

Houses of Glass

Secrecy, Transparency, and the Birth of Representative Democracy

Katlyn Marie Carter

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*Note: This piece is a draft of the first chapter of my book, *Houses of Glass: Secrecy, Transparency, and the Birth of Representative Democracy*.

Chapter 1

Piercing the Impenetrable Darkness: Debating State Secrecy during the American Revolution

In June 1773, a pamphlet appeared in Boston claiming to contain thirteen private letters written by Thomas Hutchinson, the embattled governor of Massachusetts. The letters dated from 1768-69 and had been addressed primarily to Thomas Whately, who had been a Secretary to the Treasury under George Grenville during the drafting of the Stamp Act. Though they did not contain any stances the governor had not more or less taken publicly, their publication proved the death knell of Hutchinson's career. It was Benjamin Franklin, then working as an operative of the Massachusetts Assembly in London, who obtained the letters under circumstances that remain a mystery. After the fact, Franklin wrote that it was "his duty to give my constituents intelligence of such importance to their affairs," and recounted having sent them to Boston "on these express conditions: that they should not be printed, that no copies should be taken of them, that they should be shown only to a few of the leading people of the government, and that they should be carefully returned."¹ A limited circulation of the letters, Franklin reportedly hoped, would prove to the colonists that they had merely been misrepresented in England and that their troubles were the result of individuals who could be excised.²

Upon their arrival in Boston pressure quickly mounted to publish the letters. On June 2, Samuel Adams read them aloud in the Massachusetts Assembly and the next day, the *Massachusetts Spy* reported on their existence, speculating that the letters would "bring many dark things to light."³ Two weeks later, the letters were printed and the assembly voted to

¹ Franklin, Benjamin, "Tract," cited in Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, Mass:

² Bailyn, *Ordeal of Thomas Hutchinson*, 237.

³ *Ibid.*, 240.

petition the king for Hutchinson's removal from office. The letters took the colonies by storm; the pamphlet containing them went through ten printings on both sides of the Atlantic that year and the letters were serialized in newspapers across the colonies.⁴ Hutchinson became the *bête noire* of American agitators and Anglo-American relations continued to deteriorate. As the Reverend Samuel Cooper wrote in a letter to Franklin on the eve of the letters' first publication: "they strip the mask from the writers who, under the professions of friendship to their country, now plainly appear to have been endeavoring to build up themselves and their families upon its ruins."⁵ In publicizing his correspondence, the colonists claimed to have exposed Hutchinson, unmasking him and seemingly proving the existence of a conspiracy against American liberty.

The incident of Hutchinson's leaked letters is instructive for ascertaining the American colonists' mindset on the eve of the Revolution's outbreak. Royal officials could not be trusted; the distance between the colonies and the seat of government allowed for misrepresentation and dissembling; and the time had come to start exposing those who had been perpetrators of two-faced lies.⁶ Hutchinson's downfall proved to be at once a culmination of suspicion in secret maneuverings of state officials and a pivot to valorizing publicity for the purpose of unmasking enemies. In this sense, it foreshadowed tactics and attitudes that became pervasive as the War of Independence broke out.

The American Revolution was by no means about secrecy. And yet, secrecy was a pervasive and crucial aspect of the political operations and discourse of the revolutionary period,

⁴ Ibid., 242.

⁵ Letter, Rev. Samuel Cooper to Franklin, June 14, 1773, cited in Bailyn, *Ordeal of Thomas Hutchinson*, 242.

⁶ Russ Castronovo has recently written about the leaking of Hutchinson's letters, placing it in the context of a network disseminating private correspondence of numerous colonial officials in the years leading up to the War of Independence. He links this to modern WikiLeaks in order, partly, to emphasize the political implications of losing control over the dissemination of state secrets and of them being leaked through a network with no identifiable source. See: Russ Castronovo, *Propaganda 1776: Secrets, Leaks, and Revolutionary Communications in Early America* (Oxford: Oxford University Press: 2014). Gordon Wood, "Conspiracy and the Paranoid Style: Causality and Deceit in the Eighteenth Century," *The William and Mary Quarterly*, Vol. 39, No. 3 (1982).

on both sides of the Atlantic. Americans were not alone in their concern about the secret machinations of ministerial officials. In the years preceding the outbreak of war, rumblings of discontent and demands for more publicity in Parliament arose in the metropole as well. Colonists were aware of efforts to open the House of Commons to reporters and felt themselves part of the struggle to pull the veil from the operations of government. Secrecy was both a lens through which colonists understood their conflict with Britain and a practical component of the newly formed political institutions at the continental and state levels. As Americans began a military conflict with the British, secrets seemed to haunt them. The problem of discerning who supported the American cause and who might undermine it from within contributed to a culture of vigilance and systematized public exposure of those suspected of dissembling. But there was a simultaneous closing of the doors in newly created political bodies charged with carrying out the war. Both local political organs and the Continental Congress worked mainly in secret, shielding their operations from public view. Military conflict and diplomatic necessity served as justifications for working in secret and publicity was directed outward, valued more as a tool for exposing enemies among the people than for broadcasting government activity.

As the conflict wore on and new political institutions in America became more permanent—from the entrenchment of Congress as a continental government to the establishment of new state constitutions—secrecy within them became increasingly suspicious. If these bodies were to be considered representative, the people needed to see what they were doing. Even before the war ended, there were calls to open the doors of Congress and state legislatures on the basis that they were representative bodies, accountable to the people for their operations. In some states, this was done as a central tenet of the new legislatures' claims to be representative. In Congress, despite a case made from both within and without for opening the

doors, delegates remained committed to secrecy even after the war had ended. Determinations of which newly created political bodies should work in public view and why are essential to examine in order to trace evolving conceptions of representative politics during this formative phase of American political institutions and thinking.

Concerns about secrecy were certainly not the defining cause of the American Revolution.⁷ However, focusing on the issue of secrecy during the revolutionary and confederation periods does contribute to breaking down the divide between ideological interpretations of the Revolution and material ones. Tracing uses of secrecy, both practically and rhetorically, and thinking about its proper place in the government highlights the way in which ideology could shape and simultaneously be shaped by the attempt to translate it into institutions. Revolutionary leaders were not always consistent, even if they did strive to be; it was in the gaps between thought and action that they forged a new political culture during the war. In taking on this topic, the chapter investigates a largely overlooked subject: the workings and culture of the Continental Congress.⁸ This body was more than a blip on the trajectory of American political

⁷ There is a vast literature on the causes and course of the American Revolution, with a major split between what has come to be known as the ideological interpretation and more economic or social interpretations. On the ideological origins, see especially: Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: The Belknap Press of Harvard University Press, 1967); Jack P Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1789* (Athens: University of Georgia Press, 1986); Gordon Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1969); J.G.A. Pocock, *The Machiavellian moment: Florentine political thought and the Atlantic republican tradition* (Princeton: Princeton University Press, 1975). For work on social and economic causes of the Revolution, see especially: Gary Nash, *The Urban Crucible: social change, political consciousness, and the origins of the American Revolution* (Cambridge: Harvard University Press, 1993); Benjamin Carp, *Rebels Rising: cities and the American Revolution* (Oxford: Oxford University Press, 2007); Woody Holton, *Forced Founders: Indians, debtors, slaves, and the making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999); Eric Foner, *Tom Paine and Revolutionary America* (New York: Oxford University Press, 1976).

⁸ There has been little work on the Continental Congress since the mid-twentieth century, when the following were published: Jennings Bryan Sanders, *Evolution of the Executive Departments of the Continental Congress* (Chapel Hill: The University of North Carolina Press, 1935); Jennings Bryan Sanders, *The Presidency of the Continental Congress, 1774-89: a study in American institutional history* (Gloucester, Mass: P. Smith, 1930); Lynn Montross, *Reluctant Rebels: the Story of the Continental Congress, 1774-1789* (New York: Harper, 1950); Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781* (Madison, Wisc.: The University of Wisconsin Press, 1940); Edmund Burnett, *The Continental Congress* (New York: Macmillan Co., 1941). More recent work includes: Jack Rakove, *The beginnings of national politics: an*

development; the way political institutions were set up during the War of Independence, not just afterward, was formative for the future of American political thought and culture.⁹ To emphasize this, the chapter also aims to advance understandings of the development of republican government during the war and confederation periods by looking at the way state governments were structured with regard to secrecy and publicity.¹⁰ In doing so, it pushes beyond ideas to get at the way political representation was being set up in practice and how these structures shaped the way ideas evolved in the decades prior to the founding of the United States with the drafting of the Federal Constitution in 1787.

To understand why the Continental Congress worked in secret, and also why this became a liability for the institution, it is necessary to cross the Atlantic and examine precedent in England. There, secrecy was a fundamental part of the political process, despite mounting pressure to establish more publicity in the decades prior to the outbreak of the American War of Independence. The roughly fifteen years preceding the dawn of the 1770s marked a dissolution of stability, the introduction of ideologically-driven oppositional politics, and the emergence of a

interpretive history of the Continental Congress (New York: Knopf, 1979) ; Calvin Jillson and Rick K. Wilson, *Congressional Dynamics: structure, coordination and choice in the first American Congress, 1774-1789* (Stanford: Stanford University Press, 1994); Jerrilyn Greene Martson, *King and Congress, the transfer of political legitimacy, 1774-1776* (Princeton: Princeton University Press, 1987); Peter Onuf, ed., *Congress and the Confederation* (New York: Garland Pub., 1991); Benjamin Irvin, *Clothed in robes of sovereignty: the Continental Congress and the people out of doors* (New York: Oxford University Press, 2011).

⁹ This point has also been made by Edmund Burnett, who wrote that: “It was, in fact, in the Continental Congress that were developed and formulated many of those fundamental principles of government that have become our national heritage.” See: Burnett, *The Continental Congress*, viii.

¹⁰ A lot of the work done on state governments has been done in relation to explaining the emergence of the Federal Constitution in 1787. For a notable exception to this, see: Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf: Distributed by Random House, Inc., 1997). For other treatment of the state constitutions, see: Gordon Wood, *The Creation of the American Republic*; Woody Holton, *Unruly Americans and the origins of the Constitution* (New York: Hill and Wang, 2007); Terry Bouton, *Taming Democracy: ‘The People,’ The Founders, and The Troubled Ending of the American Revolution* (Oxford: Oxford University Press, 2007); Jessica Choppin Roney, *Governed by a Spirit of Opposition: The Origins of American Political Practice in Colonial Philadelphia* (Baltimore: Johns Hopkins University Press, 2014).

genuinely popular political culture.¹¹ Historians of the press often point to the 1770s and ‘80s as the point at which a genuinely popular political sphere emerged in Britain, necessitating a renegotiation of the relationship between an empowered “public opinion” and government.¹² A critique of the government began to intensify and calls for reform to bolster its accountability mounted over the latter half of the century; debates about secrecy and the proper place of publicity in the political process were central to this upheaval.

