellor because they were planning to restructure the court. Unfortunately this restructuring took three years, a delay that provoked some vehement complaints. The inhabitants of Orangeburg, for example,

announced that "they feel themselves much aggrieved by the unequal distribution of justice in their county owing to the present inefficient state of the Court of Equity, that while they are liable to the most active operations of the Courts of Common Law upon their persons and properties their rights in dispute may be, and some of them are, suspended in the Court of equity & that court so enfeebled by deaths & resignation as to be altogether unable to define & establish their rights, though it still claims a jurisdiction over them." The petitioners believed that "a delay of justice is, in fact, a denial of justice . . . totally repugnant to the spirit of their constitution." It is not entirely clear why the Assembly could not agree on the provisions of the equity bill before 1799, but the act of that year finally extended the equity courts to the entire state and completed the development of the postwar judicial system.[74]

Before the Revolution, a citizen with a legal complaint not cognizable by a justice of the peace had to travel to one of only three places in the state to obtain satisfaction in common law matters. If it was an equity matter, he had to travel to Charleston. In contrast, in 1800 anyone could get complete and final justice in his or her home county. Moreover, a strong emphasis on jury trials tended to insure that the justice dispensed in these courts was acceptable to the citizenry and reflected

community values. But that was not the whole story. In addition to changing the courts between 1784 and 1799, the Assembly had modified colonial and common law so that it, too, better fit the republican nature of the state.

VII

South Carolina was fortunate that it had not accepted all of the English common law. In 1715, the Assembly decided exactly what portions of it applied to the colony, thereby sparing South Carolinians from the application of inappropriate common law doctrines.[75] Nonetheless, at the end of War for Independence the legal system remained unnecessarily complex and prompted the Assembly to pass numerous reforms. Some simplified common law procedure in order to make laws act more reasonably. For instance, the common law required assignees of bonds, notes, or bills to make legal action for recovery only in the name of the obligee; new law allowed the assignees to act in their own behalf.[76] Similarly, in 1789 the Assembly for the first time allowed suits against any one co-partner in a partnership, when the other had absconded.[77] These are examples of the postwar Assembly's continual willingness to consider and reform even the smallest workings of the legal system in the interest of securing to the citizens their

rights in property. Given the importance of property in America, in both fact and political theory, it is not surprising that the most important of these reform measures related to the transfer of real estate.

Perhaps no area of American law was more tangled than land claims. Even if one could settle the questions of which Indians ceded what lands to whom and when, English law could render a clear claim murky in a very short time. Dower rights, mortgages, and other restrictions made it difficult for buyers to ascertain exactly what they were purchasing. Complex problems that had to be resolved through costly litigation were common.[97] Redistribution of land confiscated from loyalists brought these problems to a critical level because so many people encountered difficulties with their purchases. Most often, they learned to their sorrow that confiscated land they thought they had procured was not really theirs because of a prior dower claim or mortgage. Since the state government sold the confiscated land, it fell to the Assembly to settle these problems piecemeal.[78] One joint resolution passed in 1795 illustrates just how tangled these matters quickly could become. The resolution called for the instigation of a suit "against such person, or persons, who are creditors of Jacob Valk, and have received a proportion of the monies arising from the sales of [confiscated] land, purchased by Ralph Izard, esquire, at the sale of Jacob Valk's real

estate; which land is now claimed as the property of Francis Coleman; and should a verdict be recovered against the creditors, in consequence of Francis Coleman proving that the said Valk had not a legal title to the said land, but that it was vested in him, the said treasurer is hereby ordered to pay the said monies to the said Francis Coleman."[79] In England, land changed hands relatively rarely. In America, transfer of land was common; some persons even bought and sold large tracts that they never saw and never expected to see.

Faced with such circumstances, the Assembly attempted to facilitate the distribution of property in a number of ways. This impulse arose from two Revolutionary sources. First, English legal devices, like primogeniture and entail, which existed in order to maintain concentrations of wealth over generations, seemed wrongheaded in a republic. Second, because of the Revolutionary emphasis on the importance of property ownership, the Assembly sought to clarify the procedures relating to transfer of property so that clear titles could easily be obtained. Legislators addressed three major areas: how to determine land titles in mortgage foreclosure proceedings and other cases; how to regulate inheritance practices in both testate and intestate cases; and how to determine married women's claims to property.

In 1791, the Assembly attempted to improve the

procedure for foreclosing mortgages and to simplify the procedure for trying title to land. As the relevant act points out, "no actual estate is intended to be conveyed" in a mortgage, "and [the security] ought only to be considered as a pledge for the payment of the principle and the interest due on the debt meant to be secured."[80] Thus, when a mortgage was foreclosed, the judge was to order the land sold and the proper portion of the proceeds delivered to the mortgagee. This action superseded equity of redemption proceedings, which awarded the property itself to the mortgagee. At the same time, the Assembly ordered that actions of trespass henceforth would be the proper way to establish title to land, and prohibited another method, ejectment. Ejectment consisted of a legal fiction involving an attempt to eject an imaginary person from the property, "which depending on a variety of legal fiction is rarely understood but by professors of the law."[87] As the Assembly realized, the simpler trespass action sufficed.

Also in 1791, the Assembly not only abolished primogeniture, as the 1790 constitution ordered, it dramatically revised intestacy law to replace life estates as much as possible with fee simple ownership. These changes helped distribute property within the republic.[82] Under the new law, in cases where both a widow and at least one child survived, the widow received a third of the land and personalty, just as she had under common law. Now,

however, she received the property outright, instead of as a life estate.[83] Equally, when a propertied wife died, the husband also received a third of her real estate, thus voiding the common law right of curtesy that awarded him a life estate in all of her realty. In cases where there were no children, the wife received one-half of the property and the other heirs divided the rest. As in other states that abandoned primogeniture in the wake of the Revolution, the effect was equalitarian. All of the children of intestate decedents--not only the heir-at-law, as under primogeniture--were entitled to share in the real estate.

The Assembly also regulated the probate of wills. An act of 1791 obviously was intended to prevent disputes over estates as much as possible.[84] No nuncupative (oral) wills were allowed for estates valued at more than ten pounds sterling, unless the will was delivered during the deceased's last illness and three witnesses agreed on the provisions. In such cases, the witnesses' testimony had to be heard by the county court within six months or written down within six days and heard within twelve months. Written wills could not be renounced verbally. Should a slaveowner die after March 1, the slaves were to remain on the land until December, thus insuring the availability of labor during the growing season. Interestingly, remarriage with issue voided any wills written prior to the second

marriage.[85] This insured an equal share for the children of the second marriage.

The legislature also addressed problems such as how to decide what an equitable third of the land actually was. In 1786, the Assembly passed "An Act for the more easy and expeditious obtaining, the admeasurement of Dower to Widow . . . ."[86] Admeasurement was an English writ designed for just this purpose. Under the provisions of the South Carolina law, an unsatisfied widow could go to the Court of Common Pleas (the circuit court) and present her case. If the judge approved, the heir-at-law or his or her representatives had to come forward to help select a five-person panel (two chosen by each side, one by the court) to view the land and divide it or agree upon a cash settlement for the widow. This process protected the widow's rights, but also cleared the title to the land and allowed two-thirds of it to descend promptly.

During the 1790s, the Assembly continued to encourage clear land titles and to remove obstacles, grounded in women's property rights, that impeded the orderly transfer of realty. In 1792, the Assembly eliminated problems raised by undisclosed marriage settlements by voiding all such settlements not registered within eighteen months of the marriage. To be effective, these contracts had to "describe, specify, and particularize the real and personal estate, therein intended to be included." In no case,

however, could any such settlement allow a woman to alienate her dower land to pay off debts incurred by the man before the marriage.[87] Finally, a bill introduced in 1794 and passed in 1795, "An Act to facilitate the conveyance of real Estate," reaffirmed the South Carolina practice of allowing a woman to renounce her dower and inheritance right to land that her husband wanted to sell, but only after a judge examined her privately to determine that she was not being coerced. Scholars disagree on how much protection private examination actually accorded wives, but the effect of this law, and related measures, is obvious. By the mid-1790s, land in South Carolina could pass from one holder to the next much more readily, and with less fear of subsequent litigation, because of the alterations in women's traditional property rights.

VIII

John Dudley told the New Hampshire jury, "it is not law we want, but justice." Many in the South Carolina Assembly would have not have understood the distinction. They wanted law and justice and believed that the latter depended on the former. "In a free republic," read the preamble of an act passed in 1791, "the citizens ought to be entitled to equal liberties and equal privileges, so no

set of men are exempt from the process of any court within the limits of its jurisdiction, without such exemption is expressly granted by the constitution."[88] The laws passed by the Assembly worked with remarkable uniformity of purpose toward these ends. The predominate tendency was toward inexpensive, fast, fair, effective, and popular courts. While recognizing that the legal system should not be changed lightly or haphazardly, the Assembly tried to be responsive to the voice of its constituents. They also tried strenuously to regularize procedure, recognizing that this was essential to their primary goal. In particular, they dramatically reduced the web of restrictions surrounding land titles so that citizens could more easily acquire and dispose of property.

When discussing the legal system in this period, the usual South Carolina dichotomies again break down. Backcountry and lowcountry interests were not opposed. Similarly, the split between conservatives and radicals did not figure prominently here. What conflict there was concerned means more than ends. The dispute between the House and the Senate over the chancery court in 1785 apparently resulted from nothing more than the question of whether to specify the court's power or to trust a definition based on former usage; something could be said for both sides. Overall, the Assembly pursued its republican vision.

Why,

then, did so little conflict surface in the Assembly over a system as critically important as judicial structure and process? First, in the absence of parties, occasional differences never hardened into perpetual ones. Second, an inequitable court system had no natural constituency (except perhaps corrupt lawyers). Within the bounds of shared republican ideology, an effective court system seemed appropriate and in everyone's interest. Third, conservatism is always relative, and even the most conservative people in that era realized that establishing a republic required some changes in the old order. While many did not want the social and economic system to change, they did not see the changes in the judicial system as a threat to that order. Ultimately the old social order stood on a black foundation and legal equality for white males could not threaten it.[89]

NOTES

CHAPTER V: THE DEVELOPMENT OF REPUBLICAN COURTS AND LAWS

[1]Senate Journal, 1798, fol. 5.

[2]Ibid., fol. 6.

[3]Lawrence M. Friedman, A History of American Law (New York, 1973), 23.

[4]Senate Journal, 1798, fol. 5

[5]See Gordon Wood, Creation of the American Republic, 1776-1787 (Chapel Hill, N.C., 1969), 161, 407, 436, 453-456, et passim.

[6]For the South Carolina elite's fear of democratic forces in government, see Ulrich B. Phillips, "South Carolina Federalist Correspondence, 1789-1797," American Historical Review, XIV (1908-1909), 776-790, especially 779-780.

[7]J. G. A. Pocock, The Machiavellian Moment (Princeton, N.J., 1976), 574. His analysis draws heavily on Wood, Creation of the American Republic.

[8]For Wilson's views, see Adrienne Koch, ed., Notes of Debates in the Federal Convention of 1787, Reported by James Madison (New, indexed edition, Athens, Ohio, 1984), 336-337; Robert Green McCloskey, ed., The Works of James Wilson (Cambridge, Mass., 1967), II, 500-502.

[9]It seems unlikely that this was a tactical maneuver since members of the convention did not regard it as such. See Koch, ed., Notes of Debates, 61, 462, 465.

[10]Daniel Boorstin, The Americans: The Colonial Experience (New York, 1958), 197. See also Friedman, History of American Law, 81, 83.

[11]For the complexities of common law procedure, see William E. Nelson, "Court Records as Sources for Historical Writing," Publications of the Colonial Society of Massachusetts, LXII (1984); Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830 (Cambridge, Mass., 1975), 21-30, 72-79, and Mary K. Bonsteel Tachau, Federal Courts in the Early Republic: Kentucky, 1789-1816 (Princeton, N.J., 1978), 77-82.

[12]Friedman, History of American Law, 51-55.

[13]There is something to be said for this position, since the common law court system had to be supplemented with an equity court system to ensure justice.

[14]Blackstone offered the following definition of the powers of Parliament. "The power and jurisdiction of Parliament [is] so transcendent and absolute, that it cannot be confined . . . within any bounds. . . . It can, in short, do everything that is not naturally impossible . . . . True it is, that what the parliament doth, no authority upon earth can undo." J. W. Ehrlich, Ehrlich's Blackstone (San Carlos, Ca., 1959), 55.

[15]McCloskey, Works of James Wilson, I, 38-39.

[16]Quoted in Richard Ellis, The Jeffersonian Crisis: Courts and Politics in the Early Republic (New York, 1971), 115.

[17]Ibid., 261. Tachau, Federal Courts in the Early Republic, contests this point of view.

[18]Rayford B. Taylor, "The South Carolina Judiciary, 1669-1769" (Ph.D. diss., University of Kansas, 1982), 97. County courts had been established in the lowcountry in 1734, but apparently no longer met by the time of the Revolution.

[19]The constitutions are printed in Statutes of South Carolina, I. The references here are to article and section. South Carolina Constitution of 1776, Article XVI. The colonial council had served as both the chancery court and the upper house of the Assembly. Under the 1776 constitution, the Privy council retained the former function, but the latter devolved on a newly devised legislative council which was replaced by the Senate in 1778.

[20]Ibid., Article XVII. Late in the colonial period, vice-admiralty courts, which had no juries, enforced custom regulations. This seems to be what the constitution intended to prohibit. See Robert M. Wier, Colonial South Carolina: A History (Millwood, N.Y., 1983), 300-301.

[21]Ibid., Article XVIII.

[22]Ibid., Article XIX-XX. Only the chancery court justices were immune to recall because they also served as privy counsellors.

[23]South Carolina Constitution of 1778, Articles XXVI, XXXIX-XLV.

[24]This constitution also extended the length of legislators' terms and increased their property qualifications. See Chapter IV above. In part, these changes reflected the increased influence of the backcountry. To compare constitutional change in South Carolina to that in other states, see Wood, Creation of the American Republic.

[25]South Carolina Constitution of 1790, Article III, Section 1.

[26]Ibid.; United States Constitution, Article III, Section 1.

[27]Taylor, "The South Carolina Judiciary," 83-83; Senate Journal, 1798, fol. 7.

[28]Statutes of South Carolina, VII, 197-207. Prior to 1769, all criminal cases and all civil cases valued at more than twenty pounds current money had to be tried in Charleston.

[29]Ibid.

[30]The Assembly did receive a complaint from four of the circuit court justices in 1796 which reveals that the state judges desired to limit their role to law matters in accordance with republican principles. These judges, who had served in the Assembly until the Constitution of 1790 had prohibited their serving both on the bench and in the Assembly, complained that the Assembly, in assigning them extra tasks, had violated the Constitution, "because as Common law Judges we cannot take cognizance of any matter by rules foreign to the common law. 2d Because if we proceeded by foreign rules, we should be exercising distinct offices, which we are not at liberty to do." They went on to point out "the dangerous tendency of committing to one set of Judges so many various and distinct jurisdictions. If such a policy does not breed an aristocratic influence in the Government . . . it will unavoidably produce uncertainty & confusion." One might doubt the sincerity of their concerns, thinking it merely an attempt to divest an onerous and unpaid duty, but this seems unlikely. The judges added "We have hitherto been silent on this accumulation of new & foreign duties, because no case occurred in which we had the occasion to inquire into the nature of it." Since one of the acts had been in force for seven years, it seems unlikely that they were overworked. They were expressing genuine republican concerns. Moreover, Aedanus Burke, the principle author of the letter, was one of South Carolina's foremost republican ideologues. Such a concern about the underlying implications of legislation would have been completely in character for him. Aedanus Burke, et. al., to Governor Charles Pinckney, Oct. 24, 1796, Manuscript Department, Duke University Library, Durham, N.C.

[31]Statutes of South Carolina, VII, 208.

[32]Ibid., 208-211.

[33]Ibid., 209-210.

[34]Ibid., 208.

[35]For the American distrust of chancery courts, see Stanley N. Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century," Perspectives in American History, V (1971), 257-285.

[36]Senate Journal, 1784, fols. 195-196.

[37]Ibid., fols. 106, 116, 162. There is no record of exactly what the Senate struck out of the bill.

[38]Ibid., fol. 189.

[39]Statutes of South Carolina, VII, 211, 258-260, 278-279, 297-298. In 1791, the name of the court was changed from chancery to equity. Senate Journal, 1795, fol. 79; Petitions 1798-62-01.

[40]The interpretation of the postwar court system offered here differs substantially from that of Michael Stephen Hindus, Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878 (Chapel Hill, N.C., 1980), especially 5-8. He focuses on the eventual failure of the county courts, but his evidence is sometimes unable to support the burden he places on it. For instance, he accepts the relative orderliness of the Camden court riots. "By their support of the court in criminal matters and their promise to treat officers of the court 'with the utmost civility,' the dissidents showed their basic acceptance of authority, but resistance to its oppressive encroachment." Given this, his next sentence, "The Camden affair illustrates the hostility directed at the judiciary during these years," seems strained. At least for the 1780s, Hindus seems to neglect the larger pattern of the judicial system.

[41]Statutes of South Carolina, VII, 211. The unpassed bill of the previous session can be traced in the House Journal, 1784 as Bill 47. Apparently there was not sufficient time during the session for the problems with the bill to be resolved.

[42]Statutes of South Carolina, VII, 211-242. Technically, the county courts and circuit courts had concurrent jurisdiction in cases under £50.

[43]Ibid.

[44]Ibid., 236. The republican practice of selecting the most independent for grand jury duty dated to the colonial period.

[45]Ibid., 213-214.

[46]Ibid., 238-242.

[47]Ibid., 222.

[48]Ibid., 217-218.

[49]Ibid., 231. See also the similar provisions in cases of trespass vi et armis on the same page.

[50]Ibid., 221.

[51]Ibid., 235.

[52]Unlike the superior courts, the county courts were modified almost every year between 1785 and 1794. Some of the earlier modifications were small and in the spirit of the establishing act. In 1786, the courts' powers were increased to cover larceny cases up to 40s. and to allow the whipping of those convicted. At the same time, the summary jurisdiction of the court was extended to £10. A jury became permissible in those summary cases where both parties wanted it or where either party was willing to pay the jurors. After 1788, any attorney who "shall advise, bring up, or prosecute any appeal . . . which by the supreme court may be deemed frivolous and groundless" had to pay all costs. Ibid., 243-250.

[53]Senate Journal, Jan. 1788, fols. 93, 106, 117.

[54]Ibid., fol. 117.

[55]Senate Journal, 1789, fol. 154.

[56]Senate Journal, Jan. 1791, 109.

[57]Petitions, 1791-73-01, 1791-106-01.

[58]Ibid., 1792-32-01.

[59]Ibid., 1792-32-01, 1792-29-01.

[60]Ibid., 1791-33-01.

[61]Ibid., 1791-28-01, 1791-30-01, 1791-31-01, 1791-32-01.

[62]Ibid., 1791-45-01.

[63]Statutes of South Carolina, VII, 260-278.

[64]Ibid., 269.

[65]Senate Journal, 1797, fol. 5.

[66]Statutes of South Carolina, VII, 283-290.

[67]Senate Journal, 1797, fols. 5-8.

[68]Statutes of South Carolina, VII, 287. Other reforms also affected juries. A petition alleging that the law that allowed special juries in civil cases was being "abused to the purposes of delay and chicanery," and had slowed court proceedings to a crawl attracted 500 signers. Therefore, the procedure was abolished except in cases where both parties desired it. The Assembly also discovered "the present mode of administering oaths to the

jury, in every separate trial, is highly unnecessary and not becoming that solemnity with which all oaths ought to be administered." Therefore they decided to allow one oath to suffice for several cases. In these cases as in so many others, the Assembly reacted promptly their constituents' expressed desires. Ibid., V, 305-306; Senate Journal, 1797, fols. 22, 28, 35, 113.

[69]Senate Journal, 1799, fols. 30, 60, 67; Petitions, 1798-132-01.

[70]Ibid., 1799-71-01.

[71]Ibid., 1799-72-01

[72]Statutes of South Carolina, VII, 291.

[73]Ibid., 293. The old fines for lawyers who overcharged had been repealed with the old county court acts.

[74]Ibid., 293-300.

[75]The British law that South Carolina adopted in 1715 are printed in Statutes of South Carolina, II, 417-602.

[76]Ibid., V, 330.

[77]Ibid., 277-278.

[78]See Chapter X below.

[79]Session Laws, 1795, 34.

[80]Session Laws, Jan. 1791, 32-33. In 1797, the Assembly provided that a person in default on a mortgage could choose to convey the property to the mortgagee without going to court, and that the title thus obtained would be satisfactory. Statutes of South Carolina, V, 311.

[81]Ibid., 169-170. See also Friedman, History of American Law, 18-19 and Nelson, Americanization of the Common Law, 74, 84.

[82]See Stanley N. Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Era," Michigan Law Review, LXXVI (1977), 1-29; John E. Crowley, "Family Relations and Inheritance in Early South Carolina," Histoire sociale--Social History, XVII, (mai-May 1984), 35-57. Earlier attempts to abolish primogeniture failed in 1785 and 1789.

[83]Statutes of South Carolina, V, 113. See Marylynn Salmon, "'Life, Liberty, and Dower': The Legal Status of Women After the American Revolution," in Carol R. Berkin and Clara M. Lovett, eds., Women, War, and Revolution (New York, 1980), 85-106. Salmon's study, which focuses on equity court decisions, does not effectively present the statutory law on which they were based.

[84]Statutes of South Carolina, V, 106-113.

[85]Ibid., 112.

[86]Ibid., IV, 742-743.

[87]This measure failed to pass in 1790. Senate Journal, 1790, fol. 25. Several other bills "concerning marriage" were introduced but never passed. Senate Journal, 1794, fol. 24; Senate Journal, 1795, fol. 44. A bill to repeal the admeasurment of dower act described above was brought in 1797 and 1798 but not passed.

[88]Statutes of South Carolina, VII, 108.

[89]This analysis is similar to that offered by Edmund S. Morgan in American Slavery, American Freedom: The Ordeal of Colonial Virginia (New York, 1975).

CHAPTER VI

DEBT, TAXES, AND GOVERNMENT EXPENDITURE

I

"To tax and to please, no more than to love and to be wise, is not given to men." So declared Edmund Burke in On American Taxation in 1774, as he surveyed the relationship between Britain and the American colonies. After the colonies declared independence and formed republican governments, these governments faced the necessity of imposing taxes without displeasing the electorate. In most of the new states, many citizens had reason to be dissatisfied with the existing tax laws. The Revolutionary American cry, "taxation without representation is tyranny," had been tinged with irony. Robert A. Becker points out in a recent study of the internal tax policies of the colonies that "throughout the American colonies, [domestic] tax laws overburdened the politically impotent in general and the poor in particular, and favored the politically powerful and the wealthy, particularly the landed wealthy."[1] In the revolutionary years, most states redressed old inequalities by replacing fixed taxes with ad valorem ones which made their tax policies less regressive.[2] Still no consensus

existed concerning the proper nature of taxation, for republicanism offered no definitive paradigm. On one hand, a republican government might ask for a greater proportion of taxes from the wealthy, just as it asked them for greater public services. On the other hand, it could institute a simple poll tax (which would be proportionally harder for a poor person to pay) on the grounds that this was most appropriate in a state in which each white man (within certain restrictions) had an equal vote.[3] For the most part the Assembly chose a middle ground and taxed all property relatively equally. This chapter explores both postwar tax policy in South Carolina and the related questions of how the Assembly spent the tax money and the ways government regulated economic affairs in the state.

In South Carolina, economic issues promised to be volatile because the old tax system there was indeed inequitable, and because the mid-1780s produced such a serious economic crisis. As the Assembly attempted to solve the state's financial problems, it confronted the need to balance a variety of different considerations. In the short run, the first and foremost question was always how to meet the state's immediate financial obligations, but long-term questions concerning the state's debt and the crisis in the private economy could seldom be ignored. Immediately after the war, the only way the government could raise money was by selling the confiscated estates of

loyalists. In 1783, virtually every decision which required funding had to be accompanied by a resolution saying that so much confiscated property, usually slaves, had to be sold to pay for it. While the confiscated estates provided some breathing room, the Assembly had to hammer out a tax policy which could cover three major areas of expense--the salaries of state officials, the annual expenses of the state, and the enormous war debt--without exacerbating divisions in the state. In addition the Assembly had to sort and audit its own accounts to determine who was owed what. Even as the Assembly organized the state's finances it faced a local economy threatening to crumble because of debt and the lack of a circulating medium.

Given the extent of these problems, it is remarkable that the state muddled through as well as it did. With a surprisingly deft touch, the Assembly made major interventions in the economy when necessary and at other times delayed action until problems solved themselves. The mid-1780s were the critical period when the Assembly made major innovations. In 1784, the state overhauled the tax structure not only to increases tax revenue, but to lessen the relative burden on the poor and the backcountry. Later the Assembly passed a variety of measures designed to ease the crisis in the private economy, including a modest issue of paper money, the infamous "Pine Barrens" Act, and other

debt stay legislation. While the crisis was at its peak, the Assembly avoided all unnecessary expenditures so as to funnel money where it was most needed. Together, these actions quieted discontent in the state so that it could simply ride out the storm until the assumption of the state's war debt by United States effectively ended the state's economic woes. In the 1790s, the state primarily used its income to pay off old accounts and to build public buildings.

The complicated state of economic affairs in South Carolina suggests how historians like Merrill Jensen and John Fiske could reach opposite conclusions about the period. On the one hand Jensen could rightly argue that the Assembly did a creditable job of balancing the interests of the state and managed to maintain its credit reasonably well in the face of poor harvests and other problems. On the other hand, however, the crucial role that federal assumption of the debt played in saving the economy of the state reveals the limits of this roseate interpretation and strengthens Fiske's interpretation. Overall, the evidence shows that the 1780s in South Carolina were a time of economic crisis, but also that the state carefully managed the different aspects of the economy as best it could. Throughout the period, the government managed to meet its obligations, in part by keeping non-fixed expenses as low as possible in bad years

and in part by absorbing the interest on the domestic debt with high taxes. Although exhibiting considerable reluctance (particularly in the Senate), the Assembly did enact an ongoing program of debtor relief in the late 1780s. Once the crises eased, however, the Assembly showed no continuing affinity for debtors. In the 1790s, the state paid its bills while dramatically cutting taxes.

