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John Dickinson: The Development and Deployment of a Legal Mind: 1754-1774

A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelor of Arts / Science in Department from
William & Mary

by

Sophie Anne Rizzieri

Accepted for High Honors
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John Dickinson: The Development and Deployment of a Legal Mind: 1754-1774

Introduction

In the musical *1776*, John Dickinson sings “Come ye cool, cool, conservative men...To the right, ever to the right,” as he rejoices over John Adams’s absence from the Congress. This is the role John Dickinson is appointed to: the conservative, waspish, dour foil to John Adams. The HBO series *John Adams* casts Dickinson similarly: the timid, frail, nervous conservative doomed as the counterpart to the passionate, righteous John Adams. This is the image many will have in their minds when they think of John Dickinson, if they think of him at all. The historical record, however, tells a different story.¹

Neither a feeble conservative, nor uncertain in his politics, John Dickinson defended the British colonists’ rights.² Dickinson had a coherent philosophy, based on his understanding of the law. His work between 1764 and 1774 revealed that Dickinson’s political thought was far more complex than labels like “conservative” or “liberal” can convey. His published writing during this period carefully examined the specific statutes at issue, urging caution and moderation, while at the same time exhorting his readers to protest. His ideology was certainly not conservative, since he advocated for changes to Britain’s imperial policy, and ultimately for a structural transformation of the empire itself, and did not simply desire a return to the status quo.³ Unlike his fellow Pennsylvania Assemblyman and lawyer Joseph Galloway, Dickinson did

¹ *1776*, directed by Peter H. Hunt, (1972; Culver City, CA: Columbia Pictures Industries, 2002), DVD; *John Adams*, episode 2, “Independence,” directed by Tom Hooper, aired March 16, 2008, HBO. Peter Bastian, “Forgotten Founder: Revolutionary Memory and John Dickinson’s Reputation,” in *Remembering the Revolution: Memory, History, and Nation Making from Independence to the Civil War*, ed. Michael A. McDonnell, Clare Corbould, Frances M. Clarke, and W. Fitzhugh Brundage, (Amherst, MA: University of Massachusetts Press, 2013), 71.

² Milton Flower, *John Dickinson: Conservative Revolutionary*, (Charlottesville: University of Virginia Press, 1983). Flower argues that Dickinson fluctuates between radicalism, moderation, and conservatism throughout time.

³ William Murchison, *The Cost of Liberty: The Life of John Dickinson*, (Wilmington, DE: ISI Books, 2014), 34, 61, 84-88. Murchison argues that Dickinson was ultimately conservative in his views, comparing him to Edmund Burke. While it is true that Dickinson did not desire upheaval, his politics cannot be explained by conservatism.

not eventually join the Loyalist cause. Although he declined to sign the Declaration of Independence, he was a key framer of the Articles of Confederation and later the U.S. Constitution.

Nor was he a moderate, who managed to find the middle position.⁴ Dickinson's language was not incendiary. He was no Thomas Paine, and his language never approached the sort of inflammatory calls to arms as Paine's did. Dickinson urged caution, and advised taking a moderated approach. This moderation, though, was not moderation for the sake of centrism, and while his positions fell within the frame of other Revolutionary thinkers, he continually advocated for resistance to British policies. Even when pursuing radical change, he employed instead a lawyer's caution when faced with an uncertain, potentially volatile, situation. Dickinson's public addresses, like a lawyer addressing a judge or jury, were his reasoned attempts to connive his readers to follow his prudential advice.⁵

In focusing on Dickinson's political involvement from 1764 to 1774, I isolate the time period when he was working within the British constitutional system. In 1776 America declared its independence, and so the constitutional framework changed. Dickinson was a lawyer by profession, and can be counted among those in the period leading up to the Revolution who

Murchison's description, for example, of the meetings in 1774 that guided Pennsylvania's response to the Boston Port Acts make Dickinson out as a reluctant participant, who served only to moderate the radical impulses of his fellow committee members.

⁴ David Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, (Berkeley: University of California Press, 1965), 124-125. Jacobson argues that Dickinson "was not a systemic thinker," asserting instead that for Dickinson the will of the people was paramount. He describes Dickinson's politics as defined by his adherence to natural rights theory, constitutionalism, belief in the importance of the popular will, and moderation. Jacobson paints a portrait of a man who was not committed to any one system of thought, though the characteristics Jacobson attributes to Dickinson can be explained by his legal thought.

⁵ Sandra Sarkela Hynes, "The Political Rhetoric of John Dickinson, 1764-1776," abstract (PhD diss, University of Massachusetts, 1982), iv-vi. Hynes argues for an interpretation of Dickinson as a moderate. She argues that looking at his speeches reveals that he was not a moderate in that he held moderate positions, but in his rhetoric.

were “active lawyers” who engaged in “political theory.” They operated “outside of the courtroom” to compose tracts that created the Revolution.⁶ This group of lawyers, such as James Otis, Daniel Dulaney, John Adams, and John Dickinson, applied the lessons of the law to “a wider audience than judges and juries.”⁷ Dickinson’s politics were shaped by his training and practice as a lawyer.

I call the influence of his legal education, and his use of legal tactics, his “legal-mindedness.”⁸ This legal-mindedness can be seen through his focus on statutes, his learned style of rhetoric, and above all his persistent constitutionalism—his overriding conviction that the British constitution was a bulwark against despotism that needed to be preserved and reformed to protect essential political rights.. Since the constitution in eighteenth century British political thought included the government itself and the various societal norms and rights,⁹ Dickinson’s belief that the constitution needed to be preserved can be extended to his Whig political conviction in the balance of power politics and his assessment that Parliament in the 1760s and 1770s was illegitimately extending its power.

What some historians have seen as conservatism is better seen as a commitment to the English constitution born of his law education. His continued turn to history likewise was not nostalgia, but a knowledge of Greek and Roman history as well as the history of the British constitution.¹⁰ History for Dickinson was important because it demonstrated the rise and fall of

⁶ Peter Charles Hoffer and William James Hull Hoffer, *The Clamor of Lawyers: The American Revolution and the Crisis in the Legal Profession*, (Ithaca: Cornell University Press, 2018), vii-ix.

⁷ *Ibid.*, ix.

⁸ Charles J. Stillé *The Life and Times of John Dickinson, 1732-1808*. (Philadelphia: The Historical Society of Pennsylvania, 1891), 28; Stillé argues that Dickinson’s legal thought was based solely on a conservative understanding of the common law.

⁹ Bernard Bailyn, *The Ideological Origins of the American Revolution*, Fiftieth Anniversary ed, (Cambridge, MA: Belknap Press of Harvard University Press, 2017), 67-68.

¹⁰ H. Trevor Colbourn, “John Dickinson, Historical Revolutionary,” *The Pennsylvania Magazine of History and Biography*. 83, no. 3. (July, 1959), 272-273. Colbourn argues that the primary influence on Dickinson’s political thought was his historical knowledge. Colbourn calls Dickinson a “reluctant revolutionary,” branding him

politics, and provided examples and guides for the present. His view of history was that of a lawyer trained in the common law. His adherence to the constitution was predicated on its being the best guarantor of rights. Dickinson advocated for changes to the constitution as well. He believed up until 1774 that it was possible to preserve the constitution, which included both rights and the government, but came to realize that colonial independence had become necessary. He was reluctant to overturn the British constitution in July 1776 not because he was against independence but because the states lacked a new constitution that would grant stability and legitimacy.

Historians view Dickinson as less a provocative writer than someone like Thomas Paine, and attribute it to moderation born from the gentility of his upbringing, or the social climate in which he lived. Though these things are true, Dickinson's moderate tone is more helpfully seen as an outgrowth of his time in law school, where he heard lawyers argue and persuade. Instead of appealing to emotions and inflaming his readers, Dickinson demonstrated his case with statutes and facts of the case. By outlining the facts and providing analysis and recommendations for resistance, Dickinson argued the way a lawyer might to convince a jury.

Raised and surrounded by Quakers his whole life, Dickinson was undoubtedly influenced by Pennsylvania Quakerism. Quakers were politically active, and had developed a theory of constitutionalism. They advocated for individual rights, especially freedom of conscience, with a simultaneous concern for the unity of the state. These two seemingly contradictory ideas were harmonized with a strong notion of the methods one should use to enact political changes.

essentially a conservative. Colbourn argues that his interest in history, which he acknowledges was based in his law education, was what led to his conservative politics. History was a vital component to Dickinson's thought, but it did not lead to him stumbling to independence but rather a coherent theory of politics steeped in appreciation for the law.

Quakers were firmly against political violence, preferring persuasion. In this light, Dickinson's constrained rhetoric and commitment to the British constitution make sense.¹¹ However, another aspect of Dickinson's thought that contributed to his constitutionalism and his comparatively moderate rhetoric was his legal education. While at law school, Dickinson developed an appreciation for the law as both a historical and philosophical endeavor.¹² His political writings were clearly influenced by his legal training, as is evidenced by his use of legal tactics like providing objections and refutations to his own argument, laying out the facts and relevant statutory law of the case, and developing a constitutional theory of rights and resistance that was influenced by his study of the republican thinkers.

Part of Dickinson's constitutionalism was the way in which he viewed the problem and solution of British rule. The remedies Dickinson offered throughout his political career were based on the preservation of rights. Since the British constitution was composed of both the government and the people's rights, Dickinson believed that a reading of the constitution that gave more weight to rights could be achieved through understanding a more limited Parliamentary power. His proposed changes during the colonial crisis always prioritized remaining within the empire. After independence, when the British constitution was no longer the controlling framework, Dickinson threw himself into the creation of a new constitution.

¹¹ Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, (Cambridge: Cambridge University Press, 2009), 14; Jane Calvert, "Liberty Without Tumult: Understanding the Politics of John Dickinson," *The Pennsylvania Magazine of History and Biography*, 131, no. 3, (July 2007): 236, 261-262. Calvert argues that Dickinson's interest in the constitution informed his politics. She asserts that this constitutionalism, marked by preservation and considered change, was fundamentally Quaker. Adding Dickinson's legal education to his Quakerism as an influence expands our understanding of him as a thinker. Since we can see in his letters home to his parents from London, he was reading famed republican jurists like Sir Edward Coke. His political writings' reference Coke and William Blackstone, a contemporary of Dickinson's, make it clear he was thinking in terms of legal theory as well as Quakerism.

¹² Stanley K. Johannesen, "John Dickinson and the American Revolution," *Historical Reflections*, 2, no. 1 (1975): 33-34, 49. Johannesen makes reference to Dickinson's legal education and the formative nature of his time in at the Middle Temple. He confines Dickinson's influence to his *Letters from a Farmer in Pennsylvania*, and argues that his appeal came from his moderation. Dickinson, for Johannesen, was a member of the dying old guard, who stepped aside when the time came to the younger generation.

This thesis is divided into three chapters and an epilogue. In chapter one, I explore Dickinson's legal education. His letters home to his mother and father while he was at school provide a lens into Dickinson's intellectually rigorous pursuits. I conclude chapter one with an analysis of his first major political speech against a proposed change from a proprietary to a royal government for Pennsylvania. Chapter two explores Dickinson's response to the Stamp Act crisis and the Townshend Acts. Chapter three delves into his articulation of his theory of the constitution after the Boston Tea Party and the passage of the Intolerable Acts.

Chapter 1: 1754-1764

John Dickinson was born on November 13, 1732 to Samuel Dickinson and his second wife Mary Cadwalader Dickinson, both of prominent Quaker families. Conflict with the Quaker meeting in Talbot County, Maryland, led Samuel Dickinson to move his family to his estate in Kent, Delaware in 1739. There, John was tutored in Latin, history, rhetoric, and grammar before going to Philadelphia to learn the practice of law from eminent attorney John Moland.¹³ His education in the classics was typical for a boy with wealthy parents. The classics taught not only Latin grammar and Roman history, but also social responsibility and public virtue, and were thus an apt training for an aspiring lawyer.¹⁴ Samuel Dickinson was a justice of the peace in addition to a successful merchant and farmer, and so the law was a natural profession for his son. The Dickinsons thus sent their son to Philadelphia in 1750 at the age of eighteen to learn the law. John studied law with Moland for three years, from 1750-1753. In 1753, he left for London to study law at the Middle Temple, one of the Inns of Court. London was the center of law, and he would be able to watch and interact with the greatest legal minds in Britain. This opportunity was one he enjoyed with few of his peers. Among these were sons of the Randolph and Rutledge families of Virginia, along with Dickinson's own relation, Robert Goldsborough.¹⁵ Dickinson was well-educated in the classics and history, and had been immersed in the practical ins and outs of the law by the time he left for the Middle Temple.

Dickinson had a true appreciation of the classics, which he carried with him to London, where he went to receive further education in the law. Knowledge of the classics was a marker of

¹³ Milton Flower, *John Dickinson, Conservative Revolutionary*, 8-10; John Murchison, *The Cost of Liberty: The Life of John Dickinson*, 8-9.

¹⁴ Caroline Winterer, *The Culture of Classicism: Ancient Greece and Rome in American Intellectual Life 1780-1910*, (Baltimore: Johns Hopkins University Press, 2002), 12, 16-17.

¹⁵ Eric Stockdale and Randy J. Holland, *Middle Temple Lawyers and the American Revolution*, (Eagan, MN: Thomson West, 2007), 68.

a well-rounded education, and Dickinson prided himself on his learnedness. Dickinson delivered a harsh assessment of fellow student Tench Francis, both for his skills as a lawyer, and his Latin abilities. Francis “has read the Roman History but does not understand any thing of the Civil Law nor of their Customs.” Francis, Dickinson wrote, was surprised to find that Dickinson had “read Tacitus this Winter” because “but 3 or 4 men in Philadelphia could read it.” Francis then attempted to “try my Knowledge” by slipping in a mention of the writer Sallust, “of whom I profest Myself an Admirer,” and proceeded to get out his copy of Sallust’s *Bellum Catilinae*¹⁶ They proceeded to discuss Caesar’s speech, but “soon differed in our Paraphrase & an Argument begun on the Roman Laws.” Dickinson informed his mother that “your Son ‘omne tulit punctum.’” He was also careful to note that he “afforded him [Francis] a decent Retreat.” Dickinson here demonstrated his classical learning, claiming that he did so well that he “carried every point.”¹⁷ Dickinson’s understanding of Latin allowed him to understand Roman law and custom, too, in narratives that were a window into the world of politics.