Two events in the 1760s concentrated critics of the regime and set the stage for a re-conceptualizing of political representation by raising new questions about the nature of Parliament and its relationship to the public. The first was the Stamp Act crisis; American claims that colonists were not represented in Parliament because they did not vote for members, nor did members come from their communities and share their interests, echoed in the London press. Britons in the metropole began to extend the logic to the heart of the empire; if one did not vote for a member, was one actually represented in Parliament? Increasingly, this question was answered by a significant segment of the population in the negative.¹³ The ministry’s response to the uproar was to repeal the taxes imposed on the Americans, but also issue an emphatic declaration that political representation did not mean direct participation, but the voice of members selected more abstractly from the body of the people to act as a check against royal

¹¹ Brewer, *Party Ideology and Popular Politics at the Accession of George III* (Cambridge: Cambridge University Press, 1976), 15 and 42. Facilitated largely by a booming press and associational life, Brewer traces the polarization and intensification of British politics in the long 1760s to the issues of radical politician John Wilkes and the American rejection of virtual representation.

¹² The initial rise of a reform movement from 1779 to 1785, historian Hannah Barker argues, serves as a crucial point for understanding the growing role of the press and public opinion in politics. See: Barker, *Newspapers, Politics and Public Opinion in Late-Eighteenth Century England*. Also focusing on the press, historian Robert Rea has identified the period from 1760 to 1774 as one in which “the English Constitution was in the process of reinterpretation before the bar of public opinion.” See: Rea, *The English Press in Politics 1760-1774*. Others identify the roots of nineteenth century parliamentary reform in the last four decades of the eighteenth century; historian Peter Jupp has suggested a cohesive period from 1760 to 1848, characterized by the emergence of a genuine two-party system, a greater volume of activity in parliament, and more engagement with the public. See: Peter Jupp, *The governing of Britain, 1688-1848* (New York: Routledge, 2006), 185.

¹³ Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 20. Brewer identifies the American critique of virtual representation as the spark for British reformers.

prerogative.¹⁴ Considered this way, the House of Commons was a legitimate representative body, functioning as it ought. The doctrine of virtual representation laid out in the Declaratory Act entailed a theory about accountability and the nature of an MP's duty and relationship to his constituents and the population writ large. Under this theory, each Member of Parliament was meant to represent the interest of the nation—and at this point, empire—as a whole, rather than serving the particular interests of his segment of constituents. George Grenville, the minister famous for the conception of the Stamp Act, elaborated this theory by explaining that this was why the House was referred to as the 'Commons in Parliament' as opposed to the 'Representatives of the Commons.'¹⁵ Many Members of Parliament would uphold this conception of political representation through the following two decades of mounting upheaval, and well into the nineteenth century.¹⁶

However, the theoretical quandaries raised by the Stamp Act crisis were compounded in 1768 when John Wilkes was elected to the House of Commons for the county of Middlesex and promptly expelled, only to be replaced by his opponent who had overwhelmingly lost the election. Outrage ensued, fueled by Wilkes's carefully orchestrated promotion of himself as a symbol for "English Liberty."¹⁷ Pamphleteers, political societies, and politicians engaged in a war of words—and bullets, on occasions—over whether Parliament had a right to eject a popularly elected member in favor of a candidate of its own determination. Once again, the

¹⁴ Of note is that the debate over the Declaratory Act in the House of Commons was a secret session. See: Edmund Morgan and Helen Morgan, *The Stamp Act Crisis: Prologue to Revolution* (Chapel Hill, NC: The University of North Carolina Press, 1995), 296.

¹⁵ Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 208.

¹⁶ David Lemmings, *Law and Government in England during the Long Eighteenth Century: From Consent to Command* (New York: Palgrave Macmillan, 2011), 138.

¹⁷ Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 167. See also: P.D.G. Thomas, *John Wilkes: A Friend to Liberty* (New York: Clarendon Press, 1996).

struggle could be, and often was, boiled down to the nature of the relationship between elected representatives in Parliament and the people they were meant to represent.¹⁸

Both American colonists and British residents considered these two events—the Stamp Act and Middlesex Election—in tandem as part of a general crisis of corruption and mounting distrust of Parliament rooted in a lack of clarity on its representative function.¹⁹ The Boston Sons of Liberty, which began a correspondence with Wilkes in 1768, cast his plight as intricately bound up with their own.²⁰ Wilkes responded to the club on multiple occasions, always affirming his support for American interests and viewing their protestations of taxes to be integral in the struggle to preserve English liberty.²¹ This trans-Atlantic struggle to conceptually define political representation and the nature of the relationship between elected government and the body of the people played out in no small part through debates about state secrecy and battles over the visibility of governance. A 1769 pamphlet on the Middlesex Election decision, for example, was prefaced with the question: “Shall we run the risk of again proceeding in the dark? Is there any danger in bringing truth to light?” The author argued that “in this country, the pullick has the right

¹⁸ Brewer has noted that the Middlesex Election issue called into the question the basis of parliamentary power, asserting that it was not located in the House itself, but in the people. This, Brewer has rightly pointed out, was a strong challenge to the theory of virtual representation and opened the possibility of instruction from constituents to members. See: Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 165. Peter Jupp cites the Wilkes issue as one of the first where groups were not pushing for changes of particular policies, but advocating for reform of the entire system based on a coherent critique. See: Jupp, *Governing of Great Britain*, 246.

¹⁹ While John Brewer has connected John Wilkes to this re-thinking of political representation, so have historians of the American revolutionaries. In addition to noting the importance of the Stamp Act, Bernard Bailyn highlights Americans’ awareness of John Wilkes and his case: “John Wilkes’ career was crucial to the colonists’ understanding of what was happening to them; his fate, the colonists came to believe, was intimately involved with their own.” See: Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: The Belknap Press of Harvard University Press, 1967), 110. See also: Jack P. Green, “Bride to Revolution: The Wilkes Fund Controversy,” *The Journal of Southern History*, Vol. 29, No. 1 (1963); Pauline Maier, “John Wilkes and American Disillusionment with Britain,” *The William and Mary Quarterly*, Vol. 20, No. 3 (1963).

²⁰ Letter from the Boston Sons of Liberty to John Wilkes, November 4, 1769, in *General Correspondance of John Wilkes, with a few additions ; 1739-1802*, Vol. 4, No. 222. British Library : Add MS 30870 (1768- 1769).

²¹ *General Correspondance of John Wilkes, with a few additions ; 1739-1802*, Vol. 4. British Library : Add MS 30870 (1768- 1769).

upon all occasions, but most particularly upon such as this, to be fully informed.”²² Such a conviction was by that point central to British political culture. Visibility, publicity, and vigilance were increasingly advocated as remedies to ensure representative government was reflective of the interest of the common people.

Throughout the later 1760s and into the next decade, pamphlets also proliferated in the colonies addressing what it was that made representation legitimate in the context of contesting Parliament’s authority.²³ Chief among these factors was the ability of the represented to effectively exercise vigilance over the government. In order to maintain this vigilance, colonial writers advocated reform of the way representation was apportioned, the binding of representatives to constituent instructions, the changing of seditious libel laws to free the press further to criticize government, and the withdrawal of government from control over religious practice.²⁴ As Bernard Bailyn has demonstrated, the lynchpin of the colonists’ claim that they were not represented in Parliament was that they did not share the same interests as residents of England.²⁵ But when it came to defining what political representation should look like, colonial writers advanced the idea that “consent was a continuous, everyday process.”²⁶ This implied, along with the notion that instructions were necessary to guarantee accountability, that the people needed to be able to see what their representatives were doing.

It appears this notion was gaining traction in practice over the course of the eighteenth century in many colonial assemblies. While Bailyn suggested that colonists practiced a more direct form of representation in their communities, scholarship on colonial assemblies has tended

²² “The sentiments of an English Freeholder, on the late decision of the Middlesex Election [i.e. the rejection of John Wilkes by the House of Commons]” (London: J. Dodsley, 1769), 18. British Library General Reference Collection T.920.

²³ For more on the debates over the Stamp Act itself and how they led to theorizing about the nature of political representation, see: Morgan and Morgan, *The Stamp Act Crisis*.

²⁴ Bailyn, *Ideological Origins*, 47.

²⁵ *Ibid.*, 168.

²⁶ *Ibid.*, 173.

to focus within one colony, making generalizations difficult.²⁷ Yet a study of changes in assembly procedure over the course of the eighteenth century in Virginia, Massachusetts, and Pennsylvania, suggests the colonies had gradually moved in the direction of more direct representation and responsiveness to constituents. Of particular note was a move over time toward greater publicity. While none of the three colonial assemblies published journals in 1700, by mid-century all three did and “the assemblies worked even more aggressively to publicize their legislative activities outdoors,” according to Alison Olson.²⁸ While most assemblies officially banned reporting on their proceedings, Olson traced how already in the 1730s, pamphlets and newspapers contained descriptions of legislative activity, “especially when there was a dispute between the assembly and the council.”²⁹ The result, she showed, was that by the 1760s, the legislative journals were much more robust, often containing the names of members who proposed and voted for legislation. By the end of the colonial period, the Pennsylvania

²⁷ Ibid., 164. For other work on colonial legislatures, see especially: Alison G. Olson, “Eighteenth Century Colonial Legislatures and Their Constituents,” *The Journal of American History*, Vol. 79, No. 2 (Sept. 1992); Sister Joan de Lourdes Leonard, C.S.J., “The Organization and Procedure of the Pennsylvania Assembly, 1682-1776, I: Organization,” *Pennsylvania Magazine of History and Biography*, 72 (July 1948); Sister Joan de Lourdes Leonard, C.S.J., “The Organization and Procedure of the Pennsylvania Assembly, 1682-1776, II: The Legislative Process,” *Pennsylvania Magazine of History and Biography*, 72 (October 1948); Stanley M Pargellis, “The Procedure of the Virginia House of Burgesses,” *William and Mary Quarterly*, 7 (April 1927); Elmer I. Miller, *The Legislature of the Province of Virginia: Its Internal Development* (New York: Columbia University Press, 1907); George Edward Frakes, *Laboratory for Liberty: The South Carolina Legislative Committee System, 1719-1776* (Lexington, KY: University Press of Kentucky, 1970); Roger Ekirch, “*Poor Carolina*”: *Politics and Society in Colonial North Carolina, 1729-1776* (Chapel Hill: University of North Carolina Press, 1981); Patricia U. Bonomi, *A Factious People: Politics and Society in Colonial New York* (New York: Columbia University Press, 1971); Raymond C. Bailey, *Popular Influence upon Public Policy: Petitioning in Eighteenth-Century Virginia* (Westport, CT: Greenwood Press, 1979); Robert Zemsky, *Merchants, Farmers, and River Gods: An Essay on Eighteenth Century American Politics* (Boston: Gambit, 1971); Michael Zuckerman, *Peaceable Kingdoms: New England Towns in the Eighteenth Century* (New York: Knopf, 1978); Michael Kammen, *Deputies and Liberties: The Origins of Representative Government in the American Colonies* (New York: Knopf, 1969); David Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (Cambridge: Cambridge University Press, 1987); Alan Tully, *William Penn’s Legacy: Politics and Social Structure in Provincial Pennsylvania, 1726-1755* (Baltimore: Johns Hopkins University Press, 1977); Thomas L. Purvis, *Proprietors, Patronage, and Paper Money: Legislative Politics in New Jersey, 1703-1755* (New Brunswick: Rutgers University Press, 1986); Mary P. Clarke, *Parliamentary Privilege in the American Colonies* (New Haven, CT: Yale University Press, 1943).

²⁸ Olson, “Eighteenth Century Colonial Legislatures and Their Constituents,” 563.

²⁹ Ibid., 564.