II

Colonial taxes in South Carolina included a hodgepodge of different types of measures that favored the lowcountry planters at everyone else's expense. The general tax law taxed everything according to its value except land, which was taxed at a fixed rate per acre, and slaves, who were taxed on a per capita basis regardless of their value. Unsurprisingly, this system produced a good deal of resentment in the backcountry, especially during the regulation, when citizens who could not obtain such basic services as courts from the state were legally required to pay the same taxes on their land as the planters around Charleston. Charleston also suffered from higher taxes than the rest of the low country. Outside the city, citizens produced their own list of taxable goods for the collector. Only in town could the collector inspect the

premises and value items. Moreover, Charlestonians alone were taxed on their earnings.[4]

For the period between 1763 and 1769 the general tax produced about 35 percent of the tax revenue of the state. Import and export taxes produced most of the rest. Specific duties on enumerated items produced a little over 20 percent of the total, and a special tax of £100 South Carolina money (£14 6s. sterling) on imported slaves furnished the rest. This last tax, instituted to help pay for the Seven Years War raised £191,000 local money (£27,286 sterling) in six years.[5] The South Carolina tax system endured unchanged throughout the war, despite a determined effort by Christopher Gadsden in 1780 to raise the taxes of the very rich.

By 1783, South Carolina was the only southern state which had not reformed its tax policy primarily because the government did not function late in the war.[6] Both the increased need for revenue and dissatisfaction with the old system dictated some change in the system, but the extent of the revisions was dramatic. By 1784, it must have been clear that the state needed to tap its resources for the basic tax rate doubled from .5 to 1 percent and land was moved to the ad valorem category. An elaborate system of classification established the nominal value of land at anything from £6 per acre for prime rice swampland to 2s. per acre for desolate pine barrens. The old tax rate had

been 4s.6d. per hundred acres; the new rates would vary between 2s. and £6 per hundred acres depending on the quality of the land. Given that the tax rates had doubled elsewhere, citizens with marginal land received a large, and deserved, tax break. For example, under the old system, a person with 100 acres of marginal land (No.8, oak and hickory high lands above Sparrow Hill) would have paid 9s. in tax. Under the new system he or she would only owe 5s. In contrast, a planter with 100 acres of prime rice swampland would formerly have paid the same 9s, but now owed £6, twenty-four times the rate of the previous year.[7]

Other taxes also increased in 1784. The head tax on slaves doubled, going from 4s.8d. to 9s.4d., as did the tax on free blacks and mulattoes who paid no other taxes.[8] Town lots and stock in trade were assessed 1 percent and each carriage wheel (excepting those of wagons and drays) accrued the same tax as a slave, 9s.4p. Other provisions included a quintuple tax penalty for tax evasion, double taxes for absentees and the elimination by default of tax exemptions given the previous year to widows (with an estate of less than £1,000), friendly Indians, and new settlers.[9]

Just as in the colonial period, other taxes supplemented the annual tax acts. In 1783 the Assembly instituted two additional taxes. The first was a 2.5 percent sales tax on all lands, slaves, and merchandise

which was sold at auction.[10] A larger source of revenue came from the second tax which included a duty on imports. That three successive Assemblies each produced a new version of this bill attests to its controversial nature and its importance.[11] The 1784 version, which lasted three years stipulated that all places in Charleston retailing "any spirituous liquor or strong drink whatsoever in any quantity less than three gallons" pay an annual license fee of £10 and required that all billiard tables be taxed £50. Outside the city, the cost of liquor licenses dropped to £3, but the billiard table tax remained prohibitive.[12] The act revived the prewar duty on imported slaves--£3 for African and £5 for blacks who had lived elsewhere for more than three months--but it did not apply to United States citizens who immigrated and did not intend to sell their slaves in the state. Some items, including liquor, tea, coffee, sugar, cocoa, and pimentos were taxed at set rates. All other imported items except "the growth, produce, or manufacture of some of the United States" were taxed 2.5 percent.[13] In 1787, this tax measure was again reworked, raising the duties slightly.[14]

This marked the high point of taxation. The next year the Assembly revoked the tax on auctioned goods.[15] At about the same time the rates in the annual tax bills began to decline. In the crisis years from 1785 to 1787, the state had gone so far as to impose a ten-shilling tax on

white men who paid no other taxes, but once the Federal Constitution was ratified, South Carolinians, seeing better days ahead began to cut their own taxes. In 1789, the basic tax rate fell nearly two-thirds, from 20s. to 7s.6d. per £100. The cut affected all items, even those taxed at a flat rate like carriage wheels and slaves.[16] The next year, another adjustment slightly increased the basic tax rate while reducing that on slaves and carriage wheels.[17] By 1791, however, it appeared that the Assembly had been a bit overeager with their tax reduction plan, because they again had to raise the rate slightly on all items.[18] Eventually the tax rate stabilized at 10s. per £100 valuation (.5 percent) and 3s.6d. per slave. After 1793, the luxury tax on carriage wheels ended permanently.[19] In 1799, the tax rate was cut in half again.[20]

The only group of taxpayers who failed to benefit from the trend toward tax reduction was free blacks and mulattoes. In 1791, they were each taxed 3s.6d., the same as slaves. The next year, however, their tax nearly tripled to $2 (9s.4d.).[21] The rate remained at this high level throughout the period. By 1799, free blacks were paying a poll tax four times as great as the tax masters paid for their slaves, plus the same taxes as whites on the property they owned. Free blacks understandably objected to being singled out for high taxes and petitioned in protest of the poll tax. They explained that they

"cheerfully paid [other] taxes" and had "not been backward . . . in performing . . . public duties," but their arguments failed to sway the Assembly.[22]

The difference between paper and hard money complicated the problem of taxation, for the legislature had to ensure that their tax program would raise both types of tender. In the years 1784-1788 only £117,398 (19.7 percent) of the £596,092 budgeted by the legislature went for salaries and expenses; the rest went to pay the debt. (See Table 5.1.)[23] Of the £478,694 covering debts, 80 percent was paid out by the state in the form of special indents bonds issued to pay the annual interest on the state debt and were receivable for state taxes on a par with specie.[24] But the state derived no immediate economic benefit from taxes paid in this manner because it could not re-issue these notes to pay expenses or out-of-state debts. The process did, of course, keep the interest on the state debt from accumulating, but left the Assembly needing to devise a tax policy which which would annually sink the special indents and still produce enough specie income (and paper money after 1785) to pay the state's expenses without alienating their constituents. The oddities inherent in this situation probably explain the willingness of the low country delegates to accept much higher taxes. So long as they could pay in special indents, the taxes cost little because the widely-held

state bonds were considered nearly valueless. Later, when the state stopped issuing special indents, the low country delegates succeeded in lowering their share of the taxes substantially by reducing the rate on slaves faster than the rate on other property. When the general assessment on land was 1 percent and slaves were assessed 3s. 5d., slaves were effectively valued at £35 each, which was probably a low figure.

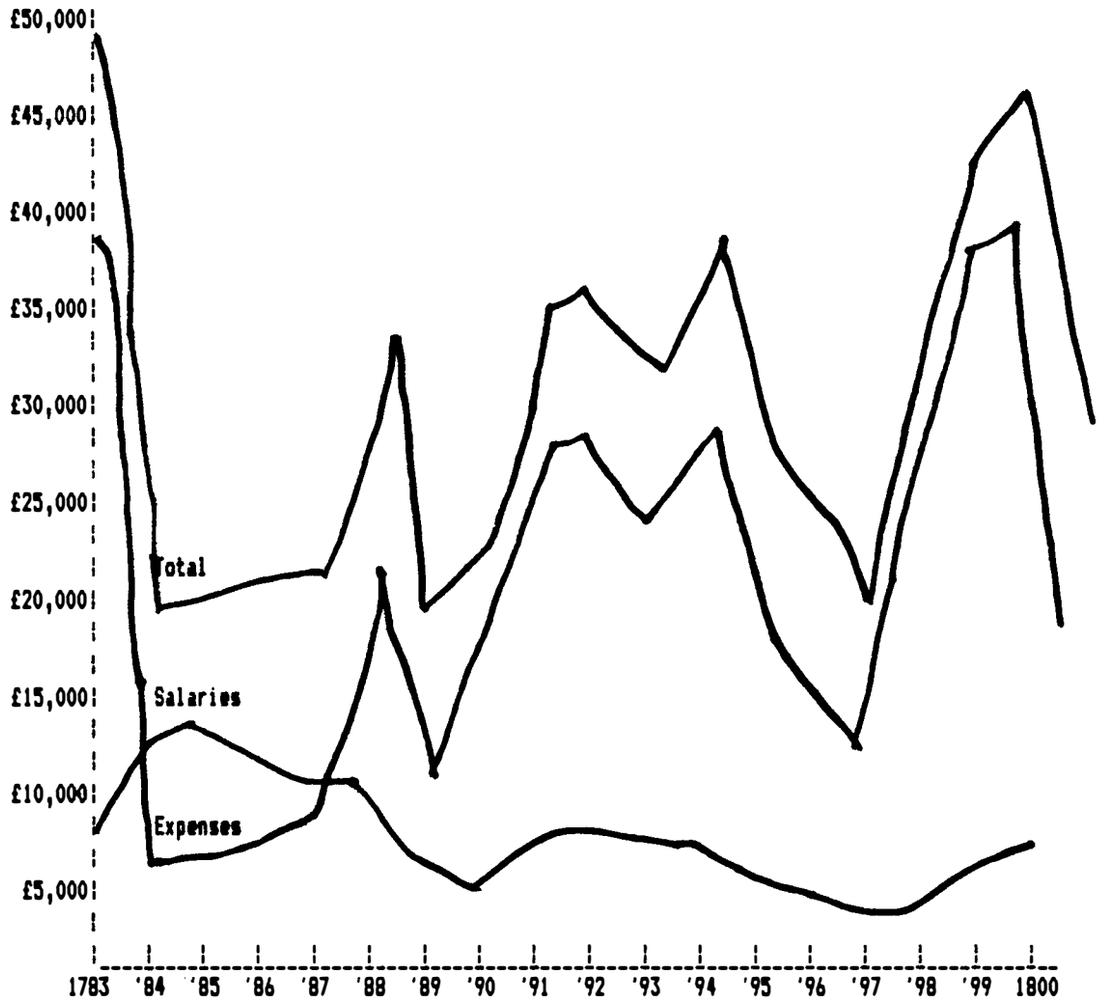
III

The legislators allocated funds as well as raising them, and the way they spent the state's money reveals their priorities. Figure 5.1 depicts the state's budgeted expense from 1783 to 1800. The stability of the salaries of most state officials in this period suggests South Carolinians did not perceive price changes as a serious problem, so no attempt has been made to adjust the figures for inflation and deflation. Prices fell sharply after the war until 1785 and slightly thereafter until 1793. That year, probably as a result of the war in Europe, prices jumped about 35 percent and then remained stable.[25]

Throughout the period, the South Carolina government had relatively few salaried officials. The state's total salaries fluctuated moderately during the period from a

FIGURE 5.1

GOVERNMENT EXPENSES*



*All values are given in pounds sterling. In 1783 and after 1795 the values were originally given in dollars. They have been converted here at the rate established by the Assembly, 4.28 dollars to the pound.

SOURCE: Budgets approved by the Assembly in the annual tax bills, The Statutes of South Carolina, IV, 538, 638, 698-699, 738-739; V, 35-36, 61-62, 131-132, 151-152, 191-192, 229-230, 254, 276-277, 301-302, 327, 328, 343-344, 376-377, 395-397. For some reason the 1792 budget was omitted from this work. It can be found in Session Laws, 1792. It should be noted that those budgets which do offers totals (e.g. 1792) are sometimes incorrect.

high of £13,158 in 1785 to a low of £5,648 in 1790. (See Table 5.1) On the average this represents about 16 percent of the total budget or about 20 percent of the expenditures not related to debt. Throughout the period a small group of low-level functionaries maintained an unchanged salary. The Senate and the House maintained clerks, messengers, and doorkeepers who were paid £287, £70, and £50 respectively. The clerk of the Privy Council and the governor's clerk belong with this group although their offices were combined in 1787, and the salary was reduced in 1790 from £150 to £100 when the Privy Council was abolished. The Treasurers and the Auditor were better paid than the clerks and their salaries fluctuated more, anywhere from £400 to £740 annually depending on the press of business at any given time. The state provided them with clerks as necessary and on occasion they were paid a bonus for extra work.[26]

The highest level of officials--the governor, the judges, the delegates to Congress and the attorney general--dominated the civil list. In general, South Carolina highest officials received higher pay than their counterparts in other, less aristocratic, states.[27] The size of the salaries produced few complaints, but one group of petitioners insisted that high salaries, "the pregnant Parent of baneful Pride, Luxury, & Immorality," were "therefore unjust and oppressive."[28] In 1783 these high officials received nearly three-fourths of the total

TABLE 5.1

SOUTH CAROLINA GOVERNMENT EXPENSES 1783-1800

YEAR	SALARIES	EXPENSES	DOMESTIC DEBT	FOREIGN DEBT	NATIONAL QUOTA	TOTAL
1783	7,605	38,807	9,345	0	44,860	100,617
1784	13,058	6,296	72,892	0	3,541	95,787
1785	13,158	7,800	88,674	5,286	0	114,918
1786	12,109	8,233	83,184	0	0	103,526
1787	11,108	10,625	64,000	0	8,563	94,296
1788	10,258	23,957	75,000	19,306	0	128,521
1789	6,648	12,502	0	15,000	0	34,150
1790	5,648	18,890	0	0	0	24,538
1791	11,214	26,147	0	0	0	37,361
1792	8,384	30,702	0	0	0	39,086
1793	9,354	23,895	0	0	0	33,249
1794	9,887	30,863	0	0	0	40,750
1795	7,377	20,729	0	0	0	28,106
1796	7,024	16,573	0	0	0	23,597
1797	6,165	13,233	0	0	0	19,398
1798	6,165	36,632	0	0	0	42,797
1799	8,583	38,030	0	0	0	46,613
1800	8,323	18,524	0	0	0	26,847
TOTAL	162,068	382,438	393,095	39,592	56,964	1,034,157

*All values are given in pounds sterling. In 1783 and after 1795 the values were originally given in dollars. They have been converted here at the rate established by the Assembly, 4.28 dollars to the pound.

SOURCE: Budgets approved by the Assembly in the annual tax bills, Statutes of South Carolina, IV, 538, 638, 698-699, 738-739; V, 35-36, 61-62, 131-132, 151-152, 191-192, 229-230, 254, 276-277, 301-302, 327, 328, 343-344, 376-377, and 395-397. For some reason the 1792 budget was omitted from this work. It can be found in Session Laws, 1792. It should be noted that those budgets which do offers totals (e.g. 1792) are sometimes incorrect.

salaries paid by the state. Over time, however, their salaries decreased. In 1787, the attorney general's salary fell from £300 to £200. But it was the governor whose position changed most. In 1783 the governor received £1200 or 17 percent of the total of all the salaries paid by the state. The next year this was increased to £1300, although it constituted a smaller percentage of the total. In 1787, though, the Assembly reversed this trend and lowered his salary to £900 and then, in 1795, decreased it to £600, equal to the salaries of the justices of the superior court. By then it constituted only 8 percent of the state's total.[29] This presumably reflects the growing awareness of the governor's relative unimportance.[30]

The total of the state salaries remained at a relatively high level until 1789 when it, like the tax rate, fell sharply. The adoption of the Federal Constitution removed several drains on the state treasury, including the £1100 the collectors received and the £1800 for the delegates to Congress. Moreover, the resignation of one of the judges saved an additional £500. In the 1790s changes in the court system, a slight downward revision of salaries in 1795, and the establishment in 1799 of the office of comptroller with a salary and staff costing £800 explain the fluctuations in the salary totals.[31]

While salaries changed only moderately, state

expenses often varied wildly (See Chart 5.1). Expenses for 1784 were only one-sixth of those of the previous year, and those of 1796 tripled those of the year before. Tables 5.2 and 5.3 divide state expenditures rather arbitrarily into two categories: fixed and non-fixed expenses. The groupings are slightly artificial because the allegedly fixed expenses did vary some from year to year and all expenses had to be appropriated annually by the Assembly. Nonetheless, the fixed expenses--the Governor's contingency fund, the relief fund for the transient poor in Charleston, the printer's bill, annuities and pension, and the expenses of the Assembly (they received no salary)--remained relatively constant. The governor's fund, the relief fund and the printer's bill seldom varied at all. No annuities or pensions were paid until 1788 and thereafter the annual bill ranged between £1,051 and £4,000. The pension costs peaked between 1789 and 1793 when they averaged almost £3,000 annually. From 1794 to 1800 the annual bill averaged only £1,250. The expense money the Assembly voted itself proved the most interesting of the fixed expenses. Throughout the 1780s the amount steadily rose from £1,168 in 1783 to £5,000 by 1789. At that time someone apparently noticed that the Assembly's expenses had quadrupled and complained, for the the next year the Assembly directly appropriated itself no money at all, although a suspiciously large amount appeared under the heading

TABLE 5.2

FIXED GOVERNMENT EXPENSES BY YEAR AND CATEGORY

YEAR	GOVERNORS FUND	ASSEMBLY PAY	RELIEF	PRINTER	PENSIONS	TOTAL
1783	4,672*	1,168		117		5,957
1784	1,000	1,166	800	150		3,116
1785	1,000	2,200	1,000	200		4,400
1786	1,000	2,200	1,000	200		4,400
1787	1,000	4,000	1,000	300		6,300
1788	3,000	4,000	1,000	300	1,600	9,900
1789	1,500	5,000	1,000	300	2,500	10,300
1790	1,000		1,000	300	4,000	6,300
1791	1,000	1,400	1,000	300	2,000	5,700
1792	1,000	1,400	1,000	300	3,872	7,572
1793	1,000	1,400	1,000	300	2,500	6,200
1794	1,000	2,400	1,000	400	1,500	6,300
1795	1,000	2,892	1,000	440	1,257	6,589
1796	1,000	1,636	2,168	393	1,401	6,598
1797	1,000	1,636	1,000	393	1,707	5,736
1798	1,000	1,636	1,000	160	1,636	5,432
1799	1,000	1,636	1,000	271	1,051	4,958
1800	1,402	2,803	1,000	271	1,051	6,527
TOTAL	24,574	38,573	17,968	5,095	26,075	112,285

*All values are given in pounds sterling. In 1783 and after 1795 the values were originally given in dollars. They have been converted here at the rate established by the Assembly, 4.28 dollars to the pound.

SOURCE: Budgets approved by the Assembly in the annual tax bills, Statutes of South Carolina, IV, 538, 638, 698-699, 738-739; V, 35-36, 61-62, 131-132, 151-152, 191-192, 229-230, 254, 276-277, 301-302, 327, 328, 343-344, 376-377, and 395-397. For some reason the 1792 budget was omitted from this work. It can be found in Session Laws, 1792. It should be noted that those budgets which do offers totals (e.g. 1792) are sometimes incorrect.

"contingent fund for payment of resolutions of the legislature."[32] In 1791 expenses of the members reappeared on the budget at the low rate of £1400 and although it rose over the course of the next decade, it never reached its former levels.[33]

Unsurprisingly, the non-fixed expenses--public buildings, military expenses, accounts payable, short term debts, and other items--varied more than the fixed ones (See Table 5.3) Public building expenditure and military expenses were most heavily concentrated in a few years. Three quarters of the public building expense, which went almost exclusively for jails and courthouses, was appropriated in four years: 1783, 1790, 1791, and 1799. These years coincide with major revisions of the judiciary system. In 1783 public buildings were sorely needed, for in colonial times scarcely a jail had existed in South Carolina.[34] In the aftermath of the new constitution of 1790 the courts were changed and again the Assembly improved the facilities. The largest expense came in 1799 when the new district courts needed accommodations.[35] The military expenses were even more concentrated. In 1783, it was not entirely clear that the war had ended and a cautious Assembly spent more than £20,000 to ensure the safety of the state. Again in 1798 when war loomed with France, the Assembly spent a large sum to maintain security. These two years saw the expenditure of almost

TABLE 5.3

NON-FIXED GOVERNMENT EXPENSES BY YEAR AND CATEGORY

YEAR	PUBLIC BLDGS	MILITARY	ACCTS	OTHER	SHORT TERM DEBT	TOTAL
1783	9,953*	20,794		234	1,869	32,850
1784		2,000	180	1,000		3,180
1785		1,500		1,900		3,400
1786		1,500		2,333		3,833
1787	4,325					4,325
1788	7,826	265	5,500	466		14,057
1789		260	1,632	310		2,202
1790	3,330	260	4,000	5,000		12,590
1791	4,800	260	7,237	250	7,900	20,447
1792		260	8,058	8,264	4,000	20,582
1793	402	355	9,682	3,256	4,000	17,695
1794	1,450	2,275	5,600	4,738	4,000	18,063
1795	747	1,622	7,570	2,322	3,977	16,238
1796	630	1,696	5,934	939	776	9,975
1797	303	1,388	5,537	269		7,497
1798		23,597	7,355	248		31,200
1799	27,793	1,470	3,270	540		33,073
1800	373	2,171	2,690	6,563		11,797
TOTAL	61,932	61,673	74,245	38,632	26,522	263,004

*All values are given in pounds sterling. In 1783 and after 1795 the values were originally given in dollars. They have been converted here at the rate established by the Assembly, 4.28 dollars to the pound.

SOURCE: Budgets approved by the Assembly in the annual tax bills, Statutes of South Carolina, IV, 538, 638, 698-699, 738-739, V, 35-36, 61-62, 131-132, 151-152, 191-192, 229-230, 254, 276-277, 301-302, 327, 328, 343-344, 376-377, and 395-397. For some reason the 1792 budget was omitted from this work. It can be found in Session Laws, 1792. It should be noted that those budgets which do offers totals (e.g. 1792) are sometimes incorrect.

three-fourths of the total military expenses in the period. Together these two categories, military expenses and public buildings, took nearly 47 percent of the non-fixed expenses and almost a third of the total expenses appropriated in the period.

"Short term debts" and "other" expenses proved considerably less expensive. The bulk of the short term debt was £16,000 paid to one James Burn whose estate had been confiscated and sold. By the time the confiscation of his property had been lifted, the new owners had made considerable improvements on the property. The Assembly decided the simplest course would be simply to buy Burn, out which they did over a four year period.[36] The largest single amount in "other" was £5,000 appropriated to pay for the state constitutional convention of 1790. Other miscellaneous expenses included payment to the commissioners appointed to settle the state's boundary dispute with Georgia, money to negotiate with the Indians, and sums like £30 to a minister for preaching before the Assembly.

The Assemblymen eventually chose to make themselves clearly accountable for their expenditures. Starting in the mid-1790s, the Assembly began to appropriate large sums described only as "incidental charges" (which are included here in the other category). Given that the £4,493.04.10 listed as incidental charges in 1794 was the largest single

item appropriated that year and more than a quarter of the entire budget, it was anything but incidental. In response, a bill was introduced the next year requiring an act of the legislature for each appropriation of state money. The measure failed that year, but passed the next and such incidental charges disappeared from the record.[37]

The final category, accounts, constituted a large part of the Assembly's workload. Because the state's power was so centralized, the Assembly found itself having to approve every niggling expenditure. Thus a passed set of accounts might look as follows:

Childs, Haswell & M'Iver's account for advertising Judge Pendleton's address	6	19	
John Logan, for taking William Jacks, and lodging him in gaol	1	13	3
John Tippins, for pursuing, taking and carrying James Hughes to gaol[38]	2	3	8

As this example suggests, many of the accounts which the Assembly approved were routine in nature. Most dealt with law enforcement in one form or another. Until 1787, the Assembly passed accounts but did not appropriate money to pay them. Thus people would petition and get their account approved and then have to petition again the next year to try to get it paid. After 1787, however, the Assembly dutifully appropriated the requisite amount of money to pay the accounts which had been passed.