Dickinson’s legal philosophy was steeped in the tradition of the common law. The founder of modern common law was Edward Coke, whose many volumes of commentary on English law were important reading for aspiring lawyers. Dickinson revered Coke and wrote excitedly that he “tread the Walks frequented by the Antient Sages of the Law; perhaps I Study in the Chambers, where A Coke or Plowden has meditated.”¹⁸ Dickinson immersed himself in the writings of Coke and Coke’s contemporary jurist Edmund Plowden, and was so caught up in their work that “[he] seem[ed] to converse with them.”¹⁹ Coke wrote *Institutes of the Laws of*

¹⁶ John Dickinson to Mary Cadwalader Dickinson August 2, 1756, in *The Complete Writings and Selected Correspondence of John Dickinson: Volume One, 1751-1758*, (Newark, Del.: University of Delaware Press, 2020), 136n9. All letters from John Dickinson are from this source.

¹⁷ John Dickinson to Mary Cadwalader Dickinson August 2, 1756, 135-136.

¹⁸ John Dickinson to Samuel Dickinson, March 8th, 1754, 20.

¹⁹ John Dickinson to Samuel Dickinson, March 8th, 1754, 20.

England, and Plowden wrote *Commentaries, or Reports*, both providing useful commentary on laws and rulings that helped lawyers better understand aspects of the law and precedent.²⁰

Dickinson clearly admired these two jurists, and purchased “Coke & Hawkins’s Ab[ridgemen]t” on January 22nd of 1754. This book was likely the seventh edition of William Hawkins’s annotated *Institutes of the laws of England*²¹ Dickinson’s admiration of Coke and Plowden spoke to his investment in the sacrality of experience and tradition of the common law.

Common law was a guide for modern lawyers and judges because it was said to be founded on reason and justice. The assumption behind the common law tradition was that only good and just laws were maintained. Any bad law would be weeded out by judges employing their reason. Dickinson described his study of the law in a way that demonstrated his respect for precedent, and the justification for its implementation:

Thus very often a Hint from a Book of Psalms has travelld through a strange confusion of Poets, Historians, Philosophers &c concluded with Galen, ‘Arts longa, Vita brevis’ & been finishd with a large lesson of Coke on Littleton.²²

All law was derived from the eternal law. Divine law, derived from the eternal law, was law revealed in scripture, and was itself the source of constitutional law, which was in turn the source of positive law, which included common law and statutory law.²³ Thus, Dickinson remarked that the legal commentaries of Littleton, commented on by Coke, were sound law in that they were traceable back to scripture, the word of God. Coke’s *Commentaries on Littleton* supplied commentary on the law, helping readers understand common law precedents as they developed

²⁰ John Dickinson to Samuel Dickinson, March 8th, 1754, 23n1.

²¹ Middle Temple Expenses, January 11, 1754-May 28, 1754, 44; 49n1. The full title of this work is *An Abridgment of the First Part of Ld. Coke’s Institutes; with Great Additions, Explaining Many of the Difficult Cases, and Shewing in What Points the Law Has Been Altered by Late Resolutions and Acts of Parliament. By William Hawkins, Serjeant at Law*. 7th ed. London: H. Lintot 1751.

²² John Dickinson to Samuel Dickinson, September 6th, 1754, 66; 67n6.

²³ Calvert, “Legal Papers and Context” in *The Complete Writings and Selected Correspondence of John Dickinson: Volume One, 1751-1758*, xliv. Quakers placed more emphasis than other traditions on divine revelation of fundamental principles of the law than did other traditions, xliv,xlv.

through English history. Coke's later volumes discussed other aspects of law, but were censored upon his death in 1634 because of their political implications to the reign of Charles I before being published in the 1640s, as the English Civil War began.²⁴ Coke's writings made grand claims about the historic precedents for laws and firmly anchored jurists to the past. He also defended the personal rights of subjects against infringement by the king, and held that these rights had been cemented by Magna Carta.²⁵

Dickinson's notion of the British constitution was complex, and was formed by both his legal education and later by both experience and further reading, particularly of William Blackstone's *Commentaries on the Laws of England*. The notion of a constitution held by English lawyers was that it was essentially the combination of laws, governmental structures and mores. Rights were the lifeblood of the constitution, and reason was the ligaments tied the laws, habits, and governing institutions together in a meaningful whole.²⁶ Dickinson, throughout his time in London expressed this sentiment about the law, describing the work of a lawyer as like that of a "Florist," and the equity courts as what gave the law "Beauty & Harmony," like "flesh" gave bones and ligaments shape.²⁷ Dickinson was also heavily influenced by Blackstone's *Commentaries on the Laws of England*, which he cited often in his 1774 *An Essay on the Constitutional Powers of Great Britain*. Dickinson's Blackstonian constitutionalism limited the king's power by the "evident consequence" of royal action. That is, any act that might damage the health of the body politic ought to be considered unconstitutional. This definition was broad,

²⁴ John Baker, *Introduction to English Legal History*, 5th ed. (Oxford: Oxford University Press, 2019), 200.

²⁵ Allen D. Boyer, "Sir Edward Coke, Ciceronianus: Classical Rhetoric and the Common Law Tradition," *International Journal for the Semiotics of Law*, X, no. 28 (1997): 4-6. Potter, *Law Liberty, and the Constitution*, 131

²⁶ Bernard Bailyn, *The Ideological Origins of the American Revolution*, 68-69.

²⁷ John Dickinson to Samuel Dickinson, April 22 1754, 31; John Dickinson to Samuel Dickinson, August 2 1755, 137.

and went far beyond the text of any statute.²⁸ Blackstone’s “evident consequence” doctrine, and the constant renegotiation throughout British history of rights Dickinson studied, led to Dickinson’s belief that the obligations that bound Britain and its colonies were not breakable. The bond between them was renegotiable.²⁹

Dickinson’s belief in the importance of the English constitution as a bulwark against royal excesses developed in London. His admiration of the jurists who had stood against the king in favor of the rule of law and the power of Parliament demonstrated his belief that the historical constitution was supreme. He remarked on his excitement about being in the hall “[w]here a Hampden and a Holt have opposed encroaching Power, and supported declining Justice, in short upon whose Judgments, the Happiness of a Nation has depended, I am filled with Awe and Reverence.”³⁰ Hampden had opposed Charles I’s monarchical excesses, and was killed during the English Civil War. Holt was a justice during and after the Glorious Revolution, who relied heavily on natural law when deciding cases.³¹ These two men thus represented the shining moments in English republican history to a young Dickinson: the repudiation of the absolute power of the monarchy and the lofty achievement of returning justice and even happiness to England. The Glorious Revolution was especially important to Dickinson, as it was to many other Americans, because it represented the opportunity to return to the ancient Saxon constitution, fully restoring the rights of English subjects.³²

²⁸ William Blackstone’s *Commentaries on the Laws of England*, Vol. 1, 250 quoted in John Dickinson, *An Essay on the Constitutional Powers of Great Britain*, 36.

²⁹ John Philip Reid, “‘In Our Contracted Sphere’: The Constitutional Contract, the Stamp Act Crisis, and the Coming of the American Revolution,” *Columbia Law Review*, 76, no. 1 (Jan. 1976): 22-23.

³⁰ John Dickinson to Samuel Dickinson, March 8th, 1754, 20.

³¹ John Dickinson to Samuel Dickinson, March 8th, 1754, 23n2, Harry Potter, *Law Liberty and the Constitution: A Brief History of the Common Law*, (Rochester, NY: Boydell & Brewer, 2015), 176

³² Colbourn, “John Dickinson, Historical Revolutionary,” *The Pennsylvania Magazine of History and Biography*, 83, no. 3, (July, 1959): 282.

John Dickinson read the great republican thinkers of English legal tradition, and was guided by their reliance on the ancient constitution and common law. The law commentaries of Coke, and the work of Hampden and Holt emphasized for Dickinson the importance of the constitution's continuity. They had based their resistances to the king on the Magna Carta, which secured rights to individuals that the king could not revoke at will.³³ Coke especially had stated the importance of the common law and the constitution as above the king and Parliament. Coke's, as well as Holt's, view of the law as the rule of reason, had a clear influence on Dickinson as he grappled with how individual rights fit within the written laws of Parliament. As the doctrines of common law and constitutional rights were based on reason, he believed, as Coke had, that they bound Parliament and the king. Thus, a law duly passed by Parliament could be unconstitutional and could in fact be invalidated by the courts if it was shown to be unreasonable. The Glorious Revolution affirmed the rights of Parliament that could not be violated by the king, but did not, according to Dickinson and his contemporaries, do enough to cement the supremacy of the fundamental law.³⁴ Dickinson's admiration of thinkers who were involved with these landmark disputes with the monarchy demonstrated his republican ideological bent, as well as his determination to maintain the rights of the English constitution.

Dickinson developed a philosophy of the law that valued being right over being successful—that is, developing correct legal interpretations whether or not those arguments won specific court cases. For him, arguing a case meant furthering the law. Dickinson wrote to his father that:

when a wrongful Judgement is given against Me to produce Coke, Plowden, Ventris,
Diis Catoni

³³ H. T. Dickinson, "Magna Carta and the American Revolution," in *Magna Carta: History, Context, and Influence*, ed. L. Goldman, (London: University of London Press, 2018), 80.

³⁴ Potter, 120, 176, 131; Reid, 'In Our Contracted Sphere:' 43-44.

Salkeld & c & shew ‘victrix causa illis placuit, sed victa peritis.’ That though they gave Judgement for the Plaintiff, Yet all the learned were of Opinion with the Defendant.³⁵

This passage from the Roman poet Lucan’s epic *Pharsalia* described Cato, a figure revered by republicans for his steadfast resistance to encroaching monarchy. The original Latin referred to Cato’s unfailing uprightness and virtue in the face of opposition: all the victorious causes pleased the gods, while all the losing causes pleased Cato. Cato was concerned with being right more than he was concerned with being favored by the gods, whose whims decided fortune.

Dickinson admired Cato’s dedication to what was right, and imagined himself standing for truth, against those who disagreed, even when it meant losing the case. Thus, Dickinson believed that standing on the right side with the legal authorities and great thinkers was preferable to making a bad argument just to persuade a particular judge or jury.

For Dickinson, government, however righteous its principles, needed to be run by virtuous men. One of the arguments he would make early in his career was that the lack of virtue in the British administration made it unfit to rule Pennsylvania. Dickinson purchased a copy of Montesquieu’s *The Spirit of the Laws*, on May 26th 1754.³⁶ The treatise, published in 1748, was a work of moral philosophy that placed emphasis on the rise and fall of liberty over time, and also articulated the necessity of a system of checks and balances to counter ambition and prevent corrupt practices from taking over the government.³⁷ Montesquieu’s interest in the preservation of liberty appealed to Dickinson,³⁸ Montesquieu viewed corruption, which Dickinson noted with alarm while he was in London, as harmful to society and the individual at once. Corruption in a

³⁵ John Dickinson to Samuel Dickinson, August 2, 1756, 138.

³⁶ Middle Temple Expenses, in *Complete Writings, Volume One*, January 11 1754-May 28 1754, 48; 49n13.

³⁷ Robert Sparling, “Montesquieu on Corruption: Civic Purity in a Post-Republican World,” in *On Civic Republicanism: Ancient Lessons for Global Politics*, ed. Geoffrey C. Kellow and Neven Leddy, (Toronto: University of Toronto Press, 2016), 174

³⁸ Nannerl O. Keohane, “Montesquieu: Constitutionalism and Civic Virtue” in *Philosophy and the State in France: The Renaissance to the Enlightenment*. (Princeton, Princeton University Press, 1980), 397.

republic especially entailed both of these things, since the desires of the individual could too easily “overcome the balances of his constitution.”³⁹

The practice of law was essential to its continued development, particularly as the British legal system was based on the common law. As he wrote to his father after attending arguments at court, there was “[p]leasure in unravelling an intricate Point of law, as a Florist receive, when he sees some favourite flower, which he had long tended himself, at last unfold its glowing Colours, & breathe its sweet Perfumes.”⁴⁰ Dickinson took pleasure in the intellectual work of the common law. He saw the law as an ever-evolving, natural, almost living thing, like a carefully cultivated plant. The florist could help the plant respond to change and adapt. But the plant itself, with its own essence, rooted in its own soil, bent toward the light in its own growth history, also had its own natural trajectory that had to be nourished. This growth and adaptability meant that it was helpful to listen to lawyers dispute the law, because that was how legal doctrines were refined into usefulness. He wrote that:

We not only hear what We have read, repeated, but disputed & sifted in the most Curious & learned Manner; nay frequently hear things quite new, have our doubts cleared up, & Our Errors corrected. The Barr is a perfect Comment upon the Written Law, & every great Man at it, is in some Measure a Master & Instructor to these young Students, who have the Wisdom to attend there. ⁴¹

The application of the law in argument was vital to how it functioned. Without the “[c]omment” on the law, it would never be applied and made actually useful. Dickinson emphasized the way the practice of law built on canon. Every case added to English law, confirming the lessons of the written law and putting it into practice.

³⁹ Robert Sparling, “Montesquieu on Corruption: Civic Purity in a Post-Republican World,” 158, 178.

⁴⁰ John Dickinson to Samuel Dickinson, April 22, 1754, 31.

⁴¹ John Dickinson to Samuel Dickinson, April 22nd, 1754, 31.

This process of elucidation was crucial because laws governed imperfect societies, with real people who depended upon it for relief. In this letter, he laid out his earnest opinion of the law:

We were not designd for Angels here, Our Passions recall us to the Duties of Humanity, & Reason teaches Us to make the Passage as agreeable as possible that leads to Future Happiness—And thus while Each pursues his particular Scheme, he unknowing and undesignedly serves as a Wheel to effect the General Good...This however I am convinced of, that there cannot be upon Earth, a nobler Employment than the Defence of Innocence, the Support of Justice, & the Preservation of peace and Harmony amongst Men: These are the Offices of my Profession, & if my Abilities are but equal to my Inclination, they will not be undischarged by Me.⁴²

Law was part of a functioning society. Its purpose could not be separated from the imperfect society within which it operated. The purpose of legal institutions and practice was also not to win cases for clients at all costs, but instead to serve the common good. Dickinson saw his profession as one which operated within a broader society. Dickinson's legal philosophy sought to preserve, not disrupt.