Assembly opened its doors to spectators, whom Olson noted “expressed their opinions on particular bills so audibly that they had to be admonished against hissing and clapping.”³⁰

Back in London, the contest over whether Parliament ought to debate in public, and particularly be open to reporters, was where the relationship between debates about the government’s use of secrecy and the functioning of political representation collided most forcefully. What was at stake in determining who could sit on the limited number of hard benches in the cramped chamber was nothing less than the relationship between political representatives and the people whom they purported to represent. The doorstep of the converted St Stephen’s Chapel at Westminster was where the rhetoric of government secrecy took on tangible meaning, where it was employed as a tool by which a theory of virtual representation was expressed and conversely contested by those who sought to eliminate barriers between the chamber and the streets and pages of periodicals. The ability of printers in particular to cross that threshold, and to publish proceedings of the House of Commons, became the first flashpoint via which the role of secrecy in a representative government was extensively debated. Reflecting a changing understanding of what it meant for Parliament to be representative, printers won a hard-fought battle in 1771 when the House of Commons conceded that reporters could record their deliberations.³¹ The persistence of an official commitment to secrecy, however, suggests this transformation in thinking about the definition of political representation remained far from fully realized in Britain at the end of the eighteenth century.

³⁰ Ibid., 554.

³¹ See: P.D.G. Thomas, “The Beginning of Parliamentary Reporting in Newspapers, 1768-1774,” *The English Historical Review*, Vol. 74, No. 293 (October 1959); P.D.G. Thomas, *The House of Commons in the Eighteenth Century* (Oxford: Clarendon Press, 1971); Andrew Sparrow, *Obscure Scribblers: a history of Parliamentary journalism* (London: Politico’s, 2003); Rea, *The English Press in Politics, 1760-1774*; Dror Wahrman, “Virtual Representation: Parliamentary Reporting and Languages of Class in the 1790s,” *Past & Present*, No. 136 (August 1992); Katlyn Marie Carter, “Practicing Politics in the Revolutionary Atlantic World: Secrecy, Publicity, and the Making of Modern Democracy,” (PhD Dissertation, Princeton University, 2017).

Three years later, across the Atlantic, delegates from the American colonies gathered in Philadelphia and vowed to work in strict secrecy. First conceived of as a temporary body, convened to form a petition of grievances and definition of Parliamentary sovereignty, the Congress soon became a fixture of American government. At the beginning, working in secret may have been intended to project unity—both in the sense of protecting individual delegates against British recrimination and also in the context of allowing for more open debate under the circumstances.³² Once the second Continental Congress convened in spring of 1775, after the outbreak of violence in Massachusetts, the delegates re-dedicated themselves to working in secret. As the body took on the task of managing a war and negotiating diplomatic relations, secrecy became a central feature of its operations. Delegates took oaths to maintain secrecy, secret committees were created, secret journals kept—in addition to “more secret journals.” Moreover, delegates grew increasingly reticent over time to commit information to writing, fearing their letters would be intercepted. Though they frequently lamented not being able to consult with friends or report back to state officials on proceedings, most concluded that guarding their deliberations was a necessity as they worked amidst British military invasion and tried to secure foreign allies.

However, by 1779 a series of leaks brought factional divisions to light and the Congress began to face challenges to its legitimacy as a representative institution. Under mounting pressure to open more of their work to public view, some members of the Congress even began considering the benefits of greater publicity. They moved to print their journals more regularly in an effort to counteract suspicion, but stopped short of opening their meetings to reporters or the public. After resigning the presidency in December 1778, South Carolina delegate Henry Laurens wrote to New Jersey Governor William Livingston lamenting that the Congress had not

³² Jillson and Wilson, *Congressional Dynamics*, 57.

opened its doors amidst the crisis of public confidence.³³ Nonetheless, even when the war drew to a close and after the peace treaty was signed, the Congress continued to adhere to secrecy in its operations. As the focus on constructing new representative republics turned to the states, opening Congress to public view seemingly became less of a priority. But understanding why and how delegates to the Continental Congress adhered to secrecy from the beginning still presents a puzzle considering they met amidst a culture of vigilance and pervasive desire to unveil secret maneuverings of the British government and their own neighbors.

Most of the delegates arrived in Philadelphia in September 1774 with instructions and a specific mandate: to convey colonial grievances to the British government.³⁴ Yet, there were factions among them from the outset; the more radical delegates from Massachusetts favored the re-implementation of a non-importation effort, while those from the mid-Atlantic in particular, were largely against taking such steps.³⁵ In the wake of what came to be called the Coercive Acts and the beginnings of colonial government breakdown in colonies like Massachusetts, the delegates faced a difficult task. Being technically vested with authority by the assemblies that had sent them on behalf of colonies, the delegates were also vehicles for acting on the more radical resolves of committees forming in local communities.³⁶ Because of the way they were selected by state governmental bodies and sent with instructions, it is possible the delegates considered themselves more like ambassadors from their colonies, as opposed to representatives of the people in the colonies.³⁷ Ultimately, Congress was to be the decisive voice of the

³³ Henry Laurens to William Livingston, April 23, 1779, *William Livingston Family Collection, Volume II: 1775-1780*. Massachusetts Historical Society, Ms. N-1579.1.

³⁴ Rakove, *Beginnings of national politics*, 23. See also, Jillson and Wilson, *Congressional Dynamics*, 43.

³⁵ Rakove, *Beginnings of national politics*, 22.

³⁶ *Ibid.*, 30-33.

³⁷ Calvin Jillson and Rick Wilson have suggested this in their study of the institutional structures of the Continental Congress and their point is well taken. They argued that: “most of the delegates felt that they had, at most, an advisory relationship to the formal and legal political institutions of their home colonies.” See: Jillson and Wilson, *Congressional Dynamics*, 2; 47.

American colonies to the British King and Parliament at what was considered a crisis point. Upon his arrival, Connecticut delegate Silas Deane directed his wife to “inform my friends that we are in high spirits, if it is possible to be really so when the eyes of millions are upon us, and who consider themselves and their posterity interested in our conduct.”³⁸ This sense of being watched, of being scrutinized, became a common trope in writings of elected delegates on both sides of the Atlantic during the Age of Revolutions. Convening in bodies that were to pronounce in the name of a people on subjects considered to be of vital and enduring importance entailed significant pressure.

Yet, in a very real sense, the “eyes of millions” were not on the delegates as they worked, or if they were, they could not see very much. Upon convening, the Congress resolved that: “the doors be kept shut” and “that the members consider themselves under the strongest obligations of honor to keep the proceedings secret until the majority shall direct them to be made public.”³⁹ Though it appears not all delegates arrived with the expectation that they would meet in secret, they seem to have been quickly convinced of the necessity of doing so.⁴⁰ Withholding information was meant to be temporary, just so the “designs and plans of the Congress must not be communicated until completed,” as John Adams wrote to his wife Abigail.⁴¹ The idea that nothing should be published until it was decided was repeatedly noted by delegates when apologizing to their correspondents for not being able to provide information.

The reason for keeping work in progress under wraps was primarily to avoid confusion and disturbance. A letter written by Caesar Rodney of Delaware to his brother in mid-September,

³⁸ Silas Deane to Mrs. Deane, in *Letters of members of the Continental congress, Vol. I*, ed. Edmund C. Burnett (Washington, D.C.: Carnegie institution of Washington Publication, 1963 reprint), 4.

³⁹ Continental Congress, *Rough Journals, Vol. I*, Sept. 6, 1774, 16. U.S. National Archives, Fold3, NARA M247, Record Group: 360. <https://www.fold3.com/image/246/451530>.

⁴⁰ New Jersey delegate Joseph Galloway seems to have expected to regularly report back on what was happening to the governor of his home state. See: Joseph Galloway to Governor of New Jersey (William Franklin), Sept. 3, 1774, in *Letters of members of the Continental congress, Vol. I*, 6.

⁴¹ John Adams to Abigail Adams, Sept. 14, 1774, in *Letters of members of the Continental congress, Vol. I*, 31.

declared that the withholding of details “until the whole business is done,” was designed to “avoid needless disputations out of doors.” Though he acknowledged the procedure was “much to the disappointment of the curious,” Rodney nonetheless appears to have adhered to its strictures.⁴² Delegates even held back from reporting to the governors, legislatures, and local committees that had sent them to the Congress. When they sent a copy of the completed proceedings to the Freeholders of Dutchess County in early November, the New York delegation noted that it was “with regret that we have thus long been obliged to withhold this mark of respect, which we owe our worthy constituents.”⁴³ Despite the delegates’ sense of responsibility to report to their constituents, they continued to keep the petition addressed to the King private, “which cannot in point of decorum be made publick until it has been laid before the throne.”⁴⁴

When the delegates did publish their proceedings, at the end of October 1774, they contained very little detail. The “Extracts from the votes and proceedings of the American Continental Congress,” published by William and Thomas Bradford in Philadelphia, came in at just under 40 pages and contained a preamble and list of resolutions passed, in addition to an address from the Congress to English subjects and one to the inhabitants of the colonies. Prefaced by the declaration that the resolutions were taken “in a full and free representation of these colonies,” the resolves were then printed without any record of debates or vote tallies within the Congress. Presented as *faits accomplis*, the “proceedings” concluded with an address from the Congress as a whole to the American colonists. In it, delegates explained their reasoning for adopting non-importation, consumption, and exportation to combat British measures, calling it a result of their having “diligently deliberately and calmly enquired into and

⁴² Caesar Rodney to Thomas Rodney, Sept. 12, 1774, in *Letters of members of the Continental congress, Vol. I*, 30.

⁴³ New York Delegates to Chairman and Freeholders of Dutchess County, Nov. 7, 1774, in *Letters of members of the Continental congress, Vol. I*, 84.

⁴⁴ *Ibid.*

considered those exertions, both of the legislative and executive power of Great-Britain, which have excited so much uneasiness in America, and have with equal fidelity and attention considered the conduct of the colonies.”⁴⁵

The fact that the Congress had worked behind closed doors and published a limited account of its proceedings was not lost on those who opposed their resolutions. In fact, the secrecy with which their work was undertaken was sometimes cited as a reason to question the Congress’s legitimacy. After warning readers that their interests had been abandoned in Philadelphia—that non-importation would only disproportionately hurt farmers and damage the prospects for restoring peace with the British—“A Farmer” raised suspicion in the way the deliberations had unfolded. “Much stress has been laid, it seems, upon the *unanimity* of the Delegates, and it has been urged, that *all the inhabitants of the continent* should think themselves in honor obliged to abide *passively* by their decisions, be they what they may, as they were *their Representatives*,” he wrote. Not only did the vast majority of the population of New York, where he was writing, have no say in their election, “it is now pretty generally understood and it is an undoubted fact, that only *most* or *all* of the New York members, but many others ... warmly opposed their conduct in a MULTITUDE of instances.” He went on to note that the public was essentially being tricked as the delegates “had unhappily agreed, before their entrance into any business, that neither *protest* nor *dissent* should appear [in the] *minutes*.” The Congress had employed “*arts and stratagems*” that amounted to “UNFAIR DEALINGS within,” and colonists should have no faith in the delegates, nor should they obey their directives.⁴⁶

⁴⁵ Ibid., 17.