The accounts system, however, did not prove fully

adequate for the state's needs, and eventually for one of the few times in the period, the Assembly delegated significant power. Still, they only did so after repeated attempts to find an alternative solution to their problem had failed. The 1799 "Act to Establish the office of a Comptroller of the Revenue and the Finances of the State" began with this telling preamble: "The financial system of the state is in many respects extremely defective."[39] The Assembly had tried to solve their problem piecemeal, but here admitted their failure. Indeed, the extent of their inability to deal with the problems is suggested by the fact that such a reorganization had been pending for more than a decade. Many previous attempts to impose order on the state's accounts--particularly those of the tax collectors--and to establish a comptroller had been defeated or had proved ineffective.[40] The new comptroller was to supervise the treasurers and the tax collectors (prosecuting them if necessary), control all disbursements from the treasury, and process all claims against the state.[41] The comptroller was intended to replace a whole series of bills which the Assembly had instituted in an attempt to settle the state's accounts.[42]

IV

If settling accounts and paying the state's annual expenses had been the Assembly's only fiscal problems, they would have faced a far easier task then they actually confronted. The state debt raised a number of issues both because of its size and because different portions of it were handled in different ways. The foreign debt created little division. All agreed that the obligation should be met in full, and all knew that it had to met with specie. Although this was easier to deal with in theory than in practice, throughout the 1780s the state did what it could to meet this obligation punctually. The 1785 tax act specified that the tax money raised should go first to the civil list, then to pay the interest on the foreign debt, and finally, if any was left, to cover the interest on the domestic debt.[43] By the following year, however, the interest on the foreign debt took precedence over government expenditures.[44] That same year, the Senate considered but eventually rejected an ordinance to lay a duty on exported specie.[45] In 1788, when the state paid the largest installment of the foreign debt (£19,306), the tax act appropriated all specie, notes, and bonds to the foreign debt.[46] The possibility of national assumption of the state debt eased the crisis by 1790, but even so the Assembly carefully considered an "ordinance to facilitate

the Payment of Specie Taxes due to this state." The House passed the bill, but the Senate, after a tie vote, postponed it permanently.[47]

The Assembly made other attempts to satisfy the foreign creditors. In 1788 the state applied all the interest arising from the paper money to the foreign debt.[48] This proved insufficient, so the next year they added £10,000 from the general revenue, the balance due on the confiscated estates, and the income from a new twenty-five cent tax all slaves imported for the next ten years. They also instructed the auditor to separate the foreign account into distinct books, to settle the amounts of the accounts, and to pay them insofar as the money appropriated allowed. He was to pay all interest first and then to divide the rest "only in exact proportion to the relative amount of the capital owed . . . so that equal justice may be extended to all."[49]

After assumption, the state's only remaining problem with the foreign creditors was paying them. This was not always as simple as it sounded. In 1796, they ascertained that although they owed the French Government $53,022.86, "no part of that debt has been paid . . . because the French treasury, to which application was made, refused to receive the payment offered . . . disavowing any knowledge of the debt." But later, when Victor Dupont, the French consul, demanded immediate payment, the Assembly agreed to

pay him out of "all unappropriated monies which may lie in the treasury," as long as they received "full receipts."[50]

A similar problem arose over the debts owed on the ship "South Carolina." After the death of the Prince of Luxemburg, the auditors were not sure who or how much to pay.[51] The House's committee reported in a perplexed tone. "The state being justly indebted, and only doubtful to whom the money is rightfully due and payable, stands in the situation of a stake-holder, and can make no election between the parties." Since "it would be unsafe" to decide, the Assembly decided to have the attorney general file a bill of interpleader with the United States Supreme Court which would require the parties to plead their cases there. This approach too had its pitfalls. The attorney general was enjoined "to attach thereto a declaration, against the exercise of any jurisdiction by the Supreme Court of the United States, coercive on the state, and a protest against this example being drawn into precedent."[52]

While the foreign debt caused little debate, the domestic debt offered more opportunities for creative finance. The state had used a combination of fiat money, loans from individuals, and conscription of property to fund its war effort. This system worked tolerably well because so many citizens were willing to dig deeply into their own pockets on behalf of the state. Twenty-eight persons each loaned the state more than £100,000 currency,

and some loaned more than three times that amount. These loans, along with the certificates issued for confiscated supplies and payments due to soldiers constituted the bulk of the domestic debt.[53] The state auditor converted the accounts into interest-bearing bonds called indents. The fiat money sank without a trace, and the only attempt to redeem it received little support.[54] As E. James Ferguson has suggested, however, sinking debt in this way is neither a dishonest nor a particularly inequitable way of paying for a war, since it affects all relatively equally, and the burden is born by the participants rather than their descendants.[55] The Assembly was not willing to sink the loans the same way, however, probably for two reasons. First, this procedure would have penalized those who best supported the war effort. Second, the well-to-do, who were well represented in the Assembly, seem to have lent the most. Still the state did not try to redeem it all at specie value, as did Massachusetts, for that was impossible.[56] Indeed, the best they could do was to try to keep up the value of the indents by paying the interest annually in special indents receivable for taxes on a par with specie. Yet they recognized that the indents themselves could not become tender or the precarious balance of the state's finances would collapse. In 1786 the Assembly felt called upon to pass an ordinance to make this clear. "WHEREAS the present mode of sinking the

public debt due on indents, by a payment of annual interest, is found to be the only method the public of the state can at present adopt consistent with the means of supporting the expenses of the government and the credit thereof, . . . [it is not possible] to allow such indents to be made a tender in law . . . [as this] would involve this state in the most ruinous circumstances, and cut off every resource for supporting . . . the government."[57]

It seems clear that the Assembly increasingly looked to the United States government to end the crisis. Once the Constitution was ratified, South Carolina stopped paying interest on the indents (thus increasing the amount of debt) and cut the tax rate dramatically (although it remains possible that this measure coupled with the elimination of the special indents actually increased the specie income of the state). A motion to issue £33,000 in special indents to pay the 1790 interest on the debt failed in the Senate by the wide margin of four votes to thirteen.[58] The Assembly apparently preferred to let the interest mount up in the hope that Congress would pay it. They were not disappointed. After a long struggle, Congress agreed to assumption, and South Carolina was identified as one of the two large creditor states, that is a state which had paid far more than its proportional share of the war cost.[59] When the United States assumed $1,205,000 of the South Carolina debt, the Assembly opened

an office to transfer the state debt to United States funded certificates. Two-thirds of the principle was paid in 6 percent bonds, one-third in ten year deferred 6 percent bonds, and the interest was paid in 3 percent bonds.[60] When the original subscription did not exhaust the available funds, the Assembly opened the subscription to those with more marginal debts.[61] The state then established a sinking fund to buy up the debt with the part of the debt the state already owned.[62]

V

Public finance, however, did not raise the most controversial questions which the Assembly confronted. The need for state action in private affairs provoked far more concern. Ordinarily, when one considers government intervention in the private economy of South Carolina in the 1780s, one thinks almost exclusively of the 1785 Pine Barrens Act and the emission of paper money. Such laws are often portrayed as either a frightened or calculated response to a moment of economic hysteria.[63] In a larger context, however, the acts appear to be in keeping with the general tenor of the Assembly's fiscal decisions in the period. When solvent individuals such as Henry Laurens and David Ramsay bitterly denounced these acts as unwarranted

and unprecedented intervention into private affairs, they ignored the long history of legislative intervention in the economy. During the 1780s this intervention took three primary forms: the regulation of the relative value of money, the issuing of paper money, and intervention in private debt cases.

The Assembly controlled the value of money in several ways. As we have seen, the emission of special indents to pay the interest on the domestic debt called for a tax policy designed to maintain the value of these notes. The Assembly also regulated the value of money by establishing a depreciation table covering the war years. Because "many contracts have been made between the citizens of this State whilst paper money was in circulation, which contracts are still unsettled; and the public have borrowed on loan considerable sums of money; . . . it is necessary that a scale of depreciation should be fixed and settled."[64] Despite a committee report that the depreciation table designed by the House in 1783 was not quite accurate, the Senate accepted it because it was late in the session and the measure was badly needed.[65] The ordinance apparently did have some defects. For the next four annual attempts was made to amend, repeal, suspend, or explain the ordinance. Nevertheless, the Assembly proved unwilling to revise it, probably because it would call into question all accounts already settled.[66] The Assembly also established

the comparative value of gold coins, provided for the coinage of silver and copper, and set down rules to maintain the value of bills of credit.[67]

Such regulation was admittedly necessary and relatively benign; paper money was less universally approved. The critics of the "Act to establish a Medium of Circulation by way of loan and to secure its Credit and Utility," however, tended to ignore the second half of the bill's title. The measure itself was really rather conservative. The issue was limited to £100,000 and each loan had to be secured by a deposit of twice the value in gold or by a mortgage of three times the value in property. Furthermore, each borrower had to pay 7 percent interest. Although the Assembly did not give the money legal tender status, it was accepted by the treasury for all debts to the government, including taxes. The principle was to be repaid at the end of five years, while the interest was due annually.[68] The measure, which passed in a special session, was modified the next year when the Assembly eliminated all bills under one pound because they were disproportionately expensive to make. At that time they also demanded an advance payment of 1 percent from the borrower to defray the cost of printing the bills and administering the loan.[69]

Partly in response to petitions, the Assembly did not call in the paper money quickly. These petitions cited the

"general failure of crops" and pointed out that extra interest "afforded an addition to the Revenue of the state."[70] Therefore, when the time came for the loans to be repaid, the Assembly extended the time limit, requiring only that one-fifth of the principle and all the interest be paid.[71] The next year, when another fifth plus interest came due, the Assembly changed the law to allow themselves to recirculate the interest payment to pay the interest on the foreign debt.[72] A drought the next year caused the next installment to be delayed until 1795.[73] After that the Assembly put off the final two payments until 1802 and later until 1804.[74] It seems likely that the final installments were put off because the notes proved so useful. The Federal Constitution prohibited the state from issuing money, but South Carolina already had the money in circulation and was receiving 7 percent interest annually. The bills continued to circulate well into the nineteenth century. The Assembly conscientiously worked to maintain the value of its money by ordering the vigorous prosecution of those who defaulted on interest payments and by receiving it for taxes and at sheriff's sales.

While the paper money experiment worked reasonably well, direct interposition between debtor and creditor, proved less satisfactory, even if it was ultimately equally necessary. When the 1782 Jacksonborough Assembly abolished the legal tender status of fiat money in 1782, it perforce

had to suspend suits for debt because so little specie was available.[75] The next year, the Assembly extended the ban to allow time for the promulgation of the depreciation table, and let the planters get in a postwar crop or two.[76] In 1784, though. the Assembly optimisticallydecided to allow the debt stay legislation to expire and reinstituted the suspended Act of Limitations of 1712 which guaranteed land title after five years of uncontested occupancy.[77]

Unfortunately, events proved that the Assembly was overlyoptimistic. Immediately after the war, South Carolinians had enthusiastically overextended themselves financially. Bad harvests in the two succeeding years compounded the problems which caused.[78] In the summer of 1785, only a year after the courts had reopened, a disciplined crowd in Camdem refused to allow the court there to hear any debt cases.[79] Meeting in emergency session in September of that year, the Assembly felt compelled to pass "An Act for regulating Sales under Execution . . .," the infamous Pine Barrens Act. Its provision are well known. Before selling attached property at a sheriff's sale, a debtor could have the property valued by local freeholders, one chosen by each party and a third by the court if necessary. Should the sale produce less than three-fourths of the assessed value of the property, the debtor could offer the property directly to his creditor who had to accept it at three-fourths of its

assessed value.[80] Creditors were understandably upset at receiving, in lieu of cash, property which demonstrably could not be sold for a reasonable price. Moreover, they consistently alleged that debtors offered only overvalued, nearly worthless, property in payment.

The act stayed in effect until January 1, 1787, despite efforts to repeal or modify it.[81] At that time the Assembly adopted a more direct method of debt control, but one which was apparently preferred by creditors. After temporarily suspending all sales of execution while they considered the matter, they decided that only one-third of any debt could be collected each year, although this protection applied only to individuals who had paid their taxes.[82] The next year, again meeting in special session, they found it necessary to delay the payment of debt even more. Henceforth only one-fifth of a debt could be collected annually.[83]

The relief legislation never commanded strong support in the Senate. This last mentioned bill had been rejected in the regular session by the Senate nine votes to twelve. At that time, a resolution stating "that this House will neither directly nor indirectly concur with or originate any law" affecting "equal justice between Debtor and Creditor" was postponed rather than defeated.[84] In the special session that fall, the final relief bill did pass, but for one of only two times in the period, senators read

their objections to a measure into the record.[85] Despite the bitterness it engendered, this problem, like so many others, evaporated in the 1790s. Increasing prosperity and the funding of the debt ended the crisis between debtor and creditor.

VI

Debt and necessity governed South Carolina fiscal policy in the 1780s. The debt was omnipresent, but necessity came in many guises. In each crisis, the Assembly needed to rebalance competing claims. In 1784, faced with the necessity of doubling tax rates, the Assembly implemented a popular tax reform which shifted the tax burden onto the lowcountry. This action could be viewed as a concession to the backcountry, but it was more complicated than that. At least three-quarters of the taxes that year were collected in special indents issued to those to whom the state owed money. Presumably these bondholders lived primarily in the lowcountry. Since the state securities were greatly depreciated, their owners could pay their increased taxes in bills of little value. Areas with fewer special indents, on the other hand, had to pay a higher percentage of their taxes in specie. Thus it is possible that the measure actually increased the proportion of specie taxes paid by the backcountry. Furthermore lowering land taxes in the unsettled areas

allowed more land speculation. Thus, in a bill which seemed at first straightforward, one sees wheels within wheels.

The balancing of interests also took other forms. Throughout the 1780s, the Assembly kept the government expenses as low as possible. Until 1788, they did not even pay the accounts or pensions they approved. What they did pay as best they could was the foreign debt, but even here they compromised. Even as they appropriated virtually all of the state's 1788 revenue to the foreign debt, they reserved the following year's revenue for domestic purposes. No issue, however, better reveals the attempt to balance competing interests than the debt stay legislation. By preference, the majority of the members of the Assembly probably preferred not to interfere in private contracts, but this did not prove practical. The preamble of the 1787 act limiting collection of debts summed up the origins of the problem. "Whereas, many inhabitants of this country before the revolution owed considerable sums of money, and of which the embarrassment of the war prevented the payment; and whereas, very considerable importations of merchandise since the peace, and the loss of several crops, have occasioned an accumulation of debts to a magnitude far beyond all former example, and such as the resources of the country are inadequate to discharge in a regular and speedy way as heretofore;" the state needed to

intervene.[86] The Assembly tried a variety of measures in succession in an attempt to find something satisfactory. After prohibiting all suits for debt after the war, the Assembly reopened the courts in 1784. The people of Camden emphatically rejected this solution by closing their court to debt suits. Asserting that the problem was a lack of specie, the Assembly next created a method which allowed debtors to offer their property directly to their creditors and issued paper money. The creditors rejected this scheme. Finally, the Assembly settled on a method allowing debts to be collected in installments. Whether this satisfied all concerned or whether the problem was simply alleviated by changes in the economic situation is not entirely clear, but the progression of the Assembly's actions is important. The policy was not consistently pro-debtor; it can best be described as an attempt to balance competing interests.

Federal assumption of the state's debt transformed South Carolina fiscal policy. Before assumption, even before the first Congress met, the Assembly began to cut taxes and to accumulate rather than pay their domestic debt. The state's economic picture in the 1790s was entirely different from what it had been a decade earlier. Between 1782 and 1789 non-fixed government expenditures averaged only £5,166 per year. Between 1790 and 1800 they averaged £18,105 per year. In the latter years, the state

paid nearly £70,000 of outstanding accounts and invested nearly £40,000 in public buildings. Other changes occurred. In the early 1790s some of the tax burden was shifted back onto the backcountry as the Assembly reduced the taxes on slaves faster than those on land. In 1799, however, the tax on land was cut and that on slaves was not. Despite the increased non-debt-related spending in the 1790s, all the tax rates fell by about three-quarters between 1784 and 1800.

NOTES

CHAPTER IV: DEBT, TAXES, AND GOVERNMENT EXPENDITURE

[1]Robert A. Becker, Revolution, Reform, and the Politics of American Taxation, 1763-1783 (Baton Rouge, La., 1980), 6.

[2]Ibid., 8.

[3]Of course, in the case of South Carolina property was represented indirectly and therefore all votes were not equal.

[4]For example, see Statutes of South Carolina, IV, 365-375.

[5]Becker, Revolution, Reform, and the Politics of American Taxation, Appendix I. It should be noted that the import tax on slaves bore most heavily on the planters.

[6]Ibid., 206.

[7]Statutes of South Carolina, IV, 528-531, 627-629.

[8]The Senate had defeated a 1783 attempt to raise the tax on slaves. Senate Journal, 1783, fol. 200. They tried again in 1784 to retain the old tax rate, but failed. Senate Journal, 1784, fols. 298-299, 363. A bill passed in Jan. 1785 to clarify the tax act, but it did not change it materially. Statutes of South Carolina, IV, 657-658.

[9]Statutes of South Carolina, IV, 530-532, 628-630. The various provisions regarding double taxes and penalties varied from year to year.

[10]It required all auctioneers to be citizens and to post £1000 bond. In cases of death, insolvency, or chancery judgment, the tax did not apply. A non-professional auctioneer only had to post a £500 bond. Ibid., IV, 562.

[11]Ibid., 55, 57, 607.

[12]Ibid., 607-610. There was a fine of £50 for failing to pay the tax.

[13]Ibid., 610-611. Throughout the period, the Assembly was careful to treat United States citizens on an equal footing with South Carolinians. See House Journal, 1784, Ord 33. In addition to passing the acts cited above, the Assembly rejected several other attempts to tax. In 1783, the Senate failed to act on a motion to pass a 3% impost to help negotiate a foreign loan. Senate Journal, 1783, fol. 205. In 1785, the House rejected an attempt to amend the 1784 duties discussed here. House Journal, 1785, 89-90, 312, 218.

[14]The tax on specific spirits increased, and the ad valorem rate went from 2.5 to 3%. The tax on imported negroes dropped to £1, but a new transient duty of 4% on non-United States citizens was created. House Journal, 1785, 8-9.

[15]Session Laws, 1788, 31.

[16]Statutes of South Carolina, V, 129-130.

[17]Ibid., 149-150.

[18]Ibid., 188-189.

[19]Session Laws, 1792, 4-8. As early as 1787, the Senate had tried to strike this tax but failed when the President broke the tie. It seems unlikely that the House would have approved even if the Senate had passed the measure. Apparently the tax on carriage wheels was eventually revoked only because the United States was also

taxing them, but the principle was not extended to the liquor tax. A committee report on a petition by liquor retailers to end their state tax asserted that "granting the prayer thereof would well accord with the principles that led to a repeal of the Law imposing a tax on Carriages, but as your Committee are not fully satisfied with the justice of those principles, they . . . [think they] may be pursued so far as to weaken the funds of the State." Senate Journal, 1795, fols. 61, 82.

[20]Statutes of South Carolina, V, 369-371.

[21]Ibid., 209.

[22]Petitions 1791-181-01, 1793-164-01, 1794-216-01.

[23]The expense figures used in this chapter are derived from the budgets approved each year by the legislature. In practice their actual expenses undoubtedly varied some. It seems particularly likely that their accounting of the money spent on debt service is incomplete because the Assembly often appropriated certain revenues rather than certain amounts to the debt.

[24]An indent was an interest bearing bond with no fixed maturity date. After the war, the state converted its debt, insofar as was possible into these notes.

[25]United States Bureau of the Census. Historical Statistics of the United States, (Washington, D.C., 1970), 120, Tables E83-E89. 120.

[26]The budgets are the source of the salary figures.

[27]Mary K.Bonsteel Tachau, Federal Courts in the Early Republic, Kentucky, 1789-1816 (Princeton. N.J., 1978), 22-23; Lawrence Friedman, A History of American Law (New York, 1973), 121.

[28]Petitions, 1792-41-01.

[29]The total of the salaries changed as the Assembly created and abolished positions. The most dramatic single change, in 1784, increased the total salary payments by 72%. That year the three new chancellors each required a salary of £500, and Francis Marion, for his services as the Commandant of Fort Johnson, received an equal salary. Marion's salary is not classified as a military expense because it was a reward for past services. Possibly it should be thought of as a pension. In any event, after a straitened Assembly eliminated the office of Commandant of Fort Johnson, the entire military budget for several years, which sufficed to man the post with a sergeant and a dozen privates came to only half of Marion's annual salary. A few other salaries, like that of the governor received small increases in 1784, but the bulk of the rest of the increase was the salaries of the new import duty collectors which ran to £1210. Statutes of South Carolina, IV, 83-84. The Senate resisted attempts to lower the governor's salary. Senate Journal, 1794, fol. 79; Senate Journal, 1791, fols. 103, 170. After 1790 the Assembly set the salaries by official act.

[30]See Chapter Three above.

[31]Statutes of South Carolina, V, 131-132.

[32]Ibid., 152. The £4000 appropriation significantly exceed the £1632.18.9 allocated the previous year. Also it was rare for the assembly to vote such sums in round numbers. Ibid., 132.

[33]Ibid., 191.

[34]Rayford B. Taylor, "The South Carolina Judiciary, 1669-1769" (Ph.D. diss., University of Georgia, 1981).

[35]This appropriation, $100,000 (£27,793), was by far the largest of the period. It was more than the total expenditure of the state on salaries and expenses for nine of the eighteen years studied here.

[36]Statutes of South Carolina, V, 144.

[37]When the Senate approved the bill in 1795 it attached a rider guaranteeing the Assembly $2 a day for expenses the next year. The House refused to accept the rider and the bill failed, but the next year both houses approved the original bill. Senate Journal, 1795, fol. 22; Statutes of South Carolina, V, 218.

[38]Session Laws, 1791, 35.

[39]Statutes of South Carolina, V, 360-363.

[40]For bills relating to the comptroller see Senate Journal, 1787, fol. 27; Senate Journal, 1788, fol. 95; Senate Journal, 1797, fol. 84; and Senate Journal, 1798, fol. 139. For bills concerning tax collectors see Senate Journal, 1795, fol. 218 and Senate Journal, 1794, fol. 133.

[41]Statutes of South Carolina, V, 360-363.

[42]See Ibid., IV, 546-548, 571, 626, 639, 679; V, 171-172, 192, 233, 187. Also Senate Journal, Jan. 1791, fol. 165.

[43]Ibid. IV, 691. The domestic interest was paid in special indents.

[44]Ibid., 738. This act required one-third of the state revenue to go toward the state debt.

[45]Senate Journal, 1786, fol. 463.

[46]Statutes of South Carolina, V, 59. It should be noted that the Assembly simultaneously appropriated the duty and sales tax money for the next year to pensions, the civil list, expenses, and then the foreign debt.

[47]Senate Journal, 1790, fol. 227.

[48]Statutes of South Carolina, V, 64.

[49]Ibid., 130.

[50]Session Laws, 1796, 119.

[51]Their confusion is understandable. The frigate had been built by the French government, given (under unknown circumstances) to the Prince of Luxemburg, and then leased to South Carolina. Each of these transactions created ambiguities.

[52]Session Laws, 1796, 114. The question was not settled until the 1850s.

[53]W. Robert Higgins, "The South Carolina Revolutionary Debt and its Holders, 1776-1780," South Carolina Historical Magazine LXXII (1971), 22-24. It is virtually impossible to reduce the amounts involved to their specie value because the loans were contracted over a four year period in which the value of the currency fluctuated wildly.

[54]House Journal, 1786, 494; See also Petitions, 1794-156-01.

[55]E. James Ferguson, The Power of the Purse (Chapel Hill, N.C., 1960), 67.

[56]In Massachusetts, a hard money policy was one of the important causes of Shays's Rebellion.

[57]Statutes of South Carolina, IV, 745.

[58]Senate Journal, 1790, fol. 223.

[59]Ferguson, The Power of the Purse, 306-309, 333.

[60]Statutes of South Carolina, V, 239-242.

[61]This included the indents issued by Alexander

Gillon on behalf of the state's ill-fated navy. Ibid., IV, 268-269.

[62]See Session Laws, 1798, 54-55, for the state of the debt at that time. In 1797, the Senate considered, but did not pass, two bills to try and tidy up the remained of the debt.

[63]See John Fiske, The Critical Period of American History (Boston, 1888).

[64]Ibid., IV, 563.

[65]Senate Journal, 1783, fol. 325.

[66]House Journal, 1785, 217-218, 253-254, 257, 260; House Journal, 1786, 454, 476; Senate Journal, 1787, fols. 114, 140

[67]Session Laws, 1783, 18; House Journal, 1783, 467, 525; Statutes of South Carolina, IV, 741.

[68]Ibid., IV, 712-716. For an analysis of the colonial precedents for paper money see Ferguson, The Power of the Purse.

[69]Ibid., 725, 740.

[70]Petitions, 1792-39-01, 1793-25-01, 1794-147-01, 1794-148-01, 1795-70-01. A petition to call in the paper money was dismissed when a committee reported that it arose "altogether from misinformation. The unsophisticated backcountry petitioners believed that "several persons hath borrowed our Money and that little or no notice hath been taken to compell those persons to refund said Money." Thus they believed that the paper money caused high taxes and made specie scarce. Senate Journal, 1795, fol. 197; Petitions, 1795-107-01.

[71]Statutes of South Carolina, V, 166-167.

[72]Ibid., 193.

[73]Ibid., 205.

[74]Ibid., 325-344.

[75]Ibid., 518.

[76]Ibid., IV, 560. Suits were always allowed for all debts contracted after the initial stay law passed.

[77]This act could not be allowed to operate while the courts were closed.[66] Ibid., II, 235, IV, 645.

[78]Robert Becker estimates that South Carolinians purchased £600,000 of manufactured goods and 5400 slaves in 1783 even though the gross national product of the state was only about £350,000. Becker "Salus Populi Supreme Lex Est; Public Peace and South Carolina Debtor Relief Laws, 1783-1788." South Carolina Historical Magazine, LXXX (1979), 65.

[79]Ibid. See Robert A. Becker, "John F. Grimke's Eyewitness Account of the Camdem Court Riot, April 2, 1785," South Carolina Historical Magazine, LXXXIII (1982), 209-213.

[80]Statutes of South Carolina, IV 710-712. Petitions played little role in these measures which were largely hammered out in the Assembly where the effects of finance were generally understood.

[81]Ibid., 727; House Journal, 1786, 446, 454-455, 476.

[82]Senate Journal, 1787, fol. 187; Statutes of South Carolina, V, 36-38. Only one-third of the mortgaged property could be sold each year even if that sale did not raise a third of the debt.

[83]It was thus necessary to suspend the act of

limitations again. Ibid., 77, 88-92.

[84]Senate Journal, Jan. 1788, fol. 126.

[85]Senate Journal, Oct. 1788, fols. 73-74.

[86]Statutes of South Carolina, V, 36.

CHAPTER VII

ECONOMIC DEVELOPMENT

I

In postwar South Carolina, the Assembly orchestrated a variety of measures which allowed economic development, but only so long as it did not endanger private property. The state's later reputation as reactionary, based upon its nineteenth-century attempts to preserve the status quo and thereby protect slavery, masks the ferver with which post-Revolutionary South Carolinians promoted growth. In the 1780s and 1790s the state's economic future was clouded. Rice remained an important staple, but good riceland was limited and already largely under cultivation. Indigo, the other major colonial crop, was rendered less profitable by the cessation of the bounty the British had previously paid.[1] Citizens attempted to fill the argicultural void with wheat, hemp, tobacco, and sea island cotton, but only in the late 1790s, after the invention of the cotton gin, did the state's agricultural future, short staple cotton, become apparent. Until then, South Carolinians investigated a number of avenues for economic growth.

Economic development immediately after the Revolution

has received little attention from economic historians. A few works have explored the re-establishment of trade, and these tend to support Merrill Jensens's conclusion that trade conditions were not disastrous during the 1780s.[2] The establishment of the Federal Constitution does not appear to have effected trade particularly dramatically, but the outbreak of the wars of the French Revolution in the early 1790s definitely increased American trade. Still, economic historians have largely assumed that real economic growth--an increase in productivity, not simply expansion--began in the nineteenth century.[3]

In South Carolina, however, it is clear that the postwar period constituted a critical period of development. The most important activity was the expansion of the transportation system. By establishing roads, bridges, ferries, and canals, the Assembly fully integrated the backcountry into the market economy. Without these improvements, the backcountry could not have embraced cotton agriculture as rapidly as it did after 1800. The Assembly also encouraged inventors and sought to sell the remaining state-owned land.

As usual the Assembly's role was not interventionist, and so the push for growth came from private citizens. The Assembly's policy goal was not so much promoting economic growth as it was regulating economic endeavors so as to protect existing interests. In many cases, the Assembly

did help private citizens achieve desired economic ends by granting patents, licensing ferries, and approving canals, but only in the case of canals did they actively offer real aid: eminent domain powers and large tax advantages.[4] In other cases, the Assembly's concerns more often reflected a desire to protect other citizens from the results of these activities than a desire to promote the end itself. Thus the Assembly regulated tolls, determined who had to provide labor for roads, and even made sure that land seized for canals was properly valued.

The South Carolina experience contrasts sharply to that of Massachusetts. According to Oscar Handlin and Mary Flug Handlin, "the Revolution had left to Massachusetts a conception of government prominent in the direction and management of productive enterprise. The aspirations of a weak young state for economic independence had given shape to a positive program; a narrow purse and the obsession of debt had channeled activities through grants of privilege." Because the state was thought to be a commonwealth, a group with one collective interest, government was free to support endeavors beneficial to that interest, even when they helped special groups or damaged individuals.[5] In South Carolina, no such vision existed. Government served as a referee protecting individual interests. Individuals, not the state, were the instruments of "productive enterprise."