The law could be refined and improved, but even the best laws were useless if the men who legislated, governed, and adjudicated were corrupt. Dickinson commented:

Laws in themselves, certainly do not make Men happy—they derive all their force & Worth from a vigorous & just Execution of them--& where there is any Obstruction to this, from Ignorance, Villainy, or Cowardice—People are just in the same Condition as if they had no Laws—& the preserving the forms of Judges Juries, Sheriffs or without Knowledge, Honesty & Resolution is like a Mill, which after a material Wheel is broken, may run giddily round—but will never make a Grain of Four.—This I really believe to be the Condition of our Country at present--& I cant well see how it can be remedied—unless they grow honester, than they are—for suppose there were two Lawyers of equal Abilities—they never woud be a Match—unless they were equal Rogues too--For all the Law of Coke & the Eloquence of Cicero—can never influence Men who don't understand You, or if they do, were determind in their Opinions—before they hear You.⁴³

⁴² John Dickinson to Mary Cadwalader Dickinson, August 15, 1754. 57.

⁴³ John Dickinson to Samuel Dickinson, February 19, 1755, 82.

The functioning of the law was determined by the way in which the laws were enforced. Laws, according to Dickinson, needed to be enforced justly. If they were not, there was no point to having a law. The men who enforce the law need to be knowledgeable, honest, and resolute, or else the law simply could function. Dickinson believed that the law needed to be administered well. His time in London left him convinced of this principle but despairing of current practice when he saw that “the most unbounded Licentiousness, & utter Disregard of Virtue which the unfailing Cause of the Destruction of all Empires for it is impossible for Publick Dignity and Security to exist without private Virtue and Honesty.”⁴⁴ It does not matter how good the quality of the law, the wheat, society will be lawless unless the governing institutions, the mill, worked properly. Virtue sustained the administration of the law. However, the administrators themselves were not the only people whose morality and understanding of the law was necessary for the system to work. The public must be able to “hear” the arguments, and so they needed a common understanding of the principles.

One troubling aspect of the enforcement of law for Dickinson was the arbitrariness of the equity courts. While necessary to mitigate the harshness of the common law, the chancery courts were also necessarily discretionary. The Chancery Court’s essential function was to dispense leniency to combat the common-law court’s sternness. These courts of equity relied on the good sense and understanding of the particulars of the situation. The Chancery Court could overrule the rulings of the Court of Common Pleas. Pennsylvania’s Quakers, however, were wary of the executive authority that operated the Chancery, and its function as an equalizer was taken on by

⁴⁴ John Dickinson to Samuel Dickinson, January 21, 1755, 72.

other branches of the judiciary in 1736.⁴⁵ Dickinson took notes on this court's proceedings in London and hoped to use them for his own cases.⁴⁶ Ideally, the courts of equity, were:

giving such a complete Acquaintance with the whole Body of the Law, that afterwards a Man's reading is like travelling again in the same Road. The Laws of England abstracted from the Court of Equity are like a Body consisting only of Bones & Muscles strong & hardy in the greatest Degree, but void of that Beauty & Harmony it has when cloathd with flesh, which in adorning it, does not detract in the least from its former Qualities.⁴⁷

Dickinson believed that Chancery Courts were essential because they responded more immediately to the facts of the case by acknowledging that "the Necessities of Human Nature are greater than our Foresight," and so there ought to be the possibility of leniency.⁴⁸ He wrote also that the common law courts ought to maintain their harshness because to do otherwise would be incompatible with their purpose. Later in this letter he registered reservations about the ubiquity of the courts of equity in Pennsylvania because there was no longer an established court whose sole job it was to deal equitably in cases:

Judges & Juries think it hard to deny a Man that Relief which he can obtain no where else: & without reflecting that Equity never intermeddles, but where Law denies all manner of Assistance, every Judgement, Every Verdict is a confusd Mixture of private Passions & Popular Errors; & Every Court assumes the Power of Legislation. The Inconvenience of this extensive & arbitrary Authority is severely felt already, & will hardly decrease till the Source is stopd.⁴⁹

Dickinson suggested that it was necessary to have the appropriate chancery law to ensure consistency. The rule of law was not supported by arbitrary leniency, but could only function if each court operated properly. Separation of duties, a theory Montesquieu posited for political life, was also necessary for a functioning legal system. In the American colonies, English

⁴⁵ Jane E. Calvert, "The Legal Papers and Their Context," in *The Complete Writings and Selected Correspondence of John Dickinson: Volume 1: 1751-1758*, li-lii.

⁴⁶ John Dickinson to Samuel Dickinson, February 19, 1755, 82.

⁴⁷ John Dickinson to Samuel Dickinson, August 2, 1755, 137.

⁴⁸ Ibid.

⁴⁹ John Dickinson to Samuel Dickinson, August 2, 1756, 138.

common law was too often distorted by “magisterial will.” The combination of common law and the uneven use of British statutory law contributed to “legal disorder” in the colonies.⁵⁰

In his legal studies, Dickinson also learned the importance of a well-crafted argument and the importance of sincerity in public discourse. The study of rhetoric sought to remind people of their rationality,⁵¹ but it became more important in the eighteenth century, with the new attention to human responses, to also convey the spontaneity of speech. The speaker could not just present reasons; he had to convince auditors of his sincerity through his expressiveness. The era’s emphasis on human sensibilities meant that a new focus was placed on forming a connection with listeners and making them care.⁵² Dickinson saw how vital good elocution was to the practice of law. Good speaking skills let a lawyer convey the full import of his argument to his auditors. Speaking well was important because it allowed lawyers to “to communicate it the law] to others: for as the clearest Ideas lose all their force by bad Expression, consequently the Art of Speaking is not beneath his [the lawyer’s] Notice.”⁵³ Dickinson observed and admired speakers who made their audience feel and experience what they themselves did. He described one notable occurrence at a hearing where “Sollicitor” Murray’s “Eloquence” showed him to be in possession of “all the Advantages an Orator can wish for”: “his Voice is Musick itself. His Language is not only easy & flowing, to captivate the Ear, but so refine as to delight the Mind, & his Arguments so nervous, as to force the Assent if the Judgment.” Murray, according to Dickinson, “has attained the Height of Perfection: Every Motion speaks, Every Attitude has a Charm. His Action has nothing affected, nothing forced in it; but seems a Confirmation of his

⁵⁰ Gordon Wood, *Creation of the American Republic, 1776-1787*, (Chapel Hill: University of 298.

⁵¹ Wilbur Samuel Howell, *Eighteenth-century British Logic and Rhetoric*, (Princeton: Princeton University Press, 1971), 77.

⁵² Jay Fliegelman, *Declaring Independence: Jefferson, Natural Language, & the Culture of Performance*, (Stanford: Stanford University Press, 1993), 2; Sarah Knott, *Sensibility and the American Revolution*, (Chapel Hill: University of North Carolina Press, 2009), 1.

⁵³ John Dickinson to Samuel Dickinson, March 4 1754, 22.

Words.”⁵⁴ It was important to make connections for the audience, and not simply rephrase what the law books said. Poole, for instance, “quoted numberless Authorities, & took the nicest Distinctions; but in the very words of the Books, which if ever he was obliged to quit, he semmd out of his Element, usd the oddest Terms, & with Repetitions & Questions spliced it out , till he came to another Authority.”⁵⁵ Dickinson learned that it was not enough to know the law, you had to be able to persuade.

While Dickinson was in London, the French and Indian War (1754-1763) was raging, and divisions in Pennsylvania deepened. Pennsylvania’s proprietor, Thomas Penn had been at odds with the Assembly since he assumed the position in 1746, believing falsely that it had seized the power of taxation from the proprietorship.⁵⁶ To remedy this in the summer of 1751, he had ordered the governor of Pennsylvania not to pass bills for excise taxes or to grant the Assembly loans unless the Assembly gave him the power to veto its spending.⁵⁷ Thus, the governors, whom the proprietor appointed, were at odds with the Assembly, leading to difficulties during the French and Indian War, when funding was desperately needed.⁵⁸ In letters to the proprietor in early 1755, the Assembly claimed that he was violating the rights of Pennsylvanians to spend their own money.⁵⁹ The Assembly petitioned the king directly, claiming that the proprietor was preventing it from raising money. When the petition failed, and when General Braddock was defeated in battle, the Assembly attempted to raise money with a land tax.⁶⁰ The Quaker-led Assembly itself was divided, though, with some, led by Speaker Norris,

⁵⁴ John Dickinson to Samuel Dickinson, March 8, 1754, 21.

⁵⁵ John Dickinson to Samuel Dickinson March 8, 1754, 22.

⁵⁶ James H Hutson, *Pennsylvania Politics 1746-1770: The Movement for Royal Government and Its Consequences* (Princeton: Princeton University Press, 1978), 7-8.

⁵⁷ Hutson, *Pennsylvania Politics 1746-1770*, 10-11.

⁵⁸ James H. Hutson, *Pennsylvania Politics 1746-1770*, 154.

⁵⁹ Hutson, *Pennsylvania Politics 1746-1770*, 15.

⁶⁰ Hutson, *Pennsylvania Politics*, 1746-1770, 17-18.

believing that though non-violence was the ideal, they must defend themselves.⁶¹ This led to some Friends resigning from their seats in 1756 over what they saw as the ungodly nature of the Assembly. Their absence resulted in a Quaker Party that adhered more to a “civil Quakerism” than one focused on spreading inner Light.⁶² Attacks on the frontier meant that the Assembly had to acquiesce to the governor’s refusal to allow a tax on proprietary lands, but it remained indignant that its rights as a British representative body had been usurped.⁶³ In London Dickinson had attended the Lords of Trade and Plantations in February of 1756, where Pennsylvanians were petitioning for the Crown to intervene to force the Assembly to act more decisively to fund the war. Each side blamed the other for the failure to raise sufficient money.⁶⁴ The movement for royal government began in 1757, as the Assembly believed the proprietor was inhibiting their governance by refusing taxation of proprietary land.⁶⁵

When Dickinson returned home to Pennsylvania in 1757 he was admitted to the bar and began practicing law in Philadelphia. Notably, he took up the defense of William Smith, an Anglican minister who published a German translation of what the Assembly called seditious libel. No experienced lawyer wanted the case, and the senior lawyer initially working with Dickinson dropped it, leaving him the sole lawyer on the case. He used what he had learned in England, deploying common law defenses and the pleading with the assemblymen to use their

⁶¹ Calvert, *Quaker Constitutionalism*, 181.

⁶² *Ibid.*, 182, 186. The political divisions among Quakers were more complex than what has been discussed here. For a more detailed account of the divisions within the Quaker Party, see Chapter 5 of *Quaker Constitutionalism*.

⁶³ Hutson, *Pennsylvania Politics 1746-1770*, 19-20, 25-26, 38.

⁶⁴ Jane Calvert, “Transcription of a Hearing ‘Before the Lords of Trade & Plantations,’ February 26, [1756],” in *The Complete Writings and Selected Correspondence of John Dickinson: Volume 1, 1751-1758* (Newark, DE: University of Delaware Press, 2020), 93; John Dickinson, “Transcription of a Hearing ‘Before the Lords of Trade & Plantations,’ February 26, [1756],” in *The Complete Writings and Selected Correspondence of John Dickinson: Volume 1, 1751-1758* (Newark, DE: University of Delaware Press, 2020), 97, 101.

⁶⁵ Calvert, *Quaker Constitutionalism*, 195-6.

right reason.⁶⁶ He also defended several merchants against unjust seizures by the British Navy in flag-of-truce cases.⁶⁷ Dickinson thus began his law career with cases that touched on issues of importance to the relations between Britain and its colonies. When he was elected to public office in 1759 and again in 1763, he was immediately thrust into the question of royal government.

The situation in Pennsylvania was inflamed further when a group of men from western Pennsylvania, the Paxton Boys, marched towards Philadelphia and were met on February 7, 1764 at Germantown by Quaker members of the Assembly. Their primary grievances were the unequal representation of western, predominantly Presbyterian, Pennsylvania when compared with eastern, primarily Quaker, Pennsylvania, and the presence of native American tribes near settled areas for the purpose of trade.⁶⁸ Religious tensions rose, and accusations flew back and forth. Thomas Penn, having recently converted to the Church of England, was accused by conspiratorially-minded Quaker party members of funding the Paxton Boys to corner the Assembly.⁶⁹ Quakers, who had long advocated the fair treatment of native peoples, were furious at the killing by the Paxton Boys of members of the Conestoga people, and factions hardened.⁷⁰ Dickinson was elected to the Assembly in 1764, and enjoyed the backing of the Presbyterian Party and other anti-royal government advocates, but he was a member of the Quaker Party.⁷¹ The Presbyterian Party was against a switch to royal government in part because they believed

⁶⁶ Jane Calvert, "Documents from the William Smith Libel Trial," in *The Complete Writings and Selected Correspondence of John Dickinson: Volume One*, 151-154; John Dickinson, "Initial Notes for Opening Arguments in the Smith Libel Trial, c. January 17, 1758," in *The Complete Writings and Selected Correspondence of John Dickinson: Volume I: 1751-1758*, 162-164.

⁶⁷ The flag-of-truce trade allowed American ships to conduct trade with the enemy during times of war. William Pitt cracked down on the trade during the Seven Years' War. Jane Calvert, "Documents on the Flag-of Truce Trade," in *The Complete Writings and Selected Correspondence of John Dickinson: Volume One*, 292-293.

⁶⁸ Hutson, *Pennsylvania Politics 1746-1770*, 94-95.

⁶⁹ Hutson, *Pennsylvania Politics 1746-1770*, 100-102, 113.

⁷⁰ Calvert, *Quaker Constitutionalism*, 187.

⁷¹ Hutson, *Pennsylvania Politics 1746-1770*, 154, 157.

the Quaker Party was bent on excluding western Pennsylvanians from power. The proprietors, though imperfect, offered an alternative to the Quaker-dominated government. The Presbyterian Party also saw the Quaker Party as weak in defending the colony from devastating border attacks.⁷² The Quaker Party itself was split, with some, such as Dickinson, Charles Thomson, and George Bryan believing that though the proprietary government was not ideal, it was better than coming under direct royal control. For Joseph Galloway and members of the Quaker Party like him, the proprietors had failed to adequately support the Assembly's defense, and then had blamed them for it.

Dickinson delivered his speech against the proposed switch to royal government on May 24, 1764, in response to a March 24th petition to force the proprietors to pay taxes on their land. Ultimately, his efforts failed, and the assembly sent the petition to London. Dickinson's speech argued for the preservation of the constitutional order of Pennsylvania.⁷³ His argument forwarded, for the first time in public life, his belief in the importance of constitutional continuity. His speech, while not given in his capacity as a lawyer, nonetheless applied a mode of argument often used in equity, or chancery, courts. This type of argument relied on the effects of the law, and allowed lawyers to plea for a reduced sentence based on mitigating circumstances. Dickinson also emphasized the importance of virtue to good government, and made constitutional arguments. Dickinson's goal was the preservation of the constitution because of the rights it, unlike even the lauded British constitution, explicitly guaranteed. This speech marked the beginning of his advocacy for preserving the constitutional order while pursuing strengthened defense of rights.