⁴⁶ Samuel Seabury, *Free thoughts on the proceedings of the Continental Congress* (New York, 1774). Library Company of Philadelphia, Am 1774 Seabury 112614.O (McNeil). Another pamphlet, published in Boston early in 1775, also highlighted the fact that the published proceedings “cautiously omitted” at least one controversial vote they had taken upon convening. See: Harrison Gray, *A few remarks upon some of the votes and resolutions of the Continental Congress* (Boston, 1775). Library Company of Philadelphia, Am 1775, Gra Ar 75 G779.

Despite this criticism, when the second Continental Congress met in the spring of 1775 the delegates immediately resolved to retain the secrecy rule.⁴⁷ What this meant in practice was that the delegates would meet behind closed doors, that their journals were split into those that would be revised for publication and those that were considered “Secret Journals,” and later, “More Secret Journals,” and that secret committees were created to oversee classified financial and diplomatic operations.⁴⁸ When Silas Deane wrote back to his wife, he urged her to “believe nothing you hear reported of us, for our doings will not be published but by an authority of the whole.”⁴⁹ Partly because of the way the journals were kept, there is no record of discussion within Congress regarding the rules of secrecy, making reference to delegates’ letters of paramount importance in gleaning their justification. As war broke out and the Congress undertook diplomatic negotiations in search of financial support, it is clear from their correspondence that working in secret became crucial. The delicacy of military and diplomatic maneuverings demanded discretion and the conditions of working in a war zone made this all the more difficult to maintain. Ultimately, the delegates felt little need to make excuses for their adherence to secrecy during the initial period of the war, even if they did lament its drawbacks.

Starting as early as that fall of 1775, the delegates were worried their letters might be intercepted and information contained therein revealed. John Adams had, at first, frequently fudged the secrecy rule in writing to his confidante James Warren, noting that his letters were “secret and confidential as the saying is” but that “in confidence, I am determined to write to

⁴⁷ Continental Congress, *Rough Journals*, Vol. 1, May 11, 1775, 59. U.S. National Archives, Fold3, NARA M247, Record Group: 360. <https://www.fold3.com/image/246/451744>.

⁴⁸ For more on the way the journals were composed, see: Herbert Friedenwald, “The Journals and Papers of the Continental Congress,” *The Pennsylvania Magazine of History and Biography*, Vol. 21, No. 2 (1897).

⁴⁹ Silas Deane to Mrs. Deane, undated, in *Letters of members of the Continental congress*, Vol. 1, 90.

freely to you at this time.”⁵⁰ But in October 1775, he wrote to Warren that: “our obligations of secrecy are so braced up that I must deny myself the pleasure of writing particulars.”⁵¹

Apparently some letters had recently been intercepted and their contents made public with an embarrassing result. This led Adams to think twice about what he committed to writing, even to his wife Abigail. In early October, 1775, he apologized for not being able to convey any substantive news to her and warned her to be careful with anything he had sent. “My letters have been and will be nothing but trifles. I don’t choose to trust the post. I am afraid to trust private travellers. They may peep,” he wrote. “Accidents may happen; and I would avoid, if I could, even ridicule, but especially mischief. Pray, bundle up every paper, not already hid and conceal them in impenetrable darkness. Nobody knows what may occur.”⁵² The letter strikes a tone of near paranoia. But over the course of the war, intercepted letters remained a constant specter for many delegates, who would cite the fear as reason for not conveying details of deliberations.⁵³

Intercepted mail could have repercussions for the military movements of the Continental Army, but also for the diplomatic and commercial efforts the Congress was undertaking in Europe. It was in this realm that deputies were particularly careful to keep work under wraps. The “secret committees” were first created to deal with overseas affairs and quickly became central nodes of the institution’s activity. A “Secret Committee” was first created in September 1775, “to contract for the importation and delivery of any quantity of gun powder not including

⁵⁰ These comments are taken from two separate letters: John Adams to James Warren, July 6, 1775, in *Letters of members of the Continental congress, Vol. I*, 152; John Adams to James Warren, July 24, 1775, in *Letters of members of the Continental congress, Vol. I*, 176.

⁵¹ John Adams to James Warren, October 2, 1775, in *Letters of members of the Continental congress, Vol. I*, 213.

⁵² John Adams to Abigail Adams, October 10, 1775, in *Letters of members of the Continental congress, Vol. I*, 225.

⁵³ See for example: William Williams to Joseph Trumbull, September 13, 1776, in *Letters of members of the Continental congress, Vol. II*, ed. Edmund C. Burnett (Washington, D.C.: Carnegie institution of Washington Publication, 1963 reprint), 87.

500 tns.”⁵⁴ Over the following years, the committee came to manage the commercial and financial affairs of the continent, and would eventually face critiques for its shadowy operation. Another committee—the Committee of Correspondence—which was initially created in November 1775 and renamed the Committee of Secret Correspondence in January the following year, was tasked with “corresponding with our friends in Great Britain Ireland and other parts of the world and that they lay their correspondence before Congress when directed.”⁵⁵ This committee reached out to trusted colonists who were abroad at the time to seek their regular reporting on the dispositions of foreign governments toward the Americans. As their operations were more formalized, Congress eventually dispatched operatives to France to seek military and financial aid in the conflict.

There, at the court of Louis XVI—which was known for its adherence to secrecy—the American envoys quietly attempted to gage the possibility for support in their struggle to throw off British rule. Correspondence between the committee and its operatives abroad was scarce, given the dangers of interception in the trans-Atlantic journey. Dispatches had to be carefully conveyed; commissioner Arthur Lee reportedly wrote a dispatch into the covers of pocket dictionaries at one point in an effort to smuggle them back to the colonies unseen.⁵⁶ News of a negotiated loan from the French was handled with extreme caution. Committee members concluded that they must take measures to keep secret what the French court wanted done quietly; telling Congress was not the way to do it. “We find, by fatal experience, the Congress

⁵⁴ Continental Congress, *Transcript Journals, Vol. I*, Sept. 18, 1775, 11. U.S. National Archives, Fold3, NARA M247, Record Group: 360. <https://www-fold3-com.ezproxy.princeton.edu/image/246/389214>.

⁵⁵ Continental Congress, *Transcript Journals, Vol. I*, Nov. 29, 1775, 144. U.S. National Archives, Fold3, NARA M247, Record Group: 360. <https://www-fold3-com.ezproxy.princeton.edu/image/246/389684>.

⁵⁶ Samuel Adams to James Warren, Nov. 23, 1778, in *Letters of members of the Continental congress, Vol. III*, ed. Edmund C. Burnett (Washington, D.C.: Carnegie institution of Washington Publication, 1963 reprint), 503.

consists of too many members to keep secrets,” they declared,” this committee ought to keep this secret, if secrecy is required.”⁵⁷

Even though they remained broadly committed to maintaining secrecy, the delegates did not uphold the policy without lamenting its perceived drawbacks, which began to grow stronger over time. Jack Rakove has suggested the delegates initially “felt no compunction” at closing their doors to the public because they were confident in their authority after an outburst of popular support following the battles of Lexington and Concord.⁵⁸ At the outset of their work, the delegates had indeed received a slew of petitions and resolves from local committees conveying their attachment to the resolves of the Congress. On their way to meet in the spring of 1775, Rakove suggests, delegates encountered displays of support and thereby gained a sense of popular sentiment going into their deliberations.⁵⁹ But once they were ensconced in Philadelphia—and later chased from the city to Baltimore and Princeton at various points—some delegates quickly felt isolated. The secrecy requirement only served to heighten this sense of seclusion, leading some to draw a distinction between the free conversations they witnessed outside and the deliberations of Congress “within doors.” Tasked with speaking on behalf of the colonies, many delegates felt the need to confer, discuss, and take the temperature, so to speak, of the people on whose behalf they were acting. Their commitment to working in secret was sometimes perceived as a wrench, though a necessary one, to fulfilling their role.

Perhaps the most frequently cited concern among delegates was their inability to consult trusted friends and confidants on the matters under consideration in Congress. John Adams lamented to his friend, Moses Gill, in June 1775 that “it would be a relief to my mind if I could write freely to you concerning the sentiments, principles, facts and arguments which are laid

⁵⁷ Ibid.

⁵⁸ Rakove, *Beginnings of national politics*, 71.

⁵⁹ Ibid., 70.

before us in Congress.”⁶⁰ Before the onset of his fear about intercepted mail, Adams had made exceptions to the secrecy rule when writing to his trusted wife, Abigail. On June 10, 1775, he informed her that though “in Congress we are bound to secrecy,” but “under the rose” he could tell her he expected ten thousands men would be kept stationed in Massachusetts.⁶¹ Even after he became afraid of committing news to writing, and seemed to have stopped conveying much of substance to Abigail, Adams continued to wish he was able to confer with those he trusted. Writing to James Warren, he drew a stark contrast between their “debates and deliberations” and “the conversations in the city and chat of the coffee house,” which he noted were “free and open.” “Indeed, I wish we were at liberty to write freely and speak openly upon every subject,” he complained, “for there is frequently as much knowledge derived form conversation and correspondence as from solemn public debates.”⁶² A few weeks later, Adams wrote to Elbridge Gerry noting that he “cannot communicate my own thoughts freely to my friends, so far as is necessary to ask their advice and opinions concerning questions, which many of them understand much better than I do.” Yet he concluded that this unfortunate situation “must be submitted to for the sake of superior advantages.”⁶³

The desire to open up about what was happening in Congress soon exceeded wishes to write to trusted friends for advice. As Pauline Maier has closely chronicled, while they debated whether to declare independence in the spring of 1776, the delegates were careful to seek out

⁶⁰ John Adams to Moses Gill, June 10, 1775, in *Letters of members of the Continental congress, Vol. I*, 117.

⁶¹ John Adams to Abigail Adams, June 10, 1775, in *Letters of members of the Continental congress, Vol. I*, 117; See also: John Adams to Abigail Adams, July 23, 1775, in *Letters of members of the Continental congress, Vol. I*, 175.

⁶² John Adams to James Warren, Oct. 7, 1775, in *Letters of members of the Continental congress, Vol. I*, 218.

⁶³ John Adams to Elbridge Gerry, Nov. 5, 1775, in *Letters of members of the Continental congress, Vol. I*, 249. See also: John Adams to Elbridge Gerry, Nov. 5, 1775. Elbridge Gerry Papers, Massachusetts Historical Society, Ms. N-1278. Adams was not alone among the delegates in desiring meaningful correspondence for the purposes of consultation in forming opinions. Samuel Adams expressed the same lamentations in letters. See: Samuel Adams to James Warren, Nov. 4, 1775, in *Letters of members of the Continental congress, Vol. I*, 249; Samuel Adams to William Heath, Oct. 20, 1775, in *Letters of members of the Continental congress, Vol. I*, 239.

evidence of public opinion before acting.⁶⁴ Given that most of the delegates had been sent with instructions to not declare independence, Congress trailed a shift in public opinion that spring, moving in a cautiously responsive fashion.⁶⁵ Not long thereafter, the confidence Rakove had cited as a reason for the delegates' willingness to withhold their proceedings from the public was dwindling. Facing the prospect that Philadelphia would soon be occupied by British troops, the Congress decided to relocate to Baltimore in the winter of 1777. Once they had left, the problem of feeling cloistered became especially acute. Writing to Robert Morris that February, Benjamin Rush noted that "we live here in a convent, we converse only with one another. We are precluded from all opportunities of feeling the pulse of the public upon our measures." He was worried because the delegates were relying "upon the committee in Philadelphia to feel it for us."⁶⁶ The problem of feeling distant from the sentiments of the public may not have been of immediate concern in the early years of the Congress's deliberations. But by 1777, this was no longer the case, as the colonies had descended into a difficult and prolonged military conflict and the Congress was responding to military, financial, and diplomatic crises as they arose.⁶⁷

Beyond desiring a better connection with the broader public, it was the sense of duty they owed to their direct constituents—state political officials—that led delegates to begin seriously challenging the adherence to secrecy in Congress. In January 1777, Maryland delegate Samuel Chase sent the state Council of Safety a copy of a letter Hancock had laid before Congress noting that: "I have no leave to make it public. I send it to give you all the intelligence in my power; it

⁶⁴ Maier, *American Scripture*, 42.