II

The 1784 act "For the Encouragement of Arts and Sciences" contained provisions for giving inventors fourteen-year exclusive patents.[6] Although relatively few inventors attempted to secure the benefits of the act, some came forward. In evaluating these requests, the Assembly was clearly as concerned with cost and the public interest as with economic development. Overall, the Assembly was reasonably willing to listen to economic proposals but selective in endorsing them. Even before the passage of the patent act, the Assembly had considered Gideon Dupont's claim to have developed a method of raising rice without a "hoe or any other implement of husbandry." The Senate committee reporting on his petition thought that a committee should be appointed to investigate his claims, and if they were proven, to award him a thousand pounds sterling and publish his methods. The full Senate was slightly less generous, changing the stated sum to an ambiguous "liberal" amount, and the House approved the resolution to that effect. In 1786 Peter Berlin received a fourteen-year patent for "sundry useful water machines." Anyone stealing his designs was to be fined one hundred pounds with half going to Berlin and half to the state. Characteristically the Assembly tried to protect the public. Should Berlin refuse to build his machines in a

reasonable time at a "just price," the damaged individual could apply to the Assembly for permission to use the design at no charge.[7]

The Assembly received a broad range of requests for aid of one sort or another in the 1780s as citizens sought a new economic base for the state. Thomas Walter wanted a patent for a new grass "which he is of the opinion will prove very beneficial to the country," and Robert Squibb wanted to patent "a new and most valuable plant . . . possessing most excellent medicinal virtues."[8] Apparently the Assembly saw no need to patent plants. Because of the state's straitened financial circumstances, the Assembly seldom approved any measures that cost money, even those that seemed beneficial to the state. John Sebastian Coopal of Flanders had the misfortune to apply to the Assembly at the worst possible time. He wanted to build a powder mill near Charleston. In return for seventy to one-hundred acres of land leased to him without charge and exemption from state taxes and duties, he offered to erect a gunpowder mill in the state. In the case of emergencies, he even agreed to match the low price for powder from abroad for the state. Unfortunately in 1785, the House committee decided it could not "recommend an increase of the public debt by purchases not immediately necessary."[9] Likewise, the Assembly failed to help Peter Guerrard establish a stocking manufactory, and did not give Peter

Allaire his requested exclusive privilege of making and vending various paints.[10]

The Assembly proved somewhat more willing to help develop cotton as a crop. The Senate committee on manufacturing reported "that a cotton manufactory in all its branches would be of extensive benefit and may be established in a short time under proper encouragements; that your committee have examined proposals made by Hugh Templeton, who appears to be well acquainted with many branches of this manufactory, and is capable of making Machines for carrying on the same which are new in this country; [and] that an exclusive patent for a short period for making the said Machines may be a means of inducing persons to undertake the same." Therefore the Senate approved the patent although they did not provide direct financial assistance.[11] It did not prove easy to establish manufacturing in the state. In 1792 Templeton and his partner again petitioned and listed some of the problems they had encountered. They reported that "they have had great difficulty to struggle with, particularly the want of a sufficient Capital and the ignorance of the People they were obliged to employ, not one of whom had ever seen any thing of the kind, and in consequence were to be instructed in every part of the work. They were in hopes they would have been able, in some measure to remedy the deficiency of their capital by hiring Negroes; but . . . after two years

experience they find they can not, as the owners before the expiration of the time have from Circumstances been oblig'd to adopt other measures, and by withdrawing their hands, obliged them to hire others, and instruct them anew." These proto-industrialists were not picky, they wanted any help that the Assembly was willing to provide. Under the circumstance, the Assembly decided to loan them five hundred pounds provided they had proper security.[12]

Later in a similar situation the Assembly demonstrated another of its familiar traits--parsimony. Although desirous of helping William McClure establish a "cotton manufactory" in the state, the Assembly did not choose to provide any funds for the project. Instead they authorized a lottery to raise up to £800. McClure would receive half of this money if he started a plant that employed at least seven white men and endured for at least eleven years. The rest of the money was to be used by the commissioners appointed in the law to promote other useful manufactures.[13]

III

In an agricultural market economy transportation was of the utmost importance, and no issue received more continuous attention from the Assembly.[14] In the colonial

period the backcountry planters had marketed few crops, but after the war they were ready to begin commercial farming. In South Carolina, the postwar years saw a major push toward opening both land and water communications.[15] The Assembly approved many roads, bridges, and ferries and ordered the clearing of rivers and the construction of canals. Ordinarily construction projects were carried out by citizens acting under the direction of commissions. As usual the Assembly was careful to shift costs onto users and protect the property rights of their citizens.

Ordinarily, petitions initiated action on transportation projects. Petitions requesting the establishment of roads, bridges or ferries were one of the most common types of petitions throughout the period. Occasionally such petitions proved controversial and sparked counter-petitions, but far more often they had strong communal approval. Many petitions of this sort carried over a hundred signatures, and some had far more than that. Few signatures signified communal disapproval to the legislature and on at least one occasion, the Assembly dismissed a petition because of the small number of signers.[16] For the most part, however, ferry petitions were routinely granted and those for roads and bridges were often granted.

Only rarely did the Assembly actually pay for improvements in transportation. In 1784, they agreed that

the expense "necessary for fixing on proper places for opening the inland navigation, be paid by an Order on the Commissioners of the Treasury out of any unappropriated money which may be therein, upon the service being performed."[17] A decade later, at the prompting of the governor, they appropriated two thousand dollars for making a wagon road over the Appalachian mountains.[18] In both of these cases, it would have been difficult to transfer the financial burden elsewhere. In virtually every other case, however, the cost of improvements, whether in labor or in cash, had to be born by the users of the services provided.

In colonial times, roads had been built and maintained by local citizens overseen by commissioners, but after the war the Assembly tried several different approaches. Immediately after the war, the Assembly replaced the old system of appointing self-perpetuating bodies of commissioners of the high roads with a new one calling for the annual election of those officials.[19] This may have reflected the democratic thrust of the Revolution, but it did not last. Five years later the Assembly reported "the mode of electing annually commissioners of the high-roads, has been found from experience, to be attended with inconveniencies." Their new approach combined the older ones: a body of commissioners were to be elected, but thereafter the group was to be

self-perpetuating.[20] Later, the Assembly had the county courts appoint new commissioners as necessary, but eventually reverted to the old colonial system of self-perpetuating bodies.[21]

These changes demonstrate the flexibility of the Assembly. There was no one clearly superior system. The first consideration was that the post of commissioner of the high roads was not particularly desirable. The principle benefit of serving a three-year term was that afterwards one was exempt from serving for the next three years. Persons who refused to serve were fined, usually ten pounds. Annual elections might well have been an intolerable nuisance. If the person elected chose to pay the fine rather than serve, the process had to be repeated.

The methods used to build and regulate roads and bridges also showed considerable flexibility. The traditional practice was to require labor from all adult male inhabitants living within a certain area for six to twelve days a year. Sometimes, particularly in the case of bridges, commissioners were empowered to let a contract to an individual who would build and maintain the bridge in return for tolls. Under special circumstances, however, the Assembly tried other methods. One unusual case involved a road from Granby's Ford to Augusta, Georgia. The case reveals the factors the Assembly considered in

making these decisions. Because the road would be primarily a thoroughfare for non-inhabitants, "Such [a] road would be of public utility, . . . [but] cannot be opened . . . by the inhabitants living only within ten miles thereof."[22] Therefore the Assembly allowed a private contractor to take charge of the road and gave him permission to establish toll bridges and to use the labor of the inhabitants six days a year. Presumably, he would have to supplement this labor with other paid labor. Since the local inhabitants built the road, they were allowed to use the toll bridges without charge.[23] Thus the road was public to those who maintained it and tolled to all others.

Ordinarily ferries were granted to individuals for a period of time, usually seven or fourteen years. During that time, no other ferries could operate nearby, and the operator could charge the tolls established by the legislature. The operator was required to avoid delays, on penalty of fines. The usual fine was about twenty shillings per hour of delay. The amount of the fine seems to be related to how busy the ferry was expected to be.[24] Some persons were exempt from tolls, usually the governor and assemblymen, ministers going to worship services, and occasionally United States congressmen.[25] On the eve of President George Washington's southern tour in 1791, bills regulating ferries began to number the President of the United States and his suite among those who were exempt

from tolls. While the Assembly received hundreds of petitions to charter ferries, they were rarely controversial. The Assembly usually approved twenty or thirty road and ferries a year, although the number tapered off in the late 1790s.

While good roads were important to South Carolinians, good water transportation was essential. Boats provided a faster and much cheaper way to carry agricultural products to market. The postwar period saw the most intense period of river clearing activity in South Carolina history. Although the Assembly had been ordering rivers cleared since 1714, most of the laws of this type came between 1778 and 1795.[26] Between 1800 and 1840 a scant half dozen of these measures passed as compared to thirty-three in the postwar era.[27] Despite the economic importance of river clearing, the legislature followed its usual procedure and required safeguards for the public and insisted on payment by those who received benefit. The clearing of rivers was marked with the usual Assembly traits: flexibility, parsimony, and concern for property. A typical provision in 1787 made sure that a new swamp drain did not hurt anyone's interest. The drain was approved "provided always that a full and adequate satisfaction and compensation be made to all persons for the damages they may sustain from this act being carried into execution."[28]

The Assemblymen consistently relied on appointed

commissioners to oversee and manage the work of clearing the rivers. This approach had the virtue of giving control to the best men (in the Assembly's opinion) but did not always work. A recurrent problem was the commissioners refusal to act. By the 1790s the Assembly inserted as a matter of course a fine of some sort for commissioners who missed meetings and gave their fellows or the governor the right to replace them if necessary.[29] Commissioners also died, and on occasion were not replaced. In some cases the Assembly had not included a provision for the filling of vacancies on the board, but in others the remaining commissioners simply did not fill open positions. At least one commission died out entirely.[30] Eventually, the Assembly, in apparent exasperation, inserted a provision in some measures to fine the commissioners fifty pounds if they failed to fill any vacancies.[31]

When the commissions were functioning smoothly, they had a variety of avenues open for clearing the waterways. The most common power was simply the authority to call out all the males between certain ages (usually sixteen and sixty) for a certain number of days a year (usually six to twelve).[32] This was reasonably equitable as long as that the land was already settled. If parts were being held for speculation, however, the value of that land might be greatly increased by the efforts of others who drained a swamp or cleared a river. In such cases the Assembly

usually rejected the forced labor approach. In 1794, a Senate committee refused a request to clear a river for the following reason. The committee found "that large bodies of land . . . situate on the said river, are owned by a few persons who have few or no settlements thereon, and of course would not contribute any labour to the clearing of the river, and by granting the prayer of the Petition, a very great number of the poor and industrious Citizens would be obliged to labour and receive no benefit or emolument whatever therefrom."[33]

When a project appeared to be of limited benefit, the Assembly invariably required that those who would benefit from it pay for it. The most explicit statement of this policy came in a 1795 act. "The said commissioners . . . shall chose three disinterested freeholders of the parish . . . who shall fix and ascertain, upon oath, the value of all the swamp lands lying in the neighborhood of the said canal, . . . and also the ratio or proportion in which they will be benefited by the same, and also the ratio or proportion in which the negroes belonging to the owners of the said lands, and liable to work upon the said drains and canals, ought to be assessed, according as their lands may be benefited by the said drains and canals."[34] This ratio was to establish the amount to be paid by each land owner. When a proposed project would help some and hurt others, those who benefited from the measure were required to pay

those "damnified" by it.[35] Local problems ordinarily required local solutions. On one occasion, however, a project was seen to "Be of great and general benefit" and the Assembly granted money to pay for it.[36] But when the money granted proved insufficient, the Assembly added a toll which would help pay for the construction and thus shift the cost back onto the users.[37] In another case the "attendant . . . great advantages" of clearing the Savannah River induced the Assembly to allow a £1200 lottery to pay for the work.[38]

IV

In the 1780s, the Assembly explored a new way to promote transportation--canals built by privately owned companies. The Assembly maintained its concerns for property and order, but in these cases had to balance it against the need to allow enough potential profit to entice the companies into action. The Assembly chartered five companies between 1786 and 1788 which collectively were to open up and interconnect the state's major river systems. In particular, this would connect the Ashley and Cooper rivers which flowed to Charleston with the interior. The provisions of the acts were similar.[39] The companies were allowed to purchase land, either by agreement with the

owner or by valuation by disinterested freeholders, and usually were also granted all state owned land within a certain distance from the waterway. In general they were required to provide "full and adequate satisfaction to all persons," but they received permission to buy local material at valued prices if necessary. Finally they were protected from vandals and malcontents. "Any person [who] shall, willfully and maliciously, cut, break down, damage or destroy . . . [anything connected with the project] on conviction shall be compelled to work in chains on the said navigation."[40] In another act, the penalty was death.[41]

The hopes of the investors, who included many of the most prominent members of the Assembly, centered on the potential financial rewards (although they were not blind to the benefits to the state as a whole). The shares in the companies were made perpetually exempt from state taxes, but the real expectation for profit was the tolls. The Assembly approved tolls which would recoup up to 25 percent of the companies' total investment each year (and concurrently reserved the right to inspect the companies books at any time). This pecentage seems a bit high, perhaps, but the legislature may not have been wide of the mark. None of the canals opened before 1800 and some of them not at all. The bait had to be tempting to keep the investors from abandoning the project. Even if the tolls were high, the Assembly may have reasoned, no one had to

use the canals and no one had been hurt by their construction.[42]

Apparently some of the mystique of canals had worn off a decade later when the subject re-emerged, for canals became more controversial. First some of the existing companies were called on the carpet. In response to a petition, the Assembly discovered that the company incorporated to open the Broad and Pacolet Rivers had done no work in ten years, and so instructed the attorney general to investigate whether this constituted grounds for recalling their charter.[43] The Assembly was somewhat more lenient toward the Catawba Canal Company. The Senate report concluded that the state would still benefit from the completion of the waterway and that the company had been working on the project but had been hampered by unusually bad weather. It gloomily (but correctly) suggested that a minimum of five years would pass before the completion of the work. Because of the delay, the company had already forfeited the land it was to have received, but the committee thought that the promise of land could still be held out as an incentive bonus to be delivered only after the work was finished. The Assembly agreed with the committee and continued its support.[44]

The Assembly also became less willing to begin new canals. Three proposals for new canals in 1795 met similar responses. In one case the Assembly demanded a survey by a

competent engineer before authorizing any work.[45] In another case they required that all expenses for the survey of a proposed canal be paid for by those who desired it.[46] In a final case the Assembly recognized that a difference of opinion existed over the effects of a proposed canal and ordered a survey, but also set forth the following dictum: "It would be unjust and improper in the Legislature, to sacrifice the interests of any of the citizens of this state, to advance the interests of others of its citizens."[47] The following year the Assembly did approve a new canal because "it appears that it would be very advantageous to the country," but insisted that it was to be paid for by voluntary subscription and that no toll would ever be charged.[48]

Even though the Assembly continued to approve water transportation companies, two extended controversies reveal that they did so with less surity and enthusiasm. Each year from 1795 to 1799 the Assembly dealt with the navigation of Pinetree Creek.[49] The bill which passed in 1796 vested exclusive rights for the navigation of Pinetree Creek in the hands of a group who agreed to clear the waterway. This followed the Assembly's rule that those who benefit should pay, and those who pay should benefit. "It is but just and reasonable . . . [as they will] complete (as they propose) the same at their sole expense, that they should be entitled to the sole benefit arising

therefrom."[50] By the next year, however, the proprietors had discovered that "the expense of proceeding . . . will far exceed their calculations and means."[51] Therefore the Assembly incorporated the proprietors and gave the new company much the same privileges as the other companies. They could receive tolls up to 25 percent of their investment and were not to be taxed by the state for twenty-one years. The power to purchase land by valuation, however, escaped the company despite repeated attempts to secure it.[52]

Another controversy flared simultaneously. In 1795, groups of citizens petitioned either for or against a proposed canal in Saint James, Goose Creek Parish. As this was one of the wealthiest areas in the state, no doubt the legislature listened to the dispute closely. The major problem was that the man whose land the canal would traverse, John Ball, opposed the venture strenuously. The Senate committee on the matter was ambivalent. "It is extremely difficult to ascertain . . . whether the benefit which the Inhabitants of Saint James, parish, Goose Creek, will derive from the said canal will be in any degree proportionate to the injury the said John Ball might sustain."[53] The Senate took the easy way out and appointed a committee to investigate the matter more fully. Apparently this produced no conclusive result because two years later a joint resolution of the two houses

established yet another investigative committee.[54] Finally in 1799, the matter was apparently resolved to everyone's satisfaction by a measure which approved the canal but satisfied Ball. While the company could purchase land and supplies at a valued prices should the owner "require an unreasonable price for the said lands or timber, . . . the said company shall not have power or authority to carry the said canal through the lands of any person or persons whomsoever, without having first made such person or persons full satisfaction for the same, agreeably to such assessment." John Ball and his heirs were to "be at liberty to flow his fields from the said canal, and to run the same, free from toll, to any part of his plantation, but not elsewhere."[55]

V

In South Carolina, as in most southern states, land speculation was common. The Assembly's role in the process is somewhat ambivalent. Although it passed the laws which opened the doors for speculation, they spent some considerable effort in an attempt keep speculation from endangering the property rights of citizens in the state. Such ambivalence should not be surprising because many members of the legislature were speculating, and all owned

property in the state. In any case, speculation was not necessarily bad. Only when it threatened the rights of others did it need to be regulated. On the whole, the Assembly's record in land legislation was laudable. It sought to control damaging speculation as best they could.

The state's land law evolved as the Assembly sought to adapt to rapidly changing conditions. In 1784, the Assembly concluded that "the granting of the vacant lands of this State will be greatly conducive to its strength and prosperity, by increasing the agriculture and population thereof."[56] Because it emphasized settling the land, this bill was hardly a speculator's dream. The price of the land, ten pound per hundred acres, was high because the Assembly demanded specie payment, which in 1784 was asking a lot. Moreover, each purchaser was limited to 640 acres, and most importantly, was required to settle or cultivate the land for a year before it could be alienated (except by will).[57] If these measures were not enough enough to prevent malfeasance, the Assembly made further provisions. "Previous to the signing of the said grant, where there shall appear to be any fraud or collusion in the progress of the said entry, warrant, and survey, the Governor . . . and any five members of the Privy Council shall . . . cause all parties to appear" and summarily decide the case.[58] Such measures show that the Assembly intended to encourage small farmers, and would seem to have effectively prevented

large scale speculation.

Almost immediately, however, these provisions began to erode. First the price was reduced by almost three-quarters to ten dollars per hundred acres. Much more importantly, this no longer had to be paid in gold; now it could be paid in indents or even balanced off against accounts owed by the state.[59] By 1785 the Assembly had realized that land at a high price would produce little revenue, but at a lower price, it could be used to set off accounts. The next change was even more significant. The special session of the legislature in 1785 (the one notorious for passing the Pine Barrens Act) eliminated most of the anti-speculative provisions in the land law. No longer did one have to cultivate the land before selling it, and the acreage limit on purchases was eliminated. Additionally it extended the time limit on credit purchases.[60] This was particularly important to speculators who could then buy large quantities of land with little money down, sell it at a profit, and then pay off the purchase price with the profit from the sales. At this point, land speculation began in earnest, and it is unsurprising that a proposal the next year to prevent the surveying of Indian land failed.[61]

The reaction to speculation set in as early as 1787. That year the Assembly prohibited the Surveyor General and his subordinates from taking up elapsed land grants. Their

reasoning was simple and significant. These officials "have great advantages over their fellow citizens, from having it in their power to take up elapsed grants . . . and such advantages being injurious to the repose and well being of the republic" should be prohibited.[62] The new law also required payment to be received before any grants were issued. The sharp practices that abounded even convinced the Assembly of the need to grant "the present proprietors of wharves and low-water lots in Charleston . . . the exclusive privilege . . . of obtaining grants for the land covered by water in front of their present wharves."[63] Apparently someone else might buy up these submerged properties and deny the owners of the coast access to the water. The same year the Assembly prohibited the governor from signing any grants of more than one thousand acres unless it could be proved that the grant did not include any lands already patented.[64]

An extreme example of one type of land fraud was voided by the Assembly in 1788. In 1786, immediately after the loosening of the land law restraints, one Jonas Beard obtained a survey warrant for the unappropriated land between the Broad and Saluda Rivers from their confluence up thirty one miles. This area was already densely inhabited. Between the rivers he ran a single line some sixteen miles long and "passing through sundry settlements," drew up a plat, and estimated that it

included 51,300 acres. Obviously this included many other prior grants, but his plan was "to oblige the inhabitants of that extensive settlement to produce their titles, or if they had lost them in the war or by other accident, to seize their land as vacant."[65]

Despite its intervention in egregious cases, the Assembly increased the stakes for speculators in 1791. The lawmakers then repealed the measure which set land prices at ten dollars a hundred acres "because all the valuable lands in this state have been granted." After a year the remaining land would be granted at no charge except for the fees of the officials involved. In the interim, a four shilling, sixpence fee would be charged.[66]

By 1793, the Assembly was faced with repeated large scale land fraud. Petitioners complained of "Excessive survey[s]." One tract consisted of 391,607 acres "including a large part of said county . . . . Your Petitioners apprehend that many actions at Law to their great Prejudice vexation and loss will Be the Event of the Said Survey Being Carried into a Grant, . . . [and] your Petitioners, many of whom are Poor, and Uninformed will Be in Danger of Loosing their possessions for want of the ability to Defend them." Over 100 persons signed this petition. Eventually the Assembly found it necessary to close the land office to all grants larger than 500 acres.[67] The Assembly voiced its unhappiness. "Whereas a spirit of

speculation hath gone forth and many persons, greedy of gain have embarked in such schemes . . . with a view to impose upon, deceive and cheat, unwary foreigners by sales of such pretended vacant land: . . . no plan can be devised so effectually to check and defeat these iniquitous schemes as to shut up the land office . . . for a reasonable time."[68] The Assembly was also unhappy with Governor Moultrie who had signed large land grants although "no person could suppose that there were in the State such large bodies of vacant land." Their official pronouncement was that "the Governor must have been deceived when he signed the same."[69] The facts suggest that if the governor was deceived he was deceived willingly. He protested the presentation of large grants to the legislature and refused to sign some at virtually the same time that he was signing others.[70] The net effect turned out to be the same because the Assembly voided the grants he did sign. Moreover, they created a new legal remedy for those whose property was endangered. They authorized any person whose duly registered tract was subsumed in a subsequent grant to file an action of trespass against that person and to recover damages and three times their costs from the offender.[71] These measures effectively ended the land boom in South Carolina. Once again the Assembly had acted in the public interest to preserve the republic.

VI

The Assembly's role in postwar economic development underlines the conservative nature of the republic. While the members of the Assembly approved of economic opportunity and pursued it as private citizens, they refused to modify their governmental practices in order to encourage it. Consistently they refused to appropriate state money for local projects. They did prove willing to order citizens to work on local transportation projects because in those cases, the citizens could be counted on to know the true cost of the improvement and to complain if it was excessive. In matters less directly under the public eye, the Assemblymen were careful. In those cases where they did approve patents or charter canal companies, they made stringent efforts to determine to their own satisfaction that the interests of individual citizens would not be harmed. Still the measures which passed did have the effect of strengthening the economy of the state. By 1800, the citizens had the benefit of a greatly improved transportation system: a system which was built to pursue private interests and regulated to protect property rights.

NOTES

CHAPTER VII: ECONOMIC DEVELOPMENT

[1]Gordon C. Bjork, Stagnation and Growth in the American Economy, 1784-1792, American Economic History: A Garland Series (New York, 1985), 19, shows that Indigo production continued through the 1780s despite the low prices received for it. He theorizes that this happened because the capital commitment to indigo agriculture could not easily be diverted.

[2]Ibid., 21 suggests that rice prices remained very high in the 1780s because the volume of rice produced due to crop failures and other factors did not return to prewar levels until the 1790s. Of course, this did not help those whose crops failed. For a contrasting view of the economic situation, see Louis Maganzin, "Economic Depression in Maryland and Virginia, 1783-1787" (Ph.D. diss., Georgetown University, 1978).

[3]Susan Previant Lee and Peter Passell, A New Economic View of American History, (New York, 1979), 40-46.

[4]It is possible that the interests of the many canal stockholders who were members of the Assembly influenced action particular favorable to those enterprises.

[5]Oscar Handlin and Mary Flug Handlin, Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861, revised edn. (Cambridge, Mass., 1969), 50-55, 242.

[6]Statutes of South Carolina, IV, 620.

[6]Senate Journal, 1784, fols. 133, 324, 334-335, 454. I have been unable to discover the committee's decision about Dupont. In 1784, £1000 sterling was a tremendous

amount of money. Statutes of South Carolina, IV, 755-756. Compare this case to Ibid., 229 where the Assembly granted a similar 14 year patent in the colonial period. The fine then was only £50 but none of it went to the state. This demonstrates how badly the state needed money in the mid-1780s. For the doctrine of just price or fair exchange, see William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830 (Cambridge, Mass., 1975), 6.

[8]Senate Journal, Jan. 1788, 82, 92.

[9]House Journal, 1785, 37-39, 86.

[10]House Journal, 1786, 382; Senate Journal, 1789, fol. 53.

11Senate Journal, 1789, fols. 41, 114, 167.

[12]Petitions, 1792-24-01.

[13]Statutes of South Carolina, V, 263-264

[14]The Assembly passed an omnibus roads and ferries bill virtually every year.

[15]This burst of transportation expansion occurred much earlier that is usually thought. See George Rogers Taylor, The Transportation Revolution, 1815-1860, The Economic History of the United States, IV (New York, 1951.

[16]Petitions, 1791-25-01. This petition to repeal a road from Coachman's Hill had 9 signers and was rejected.

[17]Senate Journal, 1784, fols. 78, 82, 140.

[18]Senate Journal, 1795, fol. 64.

[19]Statutes of South Carolina, IX, 274-275.

[20]Ibid., 307. Electing a new member required a majority.

[21]Ibid., 392-398.

[22]Ibid., 360-361.

[23]Ibid.

[24]Ibid.

[25]Ibid., 328.

[26]Ibid., VII, 475. All of the acts concerning rivers are grouped in Volume VII.

[27]Ibid. In the colonial period 17 acts relating to rivers were passed, but for the most part they related to short sections of rivers. Although the postwar era had only twice as many acts, they affected many times as many miles of waterways.

[28]Statutes of South Carolina, VII, 551.

[29]Ibid., 564, 570, 573, 575.

[30]Ibid., 548.

[31]Ibid., 568.

[32]Ibid., V, 285; VII, 527,528, 561-565. Occasionally only blacks would be required to labor on roads and rivers.

[33]Senate Journal 1795, fol. 35.