⁷² Hutson, *Pennsylvania Politics 1746-1770*, 154.

⁷³ Jane Calvert, Introduction to "A Speech, Delivered in the House of Assembly in the Province of Pennsylvania," in *The Complete Writings and Selected Correspondence of John Dickinson: Volume Three, 1764–1766* ed. Jane E. Calvert (Newark, Del.: University of Delaware Press, 2020–; draft manuscript, in progress), 58.

Dickinson argued for the preservation of the Pennsylvania charter as an equity lawyer, arguing for a gentler approach that would mitigate the potentially disastrous effects of a switch to royal government. Though the proprietors had acted badly, and while it was not fair that Pennsylvanians must “indulge the Proprietors, with a distinct and partial mode of taxation,” which needed to be addressed, caution was still necessary. Dickinson argued that they needed to be cautious because, “the same virtue that gave the alarm, may sometimes, by causing too great a transport of zeal, defeat its own purpose.” He recommended that they distance themselves “from all violent passions” as a safeguard against rash, radical change. Their frustration ought to be tempered by the realization that their rights “must be consumed in the blaze of royal authority” if they made the switch. He assured his audience that he knew they all “fe[lt] the same reverence that I do for these *inestimable rights*” granted in Pennsylvania’s 1701 Charter. It was not that they should never attempt a change, but instead that they should remain cautious and move slowly until “these privileges can be *perfectly secured*.”⁷⁴

Preserving what they had was important, and it was all too easy to push all the old out in pursuit of the new. He asked his audience to consider all aspects of their situation. He argued instead for a letter to the king, asking how he would be inclined to view a change in government. This petition could be sent “without any hazard to our constitution,”⁷⁵ and the Assembly would make a better-informed decision. Dickinson footnoted Sallust’s *Bellum Jugurthinum*, which was provided untranslated: *nihil vi, nihil secessione opus est* (no violence, no revolt is

⁷⁴ John Dickinson, “A Speech, Delivered in the House of Assembly in the Province of Pennsylvania,” in *The Complete Writings and Selected Correspondence of John Dickinson: Volume Three, 1764–1766* ed. Jane E. Calvert (Newark, Del.: University of Delaware Press, 2020–; draft manuscript, in progress), 70.

⁷⁵ John Dickinson, “A Speech, Delivered in the House of Assembly in the Province of Pennsylvania,” 85.

necessary).⁷⁶Dickinson maintained the importance of continuity and stability, and stressed that this course of action would be the least destructive and pose the least danger to Pennsylvania.

His argument as an equity lawyer, weighing practical consequences and not just applying the letter of the law in the pursuit of justice, also asked his auditors to consider their likelihood of success. The Assembly should be careful, withholding any irreversible action they were considering until it would have a greater likelihood of success. At some later date, “this province may plead the cause of her privileges with greater freedom, and with greater probability of success, than at present.”⁷⁷ He contrasted this with what was happening in 1764, which the British Parliament could characterize as occurring “In a sudden passion” and in direct defiance of “an order approved by” the king. Context was important, and Dickinson cautioned that overstating the frequency and danger of the riots of the Paxton Boys was “Imaginary danger!” which required “Vain remedy!” He warned that Pennsylvania would be giving British ministers an easy way to “furnish a reason for settling a *military establishment*” in the colony.⁷⁸In asking the Assembly to see the advantages they would forego in asking to be brought into the royal rule, Dickinson was trying to move the minds of his listeners beyond their (righteous) anger to see what the practicalities of the situation demanded. Dickinson used the skills of a lawyer arguing before an equity court to ask the Assembly to consider a less potentially damaging alternative.

Equity lawyers often brought in other elements of argument beyond the commonsensical.⁷⁹ Likewise, Dickinson brought historical examples of abrupt government changes into his argument. English law was heavily reliant on common law, which meant that the study of law was historical. Dickinson pointed out that the duke of Monmouth was too hasty

⁷⁶ Ibid., 86.

⁷⁷ John Dickinson, “A Speech Delivered,” 73.

⁷⁸ John Dickinson, “A Speech Delivered,” 88

⁷⁹ Hoffer and Hoffer, *Clamors of Lawyers*, 97.

and was executed, while the prince of Orange invaded England successfully. Denmark “suddenly” gave itself up to a king and “detested the *mad moment* which slipped upon them the shackles of slavery, which no struggles can slip off.” Dickinson’s point in bringing up these examples was to appeal to history as precedent. These instances provided illustrations of the dangers the Assemblymen invited if they were not careful. In a final crescendo of warning, he quoted Tacitus, a Roman historian, in the original Latin: “*quod multos etiam bonos pessum dedit, qui spreto quae tarda cum securitate, praematura vel cum exitio properant.*” ‘Which misfortunes hath happened to many good men, who despising those things which they might *slowly* and *safely* attain, seize them hastily, and with fatal speed rush upon their own destruction.’”⁸⁰ This section of Tacitus’s *Annales* from 3.66 demonstrated the dangers of acting too quickly. Dickinson used historical example in the same way a lawyer pointed to precedents that served his purpose.

Dickinson, believing that character was important in the enforcement of law, distrusted the king’s ministers. Franklin and Galloway thought the proprietors were incapable of enforcing the law due to their bad character, as evidenced by their efforts to avoid taxation, but argued that Parliament would deal fairly with Pennsylvania because their laws were codified into statute.⁸¹ Dickinson, however, was not persuaded that Pennsylvania could trust the British ministers.⁸² He was amazed that the Assembly would “fly for *protection*” and “trust everything to their mercy” because they were motivated by “ambition,” and only served the king out of a desire to accumulate “power.”⁸³ It was folly to believe that the ministers would set terms favorable to the Pennsylvanians, because “the gale of ministerial favour as in *all seasons*” tended in favor of the

⁸⁰ John Dickinson, “A Speech Delivered,” 71.

⁸¹ Hutson, *Pennsylvania, 1746-1770*, 139.

⁸² Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, 20.

⁸³ Dickinson, “A Speech Delivered,” 78.

proprietors, so “why do we now flatter ourselves that it will *suddenly* shift its quarter?”⁸⁴ The ministers were untrustworthy because, unlike the king, who was born for his role, ministers were not “born ministers.” Dickinson was convinced that placing themselves under direct royal rule would bring the Pennsylvanians under the thumb of ambitious men who had the ear of the king.

Dickinson emphasized the importance of virtuous men to upholding the constitutional order. He did not trust the proprietors, but nor did he trust the ministers. If they were to do this, “this precedent,” he warned, “will be pernicious.” He insisted that “with unremitting vigilance, with undaunted virtue, should a free people *watch* against the encroachments of power, and *remove* every pretext for its extension.” Dickinson feared the possibilities under royal government. Virtue was necessary to maintain Pennsylvania’s freedoms. His constitutional argument relied on the consent of the governed, and his notion of a virtuous populace further emphasized his belief that the people and most especially property owners would safeguard Pennsylvania.⁸⁵ Since the people were stakeholders, they were the ones who would have the final say. Vergil’s *Aeneid* furnished him with a perfect analogy: “*haeret lateri lethalis arundo*—That dart with which we are struck will still remain fixed—too firmly fixed, for our feeble hands to draw it out.”⁸⁶ Unless they acted now, they would embed an arrow in the side of the colony, and it would be impossible to remove. Though his opponents were attempting to prevent the corruption of the proprietors, they would end up harming Pennsylvanians’ liberties with an over-broad remedy.

Dickinson feared power, especially when it was held by unethical men: he had seen its effects in London, and those same venal men, the “ministers,” would be the ones determining the

⁸⁴ Calvert, Vol. 3, Speech, 78.

⁸⁵ Calvert, Speech, Vol. 3, 87.

⁸⁶ Calvert, Speech, Vol. 3, 89.

Crown's position in Pennsylvania. His use of analogies to the ocean and the perils of the sea in the storm were evocative, and expressed a radical Whig sentiment that power was inherently corrosive, what John Adams described as the "dominion" the government held over its people.⁸⁷ The idea of the power of the government over life and death was described in various terms, and the one Dickinson favored was that of the ocean.⁸⁸ "Power," he claimed, in general "is like the *ocean*," because it constantly wants to extend past its limit, and while no one wants a storm, extended calm is not necessarily good. According to the Whig concept of power, competition between the rulers and the ruled was necessary "where the spirit of liberty is maintained."⁸⁹ He cautioned that this desire of the powerful for ever-more power would not go away with a new government, especially one headed by the hated Minister George Grenville.⁹⁰ Dickinson described Pennsylvania as a "*little vessel*" that was about to abandon its "*own well known shores*" for the "*midst of the untry'd deep*," but had not checked whether "*her make* is strong enough to bear the *weather* she may meet with."⁹¹ Pennsylvania would be placing itself at the mercy of the powerful, with no safeguards, and without considering the consequences.

It was not just virtue, though, it was also the balances of power within the government that had to be considered. Pennsylvania had its charter from the British government, and to ask to be under the royal government would be to renege the charter, eroding the separation between the British and Pennsylvania governments. Dickinson demonstrated the implausibility of what the Assembly proposed: "We intend to surround the throne with petitions that our government may be changed from proprietary to royal; at the same time we mean to preserve our privileges:

⁸⁷ Bernard Bailyn, *The Ideological Origins of the American Revolution*, 55.

⁸⁸ Bailyn, 56, 57n.

⁸⁹ John Dickinson, "A Speech Delivered," 79.

⁹⁰ Clamor of lawyers

⁹¹ John Dickinson, "A Speech Delivered," 79.

but how are these two points to be reconciled?” Dickinson worried that in doing this, Pennsylvanians may make the king believe their rights, granted under a proprietorship, were “of no great consequences to us,” an outcome that would “be nothing less than to betray our country.” Even if they tell King George III that “we *insist* on the preservation of our privileges,” the Assembly would have made a petition “that humbly asks a favour and boldly prescribes the terms on which it must be granted.”⁹² He warned his fellow Assemblymen that they were treading dangerous ground, and risked that King George would reject Pennsylvania’s demand for their continued enjoyment of rights which after all were “inconsistent with the royal rights.” He stated the Assembly’s two unappealing options: “one of them destructive, the other dishonourable.” This strategy of Dickinson’s, stating the paths the Assembly might take in a hypothetical situation, serve to convey the immediacy of the situation: this was a choice you might have to make, he warned. These two options were: “either renounce the laws and liberties delivered down to us by our careful ancestors,” or “tell his Majesty with a surly discontent” that they have “conditions” for his “*implored protection*.” Neither was desirable. He urged caution: they were acting under a charter, and they “must surely tread on slippery ground, when they take a step that may be deemed a surrender of that charter.”⁹³ Dickinson urged his audience to remember that they depended for these liberties on a specific document; these rights were not guaranteed to royal colonies.

Dickinson argued that natural rights were protected most perfectly in the Pennsylvania charter, resting his case on the idea that preserving their liberties required the preservation of their particular constitution. He emphasized how high the stakes were: nothing less than “liberties that ought to be immortal.” These liberties were secured in charter, but were

⁹² John Dickinson, “A Speech Delivered,” 75.

⁹³ John Dickinson, “A Speech Delivered,” 76.

“restrained in our mother country,” because of “long-established customs,” and therefore the charter was unique in its explicit protections, though the rights it defended were based on “the acknowledged rights of human nature.” Dickinson argued that Pennsylvania’s charter was a statement of liberty “that our ancestors either had not moderation or leisure enough to untwist.”⁹⁴ The British constitution, while it protected many natural rights, did not live up to the promise of the ancient constitution. Pennsylvania’s charter did more to grant rights that properly belonged to all Englishmen than the English constitution currently did.⁹⁵ In giving up their charter, which had been a grant by the king in return for their settlement, the Assembly, according to the king, was giving all of that up⁹⁶:

that the proprietary government is now acknowledged by the people living under it to be a bad government; and the Crown is intreated to accept a surrender of it: that therefore by abolishing the proprietary government, every thing founded upon it, must of consequence be also abolished.⁹⁷

This argument rested on the idea that the British constitution would not guarantee all the rights Pennsylvanians enjoyed, and that these rights were only granted because the king had seen fit to grant the original settlers a charter. The rights Pennsylvanians possessed were conditional on their status as a chartered colony. These rights were especially important to Quakers, and included religious liberty, the ability to hold office and serve on a jury without swearing an oath, annual elections, “appointment of provincial commissioners” for tax money use, and the election of “sheriffs and coroners.”⁹⁸ These “privileges” operated in “contradict[ion]” with “the most antient principles of the English constitution.”⁹⁹ It was foolish to believe otherwise and to trust

⁹⁴ John Dickinson, “A Speech Delivered,” 79.

⁹⁵ Bailyn, 78, 187.

⁹⁶ Reid, “In Our Contracted Sphere,” 27-28.

⁹⁷ John Dickinson, “A Speech Delivered,” 76.

⁹⁸ John Dickinson, “A Speech Delivered,” 79-80.

⁹⁹ John Dickinson, “A Speech Delivered,” 80

these rights to the remote possibility that the English might grant them. The charter went beyond the rights granted to Englishmen, and thus must be preserved.

Dickinson valued the stability of the Pennsylvania charter and the government it constituted. Since the petition “ha[d] a direct tendency to endanger this constitution, ” it was important for the people to consent to this change. For that reason, the Assembly required “the *almost universal consent of the people*” to take this extreme action. He articulated the view that they were “the servants of the people of *Pennsylvania*,” and that the settlers of Pennsylvania, “impelled by the love of liberty which allwise Providence has planted in the human heart” made the perilous journey and “committed themselves with their helpless families to mercy of the wind and waves” to exercise “those invaluable rights which some unhappy circumstance had denied to mankind in every other part of the earth.” In leaving England and settling in America, they had “*purchased* an inheritance in its constitution.” The duty of the Assembly was thus to “preserve it [Pennsylvania’s constitution] in its utmost purity and vigour” because they “received these seats by the free choice of this people.” The Assembly did not have a “right by any law divine or human to change the government under which their authority was delegated to them.”¹⁰⁰ The government and society were constituted by the charter, and thus the full consent of the people of Pennsylvania was needed to make the change in constitution.¹⁰¹ The constitution bound the legislature, and to bound the legislature with another constitution required the first be dissolved by the consent of the people whose ancestors’ settlement had established the constitution in the first place.¹⁰²

¹⁰⁰ John Dickinson, “A Speech Delivered,” 87

¹⁰¹ Bailyn, 67-68.