⁶⁵ *Ibid.*, 30.

⁶⁶ Benjamin Rush to Robert Morris, Feb. 8, 1777, in *Letters of members of the Continental congress, Vol. II*, 240.

⁶⁷ Rakove also notes this breakdown in communication, noting that by 1777 "delegates found themselves struggling to maintain a barely adequate flow of information between Congress and their constituents." See: Rakove, *Beginnings of National Politics*, 127.

may be shewn but not printed.”⁶⁸ A month later, he wrote again to the council with “intelligence necessary for your information, but the communication of it to our General Assembly must be made with every caution of secrecy.”⁶⁹ Only a few days later, it was Chase who first proposed a resolution calling for the Congress to work with greater transparency. His proposal called for all resolutions, whether they passed or not, to be recorded in the journal and for the record of yeas and nays also to be printed at the request of a state delegation. The proposal went even further calling for the doors of Congress to be opened, “except on particular occasions—all debates held in public.”⁷⁰ The motion was seconded by the delegates from North Carolina and, as one of them, Thomas Burke, recorded in his notes that day, they “observed that it was very proper the Congress should have the public check on them, and that as every member was liable to be impeached by the state he represented.”⁷¹ Recording the votes in the journal was necessary so “that the state might be furnished with testimony to prosecute, and the delegates with testimony to defend himself.”⁷² Here, Burke articulated a link between the representative function the Congress was playing and the necessity of working in view of their constituents for the sake of accountability. But the vote on this resolution was postponed and never took place. A month later, Burke wrote to the governor of North Carolina lamenting that: “By the rule of secrecy, you know, Sir, I am not at liberty to communicate anything before it is determined and therefore cannot consult the state upon it.” Moreover, he reported that because of limited information that

⁶⁸ Samuel Chase to Maryland Council of Safety, Jan. 8, 1777, in *Letters of members of the Continental congress, Vol. II*, 208.

⁶⁹ Samuel Chase to Maryland Council of Safety, Feb. 20, 1777, in *Letters of members of the Continental congress, Vol. II*, 268.

⁷⁰ Thomas Burke, Abstract of Debates, Feb. 27, 1777, in *Letters of members of the Continental congress, Vol. II*, 285. Jack Rakove suggested that this was proposed under pressure from the Maryland assembly, not the delegates to Congress. See: Rakove, *Beginnings of National Politics*, 248.

⁷¹ *Ibid.*

⁷² *Ibid.*

was entered in the journals, “nothing therefore can give testimony hereafter that such points were contested and even rejected by a majority as is indeed the usual case.”⁷³

In the wake of this failed attempt to publish greater detail of their deliberations in the journals and even allow the public to attend their meetings, some delegations began to more flagrantly violate the secrecy rule in reporting back to state officials. Such violations of the rule were perhaps understandable considering the lag in publication of Congress’s journals. The Virginia delegates wrote to the speaker of the state’s House of Delegates, George Wythe that May to deliver the “first volume of the last edition of the Journal of Congress.” The volume, however reached “no further than the 30th of December 1775.” The delegates apologized for the deficiency of information they were able to send back: “As our duty directs, so our inclinations lead to an immediate compliance with the desires of the House of Delegates, but we apprehend insurmountable difficulty in getting the manuscript journal, because the many secret articles cannot be exposed to a copier, and neither the secretary or ourselves have time to do it.”⁷⁴ The printing of the official journals had been further stalled, they reported, because “the printer has hitherto been delayed for want of paper.”⁷⁵ John Adams made the same explanation in a letter to Thomas Jefferson a week later, noting that: “nothing gives me more constant anxiety than the delays in publishing the journals.” In this case, he assured Jefferson, the delay was a mere matter of lacking manpower, as “we have too many irons in the fire,” though “the committee are now busy every day in correcting proof sheets, so I hope we shall soon do better.”⁷⁶

⁷³ Thomas Burke to the Governor of North Carolina (Richard Caswell), March 11, 1777, in *Letters of members of the Continental congress, Vol. II*, 295.

⁷⁴ The Virginia Delegates to the Speaker of the Virginia House of Delegates (George Wythe), May 20, 1777, in *Letters of members of the Continental congress, Vol. II*, 366.

⁷⁵ Ibid.

⁷⁶ John Adams to Thomas Jefferson, May 26, 1777, in *Letters of members of the Continental congress, Vol. II*, 375.

Beyond the delay in publishing the journals, there was also the matter of what they contained, or perhaps more critically, of what they did not contain. The process of preparing the journals for publication entailed decisions about what would appear in print and “what ought to be excepted,” as John Adams explained in a letter to James Warren.⁷⁷ Back in December of 1775, as the delegates reviewed for publication the journals that were appearing in the spring of 1777, the diary of New Jersey delegate Richard Smith regularly noted how those “excepted” portions were almost daily selected.⁷⁸ In a nineteenth century study of the multiple versions of the journals, Herbert Friedenwald traced how Charles Thomson, secretary to the Congress, had actually kept and revised the journals. In a note left at the beginning of the first volume of the “Transcript Journal” Thomson explained that: “the passages and resolutions, which in this and the following books are crossed ... were ordered to be crossed or marked so as not to be transcribed for publication.”⁷⁹ Though it is thus possible to trace what was deemed unfit for publication, Friedenwald noted that it is difficult to ascertain how Thomson composed the “Secret Journals.” Frequently in the “Rough Journal,” resolutions would be marked “with the usual dotted lines in the margin to indicate that this was matter of a secret nature,” suggesting that it might be later moved to the “Secret Journal,” so as to collect them in one place for reference.⁸⁰ The journal system was complicated and discerning secret from public content was an ongoing process.

Soon, a series of leaks brought factional divisions within Congress to light and led to increased pressure for delegates to abandon their strict adherence to secrecy. In December 1778, an angry Silas Deane, recently recalled from his duty as commissioner in France, published a

⁷⁷ John Adams to James Warren, Dec. 3, 1775, in *Letters of members of the Continental congress, Vol. I*, 269.

⁷⁸ Richard Smith Diary, Dec. 14, 1775, in *Letters of members of the Continental congress, Vol. I*, 275.

⁷⁹ Friedenwald, “The Journals and Papers of the Continental Congress,” 165.

⁸⁰ *Ibid.*, 167-168.

long critique of his colleague Arthur Lee in the *Pennsylvania Packet*. Deane, who was himself under suspicion within Congress for his role in negotiating financial aid from the French, pointed the finger at his erstwhile colleague in Europe. “What I write to you, I would have said to your Representatives, their ears having been shut against me.” He proceeded to recount the dispatching of commissioners across courts in Europe, and reported that Lee “was suspected, by some of the best friends you had abroad.” As the possibility of a treaty with the French became imminent, Deane alleged Lee “was dragged into the treaty with the utmost reluctance.” “It was agreed that this important matter should be kept a profound secret,” Deane recounted, but a few days later, MP Charles Fox—whom Deane was careful to note was a good friend of Lee’s alleged confidant, Lord Shelburne—declared it in the House of Commons. Moreover, this happened shortly after “Mr. Lee’s secretary went to and from London, charged with affairs which were secret to your other commissioners.” The reader was left to connect the dots, which Deane felt the Congress had failed to do. Upon his return earlier that summer, Deane recounted having gone to Congress to inform them of these suspicions, but lamented no longer being able to obtain an audience.⁸¹ Repeatedly referring to Congress as the reader’s “representatives,” Deane suggested the public was being misled and it was time to bring the truth to their attention.

The publication threw the Congress into convulsions as delegates split over what to believe, whether Deane should be penalized for having taken to the press, and what to do with Arthur Lee. In response to the allegations, Tom Paine—who was currently employed as a secretary for the committee of foreign affairs, formerly the committee of secret correspondence—took the pages of the *Packet* repeatedly over the next month to admonish Deane and vindicate Lee and his allies in Congress. In his first response, signed “Common Sense,” Paine countered Deane’s claims about Lee and questioned his trustworthiness: “A public

⁸¹ *Pennsylvania Packet* (Dec. 8, 1778). Readex: America’s Historical Newspapers (Accessed May 26, 2017).

man, Mr. Deane's former character, ought to be as silent as the grave; for who would trust a person with a secret who showed such a talent for revealing?"⁸² He proceeded to state that over the coming days he would "lay before you some very interesting facts and materials," which he felt was necessary because "the public should know the whole, for upon that only can they form a proper judgment."⁸³ Two weeks later, Paine suggested the public might ask why Deane saw fit at this time to come out with these allegations and that the answer would reveal Deane himself was under suspicion in Congress for his behavior.⁸⁴ Despite accusing Deane of violating the integrity of his public position by disclosing secrets in print, Paine proceeded to set the record straight by revealing information he had obtained in his capacity as committee secretary. Deane had not, he disclosed, sought a third audience with the Congress; he was facing an investigation by Congress into his accounts, which he had not yet produced. "There is something in this concealment of papers that looks like an embezzlement," Paine suggested. He then laid out the precise suspicion that Deane had portrayed a deal made with the French royal agent Pierre August Caron de Beaumarchais as a loan when it was in actuality a gift, to the end of lining his pockets. Paine repeatedly urged the public to trust him as secretary for the committee of foreign affairs. Eventually, he lost his job over this revelation of what was considered secret information, though Paine had argued he was actually vindicating the peoples' "representatives" from the false insinuations made against them.

When a vote was finally taken on whether to recall Lee (which failed), the records of yeas and nays mysteriously appeared in the *Packet*. Henry Laurens railed in his notes on May 8, 1779 that "the whole truth should have been published, if publication was necessary or right, and

⁸² *Pennsylvania Packet* (Dec. 15, 1779). Readex: America's Historical Newspapers (Accessed May 26, 2017).

⁸³ *Ibid.*

⁸⁴ *Pennsylvania Packet* (Dec. 29, 1779). Readex: America's Historical Newspapers (Accessed May 26, 2017).

the whole truth will be published—and Gentlemen remember this repeated offer on my part.”⁸⁵ Thus, even though Paine had been dismissed for exposing confidential information in the press, some members were beginning to reconsider their adherence to secrecy in light of repeated leaks.