[34]Statutes of South Carolina, VII, 570, 574-575.

[35]Ibid., 544.

[36]Ibid., 531. This was a project to clear five rivers.

[37]Ibid., VII, 556-557.

[38]Ibid., VII, 569-570.

[39]Indeed one of the acts simply granted the new company the same powers as one of the existing ones had. Ibid., 541-543, 545-547, 549-551, 557, 558-560.

[40]Ibid., 559.

[41]Ibid., 542.

[42]See Carl L. Epting, "Inland Navigation in South Carolina and Traffic on the Columbia Canal," Proceedings of the South Carolina Historical Association, 1936, 18-28.

[43]Session Laws, 1797.

[44]Senate Journal 1795, fols. 26, 39; Statutes of South Carolina, VII, 262, 263.

[45]Session Laws, 1795, 77.

[46]Senate Journal 1795, fol. 220.

[47]Session Laws, 1795, 86.

[48]Statutes of South Carolina, VII, 575.

[49]The fact that the measure continued so long before the Assembly in its various forms suggests that they were unable easily to resolve it. Senate Journal 1795, fol.

153, 205; Statutes of South Carolina, V, 286, 312; Senate Journal 1798, fols. 121, 124; and Senate Journal 1799, fols. 35, 54.

[50]Statutes of South Carolina, V, 286.

[51]Ibid., 312.

[52]Senate Journal 1798, fols. 121, 124; and Senate Journal 1799, fols. 35, 54.

[53]Senate Journal 1795, fol. 123. This is the only statement which indicates that the Assembly thought it permissible to injure someone for the good of the community.

[54]Session Laws, 1797, 167.

[55]Statutes of South Carolina, V, 210.

[56]Ibid., IV, 590.

[57]Ibid., 590-593.

[58]Ibid., 591.

[59]Ibid., 706-708.

[60]Ibid., 709-710.

[61]House Journal, 1786, 504.

[62]Statutes of South Carolina, V, 39.

[63]Ibid.

[64]Ibid., 40-41.

[65]Ibid., 74.

[66]Ibid., 168. For the rest of the 1790s the Assembly continued to extend the time for taking out old land grants apparently waiting for the land office to reopen. Ibid., V, 206, 235.

[67]Ibid., 233-234.

[68]Ibid., 233.

[69]Ibid., 234.

[70]Senate Journal, Nov. 30, 1793, n.p.; Bridwell, Ronald E., "The South's Wealthiest Planter: Wade Hampton I of South Carolina" (Ph.D. diss., University of South Carolina, 1980), 283-290.

[71]Ibid., V, 234

CHAPTER VIII

ORDER IN A REPUBLICAN SOCIETY

I

The Assembly carefully regulated society in order to maintain republican government by preserving order, protecting property, and controlling individual behavior. In dealing with these issues, the lawmakers revealed much of the quality and concerns of the republican ideology they promoted. One central theme was the need to protect property, which in the English tradition was closely equated with the protection of liberty. Indeed it seems likely that the South Carolina gentry believed that protecting property and disciplining non-conforming individuals would unfailingly produce social stability. The Assembly's close relationship to the electorate kept this social vision from being repressive to propertied white males. The Assembly was self-consciously representative and sought consensual rather than partisan victories. The Assembly, for all its meddling in society, preferred to be non-interventionist, acting in response to actual or perceived problems, but rarely anticipating them.

The ultimate goal of maintaining a republican social

order unites many disparate acts. On the one hand, the Assembly regulated society in the public interest by addressing matters which individual action could not regulate. These laws range from those establishing a seaman infirmary (paid for by a tax on shipping) which kept derelicts off the street, to those prohibiting dams which kept fish from passing up or down stream, to those establishing public markets. A second group of laws protected property by encouraging the destruction of beasts of prey, regulating stray cattle, and controlling rice dams. Finally, the Assembly passed numerous measures intended to control individuals. These ranged from the obvious repressiveness of slave codes to the more subtle method of education. Taken together this legislation goes far toward revealing the orderly type of society in which the legislators wanted to live.

In practice the Assembly produced a type of negative state. Although they did provide a few desired services, they were much more quick to protect individual and public rights. For the most part, the perceived threat come from deviant individuals.[1] Occasionally such a deviant might be a person of property, but much more often it was someone who, in the judgment of the Assembly, did not know his or her place and who did not respect others property rights. Slaves who misbehaved, persons who stole, vagrants, and the like all threatened the republic, because it depended on

the moral quality of its citizens. Consistently the Assembly demanded harsh penalties against those it labeled deviant.

The Assembly's negative style of government proved inadequate when confronted by urban expansion. In other matters, the Assembly guarded its consolidated powers jealously while using them sparingly. But as Charleston and smaller towns grew, they increasingly needed courts, services, and general regulation. At first the Assembly walked a middle line, setting up local governing bodies with strictly limited powers. When this process still left too many decisions up to the Assembly, they eventually allowed the towns great latitude to govern themselves.

II

The process of ordering society antedated the conflict with Britain. One of the first postwar acts of the Assembly was reviving nearly three dozen colonial laws which had expired and adapting them to fit with independence. The scope of these laws is interesting because it parallels rather closely the three groups of legislation outlined above. Some were concerned with economic and market regulation. They licensed peddlers, established markets and fairs, regulated standards for

merchandise, and set wharfage rates. Others sought to keep order in society by "ordering and governing . . . slaves," "restraining seamen," regulating taverns, organizing the militia, and establishing patrols.[2] They limited "the making of dams . . . [which] may affect the properties of other persons," and set up tobacco inspection stations which kept inferior crops off the market.[3] A final group of laws protected public interest by empowering commissioners to keep streets clean, to clear roads, and to keep waterways open.

This does not mean that the postwar ear was simply an extension of colonial times. One of the reasons Americans embraced republicanism so readily was their perception that their own society was already republican in nature. But after the war the need to manage society seemed more pressing and the pace quickened. In 1783 in a two-and-a-half page bill, the Assembly listed the important legislation of this type from the previous eighty years. In less that twenty years, the Assembly would add more than one hundred bills to the list. With apparent continuity, but increased zeal, they continued to promote a republican society.

III

Providing the regulation needed by the general public required reasonably little effort, and for the most part the Assembly was content to leave well enough alone. Only a few issues--public health, safety, and economics--received attention. The Assembly established quarantine procedures to keep disease out of the state; it continued the militia law to keep the state safe; and intervened in a few economic matters when it seemed appropriate.

Regulating public health fell under the Assembly's jurisdiction, and for the most part this meant enforcing a quarantine on ships arriving from suspect areas. After the war, the Assembly revived the colonial quarantine law which required all pilots to ascertain whether persons on the ship had contagious disease and if the boat had come from a disease infested port. If either condition prevailed the boat had to perform quarantine. The postwar law added a requirement that all vessels from the Mediterranean or Levant be reported to the governor before they were were allowed to enter the harbor and also required all cargo from suspect vessels to be landed on Sullivan's Island and left for forty days or "until it shall be thought that such infection contained in such cargo shall be got rid of."[4]

The militia law, although often before the Assembly, changed relatively little. Three-quarters of a century of

experience culminating in a war had honed the militia law until it was generally satisfactory. As of 1783, the militia met every two months, except in Charleston where it met every month. Those free males, age eighteen to forty-five who did not attend were fined two dollars a day.[5] In 1791, uncertain as to whether the adoption of the Federal Constitution (which called for a uniform militia law under the supervision of Congress) had voided the old militia law, the Assembly re-enacted it with the provision that it would be replaced by Congress eventually.[6] After Congress laid down a uniform code for state militias, the Assembly adopted it, but really had little input into its content.[7] Although the Assembly received petitions relative to the militia fairly often, they seldom acted on them. A Senate committee felt that Quakers could be exempted from militia duty if they paid a substitute, but the full Senate rejected the proposition.[8] Some citizens who believed that those who could afford to pay the militia fines were "seldom or never seen in the role of the Citizen Soldier," wanted to make the militia fine proportional to state taxes.[9] The citizens of Washington Brigade who "resolved not to Loose one tittle of our Rights," expounded their belief that all officers, even generals, should be elected. They reasoned that "no one but an Aristocrat would wish to command a free people, without first knowing he was their choice."[10] The Assembly, bound by

Congressional action, did not respond.

Because law regulated society, the Assembly believed in the importance of having competent attorneys. In 1785, they set the requirements. A person with four years residence could qualify as an attorney in one of three ways: by passing an examination given by three judges or chancellors; by studying three years at a law college in England; or by serving a four year clerkship with an accredited attorney with at least seven years experience.[11] In 1796, they modified this law slightly.

Economic considerations also goaded the Assembly into action on occasion. In a state where rivers were plentiful and important, the Assembly did not hesitate to regulate dams as necessary for the general welfare. One recurrent problem was dams that kept fish from freely travelling upriver. The Assembly dealt with these situations on an ad hoc basis as citizens complained. Ordinarily they required dam owners to open a fish slope eight feet in width or face a penalty ranging from twenty shillings a week to six pounds a day depending on the importance of the waterway. In some cases they required the slopes to be permanent and in others they were required only in the spring.[12] The rationale of these acts, that public interest overrides private pursuit of profit, was made clear in a 1799 act authorizing the construction of a dam. The Assembly had approved the measure only after determining to their own

satisfaction that the project "can be done without injury to the inhabitants of the state." These might have been empty words in some circumstances, but the Assembly characteristically made provisions for citizens to seek legal relief should the Assembly's judgment prove faulty. In the event of a complaint against the dam, a justice of the peace was to appoint a twelve-man jury to consider the case. "If a majority of the said freeholders shall be of opinion that the said dam is an obstruction or injury to . . . people living on the said river . . . [the justice] is hereby directed and empowered to cut the said dam and fully clear the river" at the dam owners expense.[13]

The most important economic decision which the Assembly made was the decision to remain on a specie basis. While the state did issue paper money and special indents, it never made them legal tender (although it did receive them at face value for taxes). This caused particular hardship in the backcountry where the paper currency was scarce. In 1797, citizens complained that hawkers and peddlers from the north came into the state and sold, for specie, goods which they had bought for paper. This was "causing a stagnation of the circulation of money; seeing whatever comes into the hands or possession of such Hawkers and Pedlars as aforementioned (and sorry we are to remark it is a large quantity) is immediately transferred to another distant state."[14] This problem lay beyond the

Assembly's ability to solve, but they did the best they could to protect the backcountry. In response to the petition, the lawmakers announced that the license fee for hawkers and peddlers "has, by experience, been found too small." They raised it to $250 a year and made plain that every peddler needed a separate license.[15] The Senate tried twice to prevent peddlers from selling any goods, but both times the House rejected the proposition.[16]

In the 1780s, the Assembly passed several laws establishing markets and fairs. It is not clear whether these fairs actually worked in practice, but they were instituted at the request of petitioners who must have expected them to. These bills are very similar and have an almost medieval cast to them. What is most striking is their detail. They specify particular days and even hours for the fairs and list items to be offered for sale: "horses, cattle, grain, hemp, flax, tobacco, indigo and all sorts of produce and merchandise."[17] The fairs were to be run by an elected director and clerk. "No person . . . [was to] be liable to be taken at the said fair, by virtue of any process, except for treason, felony, or other capital crime, or breach of peace,"[18] The town markets were more strictly regulated than the fairs. Elected commissioners had to see that the streets were clean, that slaves sold nothing without a ticket from their master, that fair weights were employed, and that "any poor

carrion, blown or puffed up or unwholesome meat" be destroyed.[19] But this minute regulation of economic affairs was ending.[20] After 1789, no more such markets and fairs were established in the state, suggesting that a new system of supply and demand evolved to serve the state's growing population. It is symbolic of this change that the Senate did not even discuss a 1789 petition from the bakers of Charleston asking that bread prices be regulated.[20]

Other measures also suggest that the Assemblymen accepted economic liberalism in the private economy. For example, in 1786 the Assembly moved to allow a better remedy to persons who accepted bills of exchange which were later protested. The new act allowed the recipient of a protested bill to receive interest and to institute action against the "drawers or endorsers jointly . . . or separately."[21] The interest the Assembly allowed, 12.5 percent, was substantial. But while the Assembly loosened its grip on economic affairs it still tried to regulate society in other ways.[22]

IV

The Assemblymen were most adamant in their effort to protect property within the state. Immediately after the war they sought to restore property to its rightful owners

insofar as was possible. As the bill indicated, "many persons in this State have by various means since the commencement of the present war become possessed of . . . the property of others."[23] Without inquiring into the means by which such property had been acquired, the Assembly mandated it should be reported to the local justices who were to advertise the same both locally and in the state gazette. This measure was later "found inadequate to the good purposes thereby intended" and productive of "many frauds and abuses," particularly with regard to slaves, the most valuable (and the most mobile) part of this property.[24] Therefore the Assembly found it necessary to require all slaves held by persons other than their owners be sent to Charleston where they would be held for a year and then, if unclaimed, sold for the benefit of the state.

This wartime dislocation was a onetime occurrence but more long-term problems with mobile property arose. In the decade after 1786, a half a dozen bills concerning stray livestock came before the Assembly.[26] The procedure the Assembly instituted for handling strays was rather rigorous. A freeholder was to take up any unknown stray on his own land, but he then had to advertise the fact within three days, and go before a justice of the peace who would appoint three disinterested men to appraise the beast and verify its description and all marking. If the animal was worth more than ten pounds, the finder had to advertise in

the state gazette for its owner. Should the owner not appear, the beast was to be sold and the money was to go to the state. In no event did the finder get anything more than the labor of the animal, if a draft animal, and amazingly, there was no provision for his being reimbursed for his required expenses either by the owner (should he appear) or out of the purchase money should the animal be sold. Yet if he did not act, he could be fined three pounds.[27] Clearly the primary concern of the Assemblymen was to protect the owner whose property strayed. Eventually they modified the law to provide a "reasonable allowance" for the finder.

To some extent strays were unavoidable, but theft was a much more serious problem and the Assembly took strong steps to curb it. Death was the penalty for stealing horses, asses, and mules. A ten-pound per beast fine was deemed sufficient for cattle rustlers, but those who could not pay the fine (primarily slaves) could be whipped up to thirty-nine lashes. Lesser beasts carried lesser fines. Disfiguring another person's horse or cow (i.e. misbranding them) brought a twenty-pound fine, or more lashes. Under no circumstances was an unsupervised slave to brand any animal.[28]

Even draconian measures apparently were not sufficient for the Assembly later reported "the stealing of cattle has become of late very prevalent in several parts

of the State."[29] Their new solution seemed simple. Every butcher had to produce the hide and ears of the cattle he butchered so that the brands could be checked and stolen cattle traced. But the new system had drawbacks too. In 1798, the butchers of Charleston reported that it was nearly impossible to catch anyone this way because similar or identical marks were used by cattle owners in different parts of the state. As evidence, they adduced "the circumstance of only one cow having been discovered in this way since passing the act aforesaid, altho' the Inspector . . . hath registered no less than fifteen thousand within that time." Since it cost money to pay the inspector and because the "noxious effluvia" endangered citizens' health, the butchers suggested that drovers be required to obtain certificates from their local justices of the peace before bringing cattle to market.[30] In 1798, citizens petitioned to "prevent suspicious persons with horses and other property, from passing and re-passing over the respective bridges and ferries throughout the state."[31] A final measure to protect stock put a bounty (paid in tax deductions) on wildcats, wolves, and panthers.[32]

Concern for protection of private property also marked a measure regarding dams. Rice growers habitually dammed up water on their fields over the winter and released it in the spring as part of the rice planting process. These floods had the potential to damage their

neighbor's crop. So the Assembly required that all rice dams be opened by March 10 each year, before planting. An owner who failed to do so faced a hundred pound fine and also suits for damages from his neighbors. The measure also regulated the strength of dams so that they would not give way by accident.[33]

In 1783, in response to the treaty of alliance between France and the United States, the Assembly prohibited the plundering of ships in distress on pain of death. The detail in the measure suggests that this might have been a familiar problem. No person "shall make a hole or holes in the bottom of any ship or vessel in distress, or shall take away a pump, or willfully and unlawfully do any mischief tending to the loss of such ship." The bill even went so far as to prohibit assaulting someone attempting to help rescue a vessel in distress.[34] The presence of these detailed provisions suggests that every loophole had to be covered.

V

For society to run smoothly, individuals had to conform to their prescribed roles. In a republic, morals were extremely important. One petition called on the Assembly to "Convince the Abandoned that the Legislature is

the Friend of Good Order and morality."[35] While the Assembly did not try to make all individuals fit one mold, they did have a clear conception of the limits of acceptable behavior for all ranks of inhabitants. Their policy worked at three levels. In its most arbitrary form it consisted of policing slaves so that they could not escape their place and disciplining miscreants whose malfeasance threatened society's moral code and individuals' property. At a middle level the Assembly sought to control, but not eliminate, "pernicious practices" like excessive drinking and gambling. Finally they used a very different method, education, to try to inculcate in the citizens the kind of values which would eliminate most of the problems just mentioned.

Apparently most South Carolinians believed that colonial law sufficiently kept slaves under control. Because of the loss of slaves during the war, the ban on slave imports after the war, and the influx of white settlers into the backcountry, the percentage of blacks in South Carolina had declined from 60 to 40 percent of the population by 1790. Under the circumstances, the strict laws regulating slaves and slave behavior which had been passed after the Stono Rebellion in 1739 seemed adequate. One historian has recently argued that after 1740 South Carolinians exhibited a curious ambivalence about their slaves. Despite the strict laws, they felt a psychological

need to treat their slaves as if they were no threat.[36] This study obliquely supports that thesis. After the war the Assembly renewed some of the existing laws controlling slaves, but from 1783 to 1799 passed only one new law restricting slave behavior. That law prevented shopkeepers from dealing with slaves not having a ticket from their master.[37] In contrast, the Assembly passed one surprising law. They not only freed, they enfranchised a slave woman along with her child because her husband had courageously served during the war as a spy for Governor Rutledge.[38]

Underneath this complacency, however, ran another current. Occasionally petitions revealed deep concern. Some inhabitants of Saint Luke's Parish in the lowcountry, where the percentage of blacks was still high, requested a ban on the importation of slaves from the northern states. They reported that "it is notorious that divers of the Citizens of the northern States have, for a number of years past, been in the habit of shipping to these Southern States, Slaves who were scandalously infamous & incorrigible, to the great detriment of the peace and interest of the Citizens of these States." They went on to complain about persons who wanted to end slavery. Although they admitted that some abolitionists might be "actuated by conscientious principles," they insisted that others simply wanted credit for abolishing slavery and that still others desired that "those possessed of slaves should suffer from

them."[39] Another petition expressed alarm about West Indian blacks in the state. Its signers, including former governor Arnaldus VanderHorst, proposed putting guards on ships to prevent black sailors from spreading ideas; expelling all French free blacks from the state; and establishing a large guard in the city.[40] In the 1790s, after the slave revolt in Santo Domingue a number of measures to control slaves were introduced but not passed. For the most part, it was the Senate which blocked this legislation. In 1794, the Senate decided not to return to the House a bill to regulate mechanic slaves; refused to read a House bill to amend the regulations concerning Negroes; and postponed a bill for the better regulation of patrols in the state declaring "the old law is efficient."[41] Later they postponed or rejected bills to restrain emancipation and to compel ship captains to give bond not to carry off Negroes.[42] Overall the postwar era was not a time of harsh legal repression for slaves despite the Haitian Revolution. Still there can be no doubt that if the Assembly had perceived a threat to white control, they would have instantly adopted extremely repressive measures.

In 1800 at the very end of the period under consideration, the Assembly passed a new act which more clearly defined the limits of acceptable black behavior.[43] First the Assembly prohibited blacks from meeting together

for "mental instruction . . . [in any manner] so as to prevent the free ingress and egress from the same [meeting place]."[44] They did not prohibit education, per se, but they did not want groups of blacks meeting out of the public eye. Such meetings were to be dispersed and the participants were liable to be whipped up to twenty lashes. Even a proportion of whites present at such a meeting did not make it legal. Similarly no instructional meetings were allowed between dark and dawn. This was the first act ever in South Carolina to inhibit instruction of slaves.[45] The act also required whites to ride patrols or face a two dollar fine, and owners of plantations with ten or more slaves to employ a white overseer if they were not present on the estate themselves. Finally, the act stipulated that before a slave could be emancipated, he or she must be examined by a group of freeholders to determine if he or she were capable of being self-supporting. If not, the slave could not be freed.

Vagrant whites who might well be thieves and certainly set a bad example for the inhabitants received harsh treatment. A wanderer was deemed a vagrant unless he could produce a certificate from three justices of the peace from his home vicinity attesting to his character. Anyone lacking this document was to be tried by a six-man jury and if found vagrant was to be sold as a servant and if not purchased, whipped.[46] In the city, vagrancy seemed

to be an even greater problem. For three successive years the Charleston city council petitioned the Assembly, claiming "that numbers of beggars have lately been wandering about the Streets of Charleston and have now become highly expensive to the State and burthensome to the Inhabitants; many of which idle strollers have removed hither from our sister states with the avowed design of deriving to themselves a support from the charitable contributions of our citizens. Your memorialist therefore submit the propriety of granting a power to the Intendant and Wardens to put a stop to the Emigration of all such roving and idle vagrants, and that they be permitted to establish a Bettering House under proper regulations where persons of the above description might be made to labour for their own Subsistence."[47]

Most major police regulation was already in place before the war so the Assembly had only to tie up an occasional loose end. During the economic crisis of the mid-1780s, the Assembly addressed the problem "which hath lately become general" of people clipping and filing gold coins. (That is they removed some of the gold from the coin and then tried to pass it as full weight.) For this crime, the Assembly deemed one year close imprisonment appropriate. They added two one-hour stints in the pillory to the term so that the public could witness the punishment.[48] Two other bills of this type were introduced

but not passed. One proposed explaining the law respecting forcible entry and the other was to regulate the police of Georgetown.[49] But these cases were exceptions.

The Assembly also regulated the morals of more acceptable citizens. They required the maintenance of illegitimate children to keep them off relief. Fathers of bastards by white women had to pay five pounds, four shillings every year to support the child until it was twelve. A mother who would not name the child's father had to post bond for its maintenance or go to jail. Only if neither parent could pay would the Commissioners of the Poor step in.[50]

As already noted, owners of billiard tables faced a twenty to fifty pound annual license fee. It seems certain, therefore, that they were used for gambling. Gambling, particularly on horses, was popular among the gentry, so perhaps it should not be surprising that the Senate rejected a bill to prohibit "excessive and deceitful gaming" in 1784.[51] In 1791, however, a similar bill with the lurid title, "An Act to suppress the pernicious practice, and prevent the evil Consequences of excessive and deceitful Gaming and Swindling," passed both houses.[52] The preamble of the act explained why it was considered necessary: "a number of idle persons, of ill fame, who have no visible means of obtaining an honest and reputable livelihood, have of late infested this state . . . drawing

into their snares many ignorant and unwary persons."[53] This list demarks in negative the kind of citizens the Assemblymen desired--industrious, well-regarded, and employed. The act allowed the victim to regain double his money if the gambler enticed or defrauded him. Another part of this bill even affected the rich gamer. Any "notes, bills, bonds, mortgages, or other securities or conveyances" which were won at horseracing, cockfighting, or gaming at card, dice, etc. were to be void. The property did not, however, revert to the former owner. Instead, it descended as if the owner had died intestate.[54]

Drinking and gambling were closely associated vices. In an age in which nearly everyone drank, liquor was regulated only by taxation. A bill to "prevent the unhappy consequences [of] . . . the immoderate use of liquor" was introduced but failed.[55] Moreover the tax on alcohol sales provided significant capital. Still citizens sometimes expressed concern about drunkenness, especially among the lower ranks of society. The Charleston city council reported that "great inconvenience is experienced by the Citizens of Charleston on account of the number of persons who are licensed to retail spirituous liquor." They wanted to cut down the number of liquor licenses, but "they have been restrained from so doing, by the consideration that . . . a great deficiency would thereby be occasioned in the revenues of the City" and the citizens were already heavily

taxed. Their solution was to raise the price of the licenses so they could sell fewer but maintain their revenues.[56] Some other petitioners, "Considering themselves as Good Citizens in Duty bound to Support Order, Morality, & Good Government, and highly prizing the privilege We Enjoy of Addressing our Legislature, . . . present as a grievance the want of Law (in come cases) Sufficient to Inforce the Observance of the Lords Day." In particular they protested "the immoral practice & Disorderly Conduct and Constant profamation of that same Day carried on at a Certain Fishery of Catabaw River in our County." The heinous practices which flourished there included buying and selling fish, fishing, selling liquor, and drunken card playing, not to mention "almost every other Vice and Immorality."[57] No doubt many members of the Assembly were sympathetic to the petitioners, but laws to control such behavior proved difficult to devise and enforce.

The Assembly was well aware that in the long run, education provided the most effective form of social control. If they forgot, a governor would remind them. Southerners are often accused of caring little about schools, but the Assembly established schools of higher learning in all parts of the state. The College of South Carolina is the best known of these schools, but the Assembly chartered a college or seminary in Ninety-Six, Williamsburg, Camdem, Charleston, Beaufort, and the

Pinckney district.[58] They also set aside land in Columbia for a free school.[59] It is true that as a rule the Assembly provided no money for these endeavors and limited the amount of income the schools could derive from their property, but they occasionally allowed the institutions to have a lottery to raise from £500 to £5,000.[60] In other cases the institutions were granted the remaining confiscated land in the vicinity.[61] In all cases the trustees of the various schools were given a relatively free hand, although the Assembly occasionally set their annual meeting date.[62] Irregularly the Assembly would prohibit the introduction of any religious tests at the schools. "No person shall be excluded from any privilege, immunity, office, or situation in the said College on account of his religious persuasion; provided he demean himself in a sober, peaceable and orderly manner."[63] Clearly the schools were seen as filling a social role, but fell afoul of the Assemblymen's limited view of their own role. They encouraged the schools, but could not, in conformity with their own principles, support them financially.