¹⁰² Reid, ““In Our Contracted Sphere,”” 29.

Dickinson held that preserving the Pennsylvania constitution and their rights as a point of principle. He said that if he was wrong about the consequences of the petition, he “shall cheerfully submit to the censure of having been too apprehensive of injuring the people of this Province.” Dickinson said that “it will be much easier for me to bear the unmerited reflection of *mistaken zeal* than the just reproaches of a *guilty mind*.” Upholding liberty was more important than his own reputation, winning any given dispute. He regarded his dissent from the petition as an “*inviolable duty*” he felt he “owe[d] to the public, by obeying *unbiased dictates* of my *reason* and *conscience*.”¹⁰³ Dickinson signaled that the result was not more important than speaking in favor of what he believed justice dictated.

Dickinson’s argument against the petition for royal government was legal minded in several ways. First, he argued like an equity lawyer might, both arguing not just against the petition, but in order to soften the Assembly’s approach, and responding to the facts on the ground. Second, he argued that the virtue of the royal government was not to be trusted, since government was run by men whose virtue was not assured. Third, he argued that the preservation of the constitution was vitally important because it was the best way to preserve the rights and liberties Pennsylvania possessed that went beyond what was currently recognized as constitutional rights by the British constitution. After the debate over the shift to royal government, Dickinson moved to preserve the British constitution, pushing for the inclusion of Americans in the enjoyment of rights the British possessed throughout the coming imperial crisis.

¹⁰³ John Dickinson, “An Speech Delivered,” 90.

Chapter 2: 1765-1768

The British government needed a way to collect payment from its North American colonies, reasoning that since the French and Indian War had been fought in North America, and that British troops had protected American homes from destruction, the payment was necessary.¹⁰⁴ George Grenville wanted to enforce the Acts of Trade to better regulate commerce, and increase, though it would only be slightly, the revenue the Treasury received from colonial trade.¹⁰⁵ These Acts were poorly enforced, since the men who held the positions farmed out their duties to Americans who skimmed off the duties they were meant to collect. By enforcing these provisions, trade would be regulated. However, this would not solve the financial problem. Grenville on March 9 1764 proposed increasing duties on some items, such as Madeira, and proposed an end to drawbacks, whereby the colonists did not have to pay the customs duties on items they would themselves export. At the same time the duty on molasses would be lowered. The admiralty court that would try violations by merchants was set up in Halifax, with the custom officers given protection from potential lawsuits. Within this act was a provision proposing a future duty on stamps.¹⁰⁶

With the enactment of the Sugar Act in September of 1764, and rumors of a stamp duty rampant, it seemed Dickinson had been proven justified in his fears about Parliament's overreach. Just as he and his fellow assemblymen were debating the switch to royal government, the ministry did what Dickinson had feared and infringed upon Americans' rights of self-taxation. He had argued that the Assembly did not properly understand the importance of the

¹⁰⁴ Fred Anderson, *The War that Made America: A Short History of the French and Indian War*, (New York: Viking, 2005), xxiii, 55.

¹⁰⁵ Hoffer and Hoffer, *The Clamor of Lawyers*, 41-42.

¹⁰⁶ Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution*, (London: Collier Books, 4th edition 1970), 36-42.

Charter of 1701. He had warned them that the British government was not disinterested; ministers in the government had their own ambitions and would attempt to exert greater control of Pennsylvania than the Assembly would like. The provisions of the Sugar Act had been proposed in March of 1764 and passed in April. News of its enactment arrived in May of 1764, prompting anger when it became clear just how far-reaching and damaging these regulations would be, especially given the post-war contraction of the America economy.¹⁰⁷ Americans boycotted British manufactured goods and protested the harsh restrictions that made the war-induced depression worse.¹⁰⁸

As early as 1764, James Otis has written *Rights of the British Colonies Asserted and Proved*, which argued that Parliament could not implement the Stamp Act because it was arbitrary, and thus unconstitutional because Parliament existed as a constitutional institution.¹⁰⁹ Members of the Massachusetts assembly sent a letter to the other American colonies requesting a Congress to discuss some form of collective action against Stamp Act on June 8th 1765.¹¹⁰ The Congress met for the first time on October 7th, 1765, a little less than a month before the measure was signed into law.¹¹¹ When the Stamp Act went into effect on November 1, 1765, Americans were prepared. The Stamp Act was repealed less than a year later, after nonimportation demonstrating to the colonists their power as a producers and consumers within the British empire as their nonimportation tactics forced Parliament to repeal the hated acts. Apart from the economic impact, the repeal of the Stamp Act also demonstrated the power of ideas and persuasion.

¹⁰⁷ Morgan and Morgan, *The Stamp Act Crisis*, 48.

¹⁰⁸ *Ibid.*, 50-51.

¹⁰⁹ Hoffer and Hoffer, *Clamor of Lawyers*, 50; Reid, ““In Our Contracted Sphere,”” 41.

¹¹⁰ Flower, *John Dickinson: Conservative Revolutionary*, 50.

¹¹¹ Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, 31.

Dickinson, along with his fellow delegates at the Stamp Act Congress, crafted a specific argument against the Act and the various unconstitutional provisions in it. For example, Dickinson drafted the *Declaration of Rights and Privileges*, which the other members commented upon and emended.¹¹² The document declared that the American colonists had the right to taxation by representation, like all other British subjects, and that since they were already represented by legislatures in the colonies, they could only be taxed by those legislatures. The declaration also insisted that the right of trial by jury be reinforced where it had come under attack with installation of admiralty courts. Dickinson also appealed to the economic purpose of the empire, claiming that the Stamp Act placed a financial strain on the colonies, which would “render them unable to Purchase the Manufactures of *Great Britain*,” interfering with the “mutually Affectionate and Advantageous” relationship between Britain and the colonies that came from the “Rights and Liberties” enjoyed by American colonists.¹¹³ Dickinson’s argument, supported by the other delegates, was that the British empire could not function properly if the colonies were taxed, and that taxation posed constitutional issues, threatening the proper, ordered functioning of the empire.

Many of Dickinson’s fellow Whig lawyers were developing constitutional arguments against the Stamp Act, seeing that it violated the rights of Americans, specifically the right to taxation by representation.¹¹⁴ Like Dickinson at this time, they remained focused narrowly on the Stamp Act itself. Dickinson concentrated on the right to taxation by representation as essential to liberty because otherwise one’s property was taken without consent. James Otis argued in his pamphlet *Considerations on Behalf of the Colonists in a Letter to a Noble Lord*, that virtual

¹¹² Ibid., , 32.

¹¹³ Minutes Saturday, October 19th 1765 in *Proceedings of the Congress at New York* (Annapolis: Printed by Jonas Green, printer to the province, 1766; reprinted Boston: 1938), 15-16.

¹¹⁴ Bailyn, *Ideological Origins*, 352.

representation—the claim that members of Parliament, though not chosen by the colonists, could still represent colonial interests-- was not sufficient representation because no member of Parliament lived in America and would not understand the situation and needs of the colonists. Another lawyer, Daniel Dulaney, made the same argument.¹¹⁵ Dulaney articulated a position that would become standard in the debate over imperial taxation: taxing the colonies for revenue of the general treasury and collecting money merely to regulate the flow of trade were fundamentally different.¹¹⁶ Taxation played a large role in the Stamp Act debates as an incident of British oppression.

Dickinson's argument against the Stamp Act, and his broadside "Address to 'Friends and Countrymen' on the Stamp Act" in particular, was legal-minded in its focus on the practical effects of the law and Pennsylvanians' resistance to it, in its invocation of Whig principles of power and the constitution, and in its stress on the rights that belonged to Pennsylvanians as Englishmen. Dickinson's argument was an attempt to rally Pennsylvanians to a coherent, organized protest against the Stamp Act. He offered a less costly alternative to resistance than what his colleagues proposed, and he hoped Pennsylvanians would be swayed by his argument. Dickinson used his skills and training as a lawyer to convince and persuade, and his broadside forwarded his philosophy that the ancient English constitution was the best guarantor of rights available. His critique, though, was very specific, and focused entirely on taxation.

One of the ways Dickinson's argument was legal-minded was that he made specific, factually grounded arguments instead of making broad statements about rights. In a November broadside entitled "An Address to 'Friends and Countrymen,'" he argued like an equity lawyer in much the same way he had in 1764. He wanted his readers to understand the ways they could

¹¹⁵ Hoffer and Hoffer, 55-60.

¹¹⁶ Hoffer and Hoffer, 58, 60.

resist without harm to their livelihoods. He did not employ incendiary rhetoric, instead pointing to the most effective, least costly mode of resistance by laying out and logically refuting other modes of protest. Like a lawyer in a court of equity, Dickinson wanted to ameliorate both the harshness of the proposed tax, while also mitigating the harm their resistance could do. He laid out the other methods that had been proposed, such as the proposal to “stop all Business that requires written Instruments, subject to Duties.” Dickinson refuted this by claiming that doing so would be an “Acknowledgment of the Validity of the Stamp Act” because it would tacitly accept “its legal Obligation” He added that it would also be too costly, leading some to conclude “that Obstruction will be more pernicious than the Execution of the Stamp Act.” Another argument against this method Dickinson offered was that the British would think they could simply wait the colonies out, since the colonists would be unable to completely stop using writing materials for very long. If, on the other hand, Pennsylvanians committed to a business-as-usual approach, “Your Conduct will convince *Great Britain*, that the Stamp Act will never be carried into Execution, but by Force of Arms,” which they would not attempt. Dickinson laid out the objection to his approach, which was that if colonial ships did not carry the proper stamped documentation, they would be stopped. Dickinson, however, did not think a Stamp Act violation was a “legal reason for such Seizures,” but even if it were, the English would not dare, because that would be act of war.¹¹⁷

Dickinson also worked to persuade his readers that to not act would be unworthy of a virtuous citizenry and would set the unvirtuous ministers upon the colonies. The ministers certainly lacked virtue, and the taxation was certainly unconstitutional. But what was more, the tax was being enacted at the behest of men who were neither the king nor the duly elected

¹¹⁷ Dickinson, “An Address to ‘Friends and Countrymen’ on the Stamp Act,” 204-205.

members of Parliament. They were instead the same ambitious men Dickinson had worried about in 1764. He wrote that American virtue and a commitment to resist the new acts was important because the ministers “have hunted for Precedents to palliate the Horrors of this Attack upon *American Freedom*.” If they did not protest the acts, or gave in after a boycott, they would be giving the ministry just what it wanted. The ministry had acted disingenuously and “could find nothing that even *their* unlimited Audacity could dare to call *Precedents* in this Case, but the Statute for establishing a Post-Office in *America*, and the Laws for regulating the Force here, during the late War.” He warned that if Americans gave in now, the ministers would continue to tax them, because “no Measure can be more popular at Home, than to lessen the Burthens of the People *there*, by laying Part of the Weight on” people far from home. Resistance of the acts therefore had to be immediate, and they had to also be committed. Anything else would lay Americans open for further exploitation.¹¹⁸

Dickinson’s Whig view of government held that the British government had corrupted their constitution. Since the Glorious Revolution, Parliament had taken on an outsized role, overwhelming England’s natural rights in the process, according to Whigs. Dickinson believed that the rights Americans had stemmed from their ancient constitution, which was a perfect incident of natural rights.¹¹⁹ Natural rights could not be protected without liberty guaranteed by the English constitution. However, these rights were merely theoretical unless they were actually upheld. Essential to the Whig philosophy of government was the idea that “Power is of a tenacious Nature: What it seized it will retain.”¹²⁰ Dickinson feared the precedent that would be

¹¹⁸ Dickinson, “An Address to ‘Friends and Countrymen,’ on the Stamp Act,” in *The Writings of John Dickinson: Volume 1: 1764-1776*, ed. Paul Leicester Ford, (Philadelphia: The Historical Society of Pennsylvania, 1895), 202-203.

¹¹⁹ Bailyn, *Ideological Origins*, 77.

¹²⁰ Dickinson, “An Address to ‘Friends and Countrymen,’” 203.

set by passivity to an increase in British power. The discourse about power of American Whigs placed emphasis on the inertia of power, something which Dickinson had relied on in his May 24 1764 speech.¹²¹ Any solution to the current difficulty must not lead to any increase in ministerial power. To stem the tide of power meant more than paying lip service to natural rights. Dickinson appealed to his readers' virtue, asking them to place the well-being of American rights over their individual economic interests. He claimed that they were now on the precipice determining "whether *Pennsylvanians*, from henceforward, shall be Freemen or Slaves."¹²²

Dickinson's legal philosophy led him to view Americans' rights within their larger framework of rights granted by God, and expressed as a part of the ancient constitution handed down through the Saxons and the Magna Carta. He wrote that Pennsylvanians needed to consider what to do to protest the Stamp Act "without Injury to this sacred Right." This "sacred Right" was the right to self-taxation:

Men cannot be happy, without Freedom; nor free, without Security of Property; nor so secure, unless the sole power to dispose of it be lodged in themselves; *therefore* no People can be *free*, but where Taxes are imposed on them *with their own Consent*, given personally, or by their Representatives. If then the Colonies are equally intitled to Happiness with the Inhabitants of *Great-Britain*, and Freedom is essential to Happiness, they are equally intitled to Freedom. If they are equally intitled to Freedom, and an exclusive Right of Taxation in essential to Freedom, they are equally intitled to such Taxation.¹²³

Dickinson's argument was that Americans had these rights by virtue of their equal standing to British subjects. Dickinson argued that "the right to *dispose* of property freely" was an American right because it was a British right, too.¹²⁴ A right to the use of one's property did not stem from

¹²¹ Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 209; Bernard Bailyn, *Ideological Origins of the American Revolution*, 56.

¹²² Dickinson, "An Address to 'Friends and Countrymen,'" 201.

¹²³ Dickinson, "An Address to 'Friends and Countrymen' on the Stamp Act," 202.