Immediately following the resolution of the Deane-Lee dispute—at least for the time being—the Congress voted to publish its journals on a weekly basis.⁸⁶ Though a significant step considering the lag in publication up to then, the weekly journals were still by no means intended to present a full view of deliberations. As delegate William Floyd noted in delivering the first weekly journal to New York Governor George Clinton: “All matters of a secret nature are put on a separate journal and will not be printed until the war is ended.”⁸⁷ This statement implied that the secret journals were perhaps intended for publication upon the conclusion of the war. In the meantime, delegates continued to be frustrated by the limitations of the published journals for the purposes of explaining themselves to their constituents back home. Later in May, delegate James Lovell wrote to the Deputy Secretary of the Massachusetts Council, John Avery, noting that “the published journals will in part explain my grounds; the secret ones would fully do it.”⁸⁸ In mid-June, he complained to John Adams that “you will be scarcely able by our motley journals to understand what we are about.”⁸⁹ Though it ultimately amounted to a token gesture, the Congress had nonetheless taken a small step toward opening their work to public view by printing their journals weekly.

Pressure, however, continued to mount as further leaks seemed to prove how inadequate the weekly publication of the journals was to showing what was actually taking place. On June

⁸⁵ Henry Laurens, Notes of Debates, May 8, 1779, in *Letters of members of the Continental congress, Vol. IV*, Edmund C. Burnett, ed., (Washington, D.C.: Carnegie institution of Washington Publication, 1963 reprint), 201.

⁸⁶ William Floyd to the Governor of New York (George Clinton), May 14, 1779, in *Letters of members of the Continental congress, Vol. IV*, 211.

⁸⁷ *Ibid.*

⁸⁸ James Lovell to Deputy Secretary of the Massachusetts Council (John Avery), May 17, 1779, in *Letters of members of the Continental congress, Vol. IV*, 217.

⁸⁹ James Lovell to John Adams, June 13, 1779, in *Letters of members of the Continental congress, Vol. IV*, 262.

19, 1779, as they opened a discussion of a set of proposed peace terms that had been under consideration for a few months, Robert Morris reportedly “said our pretended private business was no secret, it was known and talked of in every one of the states,” to which Thomas McKean “confirmed this as to every county town in Pennsylvania.”⁹⁰ The French minister in America had prodded Congress early in 1779 to prepare its conditions for peace after Spain had declared it would inform Britain of its intent to serve as a mediator or else enter the war.⁹¹ Laurens reported in his notes having announced that he had “reason to believe it [the proposed terms] has been transmitted to South Carolina, but not by me. I have hitherto held myself restricted from speaking or writing on the subject.”⁹² For months, the delegates had been discussing the proposed peace terms, with one of the main sticking points being access to fisheries off the coast of New England.⁹³ As with all their deliberations, the peace conditions and thoughts on it were closely guarded, but internal disagreements led some members to bring the issue to the press.

In the June 23 issue of the *Pennsylvania Gazette*, “Americanus” picked up a report that had appeared in the *Maryland Gazette* nearly a month earlier which had suggested there would be a strenuous military campaign over the summer that could have been avoided had the Congress acted more wisely. “If the present distresses and ravages of war, and the expence of our blood and treasure, is owing to the dishonest and unwise practices and conduct of any man, or sett of men,” Americanus wrote, “they ought to be exposed to the public, and the measures they have so fatally pursued to be reprobated and condemned.” There was a dangerous faction at work within the Congress, he suspected and “if so, it is high time that not only the Journals of

⁹⁰ Henry Laurens, Notes of Proceedings, June 19, 1779, in *Letters of members of the Continental congress, Vol. IV*, 276.

⁹¹ Rakove, *Beginnings of National Politics*, 255

⁹² Henry Laurens, Notes of Proceedings, June 19, 1779, in *Letters of members of the Continental congress, Vol. IV*, 276.

⁹³ Rakove, *Beginnings of National Politics*, 256-257.

Congress and the ayes and noes should be published, but that the doors of the House should be thrown open.” If this were done, “their constituents [would] have an opportunity of judging for themselves who are the men who oppose themselves to the peace and happiness of the states.” Though he proclaimed to be “very sensible of the impropriety and danger, as well as of the absurdity, of debating in public on the terms to be proposed in a treaty,” Americanus concluded that “when this bleeding country is told that an execrable faction prevents peace, it is but natural to enquire where this faction is, who compose it, and what are their views.”⁹⁴ It was an overt call for Congress to open its deliberations to public view, based on an insinuation that the delegates were using secrecy as a tool to subvert the best interest of the country.

The summer only got worse for the delegates, as the proposed peace terms were not the only issue for which they were coming under scrutiny. In the *Pennsylvania Packet* three days later, a letter signed “Leonidas” lamented the state of continental money, which was suffering from massive inflation, and asked why the Congress, though aware of the problem, did nothing. Set up in the form of a speech “which ought to be spoken to Congress” on the issue, “the speaker first emphasizes the fact that the people are their masters, Congress their servants.” A bold pronouncement of the relationship assumed between delegates and “the people,” Leonidas cast the Congress as a representative body of the population, not just of state governments. “Rouse then gentlemen, to a sense of danger of these infant states that are committed to your care,” he urged. “Let us read something more than the Yeas and Nays and questions for recommitting and postponing business in your journals,” Leonidas suggested, tying the delegates’ representative function to an obligation to work in public view.⁹⁵ Another anonymous piece in the *Maryland Journal and Baltimore Gazette* printed on June 29—and subsequently reprinted in at least five

⁹⁴ Letter from Americanus in the *Pennsylvania Gazette*, cited in *Letters of members of the Continental congress*, Vol. IV, 277.

⁹⁵ Leonidas, *Pennsylvania Packet*, in *Letters of members of the Continental congress*, Vol. IV, 295.

additional newspapers over the coming month—tied together the Deane-Lee spat and the rumors about the proposed peace terms into a general distrust of Congress. The author, “O Tempora! O Moses!,” alleged that there was a “junto early formed in Congress” that was managing to manipulate the proceedings to block all progress.⁹⁶

The “Leonidas” letter went too far for some of the delegates, who called on July 3 for the printer of the *Packet*, John Dunlap, to be summoned before Congress to answer delegates’ questions about the publication. According to Laurens’s notes, Elbridge Gerry proposed the measure after noting that “if such infamous publications are to pass without proper notice, tis time for Congress to go home and other men to come in their stead.”⁹⁷ But others urged restraint, noting that “it would be lowering and disgracing the dignity of Congress to take any notice of the printer or author,” as Thomas Burke reportedly declared. Laurens, who had supported calling in the printer, was not so trusting of the motives behind these delegates’ pronouncements. “When men seem to be honest, they calculate for the accomplishment of interested or wicked purposes,” he noted in his diary, “when they speak truth, it is in order to deceive.”⁹⁸ In a letter to Richard Henry Lee, dated June 22, Laurens seemed to lament that though the possibility of open doors had appeal, it was not tenable: “As to the hearing and open doors I believe it would be a proper means had we the proper men—but alas!”⁹⁹

Laurens’ profound reflection laid out a problem he and likeminded delegates wrestled with over the following months. It seemed the only way to counter the leaks would be to release more information, which risked betraying secrets. In a letter back to Laurens the next month, Lee

⁹⁶ “O Tempora! O Moses! *Maryland Journal and Baltimore Advertiser*, in *Letters of members of the Continental congress, Vol. IV*, 307.

⁹⁷ Henry Laurens, Notes of Proceedings, July 3, 1779, in *Letters of members of the Continental congress, Vol. IV*, 295.

⁹⁸ *Ibid.*

⁹⁹ Henry Laurens to Richard Henry Lee, June 22, 1779, *Richard Henry Lee Papers*. American Philosophical Society. Mss.B.L51.

referred to the recent publications in the *Packet* and *Maryland Journal and Baltimore Advertiser* as cases where authors were “so artful in garnishing falsehood with truth that the varnished tale goes on with perhaps the greater number, who neither are, or will take pains to be informed.” He seemed at a loss when it came to determining how to combat what he characterized as a pernicious problem. “I know the knaves who write these things have the advantage, because they cannot be completely exposed without exposing secrets that it would be very unwise to publish at present,” he lamented. “This the true friends of America will not do, and thus those Scribblers know well, which induces them to come forward with so much effrontery.”¹⁰⁰ But given what had been introduced into public discussion, other delegates’ thinking seemed to be evolving when it came to the gravity of maintaining secrets.

For his part, Laurens believed the time had come to work in full public view—with the steady stream of leaks and what he felt to be manipulation of the truth based on a conviction that the Congress would stick to secrecy, it would be best to simply remove the restrictions. Reporting to William Livingston, the governor of New Jersey, on July 5, Laurens urged him to take action “if this sketch for reformatations shall not meet your Excellency’s judgment.” “Order our doors to be opened that our masters may discover what we leave undone,” he concluded. Laurens’ word choice was identical to that of “Leonidas” in his published call for greater publicity in Congress and suggests a particular conception of the representative function Congress was fulfilling.¹⁰¹ He may have come to this conclusion partly as a result of his quarrel with Robert Morris, whom he had questioned with regard to accounting. When Morris published a vindication of his behavior in the *Packet* on July 8, saying that his accounts had been

¹⁰⁰ Richard Henry Lee to Henry Laurens, July 10, 1779, in *Letters of members of the Continental congress, Vol. IV*, 308. Gouverneur Morris made a similar statement to Robert Livingston in a letter dated July 22, 1779. See: *Letters of members of the Continental congress, Vol. IV*, 384.

¹⁰¹ Henry Laurens to William Livingston, July 5, 1779, in *Letters of members of the Continental congress, Vol. IV*, 299.

investigated and found to be sound, Laurens was livid. In an undated letter to Morris, likely sent shortly after the publication, Laurens conveyed his frustration at Morris's decision to bring the quarrel into print. He challenged Morris to "publish all the papers respecting the transaction. I have copies of them at your service." If Morris wanted to make the issue a public matter, Laurens called for him to put the whole story out there. "You and I may safely foretell what will be the issue. Superficial readers will say 'why this seems to be fair enough.' Men of business and discernment will more gravely declare, 'this is a very extraordinary and very dangerous mode of disposing of the public money.'"¹⁰² Laurens seemed to have had his fill of symbolic nods to publicity; if the delegates were going to skirt secrecy, they best bring everything into the open.

Over the coming years, the push for greater publicity in congressional work did make strides. The Articles of Confederation, ratified in 1781, included a provision requiring regular publication of the journals, with clearly delineated exceptions of "such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy."¹⁰³ Though this clause did not necessarily result in a more open public communication of information, there does appear to have been a more frequent flow of facts from the President and/or the Committee at Headquarters—which was travelling with the army—to the governors and state assemblies in the early 1780s. Many of these missives requested secrecy due to the contents being of a military nature, but state governments were being let in on those secrets to a seemingly greater extent.

When the war finally drew to a close, the matter of peace negotiations posed yet another test for congressional delegates when it came to deciding what to keep secret. As news arrived of the negotiation, it was officially considered secret. The Pennsylvania delegation apologized to

¹⁰² Henry Laurens to Robert Morris, un-dated, in *Letters of members of the Continental congress, Vol. IV, 304*.