VI

Finally the Assembly regulated the towns in the

state. The City of Charleston constituted a large thorn in the side of the legislature because it required a great deal of regulating. As the state's only large urban area, it had problems which no other jurisdiction shared. In part to relieve themselves of the burden of administering it, the Assembly incorporated the city under the direction of an elected city council. This worked up to a point, but the council regularly petitioned the Assembly to define their powers, approve their actions, grant some privilege, or settle some dispute.[64] In general, the Assembly tried to avoid granting the city council extensive powers or paying for anything in the city. On one occasion they explained "it would be improper for the State to bear the burthen of an improvement chiefly useful to the City."[65]

The regulation of Charleston became such a chore that the Assembly felt compelled to make one of its largest delegations of power by incorporating the city. "From the many weighty and important matters that occupy the attention of the Legislature at their general meeting, it has hitherto been found impracticable, and probably may hereafter become more so, for them to devise, consider, deliberate on, and determine, all such laws and regulations, as emergencies, or the last local circumstances of the said town, may from time to time require."[66] The Assembly divided the city into thirteen wards which each elected one warden. One of these wardens

was elected intendant at a city wide election and his ward then elected a replacement for him.[67] Together the intendant and wardens constituted the city council, and their list of powers suggests why the Assembly wanted to drop the job. They had "Full power and authority . . . to make and establish such bye-laws, rules and ordinances, respecting the harbour, streets, lanes, public buildings, work houses, markets, wharves, public houses, carriages, wagons, carts, drays, pumps, buckets, fire engines, the care of the poor, the regulation of seamen or disorderly people, negroes, and . . . [all else] that shall appear to them requisite."[68] The council also assumed the duties that various commissions fulfilled elsewhere. One of the major motives imputed to the Assembly in incorporating the city was the belief that the council could control riots. Indeed Article VI of the charter deals with that eventuality. In case of riot the council was to meet and "such measures shall thereafter be taken as shall appear most advisable for pre nting or suppressing such riot."[69] Still, it remains unclear exactly what the Assembly thought the council could do in such a circumstance.[70]

Despite their attempts to escape the problems of the city, the Assembly had to redefine and enlarge the city council's powers throughout the rest of the period. The year after incorporation, the Assembly had to "explain" that the wardens could jail individuals and extended their

powers to cover trying seamen and allowing lotteries.[71] The Senate tried to make the wardens' court a court of record, but the House objected.[72] The next year the Assembly had to repeal all old acts relating to the city to prevent a clash of jurisdictions.[73] Subsequently the Senate tried twice without success to increase the city council's powers.[74] By 1791, it was again necessary to ascertain the jurisdiction of the Charleston Court of Wardens. First the Assembly rejected a measure passed by the council limiting gambling because the wardens had exceeded their authority. They concluded "the ordinance was well calculated to prevent . . . [fraud, but] it was never the intention of the Legislature that any citizen of the state should be punished in so summary a manner . . . without a trial by jury."[75] The Assembly then inserted provisions for a jury trial and passed the measure themselves.

In the same session the Assembly responded to a query from the wardens for a clarification of the jurisdiction of their court. The Assembly answered them. They could try cases up to twenty pounds not affecting freeholds; they could call witnesses from outside the city; and they could try cases where an individual owed more than twenty pounds to another so long as the debts were separate and none by itself exceeded the twenty pound limit.[76] Moreover, the Assembly informed them that counsellors, attorneys,

solicitor, and clerks of the superior court were not exempt from the warden's court's jurisdiction. "In a free republic the citizens ought to be entitled to equal liberties and equal privileges, so no set of men are exempt from the process of any court, within the limits of its jurisdiction, without such exemption is expressly granted by the constitution."[77] Later the council's power increased even more as it was empowered to confine strolling beggars, to prevent narrow streets from being opened, and to increase the price of liquor licenses "according to their discretion."[78] But bills to allow them to levy fines up to fifty pounds and to regulate mechanic slaves failed.[79]

At the end of the Revolution, Charleston was the only urban area in South Carolina, but after the war, other towns developed and grew and required regulation, Indeed, town legislation is virtually the only type of law to increase dramatically in the 1790s. By 1790, Camdem was the second largest urban area in the state and became the only town outside Charleston incorporated during the period.[80] In general, its incorporation law was modeled after that of Charleston. The town had only four wards and was limited to owning £10,000 of property, but it could hold lotteries and levy taxes up to one-third of the states annual assessment.[81] Although the Assembly seemed to have incorporated some of what it learned in Charleston, this

charter still had to be modified. Complaints about high taxes led the Assembly to allow the town council to raise the cost of liquor licenses to thirty shillings annually to lower other taxes.[82] Later the Assembly declared that the intendant and wardens were "justices of the peace, to all intents and purposes," and also extended the boundary of the town because they expected "a considerable degree of benefit would [thereby] accrue to the inhabitants."[83] The town's small size made biweekly council meetings impractical so the interval was increased to bimonthly.

Columbia, the new capital rated considerable attention even though it was small. The Assembly ordered it laid out along two 150 foot wide perpendicular streets with minor streets sixty feet wide. The commissioners were to pay a "generous" price for the land but "without reference to its future or increasing value." The cost was to be paid from the proceeds of selling half-acre town lots at auction with a minimum price of twenty pounds. The purchasers were to build a house at least thirty by eighteen feet with brick chimneys within three years or pay an annual fine until they did.[84] As usual, it became necessary to alter these provision. In 1790s the Assembly lowered the price of land off the main streets to seven guineas an acre (about a fifth of the original price), and ended building restrictions except on the main streets. By 1798 Columbia needed the same type of regulation as larger

towns, although it was not incorporated. As in the other towns, the commissioners ran the market, suppressed gambling, issued liquor licenses, and oversaw the maintenance of the roads. In general they could "pass all such rules and regulations . . . as they may deem proper and requisite for the promotion of the quiet and safety of the inhabitants."[85]

Other towns received attention on an ad hoc basis. The major controversy in Beaufort concerned land claims which would terminate streets which the inhabitants wanted to extend. After several false starts, the Assembly gave the Beaufort street commissioners authority to sue the land's owners so that a jury could determine the validity of their claims. Should the claims be upheld, the jury was to value the land and its improvements and the commissioners were to assess the inhabitants so that it could be purchased and the street extended. Of course, should the jury find in favor of the commissioners, they would simply seize the land.[86]

VII

All governments regulate their societies but the areas the Assembly chose to control are significant because they reveal what type of government the Assembly wanted to

create. First they made available desired services which could only be provided by the government. These services--quarantines, seamen's infirmaries, lawyers qualifications, the militia, and public markets--all worked to the advantage of the prosperous citizens. None were coercive. The coercive measures fell on the allegedly inferior slaves and miscreants. Indeed the emphasis on disciplining malefactors appears repeatedly. All told the net effect on the ordinary citizens was negative. Positive measures, like education, could only be promoted indirectly. The government protected citizens from disease, theft, slaves, vagrants, and unqualified lawyers. It was by disciplining or expelling the unacceptable that the Assembly sought to provide its productive white citizens with a proper place to live and work.

NOTES

CHAPTER VII: ORDER IN A REPUBLICAN SOCIETY

[1]This is one way the republicanism of South Carolina differed from Jacksonian Democracy. The Jacksonian government tried to protect individuals from concentrations of power and wealth rather than individuals.

[2]Statutes of South Carolina, IV, 540-541.

[3]Ibid.

[4]Ibid. V, 78-80 and 572-574. The quotation is from 574. The Assembly modified the procedure in subsequent years. In 1784 the Assembly repealed all previous quarantine acts in favor of a single new act, but made only minor changes. The next year the Assembly lifted the automatic quarantine of the Mediterranean and the Levant. After that, any ship with a clean bill of health from an uninfected port faced no quarantine. Ibid., 615-618 and 668. In 1792 some merchants asked the Assembly to end the requirement that ships exempt from quarantine stop at Fort Johnson, but the Senate did not believe the change would be proper. Senate Journal, 1792, fol. 90.

[5]Statutes of South Carolina, IX, 689-690.

[6]Ibid., 692.

[7]Ibid., VIII, 485-497.

[8]Senate Journal, 1792, fol. 42.

[9]Petitions, 1798-114-01.

[10]Ibid., 1794-197-01.

[11]Statutes of South Carolina, IV, 668-669. They also allowed reciprocal privileges for any out-of-state person licensed to practice before his state's supreme court. A move to revise this law failed after considerable debate Senate Journal, Jan. 1788, fols. 13, 23, 29.

[12]Statutes of South Carolina, IV, 623; V, 82, 93, 103, 217, 278; VII, 531.

[13]Ibid., 354-355. For another mill controversy see Senate Journal, 1797, fols. 116, 118, 138, where the Assembly agreed to allow a mill, but only "under such limitations, and restraints, as shall occasion the least possible injury." Morton J. Horowitz, The Transformation of American Law, 1780-1869 (Cambridge, Mass., 1977) argues that in the nineteenth century, judges developed a dynamic instrumental view of property which emphasized production, development, and use. In 1805, for example, the New York State Supreme Court upheld a ruling in Palmer v. Milligan that supported a property owner's right to obstruct a river for a mill. This began a trend toward weighing the relative efficiencies of conflicting property use. There is little sign of this development in the South Carolina Assembly during this period.

[14]Petitions, 1791-91-01.

[15]Statutes of South Carolina, V, 307-308.

[16]Senate Journal, 1798. fol. 124; Senate Journal, 1799, fol. 130.

[17]Statutes of South Carolina, IV, 652.

[18]Ibid., 649.

[19]Ibid., V, 23. A similar type of measure was a 1785 act regulating to toll at grist mills in the state. Ibid., IV, 652.

[20]Jan 1787, fol. 56.

[21]Statutes of South Carolina, IV, 741. This measure had been introduced the previous year and failed. House Journal, 1785, 222, 251.

[22]The new type of economic legislation endorsed by the Assembly will be discussed in the next chapter.

[23]Statutes of South Carolina, IV, 539.

[24]Ibid., 586.

[25]A later act protected slave property by forbidding hired out slaves from being distrained for their employer's past due rent.

[26]House Journal, 1786, 468, 497, 498-499; Statutes of South Carolina, V, 6-7, 137, 279; Senate Journal, 1794, fol. 111; Senate Journal, 1795, fols. 52, 117.

[27]Statutes of South Carolina, V, 6-7.

[28]Ibid., 139-141. This was a serious stiffening of the old 1768 law which prescribed death only for repeat offenders and had much lower fines and penalties for other offenses. Ibid., IV, 284-286.

[29]Ibid., V, 279.

[30]Senate Journal, 1798, fols. 108, 146; Petitions, 1798-90-01.

[31]Senate Journal, 1798, fol. 116.

[32]Statutes of South Carolina, IV, 726.

[33]Ibid., 722-724.

[34]Ibid., IV, 550-555. The quotation is from 552.

[35]Petitions, 1792-54-01.

[36]Watson, Larry Darnell, "The Quest for Order: Enforcing Slave Codes in Revolutionary South Carolina, 1760-1800" (Ph.D. diss., University of South Carolina, 1980).

[37]Statutes of South Carolina, V, 296.

[38]Ibid., IV, 545. According to the law the man was still a slave, but he might have been dead.

[39]Petitions, 1792-54-01.

[40]Ibid., 1797-87-01. This petition was inspired by an abortive plot by "certain West Indian negroes in the city." Apparently this was the same plot explained in a letter from Jacob Alison to Jacob Read. Alison to Read, Dec. 5, 1797, Jacob Read Papers, Manuscript Division, Duke University Library.

[41]Senate Journal, 1794.

[42]Senate Journal, 1799, fol. 74; Senate Journal 1797, fol. 130.

[43]Statutes of South Carolina, VIII, 440-443.

[44]Ibid., V, 440.

[45]Ibid., VII, 399. There had been a law to prohibit assemblies subversive of the peace.

[46]Ibid., V, 41-44

[47]Petitions, 1793-09-01, 1794-56-01, 1795-21-01.

[48]Ibid., 716.

[49]Senate Journal, Jan. 1788, fol. 195; Senate Journal 1795, fol. 265.

[50]Statutes of South Carolina, V, 270-271. The act also prohibited a man with a wife or legitimate children from leaving more than one-quarter of his estate to the woman he lived with or a bastard child.

[51]Senate Journal, 1784, fol. 350.

[52]Statutes of South Carolina, V, 196-198.

[53]Ibid., 197. The law derived from a disallowed ordinance of the Charleston city council. See Petitions, 1791-158-01.

[54]Statutes of South Carolina, V, 198.

[55]Senate Journal, Jan. 1788, fol. 13.

[56]Petitions, 1796-4-01.

[57]Ibid., 1798-139-01.

[58]Statutes of South Carolina, V, 198, 223; VIII, 188-192, 193-194, 198.

[59]Ibid., V, 216.

[60]Ibid., V, 198, 223; VIII, 188, 189, 198.

[61]Ibid., 189-192.

[62]Ibid., 189-190.

[63]Ibid., 191; V, 198.

[64]Senate Journal 1787, fols. 116, 232; Senate Journal 1788, fol. 38; Senate Journal, Jan. 1791, fol. 78; Senate Journal 1792, fols. 87, 159; Senate Journal 1797, 57.

[65]Senate Journal, 1796, fol. 57.

[66]Ibid., VII, 97.

[67]Ibid., V, 97-98. No one over fifty was required to serve. Those declining to serve if elected were charged £20 (£30 if elected intendant).

[68]How complicated these affairs could become is suggested by the controversy surrounding the extension of East Bay Street. Despite five separate acts designed to dispose of the matter, it was not settled by 1800. Ibid., VII, 103-104, 105-106, 109-110, 111-112, 112-113.

[69]Ibid., 100.

[70]Senate Journal, 1784, fols. 312, 314. The Assembly had found it necessary in 1783 to forbid any illuminations in the city when the news of the peace treaty was received, presumably to lessen the risk of riot.

[71]Statutes of South Carolina, VII, 101-102.

[72]Senate Journal, 1784, fols. 255, 258, 302.

[73]Statutes of South Carolina, VII, 102-103.

[74]Senate Journal, 1787, fol. 241; Senate Journal, 1788, fol. 36.

[75]Statutes of South Carolina, V, 27-28.

[76]Ibid., VII, 107-108.

[77]Ibid.

[78]Ibid., 109, 115, 111.

[79]Senate Journal, April 8, 1794, n.p., April, 10, 1794, n.p.

[80]Statutes of South Carolina,, VIII, 165-168.

[81]Ibid.

[82]Ibid., V, 211-212.

[83]Ibid., 316, 334-335.

[84]Ibid., IV, 751-752. The fine was 5% of the purchase price.

[85]Ibid., 332-335.

[86]Ibid., 335-336. See also Session Laws, 1795, 78; Senate Journal, 1795, fol. 174; Senate Journal, 1797, fols. 25, 60, 143. The only other Assembly action relative to Beaufort was the prohibition of raising or keeping hogs in town, Statutes of South Carolina, IV, 673. Winnsborough and Georgetown also got commissions see Ibid, V, 11-12, 186-187.

CHAPTER IX

PETITIONS

I

Petitions played a crucial role in the Assembly's activities. Every session between 100 and 500 petitions informed the Assembly of local concerns and problems, asked for the rectification of injustice, requested special favors, and presaged nearly all major legislation. The variety of types of petitions the Assembly received demonstrates the wide scope of the republic's government. The Assembly consistently treated petitions with respect and often deferred to them as expressions of popular will. Although fewer than half of all petitions were actually approved, no issue of public concern expressed through petitions ever failed to be considered carefully by the legislature, and all were resolved to the eventual satisfaction of the majority of voters. Some petitioners seemed to consider the primary role of the Assembly to be responding to petitions. One group of citizens began their 1785 petition "we the Humble petitioners of the House of Representatives assembled in Charleston to hear and Consider the Grievances to the people of the state."[1]

Petitions had an ambivalent quality in a Republican government. By their very nature, petitions are liable to be selfish and parochial; they arise from a perceived grievance or a desire for some favor and typically present only the petitioner's side of the case. In an absolute government, where the favor lies wholly with the government, this raises no problems. In a republic, however, where government exists to implement the collective will of the people, the limited nature of petitions could cause more trouble. The Assembly should respond to the will of the people, but not necessarily to the selfish desires of a few. In a sense, the Assembly had to serve as a lens which focused the various views of the people into a self-consistent, coherent structure which represented the collective will of all.

The petitions can be classified as public, semi-public, or private. Public petitions requested action which would affect all members of the community by asking for new laws, remonstrating against existing ones, pleading for adjudication in public disputes, or seeking public services. In general, the Assembly used three unofficial criteria to decide whether to grant these petitions. First, was it what most people wanted? This criterion applied most forcefully to questions of adjudication. When citizens in a county wanted the courthouse moved, the Assembly invariably sought to discover where the local

majority wanted it. Second, the Assembly deliberated over the appropriateness of the legislation in a Republic. This assumed particular importance in the debate over the legal structure of the community. Finally, the Assembly considered the reasonableness and feasibility of the request. Perhaps no issue more fully tested these considerations than the questions relating to debt and paper money. The desires of the people lay beyond legislative fulfillment and what would be reasonable appeared quite different to debtor and creditor. Despite the difficulty of balancing all these different criteria, the Assembly's record on public petitions appears quite creditable. They responded, but did not pander.

Semi-private and private petitions, although related in content, tended to express different types of concerns and the Assembly's manner of judging them was correspondingly different. Private petitions sought favors, exemptions from legislation, confirmation of presumed rights, adjudication of private disputes, appeals from other parts of the system, and privileges granted only by the legislature (e.g. citizenship). In these cases the most important criterion used by the Assembly was whether the request was just and fair. As a rule, the Assembly sought outside corroboration of attested facts and without it, seldom approved a request. An almost equally important consideration was that approval would do no harm to any

individual or the state as a whole. A lesser consideration was whether the request would be beneficial to the state. Finally, the Assembly, conscious of the importance of precedent, refused petitions which met all other criteria if they felt that approval would constitute a bad precedent which others, with less deserving cases would try to exploit.

Semi-private petitions sought specific favors for individuals, like the establishment of a ferry, which would have repercussions on the larger community. Thus they had characteristics of both public and private petitions. A request for a ferry or a patent on a rice pounding machine constituted a private petition as far as the petitioner was concerned: he or she wanted the grant of an exclusive franchise. But the Assembly was far more concerned about whether the ferry was needed by the local inhabitants or whether the new machine would stimulate agriculture. Therefore, the Assembly would deliberate, using the criteria appropriate to public petitions: popular desires, appropriateness, reasonableness, and feasibility. But should the question change slightly--perhaps two people wanted a ferry at the same location, or there was some question as to who invented the machine--then the criteria for private petitions, justice or protection of existing rights, would rule.

Analysis of the petitions is difficult for various

reasons. Quantitative analysis of the petitions proved unfeasible because of the large number of types of petitions and because the petitions are not uniform in value. One particular petition may be more significant than one hundred others. The number of possible outcomes for a petition is daunting. When a petition was presented, the house could refuse to hear it, postpone it, table it, or send it to a committee. Virtually never did either house act positively on a petition without committing it. Once committed, a report might or might not be delivered. If not, the measure either died in the committee, was discovered to be unnecessary, was withdrawn, or was subsumed by some general legislation. Thus, in some cases, no report simply meant that the problem had already been resolved. Should a report be heard, it could be tabled, postponed, rejected, accepted, or recommitted. Ordinarily, acceptance meant that the proposal was either drafted into a bill or resolution, and if the bill was approved it would be sent to the other house which had all the options of the first one.[2] To complicate matters further, in a few instances, approval by one house was all that was necessary.

It is not always clear what happened to the petitions or even what the petitioner was requesting. For example, in 1786, Francis Proctor petitioned the House. The original petition has been lost, but according to the Senate abstract it concerned "a demand against the

state."[3] The committee report, which did survive, says that the committee could not decide the question and referred it back to the whole House. The House approved the committee report, but the record shows no further action or discussion on the petition.[4] Probably nothing happened, but it his hard to be sure. In short, for many petitions, it remains difficult to determine whether the petitioner got what he or she wanted. A rough approximation is that about a third of the petitions died in committees, about a third were granted, about an eighth were rejected outright, and the remainder fell somewhere in between. Petitions varied greatly in their presentation of their grievances. A 1799 petition from the Inhabitants of Upper Prince William county complained that the distance they had to travel to vote was so great as effectively to disfranchise them. The petition was poorly worded and written with various emendations, and almost a quarter of the thirty-nine signers used marks, a highly unusual percentage.[5] In stark contrast stands a petition from the inhabitants of Saint James, Santee who sought to have a public road and bridge moved. They argued that the expenses for the bridge were high and regular and supported their contentions with thirty-four pages of documentation including an attested copy of the commissioners of the high roads report of all expenses on the bridge in the last thirty years. They also included a list of the slave

owners in the vicinity and the number of slaves each had who would were liable to work on the road and bridge, and demonstrated that the owners of more than three-fourths of the slaves (about half the slave owners) favored relocating the road.[6]

II

Public petition informed the Assembly of conditions in the state, suggested generic answers to problems, and asked for specific legislation. There were five general areas of concern: the legal system, public officials, public services, the regulation of society, and economic development. Some of the measures they prompted have already been discussed. The first category was the most important and the most fluid. Some years there would be very few petitions and some years many. In any year, these petitions clustered around particular issues like debt legislation or apportionment. On the other hand, the flow of petitions concerning offices and services remained relatively constant.

Those who doubt that South Carolina faced a crisis in 1785 should consider the petitions received that year. Only in that year did the Assembly face a dozen petitions that each mentioned numerous grievances and prayed for redress of them.[7] A typical one called for a constitutional convention (i.e. reapportionment), moving

the state capital inland, paper money, debtor relief, commercial powers for Congress, regulation of the chancery court, serving writs from someplace other than Charleston, and a new depreciation table.[8] Other petitions added limitations on slave imports and British trade, and the need for more courts of ordinary to the list.[9] While the Assembly did not meet all these demands immediately, they consistently responded as best they could and in the end resolved these matters all to their constituents' satisfaction. Never again in the period did the Assembly face such a widespread call for a revamping of the government.

In an age when travel could be difficult and time-consuming, the proximity of courts and official mattered a great deal. Ordinarily it was advantageous to live at or near the official seat and inconvenient to be far removed from it. Thus, the Assembly constantly received petitions requesting the establishment of new counties or the relocation of courts in older ones. The Assembly established new counties in the backcountry as they proved necessary and desirable. In particular 1791 and 1799 were banner years for these requests, the first year being immediately after the new state constitution went into effect, and 1799 being the year the Assembly completely revamped the judicial system of the state.

While forming new counties proved relatively

non-controversial, the numerous requests to relocate courts within an existing county always provoked controversy. Again two-thirds of these requests fell in a very short period, the years between 1791 and 1794 when the state government was reorganized under the new constitution. The Assembly responded to these and other requests in a number of ways, but within the framework of self-determination and majority rule. When some inhabitants of Beaufort District complained that the circuit court and ordinaries office in Port Royal were too far away, the Senate committee reported "the grievances . . . are imaginary and delusive." The full Senate rejected this report and sought to inquire with more people saying that the question concerned the good of all.[10] A series of 1792 petitions complained of the inadequacies of the location chosen for the Pinckney District courthouse. The petitioners complained that the commissioners selected to chose a spot "have fixed on a place for that purpose in many respects inconvenient & improper; the Situation being by no means so elegant, so convenient to the river nor so well watered as might have been obtained without moving considerably from the supposed centre of the District."[11] Collectively these petitions had 560 signers, and so the Senate recommitted the report that maintained that the new courthouse had been built and would be too expensive to move.[12]

The situation in Georgetown district was one of the

hottest. A series of petitions and counter-petitions argued for and against moving the district court.[13] More than 350 petitioners felt that the courts were fifty to 100 miles away (on the coast) but almost 200 others accused them of being "actuated by mistaken motives." The word mistaken replaced another word, probably stronger, which had been scratched out.[14] Eventually the Senate agreed that the court should be moved but postponed deciding where. These delaying tactics did not constitute an abdication of responsibility; rather they represented a careful waiting for consensus. While having to travel a long distance to court was certainly a nuisance, the financial burden of building a new courthouse and jail was substantial. Surely it was better to wait and be sure.

The one area where the Assembly withstood longterm popular agitation was reapportionment of the legislature. At one level, this was possible simply because the over represented lowcountry electorate did not object to the actions of their representatives. But this was not simply an exhibition of raw political strength. Rather, it reveals the depth of the Revolutionary dilemma among the elite. As their actions in other areas clearly shows, the elite members of the Assembly carefully considered and responded to the demands of the electorate, even when it contradicted their judgments. They believed in the republic, but actually to let go of power proved

difficult. As long as the backcountry had no practical grievances resulting from malapportionment, the Assemblymen could rationalize their maintenance of power as an attempt to maintain a system that was functioning well. This rationalization, whether conscious or not, worked. Although intermittent petition campaigns put strong pressure on the Assembly by citing Revolutionary justifications for their demands, the backcountry members of the Assembly did not make reapportionment their primary goal. While the Assembly produced acceptable and appropriate legislation and made some concessions (like moving the capital), the majority of the backcountry citizens acquiesced.

Throughout the 1780s the Senate fought to avoid calling a constitutional convention. Sometimes the issue seemed to be different, but in reality apportionment was central. In 1787, a proposal for a constitutional amendment to allow the election of sheriffs prompted a joint committee to resolve "that . . . the most effective method of procuring a revisal, amendment and alteration of the constitution is by a Convention of Delegates chosen by the people for that express purpose and no other."[15] The Senate narrowed the proposal down and tried to limit the powers of the proposed convention, but eventually rejected the measure by a single vote.[16] Still the pressure was difficult to deny. In 1789, the new counties in the state

objected that they had no representation in the legislature because the Assembly would not reapportion. The Senate committee investigating the petition reported that "upon the principles of the revolution which is the fundamental Constitution of America no part of the Community is to be taxed without being represented or bound by Laws to which they do not assent either by themselves or their representatives."[17] Ultimately, the Senate buckled, but they still tried to strike the provision in the measure that provided pay for the delegates. No doubt this was an attempt to prevent poor people from the backcountry from attending. When the House emphatically rejected this, however, the Senate gave in completely.[18] Still, one should not overemphasize the recalcitrance of the Senate. All of these negative votes came close to passing (the move to strike pay passed only on the president's casting vote), and eventually the Senate did approve the convention despite a solid low country predominance in that house.

The carefully controlled convention in 1790 increased the backcountry representation, but still kept majority control in the lowcountry. Therefore, the apportionment crisis re-emerged in 1794 and 1795. Again in response to a petition, a Senate committee suggested a solution. They proposed "that the representation be apportioned among the different election districts in this state, according to population, by adding to the whole number of free

inhabitants, the whole number all other persons (excluding Indians not taxed)."[19] Thus, by including slaves in the apportionment the committee sought to allow the indirect representation of wealth as well as population. But the full Senate would not endorse this and offered an alternative vision. "That the object of Society is to promote public happiness, by securing the liberty and property of the individuals who compose it, however variant their interests may be, that with this avowed intention, and after full discussion, the representation established by the present Constitution, was formed by solemn compact, and that the liberty and property of every Citizen of this state, had hitherto been secured by it, that while we are thus in the full enjoyment of this happiness, it would be unwise to risque it by granting the power of the petition."[20] Like so many other measures of this type, it passed by a single vote.