¹²⁴ Stanley K. Johannesen, "John Dickinson and the American Revolution," *Historical Reflections*, 43; Reid "In Our Contracted Sphere": The Constitutional Contract, the Stamp Act Crisis, and the Coming of the American Revolution," 22.

the general right of men to be happy, but from the specific fact that Americans “are equally intitled to Happiness with the Inhabitants of *Great Britain*.” Dickinson’s legal reading and the unconstitutional taxation by Parliament gave urgency to his claims to being treated like the English in their rights to taxation by representation. Any rights the English had the Americans also had by virtue of their possession of the same constitution as English. He rooted his argument in the notion of Pennsylvanians’ entitlement to these rights due to their status as Englishmen.¹²⁵

Dickinson continued to write against the Stamp Act and to defend their actions. He addressed the issue of the prohibition on paper currency in the Americas, and Dickinson compiled data on the exports from England to its colonies, arguing with force that the Caribbean plantations were unfairly favored in colonial policy decisions. Dickinson argued in this letter that Britain could not hope to gain more from stamp duties than they could from the trade Britain and America already conducted. He also asserted that Britain risked losing its colonies from “their severity and an unjust jealousy.” The only way to prevent a break with Britain was for its government to revitalize “stagnated trade,” to lift its “taxes torn from [the colonies] without [their] consent,” and to give power back to the local governments which were “the principal pillars of liberty.”¹²⁶ Disunity would be harmful to both parties, but loss of liberty was even more dangerous. He thus argued from the facts of the matter, the revenue Britain gained from trade, and the principles of liberty and rights that were endangered by these actions. The next year Dickinson wrote *An Address to the Committee of Correspondence of Barbados*. This was written to combat what Dickinson saw as a mistaken impression on the part of Barbados’s Committee of Correspondence about the north American colonies’ protests. He wrote that the Stamp Act was a

¹²⁵ Hoffer and Hoffer, *Clamor of Lawyers*, 48, Reid “‘In Our Contracted Sphere’: The Constitutional Contract, the Stamp Act Crisis, and the Coming of the American Revolution,” 43.

¹²⁶ John Dickinson, “The Late Regulations Respecting the British Colonies Considered,” 1765 in *Pamphlets of the American Revolution: Volume 1: 1750-1765*, ed. Bernard Bailyn, (Cambridge, MA: Belknap Press, 1965), 690.

violation of rights from God. The government made only “*declarations*, but not *gifts* of liberty.”¹²⁷ Dickinson’s understanding of rights was that constitutions existed to protect against incursions on these rights, and that Americans in standing up for their rights were merely laying claim to what they already possessed.

Much like in his speech of 1764, Dickinson during the Stamp Act crisis was committed to preserving the constitution. However, now the debate was taking place on an imperial scale, as opposed to being confined to Pennsylvania. Further, he made his argument with a view towards convincing the reading public, as opposed to the Assembly, and he adjusted his argument style accordingly. First, Dickinson argued like an equity lawyer would, and was responsive to the situation as it had developed, discussing the specifics of the law and its effects. Second, he addressed that virtue was needed to resist the Stamp Act’s imposition, and that a lack of virtue on the part of the ministers had led to the Stamp Act being imposed. Third, he argued for the preservation of the ancient constitution, specifically arguing that Americans were due the same rights of taxation by representation as Britons in Britain by virtue of the ancient constitution. The constitutional crisis at this moment could be resolved if the king and Parliament conceded that taxation could only be done by a representative government.. In this case, there was no relief to be found in an alternate charter. Dickinson’s work thus exhorted his readers to resist the Stamp Act to force the ministers to act well, and restore the ancient constitutional liberties they were due as Englishmen, specifically, the right to taxation by representation.

On March 18th 1766, the Stamp Act was repealed. However, Britain’s debt from the French and Indian War had not disappeared. Parliament enacted the Quartering Act in May of

¹²⁷ Dickinson, “An Address to the Committee of Correspondence in Barbados,” 1766 in *The Writings of John Dickinson: Volume 1: 1764-1776*, ed. Paul Leicester Ford, (Philadelphia: The Historical Society of Pennsylvania, 1895), 262.

1765 to enforce the requisition requests made by army officers in America. New York's refusal to supply General Gage with a portion of requested supplies in 1766 led to the suspension of the New York legislature on October 1, 1767 with the Restraining Act. This act's purpose was to reassert Parliament's supremacy over the colonies, an intention that became especially clear after the legislature granted the funds, but Parliament refused to back down on its suspension of the legislature. The royal governor was satisfied, but Parliament insisted on exact compliance with the law. Meanwhile, the British government still needed money to pay for the maintenance of its colonies. Further, Charles Townshend, the chancellor of the Exchequer, wanted to prove a point to the colonies, who were convinced that they had succeeded through their protests in obtaining the repeal of the Stamp Act, and proposed a duty on lead, glass, paper, paint, and tea.¹²⁸

Dickinson wrote his *Letters from Farmer in Pennsylvania* in response to these acts. They were published in *The Pennsylvania Chronicle* once a week from December 2, 1767 to February 15, 1768, totaling twelve letters.¹²⁹ Dickinson's *Letters* were legal-minded in their Although posing as a gentleman farmer, Dickinson, like a lawyer laying out a case to the jury made direct, consensus-building appeal readers; used Whig theories of virtue and fear of power; and a sense that the constitution's fully meaning was not embodied by the British government's laws. The *Letters* went beyond the "Address to 'Friend and Countrymen' on the Stamp Act," addressing not only taxation without representation, but also the abuses by judges. The first six exposed the problem as it stood, outlining the specific issues with the statutes, and the history that backed Dickinson up in his claims. Letters seven through eleven dealt more explicitly with the acts'

¹²⁸ Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, 44-45.

¹²⁹ Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, 46.

constitutionality. The final letter was an exhortation to American unity and joint protection of rights.¹³⁰

As he was not elected to the Assembly that year, public writings were the only way for him to express his opinion on public matters. His letters addressed the Quartering Act, the Restraining Act, and the Townshend Act. Each letter was devoted to explaining the illegality of these acts to the public. The *Letters* sought to explain his concerns with these new acts of Parliament, and to exhort his readers to action. One of his central claims was that if ordinary people remained vigilant about their rights, it would be difficult for Parliament to chip away at them. Dickinson's *Letters* insisted that resistance be peaceful, and cause as little disruption as possible.¹³¹ Dickinson also insisted that the right to representative government was present already in the British constitution, and that Parliament was in violation of the constitution. This was a treasonous charge, and explains why Dickinson signed his letters "A Farmer," a choice that both granted anonymity and set him up as a citizen compelled by circumstances to leave semi-retirement. If Parliament was in violation of the constitution, the way to gain back natural rights was to insist on adherence to the constitution, which could only be guaranteed with a system of internal government balancing.

Unlike with the Pennsylvania's controversy over proprietary or royal government and Stamp Act crisis, Dickinson did not have an official role in government during the debates about this newest round of taxes. When he wrote to the public, he wrote without having had any involvement with any official deliberations. He situated himself as a "*Farmer*" who had "received a liberal education, and have been engaged in the busy scenes of life," but is now

¹³⁰ Jacobson, *John Dickinson and the Revolution in Pennsylvania*, 53-55.

¹³¹ Jane Calvert, "Liberty Without Tumult: Understanding the Politics of John Dickinson." *The Pennsylvania Magazine of History and Biography*. 131, no. 3. (July, 2007): 252-254.

“undisturbed by worldly hopes or fears,” and spends “a good deal of [his time] in the library,” where he has become knowledgeable in history and the constitution. Dickinson, as the Farmer, wrote then that he was writing because his liberality has led him to “[b]enevolence toward mankind,” that meant he had to write, so that his “silence and inactivity shall not give any implied assent to any act, degrading my brethren and myself from the birthright, wherewith heaven itself *‘hath made us free.’*” Dickinson positioned himself as a concerned citizen, who felt it his duty to share his thoughts with his fellow countrymen. This attitude reflected the nature of eighteenth-century intellectual life, which was focused on civic engagement and the surrounding community.¹³² It also indicated a desire to place himself above the political fray. Dickinson’s self-representation as a learned farmer emerging from a quiet life in a time of trouble also was reminiscent of the Roman citizen, who reluctantly gave up his quiet life to aid his country.¹³³ In adopting this attitude, Dickinson as the “Farmer” was acting like a lawyer within the public sphere. He used his skillset and made his arguments to the public, using a public persona that indicated his interest in speaking to the public directly.

As a man who loved the law, and thought that understanding the law was important to public life, it is understandable that he wanted the public to know the law. He opened this letter by addressing the letter “for such of you, whose employments in life may have prevented your attending to the consideration of some points that are of great and public importance.” The issues of taxation affected all who purchased lead, glass, writing materials, and tea, among other essentials. It was important that all understood their rights, as well as the underlying statutes and

¹³² Bender, “The Culture of Intellectual Life: The City and the Professions,” 6-7.

¹³³ Pierre Marambaud, “‘Dickinson’s ‘Letters from a Farmer in Pennsylvania’ as Political Discourse: Ideology, Imagery, and Rhetoric.” *Early American Literature*, 12, no. 1. (Spring 1977), 67

reasons the acts were so nefarious. In addressing this letter in particular to those whose lives did not allow them to follow the crisis closely, Dickinson demonstrated that it was important for all people to understand and be able to discuss the new taxes, which affected all who purchased these goods. The law affected everyone, and thus everyone should understand it and be able to take part in debating it. He took his legal skills to the public, arguing for a specific interpretation of the new acts, forcefully citing statutes and precedents as well as historical examples to make his point.¹³⁴

One of the ways Dickinson spoke to the public from the framing of a learned gentleman in his *Letters* was through the use of Latin quotations at the end of every letter. This Latin, like the Latin in the body of the text of the *Letters*, was not precise legal terminology but pithy lines. These quotations were not mere window dressing, but served to add gravity to his argument and give it the authority of age. They often gave an ominous tilt to the letter, offering a warning that the Romans had also had experience with encroaching threats to their republic. The Latin was translated into English, and the lines were aphoristic enough that the reader need not know the context of the quote for it to be effective. The classics seeped into intellectual discourse as an authority to which one could appeal. The fall of the Roman republic was an especially potent analogue because thinkers like Dickinson had a cyclical view of nature of politics: despite the different contexts of Rome and Britain, corruption was a potent force, and the shift from liberty to tyranny was one that could be made again. For instance, at the close of the first letter, he warned his readers that “*Concordia res parvae crescunt*, small things grow great by concord.” He illustrated the danger of issues that might seem small now, but whose effects would be felt later. The quotations he chose became more urgent. The first, quoted above, is a warning of

¹³⁴ Dickinson, *Letters from a Farmer in Pennsylvania in Empire and Nation*, ed. Forrest McDonald. (Englewood Cliffs, NJ: Prentice-Hall Inc., 1962), 38.

things to come. The final quotation exhorted his readers to look out for their rights, “*Certe ego libertatem, quae mihi a parente meo tradita est, experiar: Verum id frustra an ob rem faciam, in vestra manu situm est, quirites.*” For my part, I am resolved to contend for the liberty delivered down to me by my ancestors, but whether I shall do it effectually or not, depends on you, my countrymen.”¹³⁵ The quotations offered by Dickinson did not assume deep knowledge, only appreciation that the source was Roman. Dickinson’s use of the Roman past to convey moral urgency was part of the Farmer persona of a learned, cultivated gentleman seeking to appeal to his audience’s virtue.

Dickinson argued the way an equity lawyer would, presenting his case to the public that detailed harm that had been done or would likely occur if they did nothing. Since the *Letters* appeared in newspapers and were meant to convince literate Americans that the new laws were not to be obeyed, even if that disobedience required short-term economic sacrifices, Dickinson also had to demonstrate that Parliament’s decision would be far more economically detrimental in the long run. Just as he had during the Stamp Act crisis, Dickinson showed that taxation was not only unnecessary, but actually harmful. He cited William Pitt’s statistic that trade from America brought in around two million pounds of revenue.¹³⁶ Dickinson also decried the effect the taxes would have on devaluing American land. Since farming the land had made it more profitable, why should the colonies pay to defended lands that were not nearly as populated. In bringing in these specifics, Dickinson made his argument tangible. His readership was made to question the decisions made by Parliament, from the standpoint of their economic wellbeing as well as from constitutional principles.

¹³⁵ Richard Gummere, “John Dickinson, the Classical Penman of the Revolution,” *The Classical Journal*, 52, no 2. (November, 1956), 84.

¹³⁶ Dickinson, *Letters from a Farmer*, 24-25.

Dickinson's *Letters from Farmer in Pennsylvania* argued to the public using the relevant statutory law. In these letters, Dickinson cited statutes that proved that the Stamp Act, and the newly enacted taxes were illegal. Dickinson parsed and defined the terms of the statutes themselves to demonstrate their illegality. In his first letter, he quoted from the Act of Suspension, asserting that it was illegal because it came from Parliament, which did not have the "supreme authority" it here claimed, "over these colonies, in *the point of taxation*." Dickinson urged his readers to be vigilant, because this was just as illegal as if the army had been sent to impose the Stamp Act.¹³⁷ Letter four made a similar attempt with the Townshend Act, arguing that this new imposition of duties qualified as an internal tax, because they were levied "*for the sole purpose of levying money*." These duties, therefore qualified as taxes. Dickinson worked to establish the facts of these cases. Letter five detailed the differences between taxation and regulation. Parliament had the authority to regulate trade because it had the authority to act in the interest of the whole empire. It did not have the power to levy taxes. The Townshend duties were a tax, and therefore illegal. Letter eight parsed out the law to conclude that the duties were not even going to be used for their own benefit. The land that was to be protected was not taxed as much, and would drain resources. Dickinson utilized the information in the statutes themselves to argue that the law did not square with definitions.

Dickinson believed that Parliament had limited law-making abilities, and like other American Whigs, he thought that Parliament had exceeded its powers. In letter two, Dickinson footnoted bills Parliament had passed that dealt with trade regulation, seeking to prove that the Stamp Act was the first act that explicitly attempted to generate a revenue. He cited statutes from the reigns of Charles I and Charles II, William III, Anne, and George II that showed that

¹³⁷ John Dickinson, *Letters from a Farmer*, 5-6.

previous acts regarding the colonies were for the regulation of trade. He pointed back to 25th Charles II, chapter seven, section two, which gave plantations the ability to trade with one another without regulation.¹³⁸ Grenville violated Parliamentary precedent by taxing what the colonies were required to purchase with 4th George III, chapter 15.¹³⁹ Dickinson went back even further to the reigns of King Edward I and Henry V.¹⁴⁰ Showing the precedent, especially with laws going back to before the Glorious Revolution, Dickinson demonstrated that the laws that were made three hundred years ago still had bearing. In treating acts of Parliament as though they were decisions handed down by court, Dickinson could say he was not questioning supreme law, but merely offering a dissent from judicial opinion. Since Parliament was considered the highest court in England, it made sense for Dickinson to treat it that way in his writing.¹⁴¹ In critiquing Parliament's legislation, Dickinson engaged directly with the laws to make his argument, and also criticized Parliament's actions.