¹⁰³ Articles of Confederation, Article IX (March 1, 1781), accessed May 25, 2017, The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/artconf.asp. Rahul Sagar has cited this provision as precedent for what would be debates in the Federal Convention in 1787. See: Rahul Sagar, *Secrets and Leaks: The Dilemma of State Secrecy* (Princeton: Princeton University Press, 2013), 21.

the state's executive Council, in December 1783, for not being able to provide details of recently arrived letters from ministers abroad. "As they consist principally of steps taken by our ministers in their negotiations for peace, and of conversations of a secret nature, which they have had with the ministers of some European courts, we are not at liberty to copy them for your inspection," they wrote.¹⁰⁴ Yet other delegates saw fit to share the information with people they believed had a need to know. Writing to George Washington, for example, Arthur Lee noted that though "Congress have thought proper to enjoin secrecy with regard to communications of some of our ministers ... I apprehend, the secret will be at least as safe with your excellency as with us; and it seems to me as necessary that you should be circumstantially informed."¹⁰⁵ With the end of war, it seemed the pressure to keep secrets lessened.

Though the Congress continued to exist until 1789 when the new Federal government was put in place with the ratification of the Constitution, the center of political life shifted to the states after the war. It was in these laboratories that American republics were being formed and the problems of political representation were primarily being worked out. Even efforts to open Congress to public view seemed to shift to the states. In a letter to the Massachusetts Assembly in June 1784, congressional delegate Francis Dana urged the state legislature to "require their delegates in Congress to keep them informed of what passes there not of a real secret nature, especially of all money matters." He suggested that: "An apprehension that their proceedings will be carefully reviewed by those bodies, will introduce into Congress more circumspection, more prudence, and oeconomy; and will serve to establish them in the full confidence of the

¹⁰⁴ The Pennsylvania Delegates to the Pennsylvania Council, Dec. 30, 1783, in *Letters of members of the Continental congress, Vol. VII, 403*.

¹⁰⁵ Arthur Lee to George Washington, March 13, 1783, in *Letters of members of the Continental congress, Vol. VII, 81*.

whole union.”¹⁰⁶ Aside from the occasional effort like Dana’s, the spotlight largely shifted away from the Congress.¹⁰⁷ In the meantime, congressional papers languished in “iron chest[s],” according to Thomson’s papers.¹⁰⁸ Though questions of publicity would rear their heads again with the creation of the new federal government, in the interim, they were mainly being asked and worked out at the state level.

While the Congress was meeting in secret, a number of the state governments founded starting with the declaration of American independence took the opposite approach. A brief overview of the way secrecy was treated in the state constitutions adopted from 1776 to 1780 makes clear that this question was top of mind for those forming new governments, even if there was not complete uniformity in how it was viewed. States broadly fell into three categories: those that did not broach the topic of secrecy or publicity explicitly in the constitutions; those that saw fit to define provisions for maintaining secrecy, particularly in executive organs; and those that sought to guarantee the publicity of legislative proceedings. The way states handled this question spoke to visions of the separation of powers between executive and legislative and, in the case of those that ensured publicity, to the way legislatures were to function as representative. Aside from the few Constitutions that did not mention secrecy or publicity—Delaware, New Hampshire, New Jersey, and South Carolina—the rest took a stance on the way secrecy was to be used in the government.¹⁰⁹ Addressing the issue also suggests the extent to which this was becoming a question, particularly in setting up republican governments.

¹⁰⁶ Francis Dana to the Massachusetts Assembly, June 11, 1784, in *Letters of members of the Continental congress*, Vol. VII, 549.

¹⁰⁷ Jack Rakove also notes this declining attention on Congress, citing its continuing to meet in secret and its limited capacity to act as reasons why little attention was paid to it. See: Rakove, *Beginnings of National Politics*, 355.

¹⁰⁸ Charles Thomson to Benjamin Brankson, Aug. 31, 1784, *Charles Thomson papers*. Historical Society of Pennsylvania, #0658.

¹⁰⁹ Note that neither Connecticut nor Rhode Island adopted state constitutions until the nineteenth century.

Before establishing constitutions, however, each colony had created committees as colonial authority broke down and violence broke out. Starting in the summer of 1774, makeshift bodies formed up and down the coastline to fill the power vacuum. These provincial conventions, congresses, councils, and committees were created alongside local organizations at the town and county levels—all of which were dedicated to advancing the American cause of resistance to perceived British persecution. Aside from military preparations, as violence was anticipated and then broke out in the spring of 1775, these committees in particular were concerned with discerning enemies among the populations they sought to govern. They formed a crucial link, as Rakove has argued, between localities and the continental effort.¹¹⁰ In many ways they were the basis of the Continental Congress's authority on both ends—in providing expressed support for its initiatives and then in enforcing its directives at the local level. In fulfilling this role of enforcement, concerns with secrecy turned into systematic vigilance in the form of surveillance and a valorization of publicity in the sense of exposing enemies.

The collapse of colonial governments occurred at varying points depending upon the colony, leading to an uneven transfer of authority to newly established bodies. At the colony, or state, level, legislative bodies called variously congresses or conventions were convened and frequently appointed either committees or councils of safety as quasi-executive organs. In some states, these committees or councils tended to be shorter lived than in others where they became more fixed features of new governments. In Massachusetts, Virginia, and in the Carolinas, for example, committees appointed by the interim provincial congresses in 1774-75 were largely disbanded by 1776.¹¹¹ In the mid-Atlantic colonies of New York, New Jersey and Pennsylvania,

¹¹⁰ Rakove, *Beginnings of national politics*, 30.

¹¹¹ Agnes Hunt, *The Provincial Committees of Safety of the American Revolution* (Cleveland, Ohio: Press of Winn & Judson, 1904), 10; 11; 111; 118, 128, 130.

state-level committees of safety remained active through 1777 and even into 1778.¹¹² In still other cases, like Connecticut and New Hampshire, state wide committees of safety continued to operate after the end of the war, disbanding only in 1783 and 1784, respectively.¹¹³ There is little scholarship on these quasi-executive bodies at the state level, though they are beginning to receive attention.¹¹⁴

A number of the newly created provincial conventions and congresses met behind closed doors and the committees or councils of safety they appointed were sometimes not required to report their activities to the body that had created them.¹¹⁵ These state-level committees, which were often formed to stand-in as the government when legislatures lacked quorum, were primarily tasked with procuring provisions for the militia, summoning it when merited, coordinating with the army, enforcing the embargo, and monitoring for enemies of the American cause. The committees, which ranged in size from a handful to a few dozen members, were the principal points of contact for continental political and military officials seeking information or delivering directives. Committees were also instructed by the interim state legislatures to “keep watch,” both for possible military attacks, but also for threats from within the population. In this capacity, they took on quasi-judicial roles as many of them became a point, or sometimes the

¹¹² Hunt, *Provincial Committees of Safety*, 63, 68, 70, 76, 79, 82.

¹¹³ *Ibid.*, 21, 30, 53.

¹¹⁴ Joshua P. Canale, *American dictators: Committees for public safety during the American Revolution, 1775-1784* (Unpublished dissertation, State University of New York at Binghamton, 2014), 3.

¹¹⁵ The New York Provincial Congress, for example, explicitly voted on May 22, 1775 in its first meeting: “That for the dispatch of business and to prevent interruptions, the doors at our meeting shall be shut and that none but members be permitted to take copies of our proceedings of this Congress.” See: *Journals of the Provincial Congress, Provincial Convention, committee of safety and council of safety of the State of New York, Vol. II: 1775-1776-1777* (Albany: Printed by Thurlow Weed, Printer of the State, 1842), 8; On October 18, 1774, the Massachusetts Provincial Congress likewise “Ordered that the galleries be now cleared, and that the doors of the house be kept shut, during the debates of the Congress until further order thereof.” See: *The journals of each Provincial congress of Massachusetts in 1774 and 1775, and of the Committee of safety* (Boston: Dutton and Wentworth, 1838), 22. See also: Hunt, *Provincial Committees of Safety*, 17; 30; 69.

final point, of trial for suspected “Tories,” or loyalists.¹¹⁶ Regardless of the way in which they originated, these local committees shared a common motive of exercising vigilance.¹¹⁷

As states drafted constitutions to establish more permanent government structures, publicity was more of a norm and secrecy, it seems, could no longer be expected. Those state constitutions that included provisions for secrecy tended to do so in relation to the executive arm of the government they created. In Maryland, for example, the need for secrecy was mentioned in relation to the Council of the Governor—a small body of men selected from and by the state legislature to advise the executive. Noting that the council would be required to keep a record of proceedings, the constitution also allowed it to appoint its own clerk, “who shall take such oath of support and fidelity to this State, as this Convention, or the Legislature, shall direct; and of secrecy, in such matters as he shall be directed by the board to keep secret.”¹¹⁸ The Virginia constitution created an identical council “to assist in the administration of government,” and similarly noted “this Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy, in such matters as he shall be directed by the board to conceal.”¹¹⁹ Using the stronger term “conceal,” the Virginia clause nonetheless shared the same intent as that in the Maryland framework. Georgia was the final state to reference a need for secrecy and provisions for maintaining it. “When any affair that requires secrecy shall be laid before the governor and the executive council,” it was up to the executive to administer an oath for members of the council and “to the secretary and other officers necessary to carry the

¹¹⁶ This summary description of the committees’ composition and operations is drawn from the account of each state’s committees in: Hunt, *Provincial Committees of Safety*.

¹¹⁷ For more on these committees see: Carter, “Practicing Politics in the Revolutionary Atlantic World.”

¹¹⁸ Constitution of Maryland, Article XXVI (November 11, 1776), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/17th_century/ma02.asp.

¹¹⁹ Constitution of Virginia (June 29, 1776), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/subject_menus/18th.asp.

business into execution.”¹²⁰ The oath entailed a pledge, when any secret business came up, to not “in any manner whatever, either by speaking, writing, or otherwise reveal the same to any person, whatever, until leave given by the council, or when called upon by the house of assembly.”¹²¹

These provisions for secrecy with regard to the executive wing of governments helped to distinguish executive from legislative power, partly on the basis of the manner in which they were to operate. Moreover, though the constitutions did not directly address provisions for publicity in the legislature, what these clauses suggest is that some degree of openness may have been assumed. Provisions requiring oaths to be taken by members and/or clerks to the executive councils marked the executive as a realm of government authority requiring a certain degree of secrecy in its operations. The implied contrast was to the legislative branch, which these constitutions did not address with regard to secrecy. Furthermore, all three of these constitutions took care to note that the oath would be administered with regard only to issues the council and/or governor deemed needed to be concealed. The further implication of this decision being that there were areas of state activity where secrecy was not required. Finally, the fact that these constitutions addressed the necessity of secrecy at all suggests that it could not be assumed that these entities could operate in secret and that they could not expect to keep all activity secret. Even in guaranteeing the ability of executive councils to employ secrecy, the provisions were acknowledging the limits of its legitimate use.

While these three constitutions carried implied notions about the publicity of the legislature’s work, five other states made explicit guarantees for it. These states went beyond the implied presence of publicity in government to mandate that legislatures work in view of the

¹²⁰ Constitution of Georgia, Article XXX, (February 5, 1777), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/ga02.asp.

¹²¹ Ibid.

public. In doing so, the constitutions implied particular understandings of political representation. Requiring a precise degree of publicity in their proceedings suggested that deputies in the legislature were to be held accountable by those who had sent them. There was a need to know what happened inside state houses for the government to function properly.