This Senate pronouncement inspired an eloquent petition that effectively rebutted the Assembly's platitudes. "We complain that in apportioning the representation of the People of this state in the state legislature, personal rights have been sacrificed to the rights of property, contrary to the clearest and most sacred principles of free government. . . . We complain that the undue power given to one part of the community by this abuse, had been constantly exerted for the

preservation of the abuse itself. . . . It is contended that in representation property ought to be regarded as well as numbers. We do not dispute the principle. We complain that in our representation, property is infinitely more regarded than numbers. Let them be equally considered . . . and we are content." They went on to make some penetrating observations about the nature of the system. "We deny that the present representation was founded on compromise. It is a continuation of the ancient abuse [i.e. the underrepresentation of the backcountry]; and was forced upon us, sorely against our will . . . We deny that this representation has preserved the tranquility, and promoted the prosperity of the state. That its tranquility has been preserved notwithstanding the atrocious nature and alarming tendency of this system of representation, furnished a strong proof of the peaceable and orderly disposition which predominates among the people . . . . To attribute our happiness to that very evil which most endangers it, and of which we so justly complain, and to tell us that our interest were consulted by a system which strikes at the root of our dearest right, what is it but to return mockery to our petitions, and add insult to injury."[21] It is crucially important, however, that this petition could complain of no misuse of power except the continuation of the system.

The Senate committee that considered this petition

presented what would become the eventual solution to the problem. They reported "the grievances therein complained of exist, and therefore recommend that they be redressed, in the most speedy constitutional manner, by apportioning the Representatives of this state, in a joint ratio of wealth and population." While the Senate debated this proposal, the House sent a message asking for adjournment. The Senate motion to ask for two more hours failed, again by a single vote.[22]

The debate over reapportionment had been sparked by a petition campaign in 1794. Over thirty petitions signed by more than 3600 citizens denounced the extant system of representation in similar terms. They advanced a number of propositions: "That civil goverment [sic] being for the Peace and happiness of men in Society, it ought to be framed for the equal advantage of all its Members--That all power in goverment is derived from the whole body of the people--that the People at large can have no interest contrary to the true interest of the republic--And that when the general voice of the People is heard in opposition to any measure or opperation [sic] of the goverment, it ought to be hearkened to, and their wishes answered as far as is consistent with the ends and purposes of goverment."[23] The widespread upheaval reveals careful organization. Many of the various petitions appear to be in the same handwriting and most use the same, or very

similar wording. Moreover, many of the petitions had a high percentage of marks rather than signatures (up to 50 percent). This was highly unusual. Seldom did any other type of petition contain any marks at all. Thus it seems apparent that someone had done a good job of rounding up signers.

Still one can be too easily impressed by the showing. Knowing that proportional representation became the rule in America, and that the grievances of the backcountry were, by our standards, entirely justified, one could conclude that the whole backcountry justifiably and uniformly complained, but a careful reading of the evidence suggests that this was not true. Unsurprisingly, no one from the backcountry petitioned to keep the disproportionate system, but apparently a fair number of citizens must have declined to sign the petitions. Exact figures are unobtainable, for some petitions have been lost, but the total number of signers is less than 20 percent of the male heads of household in the backcountry districts in 1790.[24] The state contained twenty-four back-country counties, but the Assembly only received petitions from ten of them, despite the clear organizational effort. In only one of these counties, did the number of signers equal two-thirds of the male heads of household, and in only three more was the percentage about half. In all but one of the rest, less than a quarter signed.[25] When the

nature and clarity of the grievance is considered, it is surprising that so few signed, especially since people signed other types of petitions freely. Many strictly local petitions, like those for ferries and roads, got over 200 signatures. In 1797, a single petition to abolish special juries, without any apparent organizational push got 500 signers. Even routine requests for a local tobacco inspection station could have 300 or more. Therefore it seems likely that a reasonably large number of people chose not to sign. It is impossible to say whether the members of the Assembly realized this, but apparently the Assembly's lack of positive response killed the reapportionment campaign for a time. Even the eloquent 1795 petition cited above received few signatures.

III

Unlike the public petitions, semi-public ones caused few difficulties. Their distinguishing characteristic, an involvement of some public interest in an otherwise private matter, usually inclined the Assembly to approve them unless there seemed to be some specific reason not to do so. Almost all semi-public petitions involved either an incorporation; roads, ferries, or canals; or state officials. The petitions on transportation have already

been discussed, and the other measures were largely administrative. The limited scope of many of these matters suggests the extent to which the Assembly maintained centralized control.

Most requests for incorporation came from religious societies, for whom the principle benefit of incorporation would be being allowed to own property communally. From 1783 to 1793, four or five religious societies requested incorporation annually. As long as the societies met the constitutional requirements for incorporation (fifteen members and belief in a supreme being), these requests invariably succeeded.[26] About a third of the congregations were Episcopal (and these surely represented some of the largest congregations). About one-fifth were Presbyterian and one-fifth Baptist, and the rest were a mixture of other denominations. Even the Catholic and Jewish congregations of Charleston were incorporated in 1791.[27]

Non-religious societies that desired incorporation had a lower success rate, but still succeeded reasonably well. All eleven requests from philanthropic and educational societies were approved by the Assembly. Fraternal societies, despite charitable aims, had less success. The Masons and the German Friendly Society were incorporated in 1791, but the Friendly Hibernia Society and the Society of the Friendly Brothers of Ireland had been rejected somewhat earlier.[28] The Assembly denied the

request for incorporation from the Master Coopers' Society, and granted that of the Master Taylors' Society only after they petitioned a second time explaining that their purpose was entirely charitable and that they had no desire "to monopolize the business."[29] Business incorporations also had mixed success. The Charleston Insurance Company received a charter in 1796, and the Assembly agreed to incorporate the Charleston Water Company in 1799, but the original proposal to charter a bank in the state failed in 1784 and the successful effort to establish one stalled in the legislature for five years until 1801. The petition to incorporate the Charleston Chamber of Commerce received no action. Four cities requested incorporation. The two largest, Charleston and Camden, were incorporated, but Georgetown and Columbia were not.[30] Thus it seems that the Assembly sought to limit the incorporations of societies to those which they considered both acceptable and deserving of state endorsement.

Once established, incorporated societies often petitioned the Assembly for special privileges. Most often they asked for relief from taxes, permission to hold a lottery, or permission to sell property, but these requests met with little success.[31] Occasionally petitioners would ask the Assembly to aid them unwittingly in an internal struggle within a society. In 1798, members of the Mount Sion Society, a group incorporated to develop a public

school or college in Camden, petitioned the Assembly. The petitioners asserted that it had proved impossible to start the school they wanted, but they still sought to educate some boys. "To this end your Memorialists are of opinion that the growing Navy of the United States affords an ample field." In view of the national crisis then at hand, they wanted the Assembly "to enable the Society to apply its funds to the education of Such a number of boys as they can afford in the knowledge of Naval Tactics, to fit them for Service in the Navy of the United States . . . and consequently to the permanent utility of the Country." Almost immediately, however, the Assembly received a second petition from eight other members of the Society, "having by Accident Just been informed that a Petition has been presented to your Honorable House signed by Several of the Members of the Said Society residing in Charleston." In their view, granting the first petition would "tend totally to destroy the Charter or induce Innovations injurious to the Same. . . [which] will be a permanent and Serious Injury to the interior Country."[32] Thus they requested that the Assembly postpone action which it did.

The Assembly also received a number of petitions from applicants for offices and current officeholders. Various persons applied to the Assembly for positions as state printer, tax collector, or custom collector, and groups of citizens sometimes offered their opinion on appropriate

candidates for justice of the peace and tobacco inspector. Only rarely was the coveted position awarded. This may actually have worked to the petitioners' advantage, for many officials protested that their salary or fees were insufficient. In 1785, a half-dozen officials had to petition the Assembly to receive their salary at all.[33] In the 1790s, the court clerks were particularly vocal about the smallness of their fees, but ordinaries, tax collectors, coroners, and harbor physicians all complained.[34] Officials also reported problems with executing their offices, such as the lack of proper books, or in one case, the requirement that the Master in Chancery be in Charleston with the equity court at the same time that he was required to be in Columbia with the governor.[35] Citizens also reported by petition on the misconduct of officials which occasionally resulted in an impeachment or a reprimand.[36]

IV

Private petitions encompassed a variety of topics. Many involved monetary claims against the state. Some asked the Assembly to exercise powers, like granting citizenship, which only the legislature possessed. Others involved extralegal questions, matters for which no set

procedure existed and which had to be considered individually. The Assembly also served as a court of last resort for those who felt that in their case the normal legal procedures had worked inequitably. Finally, many petitioners sought special favors from the state, usually exemption from the effects of some particular law or release from bonds or purchases.

Accounts occupied a good deal of the Assembly's time. The Assembly received accounts in one of three ways--from the treasurers, from the auditors, or by individual petition. Hundreds of persons petitioned the Assembly in order to receive what they thought they were due. Because the Assembly deliberately kept the purse strings firmly under their control, they were compelled to scrutinize each of thousands of items individually. Petitioners requested recompense for services or goods rendered during the war; payment for performing various services; and even restitution for slaves executed by the state.

The bulk of the claims were war related. Many units had broken up without settling soldiers' accounts. Moreover, a large number of citizens had provided supplies for the soldiers in return for state and federal certificates. These certificates had to be presented to the Assembly and authenticated before the holder could be paid. The Assembly tried to pay all just claims submitted with proper

vouchers in accordance with their regulations. They also tried to avoid favoritism by paying all claims in the same medium insofar as was possible, As late as 1795, the state was still paying war-related claims although by then the Assembly was growing increasingly less willing to consider them.[37]

When a petitioner had made disbursements on behalf of the state or had had transactions with the state, his or her accounts needed auditing so that the amount due could be determined. John Ford, in 1791, lost his accounts, but after an audit received £115.14s.3d.[38] That same year, William Hort, the treasurer in Charleston requested that his accounts be audited so that he could be paid, and other officials often found themselves in the same position.[39] Some, like Keating Simons who reported that he was still owed £157.14s.10d after his account had been settled, were dissatisfied with what they had received, but seldom got any satisfaction.[40] When John Fulton's executor discovered vouchers which had been lost, he attempted to have the account re-examined, but also failed.[41] Sometimes, whole regiments needed their accounts audited.[42] Seventeen ninety one seems to have been a banner year for auditing accounts, no doubt because the prospect of federal funding of the state's indents made it seem worthwhile to pursue small or questionable claims. In general, the Assembly approved accounts as long as they had proper vouchers and

were submitted according to the time schedule they had prescribed. While the Assembly insisted on vouchers, they tried to be fair. In 1791, the Senate went so far as to audit twenty-five accounts previously rejected for lack of vouchers and agreed to pay those that had been presented on time whenever proper documentation could be produced.[43]

Many other petitions requested that the Assembly pay accounts which had been approved. These petitioners either knew exactly what they were owed or had previously had their accounts settled. By the early 1790s, the Assembly was appropriating money annually to pay the accounts they approved, but for much of the 1780s, it had not been able to do so. Thus many persons, like Ann Timothy, the state printer, repeatedly petitioned to be paid.[44] Other state employees also petitioned, but without marked success. Gabriel Smithers built a smokehouse and kitchen for the Ninety Six district jail because "cooking in one of the Gaol rooms would expose that valuable and expensive building to the great risk of fire." Still the Senate rejected their committee's initial approval of the charge.[45] The same thing happened to John Caldwell's request for payment for a jail he was building. The centralization of the state government is clearly revealed by the petitions of sheriffs seeking reimbursement for expenses demanded in the course of fulfilling their job.[46] Most accounts of this type went through the treasurer, but

each still had to be approved by the Assembly. Finally, the Assembly also agreed to pay for any slaves executed by the state and at least twenty-five were, almost all after 1790. Most petitions of this last type were approved.[47]

Only the Assembly could grant citizenship, annuities, or pensions, and accordingly they received numerous requests for these boons. Pensions and annuities were reserved for disabled veterans and their helpless dependents. In the 1780s there was little money for anyone, but by the late 1790s the Assembly supported quite a number of veterans. The citizenship questions were inextricably entangled with the confiscation and banishment acts of 1782. Petitioners who had never been banished encountered no problems in obtaining citizenship, but those who had been were scrutinized carefully. Although most of those banished were eventually re-admitted, in certain cases the Assembly refused to back down. After 1791, few of these petitions were received, but as late as 1798, the Senate rejected the application of William Gist for re-admission to citizenship. Not only did the Assembly explicitly desire to avoid a deluge of similar petitions, they deemed "the pains and penalties . . . are a just retribution on the part of his injured Country, for a most flagrant breach of the law of nations."[48]

The extralegal petitions defy easy categorization and the multitude of different matters they covered suggests

the scope of the Assembly's role in society. In 1798, Francis Marion Dwight received permission to change his name to Francis Marion in order to comply with his uncle's last request. The Swamp Fox had no children and did not want his name to die out.[49] Dr. Peter Fayssoux had to petition for permission to use one of the statehouse rooms for a meeting during the Assembly's recess.[50] William Pickett requested the correction of an error in the records of the ship South Carolina which made him appear to be a deserter.[51] Some requests came from outside the state. Richard Folwell of Philadelphia asked for financial support for printing the journal of the Continental Congress from 1774 to 1788, and the Historical Society of the State of Massachusetts asked for copies of all South Carolinian laws, journals court proceedings "and such other papers as have heretofore been printed or may hereafter be printed."[52] The Assembly proved amenable to many such requests.

Alexander Moultrie, however, was the unquestioned winner for effrontery. As the Attorney General of the state in 1792, he told the Assembly about "Several Facts & circumstances . . . which he hopes . . . will not be considered unworthy of them, or either impertinent or irrelative." In tortuous prose he laid out the following story. It seems that he had imprudently loaned out some state-owned indents to support a private scheme on the

assurance of a lady that she would replace them out of her husband's estate, once it was probated. Unfortunately, her co-executor (who had no knowledge of this commitment) disposed of the indents. Simutaneously, the indents appreciated precipitously with the news of federal assumption of the states' debts. This left Moultrie holding the bag. He volunteered to pay for the indents at one to five in specie.[53] The Assembly rejected the offer, impeached him, found him guilty, and barred him permanently from holding office in the state. Undaunted, he approached the Assembly again a few years later with a different scheme. First he acknowledged that "through his own imprudence and ill-placed confidence, he has been reduced from a State of affluence and Independence to the necessity of giving up (tho chearfully) to his creditors some years ago a very considerable part of his Property." The cause of his failure, he maintained was "the unjust failure of the State of Georgia in fulfilling a contract of great magnitude." By this he meant the fraudulent Yazoo land deal. What Moultrie proposed was this: he had been suing the state of Georgia in federal court (winning, he believed) when a yellow fever epidemic postponed the case. By the time it was resumed, the tenth amendment to the Constitution which prohibited a citizen of one state from suing another had been ratified and voided the case. But when the United States government stepped in to settle the

Yazoo claims, he saw a new chance. Moultrie thought that he would improve his odds if he teamed with the state. He therefore wanted an agency to go to Philadelphia and he agreed to act under the direction of the state's congressional delegation. The money he expected to receive would first go to the state to pay off his earlier embezzlement, and the rest would go to pay his private debts. He exuded confidence and thought that the whole thing would only take a month. The Assembly disagreed and for the only time in the period, the Senate unanimously rejected a petition.[54]

Only rarely did the Assembly function as a court of last resort, but on occasion, it was necessary for them to do so, particularly since there was no overall supreme court in the state. William Livingston, whose slave was condemned to perpetual imprisonment in the workhouse, complained. He admitted that the slave's actions had been "highly criminal," but believed that the sentence deprived him of his property. The Assembly did not endorse the reasoning but did assert "it is illegal and incompatible with the Laws of the Land, to sentence a prisoner to perpetual imprisonment," and ordered the slave released.[55] The case of Herman Justus Floto, who had committed no crime, seemed even more unjust. He explained that he thought it was necessary for him to appeal to the legislature, "altho' he is Sensible of the Impropriety of a

Citizen making any application to a Legislative Body, for any Interference between himself and others, in matters under Judicial Cognizance, where the Laws of the Land are competent to do Justice and afford Relief." He had been arrested for a $40,000 debt contracted by a former co-partner, and being a stranger in the state was unable to post a bond of that size and so went to jail. Only the equity court which had issued the original writ under which he was arrested had the power to release him. Unfortunately it was "the Opinion of the Judge of the Court of Equity, that he could arrest your Petitioner under the Ne Exeat [writ] as aforesaid, but [that he] could not hear or determine his Case till a full Court of Equity was formed by a full Bench." Because of death and resignation, there were no other equity justices. "Your petitioner has by that Reason undergone the hard Situation, of being detained in a Loathsome Goal with his family waiting untill [sic] he can have such hearing, which may never be."[56]

Petitions for exemptions from laws were relatively common. One kind of request of this type called for a buyer to be released from a purchase of property from the state. These cases fell into three classes. First, those who did not receive proper value for their purchase. Henry Geddes asked to be released from a purchase "especially as one of the tracts cannot be found and the other two [are] held by prior owners."[57] James Theus bought a tract but

discovered "the greater part thereof, is claimed in consequence of an older survey."[58] In cases like this the Assembly usually proved agreeable. A second type of case were those in which a buyer foolishly, but knowingly entered into a bad deal. In such cases, the Assembly usually refused to act.[59] A final group of petitions arose as a consequence of the general rise in value of indents after 1790. Many persons, most notably John Lewis Gervais, one of the state treasurers, had speculated in land, expecting to pay for it with nearly worthless indents. Their sudden appreciation threatened him and others with ruin. Gervais stated the case for these people. He had agreed to purchase the property based upon the then current value of indents. "Your memorialist fondly hopes it cannot be the wish of any to benefit the State upon the ruin of its members arising from Circumstances altogether fortuitous by exacting more than the real value of purchases made."[60] Because he had acted in good faith, the Assembly agreed and passed a general law allowing purchases to be paid for at one to five in specie. This meant that the citizens, rather than the state, would receive the most benefit from the rise in price of indents after assumption.

A related type of petition requested release from bonds. As these petitions reveal, bonds were tricky things. John Splatt Cripps agreed to stand bond for an auctioneer because the law required the treasury to settle

auctioneer's accounts every two months. Thus he thought he could only be liable for two months worth of duties, a relatively small amount. When the treasury failed to keep up with this obligation, Cripps wanted to withdraw his bond.[61] Apparently only the Assembly could release an unfulfilled bond, no matter the reason. Eliza Carnes complained that her late husband had stood bond for his late brother's purchase of confiscated land. Because of the appreciation of the debt, the brother died insolvent, with the land still mortgaged to the state. By that time, she had no interest in the land (which the state actually possessed) and would not own it even if she paid the bond, but she still owed the money to the state. She understandably felt that this was unreasonable, but her case received no action.[62] The Assembly did sometimes return unfulfilled bonds when the land had never been received.[63]

A final type of private petition requested permission to import blacks into the state despite laws prohibiting this. From 1787 until 1803, the Assembly prohibited the importation of any blacks. Although the Assembly would not allow slaves to be imported for sale, they ordinarily would allow citizens to import slaves they had inherited in other places or to bring back slaves they had sent out of the state.[64] The exception was that they strictly enforced the a ban against West Indian slaves who might have imbibed the

principles of the Haitian Revolution. The Assembly informed Samuel Douglass of Jamaica, "it is notorious that Slaves in the Island of Jamaica, have been frequently in violent commotion . . . [or] a state of actual insurrection."[65] William Telfair admitted he was "impressed with a due Sense of the wisdom and policy which had dictated the measure of preventing the importation of Slaves from Africa, from the West Indies and other cases," but felt that his case was different "because the negroes in question were chiefly born in this State, have all been resident long therein and were carried away by a native citizen . . . and have been kept ever since they left this State on a Small Island where they had no connection with any french negroes and are remarkably orderly."[66] The Senate disagreed with his evaluation of the situation. "The peace and safety of the State may be extremely endangered, perhaps destroyed, by the introduction of Negroes from any part of the West Indies."[67]

V

The final large group of petitions arose as a result of the famous Confiscation and Amercement Acts. In passing these acts, the Assembly created more trouble for themselves than they could have possibly foreseen, for what

took two weeks to enact took two decades to sort out. To a large extent this was the Assembly's own fault, for the original acts were poorly designed by almost any criteria. This poor execution, quite untypical of Assembly's usual action, reflected their lack of assurance over the desired result of the legislation. At least four different motives influenced the action. First, some desired to punish tories generally. Second, many realized that the state desperately needed funds because its tax base was disrupted, and that the loyalist estates would provide them. Third, the Assembly sought to use the threat of confiscation and banishment to undermine the British position in then occupied Charleston, by forcing the inhabitants of the city to leave or cease cooperation with the invaders. Finally, some had a desire to equalize the relative suffering of the interior county and Charleston. Many non-Charlestonians were incensed by the idea that persons who resided in the city during the British occupation escaped the damage to persons and property experienced in the other sections of the state. The confusion inevitably created by these diverse motives was compounded by the arbitrary way in which the Assembly chose who was to be included on the lists. Three groups were designated. Those who actively fought with the enemy. Those who signed congratulatory addresses to British General Clinton and Admiral Arbuthnot, and those who were

particularly singled out by legislators as reprehensible. When an Assemblyman intervened, however, he could also usually get names taken off the lists. Thus, the lists were ill-conceived from the beginning: nearly all of those included were from the low country; the signers of the addresses, as soon became clear, were little if any more culpable that their fellows in Charleston; and the omission of certain names was an open scandal.

Thus, the Assembly almost immediately began to back away from the extremism of its 1782 acts. In 1783, the petitions began to flood in to the Assembly from virtually everyone on any of the lists. Eventually the Assembly received more than 500 petitions relating to these acts. Over time the type of petitions received changed. For several years after 1783, most petitioners sought exclusion from the confiscation and banishment provisions. In many cases, this was granted although amercement was usually substituted for confiscation. By 1789, most, although by no means all, of these petitions had been received and resolved one way or the other. From 1789 to 1791, the most common request was for release from amercement. In those cases, the Assembly was usually unsympathetic. By the mid to late 179●s, a different set of problems arose, relating to the problems that purchasers of confiscated property had with their titles, and the problems that persons released from confiscation had with recovering their property.

The first wave of petitioners voiced similar excuses for their actions. Those who signed the address to the British officers claimed that they were sick and could not leave town; that they had to care for their families; that they were led astray by bad advice; that they were threatened; or that they simply were ignorant of the implications of their actions. Those who had taken up British arms claimed they never injured Americans; that they were solicitous of captured prisoners; that they were heartily sorry (as they surely were by then); or that they only took arms to protect the country from others more violently inclined. The final approach was simply to claim ignorance of any reason why one should appear on the lists. The Assembly's reaction to the petitions seems to have been based on independent research by their committees, for their is little correlation between the claims in the petitions and the Assembly's eventual action. In a sweeping reordering of the lists, the Assembly relieved many of the petitioners and changes numerous confiscations to amercements, a much more equitable punishment.