Dickinson, unlike in 1764 or 1765, set his sights not on corrupt members of Parliament but on the decay of checks and balances within the imperial system, which had led to unconstitutional measures arising from Parliament's overreach. When Parliament usurped the role of colonial legislatures by taxing the colonies themselves, it demonstrated the danger of overreach to the balance of power. One of the consequences of Parliament usurping the legislatures was that the rule of law, and with that rights and liberties, was undermined. Dickinson quoted Lord Camden that taxation and representation had always been tied together, since "the constitution," and so the overreach of the Stamp Act and the Townshend Act violated two things united in the "laws of nature." These rights ought to be protected by a robust judicial

¹³⁸ John Dickinson, *Letters from a Farmer*, 7-9.

¹³⁹ John Dickinson, *Letters from a Farmer*, 35.

¹⁴⁰ John Dickinson, *Letters from a Farmer*, 22

¹⁴¹ Hoffer and Hoffer, *Clamor of Lawyers*, 70.

system, but in the colonies that system was not evenly applied, with the common law administered imprecisely, and some duly passed statutes were not implemented. If judges' salaries were controlled by the people, they would be held accountable. The judges could still be appointed by the executive, since that would only increase accountability, and after all, the right of collecting tax money is far more important than that of spending it.¹⁴² A “*mixed government*” depended on “[a] perpetual *jealousy*, respecting liberty,” which in turn required a virtuous citizenry always on alert, and cognizant of the public good. Virtue was necessary, but was not sufficient to a government that allowed rights to flourish. The way to secure these rights was through colonial unity, because “[t]heir *happiness* is founded on *their constitution*.”¹⁴³ The preservation of the constitution was the only way to reliably ensure rights.

Parliament's overreach was unconstitutional because it violated, according to American Whigs, the terms of the settlement of the colonies. The spirit of the law could still be violated, even by the king and Parliament.¹⁴⁴ The purpose of constitutional order was to have a balance of power that could withstand powerful men who lacked virtue and attempted to deny rights to Englishmen. The constitution of Great Britain, though it gave Parliament the powers of legislation, did not give it arbitrary power. Powerful men, namely the king's ministers, were the primary culprits in the “arbitrary acts” enacted. The ministers' act threatened colonial unity, but the colonies acting together could “preserv[e] that constitution in unabated vigor, *throughout every part*.” It was by looking out for their constitutionally protected rights that the colonies' “*prosperity*” could be ensured.¹⁴⁵ It was important that the colonies act vigorously to preserve their rights, which meant the adherence by the ministers to their constitutional duties.

¹⁴² John Dickinson, *Letters from a Farmer*, 52-53.

¹⁴³ John Dickinson, *Letters from a Farmer*, 68.

¹⁴⁴ John Dickinson, *Letters from a Farmer*, 34-5, Reid, ““In Our Contracted Sphere,”” 40.

¹⁴⁵ John Dickinson *Letters from a Farmer*, 80-81.

Dickinson had a clear idea of what would happen to Americans' rights without constitutional checks. The only way to end the illegal taxation was for the British government to be "*constitutionally checked and controlled.*" The Townshend Acts, Dickinson believed, were "founded on the destruction of this constitutional security" of a well-checked government. He wrote that there was no limiting principle here: "For where does their right stop?" for if their property was that "WHICH ANOTHER MAY, BY RIGHT, TAKE, WHEN HE PLEASES, TO HIMSELF[,] " then they were not really free men, but "SLAVES." Dickinson quoted from Lord Camden, a British judge, to argue that his claim that "the *British* parliament have NO RIGHT TO TAX the *Americans*," a principle "as old as the constitution." The right to taxation only by representatives was "inseparably united," and it was the "ETERNAL LAW OF NATURE," that whatever belongs to someone "NO MAN HATH A RIGHT TO TAKE IT FROM HIM WITHOUT HIS CONSENT." Thus, since these rights were part of the English constitution, and the settlers of America "did not leave their native country" and go through hardship "TO BE REDUCED TO A STATE OF SLAVERY. They did not give their rights: They looked for protection."¹⁴⁶ The solution to this problem was not to abandon the British constitution, but to reform it. Dickinson did not believe that a binary existed between perfect adherence to the ancient constitution and the complete abrogation of all obligation. Instead, Dickinson believed that reforms within the system could be made. There was always room for negotiation. The negotiation of rights had a long history in the British system, and Dickinson believed that Americans' best option of securing their rights remained the British constitution.

The question then was how the rift was to be mended. Part of the constitutional order was the proper division of power. Dickinson believed that the English constitution would provide the

¹⁴⁶ John Dickinson, *Letters from a Farmer*, 44.

proper restrictions that would allow for the exercise of God-given rights. He argued that Parliament could properly regulate trade, but could not tax. Parliament's interference in colonial affairs meant that the judiciary was unaccountable to those people it supposedly served. Justice, Dickinson wrote, ought "to be equally independent of the executive and legislative powers." This was impossible to guarantee in America because judges were appointed by the king, and taxes were levied by Parliament. The power of taxation was a vital component of legislative power, because with control of "the purse strings" came "a *constitutional check*" which was the only way to hold the powerful accountable "*without violence*." The legislature could balance and hold Parliament accountable, but not if Parliament attempted to "*supersede* that authority in our respective assemblies, which is essential to liberty."¹⁴⁷ The colonial legislatures were necessary because the duties they executed, such as "defense of the society," "administration of justice," and the "support of civil government" needed to be completed by those who knew what the colonial society needed: the best way for it to be taxed, the way government officials worked, and the way laws needed to be executed.¹⁴⁸ Taxation by Parliament was dangerous to the colonies because it reduced the dependence the government had on the people. What was needed was a government whose branches balanced out so that the people had control over money.

Like other "Revolutionary lawyers" who were Whigs in the 1760s, Dickinson believed that Parliament was not the supreme authority, but instead shared its authority with natural rights.¹⁴⁹ While it made laws for the empire and was its highest court, Parliament, Dickinson and others argued, had neglected the constitution, especially as it had taken on the powers of the

¹⁴⁷ John Dickinson, *Letters from a Farmer*, 50.

¹⁴⁸ John Dickinson, *Letters from a Farmer*, 52.

¹⁴⁹ Howard L. Lubert, "Sovereignty and Liberty in William Blackstone's 'Commentaries on the Laws of England,'" *The Review of Politics*, 72, no. 2 (Spring, 2010), 291; Gordon Wood, *Creation of the American*, 21-24

king following the Glorious Revolution.¹⁵⁰ Dickinson argued that Parliament had power only in matters that governed the whole empire. Any regulation that was targeted specifically at one colony was outside of its purview, because targeted regulations essentially functioned as a tax. He explained in the seventh letter that because the Townshend Acts placed a duty on glass and paper, and the Americans were required to purchase their glass and paper from Britain, they were taxed. Britain could require Americans to purchase these goods from them, but they could not then impose additional regulations on those same goods explicitly to raise money.¹⁵¹ In applying a tax to the North American colonies, Parliament was taking on a legislative role when it was meant to be a regulatory body.

Parliament's unconstitutional overreach had led to violations of Americans' rights. Harkening back to the ancient constitution and all the rights and liberties it guaranteed, Dickinson wrote that colonists were in danger from Parliamentary acts because the rights they were guaranteed by the ancient constitution were not always upheld by power-hungry ministers. For instance, unlawful searches and seizures were carried under the new laws, "contrary to the common law, which has ever regarded a man's *house* as a castle, or a place of perfect security." The "castle doctrine," from Coke's *Institutes*, was vitally important to liberty. The administration of law was more important than what was in the text, because unless it was enforced equally, the rule of law did not exist in a meaningful way.¹⁵² A judicial system that was consistent was an important part of a functioning government, and it depended on the enforcement and administration of the laws as much as it depended on the laws themselves.

¹⁵⁰ Hoffer and Hoffer, *Clamor of Lawyers*, 70.

¹⁵¹ Dickinson *Letters from a Farmer*, 43.

¹⁵² Dickinson, *Letters from a Farmer*, 54.

Dickinson, believing that the British constitution secured rights, offered a remedy to these injustices, urging action but warning against violence. There was danger in not acting at all, but there was also danger in acting too rashly and too violently. He argued that they should learn from their response to the Stamp Act. They had acted in their own defense as opposed to “trust[ing] for relief to fortuitous event of futurity,” a strategy which, if correct then, ought also to be correct now, especially “if our rights *are* equally invaded, and” the protests against it, “may be as successful.” He chastised those who thought that defense of rights inevitably meant armed rebellion, “as if a man having a choice of several roads to reach his journey’s end, should prefer the worst, for no other reason but because it *is* the worst.”¹⁵³ Dickinson believed that the colonists’ claims of violated rights did not inexorably lead to war. He thus assuaged the fears of those who might be reluctant to resist for fear of war. He simultaneously insisted that the resistance be peaceful. It was imperative to fight for rights, “in the most firm, but most peaceable manner.” It was important to advocate peacefully because “[t]he cause of *liberty* is a cause of too much dignity to be sullied by turbulence and tumult.”¹⁵⁴ It was possible to be both a dutiful subject and a protector of Americans’ rights when “PROPER DISTINCTIONS” were made, and actors knew “what you owe to *yourselves*, as well as to *her*.”¹⁵⁵ Proper constitutional order could be achieved through a redress of grievances, and if that failed, “that kind of *opposition* becomes justifiable which can be made without breaking the laws or disturbing the public peace.”¹⁵⁶ Dickinson continued to believe that resistance must remain lawful in order for the constituted government to continue. The British constitution was worth preserving, and it could not be maintained if they were to engage in violent resistance. Dickinson here followed English jurist

¹⁵³ John Dickinson, *Letters from a Farmer*, 16.

¹⁵⁴ John Dickinson, *Letters from a Farmer*, 17

¹⁵⁵ John Dickinson, *Letters from a Farmer*, 84.

¹⁵⁶ John Dickinson, *Letters from a Farmer*, 18.

William Blackstone's thought that breaking the constitutional order necessarily destroyed the constituted polity.¹⁵⁷

Dickinson's argument in 1767 remained the same in many fundamental ways as his argument in 1765. He continued to emphasize that Parliament had no right to tax the colonies from the perspective of the natural rights Parliament ran up against. Dickinson maintained his argument in favor of preserving the ancient constitution, but his argument shifted away from the conduct of ministers to try to correct fundamental misunderstandings about the constitution. Dickinson's format with the *Letters*, elaborated argument rather than short broadside, allowed him to argue far more extensively about the role of Parliament in empire. He remained anchored in the statutes that ruled the case, but with the final five *Letters*, he discussed in depth the effects of the new laws in a way that emphasized the balance of power and necessity of respect for natural rights.

Dickinson's specific argument against these acts of Parliament was that they were infringing upon the rights of American legislators. This argument was similar in part to the one he had made in 1764 against the call for royal government in Pennsylvania. In 1764, he argued that the constitution of Pennsylvania was better at guaranteeing rights than the English one. However, in 1765, Dickinson argued that the English constitution was in fact the best guarantor of rights. It had been perverted, though by corrupt ministers. His argument had evolved not because he was inconsistent but because he shifted based on the specifics of the situation. He remained just as passionate about preserving rights. By 1767 and 1768, Dickinson's argument changed to accommodate the new violations of Americans' right. He argued now that the balance of power within the empire had been degraded.

¹⁵⁷ Lubert, "Sovereignty and Liberty in William Blackstone's 'Commentaries on the Laws of England,'" 294.

Chapter 3: 1774

Dickinson spent the rest of 1768-69 convincing Philadelphia merchants to practice nonimportation. He accused them of being too conscious of their profits. They had supported nonimportation methods in 1765 to protest the Stamp Act, but were reluctant to do so again. At the same time, relations worsened when Lord Hillsborough, a minister in William Pitt's government, wrote a letter to the governor of Massachusetts demanding that he order the House of Representatives to rescind their criticism of the Townshend Acts. The governor did not comply, and Hillsborough responded by penning a letter to other colonial governors demanding that they dissolve their respective assemblies to squash potential insubordination. This letter was published in the colonial newspapers, and Hillsborough's interference in colonial governments led the Pennsylvania Assembly, until now reluctant to respond to the legislation of 1767, to condemn Hillsborough's unconstitutional interference, and to demand the revocation of the Townshend Acts. When the king failed to respond to the Assembly's petition, the merchants joined the Boston and New York merchants in nonimportation in March of 1769.¹⁵⁸

A little more than a year later in July of 1770, nonimportation paid off, and all of the taxes were repealed, except for the tax on tea. In October of 1770, Dickinson was elected to the Assembly, where he once again did battle with Joseph Galloway, who had been reelected and held the position of House Speaker. In December of 1773 a group of Bostonians dumped pounds of East India Company tea into Boston Harbor. Instead of bringing charges on the men who had dumped the tea, Prime Minister Lord North's government closed Boston's port, revoked the charter, and ordered that all trials to be held by admiralty courts or in Britain, thus depriving Bostonians of their right to trial by jury.¹⁵⁹ When Philadelphia received word of this on May 18th

¹⁵⁸ David Jacobson, *John Dickinson and the Revolution in Pennsylvania, 1764-1776*, 59-64.

¹⁵⁹ Hoffer and Hoffer, *The Clamor of Lawyers*, 85.

1774, the Whigs sprang into action, forming a Committee of Correspondence. With June 1st looming large as the day enforcement of these so-called Intolerable Acts was to begin, they requested the governor call the Assembly to session, and voted to hold a convention composed of a wider body of men to nominate a delegation for a continental congress. The Committee issued a declaration condemning the Boston acts, supporting a congress, and appointing a new Committee of Correspondence.¹⁶⁰

Dickinson prepared a series of resolutions that emphasized the legal basis for Americans' rights in the ancient constitution. The convention met on July 15th, and Dickinson had prepared a series of resolutions for the Assembly to approve. The resolutions declared their loyalty to Great Britain and their desire for "ancient harmony" between America and Britain "on the principles of the constitution." They also declared that they were "entitled to the same rights" as their equivalents in England and decried the "unconstitutional" legislative authority Parliament had assumed over the colonies. Dickinson established that the crux of their argument was that the constitution was being misinterpreted by the British government to justify interference in colonial affairs. Resolution six through eight condemned the Boston Port Acts. They passed a resolution declaring that they were committed to a "suspension" of trade if their grievances were not redressed. Then followed the only two resolutions not passed unanimously. Resolution eleven declared that Pennsylvania would follow the lead of congress if it decided on "non-importation or non-exportation," and resolution twelve asserted that they would "take farther steps than are mentioned in the above resolve" if an act of parliament made it necessary. The remaining resolutions, passed unanimously, affirmed the convention's commitment to unanimity

¹⁶⁰ David Jacobson, *John Dickinson and the Revolution in Pennsylvania*, 65, 72-76,

throughout the colonies.¹⁶¹ The Assembly passed the resolutions, and agreed to send delegates to a congress, as requested in the instructions sent along with the resolutions.