Among the most limited of those constitutions was that of North Carolina, which guaranteed free press in the state and also called for printing of the journals of both Houses and the General Assembly to be “printed and made public, immediately after their adjournment.”¹²² The constitution also included a provision allowing for the “yeas and nays, upon any question” to be entered on the journal when a motion was made and seconded to do so.¹²³ Though North Carolina’s constitution fell short of requiring open doors, it nonetheless recognized the value in printing journals regularly and allowing at least a limited window into the activity inside by noting that the votes would be published when called for. In requiring regular and rapid publication of the journals and the notation of votes when demanded, the constitution of North Carolina went some way to defining the nature of political representation in the legislature. Deputies were to be held accountable for their decisions. Even if it was not possible to know everything one’s representative said in real time, the constitution seemed to recognize a need for constituents to inquire as to how representatives voted, and without much delay. Still, the constitution upheld the sense that only completed work was to be exposed to public view, much in the same manner as delegates in the Continental Congress maintained through the 1780s.

In Massachusetts, where the constitution was not adopted until 1780, the relationship between representative government and working in public view was articulated mainly in the declaration of rights, as opposed to being outlined in the procedural sections of the framework.

¹²² Constitution of North Carolina, Articles XV and XLVI, accessed May 25, 2017, The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/nc07.asp.

¹²³ *Ibid.*

Aside from requiring the recording of yeas and nays when a two-thirds vote of the legislature was taken to override the governor's objection to a proposed law, the constitution abstained from articulating procedural guarantees for the ideals laid out in the declaration.¹²⁴ Despite the lack of procedural clarity, Article V of the declaration of rights stated that all power was lodged in the people and that “the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are the substitutes and agents, and are at all times accountable to them.”¹²⁵ As a result of this relationship, the people “have a right to require of their lawgivers and magistrates an exact and constant observation of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.”¹²⁶ Though the constitution established this principle, the way in which it was to be carried out in practice was left more open-ended than it was in North Carolina, which lacked to more explicit theoretical definitions underpinning its procedural requirements.

Unlike in North Carolina and Massachusetts, the states of New York, Pennsylvania, and Vermont went further in guaranteeing the publicity of legislative work, providing for it throughout the legislative process rather than just at the end of a session. Working in public view, in fact, was central to fulfilling their roles as representative organs. While these constitutions allowed for exceptions to working with open doors and printing journals in cases “when the welfare of the state shall require their debates to be kept secret,” the default was to be open.¹²⁷ The importance of these requirements should not be underestimated. Prior to the Revolution, colonial assemblies had been moving toward greater publicity in the form of

¹²⁴ Constitution of Massachusetts, Part II, Article II (1780), accessed May 25, 2017. National Humanities Institute. <http://www.nhinet.org/ccs/docs/ma-1780.htm>.

¹²⁵ *Ibid.*, Part I, Article V.

¹²⁶ *Ibid.*, Part I, Article XVIII.

¹²⁷ Constitution of New York, Article XV, (April 27, 1777), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/ny01.asp.

publishing fuller journals more regularly and, in Pennsylvania, opening doors to meetings.¹²⁸ But establishing a constitutional requirement to allow a public audience in legislative meetings was radical in that it provided a positive guarantee, rather than a tolerance. While an audience was generally allowed inside the House of Commons by this point, for example, it was merely tolerated, not required; the public and reporters could, and often were, removed at the request of members.¹²⁹ This provision requiring open doors, then, was a significant way in which the states' constitutions were radical at the time they were promulgated. Moreover, the deliberate translation and circulation of these constitutions in France, carried out by Ben Franklin, raises the question of whether such procedures may have been more influential than those of Congress on the thinking of French figures who would convene in Versailles for the Estates General in 1789.¹³⁰ There, as will be discussed in Chapter 4, delegates adopted a similar commitment to maintaining open doors during their deliberations and to publicizing their proceedings.

Looking at the language in these constitutions is the first step to grasping their centrality to enacting political representation in a particular fashion. The New York state constitution, which was not passed until April 27, 1777, explicitly made publicity a core tenet of its legislature. Article 15 noted that “the doors, both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret.”¹³¹ Not only were the meetings of the upper and lower houses of the legislature to be public, but “the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New York; and except in such parts as they

¹²⁸ Olson, “Eighteenth Century Colonial Legislatures and Their Constituents,” 564.

¹²⁹ P.D.G. Thomas, *The House of Commons in the Eighteenth Century* (Oxford: Clarendon Press, 1971), 138.

¹³⁰ Benjamin Franklin's copy of one of these collections of state constitutions can be found in the Library Company of Philadelphia. See: *Recueil des loix constitutives des colonies angloises: confédérées sous la dénomination d'Etats Unis de l'Amérique-Septentrionale* (Philadelphia (Paris), 1778). Library Company of Philadelphia, Am 1778 U.S. Cons Log 2771.D.

¹³¹ Constitution of New York, Article XV.

shall, as aforesaid, respectively determine not to make public be from day to day (if the business of the legislature will permit) published.”¹³² The state’s new framework guaranteed the importance of publicity in its operations, explicitly calling for the opening of doors to the legislature and the daily publication of its journals. Unlike the Continental Congress, those delegates who drafted the New York constitution stated the necessity of exposing the work of its legislature to public scrutiny as it was happening, rather than only upon its completion. This was tantamount to defining the relationship between elected representatives and the people on whose behalf they were speaking; the constituent had power to observe the representative throughout the process of crafting legislation, to form a judgment of the elected official based on this full picture as opposed to simply agreeing or not with completed decisions.

Some six months prior to the adoption of New York’s constitution, the state of Pennsylvania had promulgated its own. In it, a cluster of clauses spelled out a very precise vision for how political representation was to work in the state’s legislature. Much like in New York, the constitution declared that “the doors of the house in which the representatives of the freemen of this state shall sit in general assembly, shall be and remain open for the admission of all persons who behave decently, except only when the welfare of this state may require the doors to be shut.”¹³³ Even in this clause, however, the Pennsylvania constitution was more specific than that of New York in referring to the legislature as the “representatives of the freemen of this state,” making very clear the connection between working with open doors and being representatives. The constitution in Vermont, which was passed on July 8, 1777, represents a

¹³² Ibid.

¹³³ Constitution of the State of Pennsylvania, Section 13 (September 28, 1776), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/pa08.asp.

nearly direct copy of this clause of the Pennsylvania constitution.¹³⁴ But Pennsylvania went further. Not only was the legislature to meet with open doors and print its journals—with vote lists (and the reasons motivating of individual votes if a member desired)—on a weekly basis, the public was to be actively brought into the legislative process.

Section 15 of the Pennsylvania constitution stated that: “all bills of public nature shall be printed for the consideration of the people, before they are read in general assembly the last time for debate and amendment.” This was required “to the end that laws before they are enacted may be maturely considered, and the inconvenience of hasty determinations as much as possible prevented.” And not only were the laws to be printed for public consideration, but “for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.”¹³⁵ The un-elected public was to be brought into the legislative process as active participants, informed enough to develop and express opinions on laws under consideration with the implied purpose of influencing their adoption. Moreover, press freedom was declared, but for an articulated purpose in Pennsylvania: “the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.”¹³⁶ Here, the constitution came as close as any ever had to defining a role for the press as a watchdog in a republican government. While guarantees of press freedom in other state constitutions, and rhetoric about its importance to liberty in the Anglo-American tradition certainly implied this role, the Pennsylvania constitution made explicit the relationship between press and representative government. In such a structure, the un-elected public and the press were to be active participants in governing. As elected representatives, members of the state

¹³⁴ Constitution of Vermont, Section XII (July 8, 1777), accessed May 25, 2017. The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/vt01.asp.

¹³⁵ Constitution of Pennsylvania, Section 15.

¹³⁶ Constitution of Pennsylvania, Section 35.

legislature were required to work in public view, explain actions to the people and welcome their opinions in the law-making process, and submit to scrutiny in all their work.

Pennsylvania became a radical model for how to run an independent republic. The legislature was the training ground for political reporters who would later cover the federal House of Representatives; Matthew Carey and Thomas Lloyd both honed their early shorthand systems while covering the Pennsylvania Assembly during the confederation period. When the framers of the Federal Constitution convened in the summer of 1787 and complained about an “excess of democracy” in the state governments, provisions like those in New York and Pennsylvania were chief among their concerns. In fact, the Pennsylvania Constitution, widely considered to be the most “democratical” of those implemented during the war and confederation years, provoked ongoing debate from the moment it was adopted. Moreover, when the delegates to the Federal Convention arrived in Philadelphia, Pennsylvania’s constitution was in crisis. Much of the subsequent debate over ratification of the Federal Constitution in Pennsylvania was influenced by existing divisions there over the state’s own constitution.

Keeping secrets had been central to the operation of the Continental Congress during the American War of Independence, even as a general suspicion of secrecy swept through communities up and down the eastern seaboard. During the war, publicity was primarily prized as a tool by which committees of safety exercised vigilance within their localities. Surveillance was used by interim governmental entities to expose enemies, while simultaneously proving to be a specter for political officials who guarded their communications closely. In the midst of a military conflict and conducting diplomatic negotiations abroad, delegates to the Congress were cautious to keep their activity confidential. And at the outset, they seemed to face little criticism

for doing so. Perhaps this was because they were perceived to be a temporary body, to represent the colonies rather than the people, and to be generally reactive to expressions of public opinion.

But when people perceived a government to be permanent, and to be representative, its use of secrecy was less tolerated. As Congress became a more entrenched entity with the drafting of the Articles of Confederation in 1777 even though the war was still waging, the delegates faced increasing scrutiny for working behind closed doors and limiting the publication of their journals. A series of leaks in 1779 pushed the case for greater publicity, as delegates themselves began to consider the benefit of bringing more into public view. Though Congress never did open its doors to the public, it may have been primarily because its importance waned during the confederation period. When Americans set up republican governments in the states, built around representative legislatures, they almost all assented to a view that publicity was necessary and expected. While some state constitutions went further than others in guaranteeing publicity in the work of legislatures and carving out a role for the press in scrutinizing government operations, even those that allowed for secrecy suggested in doing so that some degree of publicity was expected. Allowing for public scrutiny of representative legislatures was increasingly normalized as multiple states seemed to endorse it.

Yet, as the framers met to form a federal government in 1787, publicity was still far from being a standard expectation. In fact, at least one of the most prominent men at the time felt one of the Continental Congress's deficiencies was a lack, not an excess, of secrecy. Writing to Henry Knox in the winter of 1787, George Washington gave his diagnosis of the problems with the existing government as such:

The System on which you seem disposed to build a national government is certainly more energetic, and I dare say, in every point of view is more desirable than the present one; which, from experience, we find is not only slow—debilitated—and liable to be thwarted by every breath, but is defective in that

secrecy, which for the accomplishment of many of the most important national purposes, is indispensably necessary; and besides, having the Legislative, Executive & Judiciary departments concentered, is exceptionable.¹³⁷

Though he confided in the same letter that he did not wish to participate in the convention and declared he that doubted it would succeed, Washington concluded that: “after what I have seen, or rather after what I have heard, I shall be surprised at nothing.”¹³⁸ Indeed, Washington would go on to preside over the Federal Convention—which would be held behind closed doors and under obligation of secrecy—and produce the United States Constitution.

¹³⁷ *The Papers of George Washington Digital Edition, Volume 5*. (Charlottesville: University of Virginia Press, Rotunda, 2008), 7. Rahul Sagar identified this quotation as evidence that the framers were inclined to support the use of secrecy in government. See: Sagar, *Secrets and Leaks*, 21.

¹³⁸ *Ibid.*