The committee reports on these petitions reveal some of the factors the Assembly considered. A Mr. Duncan signed the address in the hope that he could carry on his trade as a blacksmith. The committee reported "that his having a little before the Town was besieged, done a

Material piece of Service to the Government by discovering a Plot which was carrying on against it, are of Opinion that his services on that and other occasions intitle him to relief from the Penalties of the Confiscation Act, but think as he must have made large Profits, by his Occupation during the British residence here, that he ought to pay Twelve per Cent, on the value of his Estate in lieu of his Services to the American Government who had a claim to them."[68] "David Bruce, having formerly been active in promoting the Interest of America, particularly by printing the Pamphlet intitled [sic] Common Sense rendered himself very obnoxious to the British, and hoping to avoid persecution was prevailed upon by his fears & the insinuations of Artful Persons to sign the Address. But your Committee are of opinion, that if permitted to reside among us he will in future demean himself as a good citizen."[69] He too was amerced. "John Walter Gibbes, appears to be a Character beneath the attention or Resentment of this House; his turn for Buffoonery seems to have been a principal inducement for his being taken notice of by the British Officers to whom he was attached no longer than whilst they remained Masters of the Town, and his motive for signing the Address, was with a view of recommend[ing] [sic] himself to them. . . . He would not be a dangerous Person . . . if suffered to reside among us."[70]

Petitions for relief continued to trickle in for a

decade, but many of these later petitioners seem to have been more guilty than the earlier petitioners. For the most part, these later appeals were rejected. William Greenwood admitted his guilt and threw himself on the mercy of the state, but received none. Neither did Zephiniah Kinsley (who characterized himself as "injudicious").[71] William Gist waited till 1791 to petition, but the Senate still remembered that he had committed murder under a flag of truce.[72] Dr. James Fraser petitioned several times in the 179●s for permission to return to the state with his family. When his appeals proved unsuccessful, his wife Mary penned an eloquent appeal. Although she had "formed all her attachments" in the state, she had been obliged by "duty as well as affection" to follow her husband to "a foreign land, where she had been made to taste in Common with her young and unoffending offspring, of the bitter Cups of sorrow and affliction." All she wanted was to return to the state to care for her mother, who was "bowed down with age," and she hoped the Assembly would "distain to trample on a subdued opponnent." Almost two hundred South Carolina ladies signed a petition in support of her.[73] Nonetheless the Senate resisted the ladies' plea, noting that they "cannot comply . . . without incurring the displeasure of their constituents."[74] Dr. Fraser must have rendered himself obnoxious indeed. He tried again in his own name the next year, again with no success.[75] The

Assembly even rejected James Carson who reported that he left the country early in the war, did no harm, and never violated any of his obligations. The House did not dispute his claims, yet still refused to approve his application.[76]

Still a few of these later applications succeeded. In 1791, the Senate reported that "John Fisher is not an obnoxious character in the neighborhood [in which] he formerly lived," and returned his confiscated property.[77] Peter Simons's heirs also freed their inheritance by showing that although Simons had lived in England, he was ninety years old at the time, a friend of America, and that his grandson in Parliament had opposed the war vocally.[78] In 1786, John Bremar also petitioned successfully. He reported that he was "at a loss to conceive what part of his conduct has given offense to his Country, or subjected him to such a Stigma (torn) being conscious that he never committed an Act, uttered a Word or (torn) a thought prejudicial or disrespectful to the State; on the contrary he has always warmly espoused her Cause, and can give convincing proofs of his attachments to this Country."[79] The unusual facet of Bremar's presentation is that he waited three years to make it. Most persons with good cases petitioned earlier. Perhaps the most surprising success was scored by Edward Fenwicke, who admitted that he fought on the wrong side, but claimed that he was sorry now

and that he showed humanity to his foes. The decisive factor in his case seems to be that he aided General Greene late in the war by providing information.[80]

But while the Assembly liberally lifted the extreme penalty of confiscation and banishment, they rarely altered the lighter penalty of amercement. Daniel Horry who could show that he had met the terms of Governor Mathews's proclamation escaped, as did Robert Murrell, Jr. who claimed that his amercement was a mistake.[81] Thomas Buckle, who had been persuaded by others to sign the addresses, later provided supplies to the patriots and thus proved his loyalty.[82] Few others escaped, despite numerous petitions. After 1788, the Assembly did not lift a single amercement, although they continued to receive these petitions until 1797.[83]

Even after the Assembly had settled on appropriate penalties for all concerned, they were not through with the problems of confiscation and amercement. A variety of collateral petitions came in over the next decade. Those who had been amerced, had trouble paying on time; those whose property had been legislatively restored, had difficulty in regaining possession of it. In 1785, at the heart of the postwar depression, those amerced begged for more time to pay since, they averred, they would have to sell half their property to raise the 12 percent amercement. The Assembly granted an extension, but this

did not satisfy everyone.[84] Some persons were allowed to used their claims against the state to settle their amercements, and others, who had recovered only part of their confiscated property wanted to settle out of the part that had been sold.[85] William Ancrum spent eleven years trying to settle his amercement with the proceeds of thirty-one slaves of his which had been sold by the state.[86]

The Assembly received numerous petitions from those whose property had been released from confiscation, but scarcely ever acted on them. Even the plight of poor William Valentine sparked little interest. When amercement replaced confiscation for him, all of his property had already been sold. He was unable to collect this money from the state and instead was jailed for failing to pay his amercement. A Senate committee recommended that the suit against him be dropped and that he be paid, but for unknown reasons, the Senate rejected this suggestion and his case disappeared from view.[87] The daughters of Andrew Deveaux fared only a little better. Their father's estate was sold by the state for over £5,000 sterling. When his estate was restored to him, he was paid, but in indents "which were at that time greatly depreciated." Therefore he "thought it best to leave them in the Treasury as a place of safety, until they might appreciate, by the establishment of funds for their extinguishment. They were then to be drawn out and divided equally among his said

four Daughters, who have never received any portion from him." Unfortunately, by the time they took these indents out of the treasury, the state, as a result of the legislation to relieve Gervais, was paying only one for five. "In this case, [they argued] their Father's Estate being restored by law, and he compell'd to receive Indents for Specie (which his estate sold for) pound for pound; should these Indents, which by the Act that restored his Estate were undoubtedly his, be, by the above Resolution, past [passed] long since, again reduced to one fifth, and the amercement and expenses deducted, they are only to receive £852.1s.9d principle for £5746.3s.2d for which the property sold."[88] James Burn, almost alone, received positive actions. He was paid some £12,000 outright for land which had been sold and much improved by the new owner, when it was released from confiscation.[89]

Occasionally the Assembly acted on petitions from the destitute families of the dispossessed. Elizabeth Atkin's prayer that she and her children be supported from her husband's confiscated estate was granted, and Elizabeth Oats, who had purchased (on credit) part of her husband's former estate in order to avoid destitution after he fled the state, was allowed to forgo paying for it.[90] Others, like Mary Wells, whose petition for some support received no action, were not so fortunate. Neither was Joseph Atkenson. He purchased a confiscated tract for £180 only

to discover that the former owner's widow and children still resided on the land, though they were too poor to pay any rent. "He could not prevail upon his Feelings to eject them of[f] the premises," but hoped (in vain) that the Assembly would relieve him of the purchase.[91] Heirs of the dispossessed also petitioned for their patrimony on the grounds that they had done nothing deserving of punishment. The most persistent of these was William Brisbane who repeatedly attempted to recover some portion of his father's estate.[92] His 1792 effort was an attempt to avoid paying for slaves he had repurchased for a £280 bond. He argued that the slaves, when confiscated, were being used for the express purpose of his maintenance and that he had received no other patrimony from an estate which had netted more than £5,000 for the state. But all his attempts failed.[93]

Numerous petitions sought to recover debts from confiscated estates. For the most part they were ignored, apparently because these debts could be recovered directly through the courts if they were secured by property. The exceptions sometimes involved debts owed jointly by a dispossessed person and the petitioner.[94]

The final group of problems arose late in the period when a number of persons who had bought confiscated land discovered that they had not gotten what they paid for. Henry Geddes's case is reasonably typical. Geddes bought

several tracts of land and made a bond for their cost. He paid his installments for some time. Some of the tracts he thought he had purchased, however, proved to have prior owners. At that point, he stopped paying because he had already paid more than the value of the remaining land. When the Commissioners of the Treasury sued him for the remained of the bond, he won the case and was awarded £76.0s.10d, the amount he had overpaid. His petition sought to get the Assembly to pay him the judgment and to return his bond.[95] For the most part the Assembly proved amenable to such requests, but no doubt it helped if you were prominent or a member of the legislature. In 1798, Charles Pinckney was refunded the $95 it had cost him to extinguish Mary Wells' dower claim to confiscated property he had purchased, and John Hampton received back the money he had spent proving his claim to land he had bought.[96]

It is difficult to judge the Assembly's postwar confiscation project, but on the whole it seems to have been modestly successful, if judged by its intentions. If its major goal was to exile permanently the most ardent Tories, then it was reasonably successful. Few of those who actually fought for the British were readmitted. Moreover, it seems certain that state reaped significant economic benefits from the sales, even in cases where the property was later recovered by the owner. The third goal of trying to injure the British in occupation was, of

course, moot, after the evacuation of the city, so by this criteria, leniency seemed appropriate. The most questionable area of success was in equalizing the impact of the war between the sections of the state. Throughout the 1780s and beyond significant dissatisfaction remained with the "open door" policy of the Assembly. The South Carolina Anti-Federalists attempted to use this resentment against the Federal Constitution by claiming that all of those allowed back supported the new Constitution. Yet it is possible that even by these standards the policy was successful, for the Assembly never had committed themselves wholly to this end. Thus their liberal readmission policy may simply have been their way of having it both ways.

VI

The peoples' complaints and the Assembly's actions were inextricably intertwined. In public matters, petitions consistently began the legislative process by identifying areas where citizens were dissatisfied with their government. Although petitions did not dictate policy, they often set the agenda. In private matters, the Assembly proved more willing to resist repeated pleas, but nonetheless their decisions were apparently marked by fairness and consistency. Finally, the petitions show how multifaceted the Assembly's role really was. Everything

from revising the constitution down to deciding who could use the statehouse rooms or whether a man could change his name fell under their control.

NOTES

CHAPTER IX: PETITIONS

[1]*House Journal, 1785*, 58.

[2]Ordinarily petitions were presented to both houses and those which received favorable action passed somewhere in the process.

[3]*House Journal*, 1786, 382.

[4]*Ibid.*, 383-384.

[5]Petitions, 1799-73-01.

[6]Petitions, 1795-30-01.

[7]*House Journal, 1785*, 26-27, 143, 194-196, 312-313, 315-316, 330-332, 371-373, 449-450.

[8]*Ibid.*, 330-32, 338, 449.

[9]*Ibid.*, 315-316, 449-450.

[10]Senate Journal, 1787, fol. 84, 209, 216, 228.

[11]Petitions, 1792-73-01, 1792-74-01, 1792-76-01, 1792-154-01.

[12]Senate Journal, 1792, fols. 27, 97.

[13]Senate Journal, Dec. 1791, fols. 17, 55; Senate Journal, 1792, fol. 57; Senate Journal, May 1, 1794, np, May 2, 1794, np; Petitions, 1791-71-01, 1791-264-01.

[14]Petitions, 1791-71-01.

[15]Senate Journal, 1787, fol. 211.

[16]Ibid., 213.

[17]Senate Journal, 1789, fol. 111.

[18]Ibid., 209-215.

[19]Senate Journal, 1794, fol. 117.

[20]Ibid.

[21]Petitions, 1796-164-01.

[22]Senate Journal, 1794, fol. 130.

[23]Petitions, 1794-211-01

[24]One did not need to be a head of a household to sign a petitions, and signature patterns suggest that fathers and adult sons often signed together, making the 20% figure a generous estimate.

25

Signatures on Reapportionment Petitions by Location

	No. of Signers	Heads of Household	Percentage
Orangeburg District:			
Winton County	319	c.500	

Ninety Six District:			
Laurens County	534	1395	38
Pendleton County	325	1433	22
Spartanburgh County	283	1264	22
Union County	174	1058	16
Cheraw District:		1344	
Chesterfield County	204		
Camden District:			
Chester County	500	1044	48
Fairfield County	710	1054	66
Kershaw County	196		
Lancaster County	98	866	
Kershaw County	196		

[26]The only religious society with too few members was the Coosawhatchie Baptist Church. House Journal, 1785, 319-320, 335.

[27]Statutes of South Carolina, VIII, 161-163. The Constitution of 1790 allowed non-protestant denominations to incorporate.

[28]Senate Journal, 1787, fols. 16, 38, 96. A Senate committee approved the application of the Friendly Brothers of Ireland, but no further action was taken. In 1793 the Masons requested the incorporation of their individual lodges, but no action was taken. Senate Journal, Dec. 11, 1793.

[29]House Journal, 1785, 154-155.

[30]House Journal, 1784, 544; Senate Journal, 1792, fol. 87; Senate Journal, 1795, fol. 91; Senate Journal 1796, fols. 17, 30, 92.

[31]Apparently about 1793 the state started collecting both current and back taxes from societies because eight societies petitioned with in two years for tax relief. For the most part these pleas fell on deaf ears, although the

Ancient York Masons received a release from their back taxes and committees responded favorably to some others. The petitions for lotteries from educational societies were generally approved (since the Assembly provided virtually no funds for education), but the Senate rejected the petition of the Jewish congregation for a lottery to pay off their debts. Lotteries were the product of the more prosperous 1790s. No loterries were even requested in the 1780s. The petitions for permission to sell property also received no action. Senate Journal Dec. 5, 1793, np, Dec. 11, 1793, np; Senate Journal Nov. 1794, fols. 77, 97, 116; Senate Journal 1795, fol. 32; Senate Journal, Nov. 1794, fol. 19; House Journal, 1785, 11, 191, 251; Senate Journal 1797, fols. 54, 55; Senate Journal 1798, fols. 24, 140.

32Petitions, 1798-78-02, 1798-98-01.

33House Journal, 1785, 63-65, 81-82, 85, 158-159, 166, 179, 190, 199, 201-202, 258, 270, 323, 326; House Journal, 1786, 404, 408, 435-436; Senate Journal, 1790, fol. 29; Senate Journal, Dec. 1791, fols. 10, 46; Senate Journal, 1792, fol. 9; Senate Journal, 1794, fol. 55; Senate Journal, 1795, fol. 29; Senate Journal, 1799, fols. 22, 52, 72.

34Petitions, 1793-11-01, 1793-107-01, 1793-108-01; Senate Journal, Jan. 1791, fol. 112; Senate Journal, Dec. 1791, fol. 10; Senate Journal, Dec. 12, 1793; Senate Journal, 1794, fols. 88, 114; Senate Journal, 1795, fols. 57, 118; Senate Journal, 1796, fols. 14, 18; Senate Journal, 1797, fols. 35, 46. Tax collectors euphemistically asked for augmented powers, by which they meant the power to receive a higher commission on the tax they collected. Petitions, 1791-09-01.

35Senate Journal, 1798, fols.54, 76, 83; General Assembly Petitions, 1791-171-01.

36Senate Journal, Jan. 1791, fol. 227.

37Senate Journal, 1795, fol. 51.

38Petitions, 1791-11-01, 1791-99-01, 1792-143-01, 1796-89-01; Senate Journal, 1795, fol. 138.

[39]Senate Journal, Dec. 1791, fol. 23; see also Senate Journal, 1795, fol. 109; Senate Journal, 1796, fol. 44.

[40]Senate Journal, 1794, fol. 20.

[41]Senate Journal, 1795, fol. 120.

[42]House Journal, 1785, 136-137, 268.

[43]Senate Journal, Jan. 1791, fols. 41-42, 45, 51-52, 64, 84, 95, 97, 99.

[44]Ann Timothy was the widow of Peter Timothy, the former state printer. Senate Journal, 1788, fol. 29; Senate Journal, 1789, fol. 141; Senate Journal, Jan. 1791, fol. 9.

[45]Senate Journal, 1794, fols. 24, 62.

[46]House Journal, 1785, 174, 185-186; Senate Journal, 1787, fols. 37, 44; Senate Journal, 1798, fols. 41, 76, 84.

[47]For example, Senate Journal, 1792, fol. 93; Senate Journal, 1795, fols. 123, 156; Senate Journal, 1799, fols. 60, 78.

[48]Senate Journal, 1793, fols. 28, 66, 76.

[49]Senate Journal, 1798, fols. 125, 131 Statutes of South Carolina, V, 348.

[50]Senate Journal, Dec. 1791, fol. 9. After this incident the Assembly decided to give the Governor the power to approve use of the rooms in the statehouse.

[51]Senate Journal, 1796, fols. 35, 64.

[52]Senate Journal, 1798, fol. 83; Senate Journal,

1794, fol. 13.

[53]Petitions, 1792-67-01.

[54]Ibid., 1798-115-01.

[55]House Journal, 1786, 417-418, 44-445, 447.

[56]See also Petitions 1795-67-01, 1791-100-01 for similar cases and 1798-143-01 for more on the inability of the Chancery Court to meet.

[57]Senate Journal, 1789, fol. 113.

[58]Senate Journal, Jan. 1791, fol. 43.

[59]For instance, Simon Tufts got no response to a request to release his bond for "an old infirm negro wench which he purchased from the Commissioners of forfeited Estates." Senate Journal, 1794, fol. 114.

[60]Petitions, 1791-131-01; Senate Journal, Jan 1791, fol. 173. On a roll call the Senate voted 18 to 3 in favor of relieving Gervais.

[61]Petitions, 1791-105-01

[62]Petitions, 1794-204-01.

[63]Senate Journal, Dec. 12, 1793, np; Senate Journal, May 1, 1794, np; Senate Journal, 1794, fol. 30.

[64]Senate Journal, 1796, fols. 17, 80, 105; Senate Journal, 1797, fols. 45, 48; Senate Journal, 1799, fols. 31, 48.

[65]Senate Journal, 1798, fol. 76.

[66]Petitions, 1798-57-01.

[67]Senate Journal, 1798, fols. 107, 118, 122.

[68]House Journal, 1783, 221.

[69]Ibid., 220.

[70]Ibid., 219.

[71]House Journal, 1785, 83, 157-158, 236.

[72]Senate Journal, Dec. 1791, fols. 19, 35.

[73]Petitions, 1796-7-01.

[74]Senate Journal, 1796, fol. 49.

[75]Petitions, 1797-66-01.

[76]House Journal, 1785, 235-236.

[77]Senate Journal, Jan. 1791, fols. 32, 72.

[78]Senate Journal, Dec. 11, 1793, np.

[79]House Journal, 1786, 440, 516.

[80]House Journal, 1785, 24, 211-212.

[81]Ibid., 182, 186-188, 228, 230-231, 235.

[82]Ibid., 141, 159.

[83]The 1797 petition of Elizabeth Beard was not committed by the Senate. Senate Journal, 1797, fol. 22.

[84]House Journal, 1785, 141-142, 166; Statutes of South Carolina, IV, 699-701.

[85]Senate Journal, 1794, fol. 116. It had almost been approved the previous year. Senate Journal, Dec. 4, 1793.

[86]House Journal, 1786, 434, 452; Senate Journal, 1790, fol. 20; Senate Journal, 1797, fol. 47.

[87]Senate Journal, 1788, fols. 22, 61.

[88]Petitions 1795-24-01.

[89]Senate Journal, 1789, fols. 77, 218.

[90]House Journal, 1785, 110, 158, 191-192, 252.

[91]Petitions, 1792-88-01.

[92]House Journal, 1786, 409, 486; Senate Journal, Jan. 1788, fol. 43; Senate Journal, 1789, fols. 82, 88; Senate Journal, 1796, fol. 68.

[93]Petitions, 1792-62-01.

[94]Senate Journal, 1789, fol. 100.

[95]Petitions, 1797-84-01.

[96]Senate Journal, 1798, fols. 75, 87, 90, 111, 123, 135.

CHAPTER X

SOUTH CAROLINA IN THE NEW NATION

I

In the two decades after the Revolution, the Assembly solidly established the practice of republican government in South Carolina. The Assembly's actions in furthering the will of the people and establishing popular government reveal the extent to which republicanism had permeated the fabric of American society. In all areas, except apportionment of the legislature, the laws reveal a general willingness to seek equitable compromise acceptable to all. By compromising, the Assembly effectively unified South Carolina for the first time, and it was from the vantage point of this unity that the citizens of the state would survey the changes which came in the nineteenth century.[1]

The United States Constitution, according to its preamble, sought to "establish justice, provide for the common defense, promote the general welfare, and secure the blessings of liberty for ourselves and our posterity;" the South Carolina General Assembly sought much the same ends in a variety of ways. By protecting private property,

promoting fiscal responsibility, and rationalizing the legal system, they established justice. The militia provided "common defense" while regulating society, controlling individuals, and encouraging economic development, promoted the general welfare. A strong commitment to popular government and the principles of the Revolution supplemented by a less successful attempt to promote education, constituted a serious effort to maintain the republic for the benefit of posterity. All of these traits are clearly revealed by the Assembly actions.

Throughout the period, the protection of private property remained an important goal for the Assembly. The two major functions of the courts were to maintain order and settle property disputes. The thrust of much of the regulatory legislation, like that relating to stray animals, was the desire to protect property. Economic development, although sincerely desired, was never permitted to "damnify" individuals without proper recompense. This concern appeared collaterally in other legislation. One of the major problems in the fiscal crises was how to balance the relative property rights of creditors and debtors. Should a debtor really lose all of his or her property to pay off a debt which, when contracted, had represented only a fraction of it? The Assembly thought not, but nevertheless sought to maintain the property interests of the creditors too. In a

different case, confiscation, property also played a role. Undoubtedly one of the major reasons that the Assembly responded so favorably to requests for relief from confiscation was that they were uncomfortable with depriving persons of their property in marginal cases. They proved much less concerned about amercement, which was in the nature of a fine. Finally, even in questions of order, the Assembly maintained property rights. Slaveowners whose slaves were executed for crimes were reimbursed their value by the state.

Despite severe economic difficulties, the Assembly established a responsible fiscal program which balanced the wants and needs of their various constituents. While property was one concern, the state also needed to keep functioning. In order to do so, the Assembly devised a tax system which spread the financial burden among the community and used the proceeds to meet their various obligations as punctually as possible. When debt expenditures were high, all other expenses were curtailed. At other times, the Assembly spent tax money on measures it considered beneficial to the whole state. Consistently, the Assembly refused to use general tax money for local purposes.

In order to maintain and extend the republic, the Assembly conscientiously attempted to rationalize the legal system and provide courts to meet perceived needs.

Throughout the period they restructured their courts as complaints about them developed. Another way the Assembly demonstrated its view of the importance of laws was by granting money for courthouses and jails. They also changed the statutes to make them clearer and more equitable. Finally, they reformed the jury law to make the juries more effective and to use them to educate citizens on their role in a republican society.

Within the bounds of their powers, the Assembly tried to promote fairness through their legislative program. This evenhandedness is evident in the courts, the fiscal system, and the protection of property, but also in other ways. By carefully considering thousands of petitions individually, the Assembly served as a check on the function of all the departments of government under it. Although they would not act for petitioners who had other legal recourse, they did intervene to relieve persons whose situation lay outside the bounds of the laws or who had been unfairly hurt by the system.

Repeatedly, the Assembly reaffirmed through action, their commitment to the principles of citizen government. When services had to be performed, they appointed commissioners. When property needed to be valued, they empaneled freeholders. In all their actions, they manifested their belief that the citizens knew what was best for the community. Most often, they supported

majoritarian principles. If most of the citizens of a county wanted a courthouse moved, they complied. In cases where the Assembly could not determine popular will, they waited for consensus to form. The beliefs underlying these actions were repeatedly voiced in committee reports and the preambles to laws which claimed that the best method of settling matters according to the popular will was through the use of juries.

Altogether, the Assembly demonstrated a self-conscious desire to promote the principles of the Revolution. As understood by the Assembly and their petitioners, the principal lesson of the Revolution was that government arose from the people and was to be conducted by their representatives, for the collective benefit of all. This realization was tempered by an equally strong tradition of individual liberty and personal property rights. Events in South Carolina never forced the Assembly to have to chose between the will of the people and property. So long as full citizenship remained limited to adult white propertied males, the community of interest among them continued to be strong enough to keep the republic together.

II

This period saw the replacement of a monarchical state government by a republican one, but the new system was limited. Despite the opportunity to petition, the citizens lacked the collective organization to put concentrated pressure on the government had they wanted to do so. The Assembly successfully resisted the pressure for reapportionment until 1808. On the whole, the Assembly seemed content to react rather than act, so while it proved a bulwark in defense of the people's liberties, it was not effective at pursuing their dreams. Thus, it is not surprising that some aspects of the visions of the state articulated by the governors, notably widespread education and penal reform, remained elusive. Still, by the early nineteenth century, despite these limitations, a solid South Carolina had replaced the badly divided colony of 1776.

The Assembly did fully end monarchical government in the state. No longer was the governor as powerful as the legislature. Over time, the status of governor had changed from ruler to agent, and his task had changed from protecting the king's interest to administering the state. Similarly, the Assembly rooted out particular privileges for officeholders and attempted to place all white male citizens on an equal footing. By the end of the period,

the members of the Assembly had apparently fully internalized their status as representatives of their constituents. When the judicial reform act of 1798 sparked popular dissent, they immediately modified it to meet the demands of the people.

Despite the Assembly's responsiveness, it remained difficult to organize the citizens of the state to express their will. While petitions provided an excellent way for individuals and small groups to present their thoughts and concerns, they lacked the effectiveness of political parties. Because of the centralization of power within the Assembly and because of the lack of any state-wide election, internal political parties could not be maintained in the state. Legislators sometimes had connections with national parties, but these did not necessarily translate into connections at home or votes in a district. Because citizens only voted for local candidates, they did not need parties to identify the qualifications and orientations of these candidates. As a result, issues tended to remain inside the legislature. In the long run, this was unfortunate, for parties could serve an ameliorative role.

Throughout the period, the Assembly resisted reapportionment. In part, this represented an unwillingness to surrender power, but it surely also resulted from pragmatism. Few lowcountry legislators could

have believed that reapportionment would actually improve the quality of the Assembly's action. Because things seemed to be going well, they resisted change. Still, repeated small transitions increased the backcountry's voice. The reapportionment of 1790, moving of the capital inland, and alphabetical voting in the House all helped. Most important, however was experience. Over the years, backcountry legislators learned to function effectively in debate and committees. At the same time, the lowcountry delegates became increasingly accustomed to seeing them do so. Therefore, resistance to reapportionment declined until in 1808, representation in the state was evenly divided between property and population.

Unfortunately, some of the visions promoted by the governors in their messages remained unfulfilled. Penal reform eluded South Carolina and public education never became the rule so those bulwarks of the republic failed. In both cases, this was in part because pursuing these goals would have violated some of the self-imposed limits of the Assembly. Consistently the Assembly resisted taking an interventionist role in society. Because these areas raised few problems, they demanded no action. The Assembly proved willing enough to charter schools when petitioners took the initiative, and on one occasion intervened in a punishment because perpetual imprisonment was unacceptable to them, but they were not willing to appropriate money or

attack problems which were not widely perceived.

Ultimately the mixture of actions and consequences yielded a unified South Carolina. By compromising differences in dispute and by avoiding intervening in society, the Assembly united what had been a very divided society. The lack of political parties and long-term divisive issues made this possible. While the lowcountry and the backcountry never fully trusted each other, experience proved that they did not constitute a serious threat to each other. Improving transportation between the sections of the state did much to improve relations, but the final strand necessary to bind the sections together was the introduction of cotton as a staple crop for the backcountry. A staple which required slave labor and had to be marketed down the rivers completed the unification of the state begun by the judicious actions of the postwar Assembly.

III

The solid republic built after the war, profoundly affected subsequent developments in the state. The self-reinforcing qualities of consensual politics, the absence of parties and issues, and a robust economy made the republic both durable and conservative. Increasingly, this

conflicted with what was happening in the nation at large. As mid-century approached the two societies could no longer understand one another.

The economy of the state reinforced rather than changed the system. Cotton proved to be increasingly profitable during the antebellum period. Under the circumstances, slavery continued to be profitable and necessary. The profound changes affecting the North Atlantic world in the early nineteenth century scarcely touched the state. Little manufacturing developed and the increasing use of the steamboat isolated Charleston, which had formerly lain on the sailing path between Europe and America. Outside Charleston, the state attracted relatively few immigrants and the heterogeneity of the late colonial period disappeared. White outmigration caused the percentage of black population to increase from 44 percent in 1790 to 58 percent in 1860. As a whole, the changes and dislocations of the industrial revolution made little difference in the static environment of the state.

The north and to some extent the upper south were travelling a different economic and social path. The changes wrought by industrialization, geographic expansion, and an increasing flow of immigrants yielded a society which had to learn to balance a diversity of interests wholly unknown in South Carolina. As James Madison had foreseen in the tenth Federalist, diversity had become the

strength of the United States. Once again, the republican equation had been transformed.

Meanwhile, in South Carolina, the old republic endured. We have defined American Revolutionary republicanism as the attempt to maintain a republic across time by constructing mechanistic protections against government encroachments or tyranny and by making it responsive to the will of the people at large. In South Carolina, the founding generation had succeeded well. The republic of 1860 looked much like that of 1800, both economically and politically. Paradoxically, the republic succeeded too well. In the nineteenth century, the world changed more quickly than it had in Machiavelli's day. By 1860, the republicanism of South Carolina, although it would have seemed recognizable and coherent to the Revolutionary generation, was incomprehensible to Abraham Lincoln's peers. In the nation at large, democracy, diversity, and individual rights had overwhelmed and replaced uniformity, virtue, and common values. In the nation, the political structures erected after the Revolution had proved sufficient to maintain order without demonstrable virtue. But the white citizens of South Carolina proved unwilling to trust structure alone. They knew that they depended on a system of labor which was increasingly detested by the majority of citizens in the nation. Like their forebears, they would not trust a

situation over which they had no control, and chose to chart their own course, with disastrous results to themselves. Their futile attempt to pit the republic against time once again proved what the history of republicanism shows: both republics and republicanism endure by changing with time, rather than by resisting time itself.

NOTES

CHAPTER X: SOUTH CAROLINA AND THE NEW NATION

[1]See James M. Banner, Jr., "The Problem of South Carolina," in Stanley Elkins and Eric McKitrick, eds., The Hofstadter Aegis: A Memorial (New York, 1974).

[2]United States Bureau of the Census, The Statistical History of the United States From Colonial Times to the Present (New York, 1976). 34.

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