Dickinson's *Essay on the Constitutional Powers of Great Britain* was a legal-minded excoriation of the excesses of the British government. Dickinson's argument in 1774 sought to broaden the scope of the rights of American colonists under the British constitution. The influence of his education in the law came through in his learned commentary and expansion on the constitutional thought of scholars like Blackstone. His theory of how to implement change came from his Whig politics. Dickinson departed from his earlier writings in his focus on broad reform. Though he addressed the particulars of the Boston Port Acts, his focus was on the more general abuses of the British government, which had reached an intolerable point in the summer of 1774.

Dickinson's *Essay on the Constitutional Powers of Great Britain* was written initially as an explanatory note to the draft instructions written for the Pennsylvania delegates to the Continental Congress.¹⁶² It was a far more academic piece of writing than *Letters from a Farmer* and "An Address to 'Friends and Countrymen.'" As the situation had become more dire for liberty, he brought out the full arsenal of legal interpretation of constitutional law. Dickinson was more obviously a legal theorist in this work, as shown by his emphasis on abstract principles, such as the authority for resistance, and the proper way to interpret the constitution.¹⁶³ Dickinson was writing for the assemblymen and his fellow convention delegates, and intended this work to be a more philosophical explanation of the instructions the convention sent to the

¹⁶¹ "Resolutions," in *A New Essay On the Constitutional Power of Great Britain*, (Philadelphia, reprinted London: J. Almon, 1774), 3-8.

¹⁶² See the note inserted on page 17 of the "Instructions," in *A New Essay On the Constitutional Power of Great Britain*.

¹⁶³ John Dickinson, *A New Essay... On the Constitutional Power of Great Britain*, 104.

Assembly.¹⁶⁴ The *Essay* contained footnotes where Dickinson provided long sections of Blackstone, or passages from Roman historian Livy, which he used to buttress his own arguments. Montesquieu's views on the separation of powers, which he had first encountered in law school, also appeared in the *Essay*, especially as he argued for stronger distinction between the role of Parliament and the colonial legislatures. Dickinson also marshalled Edward Coke and Cicero to his defense of natural rights as part of the constitution.¹⁶⁵ The extended footnotes made it more difficult for the average reader to understand, especially since several footnotes took up almost an entire page.¹⁶⁶ Dickinson's argument was lawyerly in his specific refutation of the opposition's points. Though he made explicit mention of the acts of Parliament that were at issue, including the closure of Boston's port, his argument was far more concerned with the larger constitutional issue.¹⁶⁷

American Whigs believed that Parliament should be subordinate to the constitution. They believed right reason bound Parliament, as it had bound the king. Constitutional rights, according to American Whigs, were the rights of life, liberty, and property and superseded any Parliamentary statute. During the Glorious Revolution, Parliament received only the powers of the king, and no more. Conversely, Tories in America in the latter half of the eighteenth-century believed, as most Englishmen did, that Parliament's word was the law of the empire. Rights were part of the constitution, but Parliament was supreme, and so any argument that supposed Parliament could act unconstitutionally was absurd. For Whigs, a proper reading of the

¹⁶⁴ See Letter IX, for instance, where Dickinson gave an explanation of the importance of constitutional checks and balances.

¹⁶⁵ See, for instance the footnotes from pages 22-26 of the "Instructions." Dickinson quoted Thomas Gordon at length in a footnote that spanned four pages, while also citing Montesquieu's *Spirit of the Laws*; Robert Sparling, "Montesquieu on Corruption: Civic Purity in a Post-Republican World" in *On Civic Republicanism: Ancient Lessons for Global Politics*, 178.

¹⁶⁶ See *Essay on the Constitutional Powers of Great Britain*, 70-78.

¹⁶⁷ *Ibid.*, 67.

constitution meant an expansive view of rights that returned the British constitution to the Saxon past. For Tories, reading the constitution properly meant acknowledging the power Parliament had as the supreme legislature.¹⁶⁸

Dickinson argued for the preservation the constitution of Great Britain through reform because Parliament had interpreted the rights it granted far too narrowly. The solution Dickinson proposed did not stop at the repeal of the offending acts, but required a reversion to the ancient constitution, which Dickinson argued had been interpreted too narrowly. *Essay on the Constitutional Powers of Great Britain* was a departure from the *Letters from a Farmer* in its scope, arguing for the repeal of the Boston Port Acts, but also more generally for a reformed constitutional structure . He advocated for a reading of the constitution beyond the letter and into the spirit, a reading which would expand rights for the individual and begin to move the interpretation of the constitution back to its original, ancient meaning.¹⁶⁹ His reading at the Middle Temple demonstrated the importance of the ancient constitution to liberty, and Dickinson carried this influence into his activities during 1774. Dickinson maintained a reverence for the ancient constitution, prizing its continuity. In 1774, Dickinson argued for a radical placing of natural rights on par with Parliament, with the goal of taking the constitution back to its ancient past.

Dickinson made an argument based on the Whig principles to curtail power. The most effective way, Dickinson, asserted, of achieving recognition of rights was the firmer assertion of guardrails between Parliament and the colonies. Dickinson cited Blackstone, the eminent jurist, asserting that there must exist a line between the “right of the mother country and those of the

¹⁶⁸ Hoffer and Hoffer, *The Clamor of Lawyers*, 44-45; Wood, *Creation of the American Republic*, 261, Bailyn, *Ideological Origins*, 68-69.

¹⁶⁹ Hoffer and Hoffer, *The Clamor of Lawyers*, 85.

colonies” because “by the laws of God, and by the laws of the constitution, a line there must be, beyond which her authority cannot extend.” In doing so, Dickinson argued in favor of a broad interpretation of the constitution that placed primacy on rights. His argument for constitutional rights relied on a proper balance of power. He argued that it was unreasonable to think that “it ever was or ever can be the truest interest of a kingdom or state to violate the laws of natural justice, equity, and humanity. These laws may be called the laws of GOD” and they should not “be broken with impunity.”¹⁷⁰ Dickinson here invoked the principle that the ancient constitution placed natural rights on par with Parliament. Dickinson had made this argument before, and it was not out of bounds with a conservative mind like Blackstone’s who believed that natural law was “coequal” with Parliament.¹⁷¹ Dickinson’s argument reinforced the Whig belief in the primacy of natural rights in the constitution. The circumstances of the summer of 1774 gave new urgency to the argument that power could not be arbitrary. Where before the arguments centered on a repeal of specific legislation, it had become clear to Dickinson that the government did not recognize the natural rights of its subjects.

Dickinson, ever the admirer of the British constitution, argued that the emphasis of the constitution needed to be shifted back to rights. Dickinson rebutted what he viewed as William Knox’s overly legalistic reading of the British constitution. According to Knox’s “construction of the constitution[,] a well established government, or the freedom of a people, depends not on the great right which GOD has given them ‘of having a share in the government of themselves,’ whereby their property is secured, but merely, on the ‘*purpose*’ to which the property taken from

¹⁷⁰ John Dickinson, *Essay on the Constitutional Powers of Great Britain*, 34-36.

¹⁷¹ Lubert, “Sovereignty and Liberty in William Blackstone’s ‘Commentaries on the Laws of England,’” 291; Robert Sparling, “Montesquieu on Corruption: Civic Purity in a Post-Republican World” in *On Civic Republicanism: Ancient Lessons for Global Politics*,

them without their consent is *applied* by those who thus take it.”¹⁷² Dickinson noted that the Americans had done thus far what the English have done “in their controversies with the crown.”¹⁷³ However, since their grievances had gone unredressed, “Now indeed the conduct of administration demonstrates to us, that we must enlarge our views, and endeavor to take a prospect of all mischiefs necessarily attending a claim of boundless power with an unbounded inclination to exercise it.” Again, the solution Dickinson offered was that of Montesquieu, and also accorded with what had precipitated the conflict in the first place. Americans needed to “enlarge” their aims because it had become clear that “boundless power” was accompanied “with an unbounded inclination to exercise it.”¹⁷⁴ Indeed, Whig American lawyers took a far more liberal view of their constitutional rights, broadening their discussion of law to a more abstracted view of what law ought to do.¹⁷⁵ Natural rights were a bulwark against arbitrary power, and were a vital part of the constitution that could only be preserved by the efforts of the colonists.

Dickinson articulated a theory of the constitution that redefined liberty in the constitution. He quoted from *Commentaries on the Laws of England* where Blackstone wrote that the limits of the government were where “the constitution hath *expressly*, or *by EVIDENT CONSEQUENCE*, laid down some exception or BOUNDARY,” of the “prerogative.” Dickinson argued for a broad definition of “evident consequence” claiming that “[t]he happiness of the people is the end” and was “the body of the constitution” and “[f]reedom is the spirit or soul.” The constitution thus ought to “prevent, or relieve, if it can, any mischief to the body of the society, and to keep that in the best health.” Therefore, he claimed, any “evident

¹⁷² Dickinson, *Essay*, 101

¹⁷³ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 99.

¹⁷⁴ *Ibid.*

¹⁷⁵ Hoffer and Hoffer, *The Clamor of Lawyers*, 85.

consequence” of a statute that harmed the health of society was unconstitutional.¹⁷⁶ This greatly expanded the rights that the colonists had, and also positioned the constitutional relationship between Great Britain and the colonies as not bound by the exact phrasing of the constitution, but by its purpose. The constitution continued to be the frame of rights beyond what its words explicitly granted.¹⁷⁸ This language of the constitution as a body also reflected the way Dickinson had conceived of the law while at the Middle Temple. The law had to be flexible in some ways. Equity courts were what gave flexibility, and similarly, constitutions provided flexibility to the body politics. As Dickinson’s above refutation of Knox demonstrated, the colonies were not obligated to obey laws simply because of the inheritance of land. Rather, the laws of nature and the spirit of the constitution as their safeguard guaranteed certain rights that could not change, no matter the relationship.

The ancient constitution clearly placed emphasis on rights, especially as they applied against kings. Dickinson again quoted from the *Commentaries*, “*Nec REGIBUS infinita aut libera potestas*, was the constitution of our *German* ancestors on the continent, and this is not only consonant to the PRINCIPLES of NATURE, of LIBERTY, of REASON, and of SOCIETY, but has always been esteemed an express part of the COMMON LAW of *England*, even when *prerogative was at the highest*.”¹⁷⁹ The ancient constitution, going back to murky time immemorial, guaranteed freedoms against the power of the king, even when the king’s powers were at their height. These rights were inherited, and had never been denied to British subjects. When the first colonists left England, they took with them the laws and customs of England,

¹⁷⁶ Dickinson, *Essay*, 36-37.

¹⁷⁸ Reid, ‘In Our Contracted Sphere,’”26.

¹⁷⁹ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 96. The Latin here translates as, *not to kings infinite or unconstrained power*.

hoping to enjoy their God-given rights and the protection of the British government.¹⁸⁰ Common law was not universally applied in the colonies, and American law was in confusion because of the inconsistent application of English common law combined with the ubiquity of equity courts.¹⁸¹ Dickinson rejected Blackstone's claim that the colonists "can be thereby deprived of the benefits of the *common law*," but also be "subjected to the *king*."¹⁸² Dickinson insisted that common law protection against absolutism had always existed alongside the prerogative. Dickinson believed that rights under the constitution had been stronger in the past than they were now.

Modern Britain, though, no longer respected the importance of common law rights against the power of the king. Over the past decade, legislation had "gradually depart[ed] from the laws of England" and gave officials powers that were unconstitutional.¹⁸³ Dickinson admired the institutional counterweights of the English constitution, declaring that "Such is the wisdom of the *English* constitution, that it 'declares' the King may transgress a 'boundary laid down by evident consequence,' even by using *the power* with which he is *expressly* vested by the constitution, in doing *those very acts* which he is *expressly* trusted by the constitution to do."¹⁸⁴ This led him to a similar critique of Parliament, which after the Glorious Revolution, he argued, had become too powerful. This was a common Whig critique. After William and Mary took the throne from James II, they acceded to Parliamentary supremacy, but in the process, Parliament ended up with more power than the king had ever had. Dickinson declared that if the king could not have done something, it did not follow then that Parliament could do it. The king had never

¹⁸⁰ Reid, "In Our Contracted Sphere," 29-30.

¹⁸¹ Gordon Wood, *Creation of the American Republic*, 298.

¹⁸² Dickinson, *Essay on the Constitutional Powers of Great Britain*, 98.

¹⁸³ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 51

¹⁸⁴ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 38.

been able to suspend the writ of habeas corpus, nor had the king ever had the right to tax the colonies, and declaring that power did not mean Parliament actually had it.¹⁸⁵ The English constitution had never been perfectly followed, but the situation had worsened considerably in the seventy years since the Glorious Revolution.

Dickinson specifically condemned Parliament's overreach, claiming it had overstepped its power by violating the "evident consequence" view he took from Blackstone. Imperfect men enforced laws and so institutional checks were necessary. Dickinson wrote that the "power of regulation" "hath been turned to other purposes, than it was originally designed for, and retaining its title, that become an engine of intolerable oppressions and grievous taxations."¹⁸⁶ Parliament had taken its rightful authority and used it to further its own power. Using an example from common law, Dickinson turned to the king's ancient power of "*custodium portuum*" which he held in trust. The king did not, however, possess "*dominium utile*." The king was the custodian of the ports into and out of the kingdom, but he could not regulate the use of the ports themselves. The king "By common law... restrain a subject from going abroad...But to *conclude* that he may *therefore take money*, not to restrain or not to enjoin, IS TO SELL GOVERNMENT, TRUST, AND COMMON JUSTICE."¹⁸⁷ Dickinson argued that the same logic applied to the governance of the American colonies. The government had certain powers, but that did not mean that they had every power. A proper reading of the constitution would affirm that government was not meant to have total power. Dickinson's argument had shifted from the *Letters from a Farmer's* specific, targeted reforms to the broader reforms to the system Dickinson now advocated for.

¹⁸⁵ Dickinson, *Essay on the Constitutional Power of Great Britain*, 39; Harry T. Dickinson, "The Magna Carta in the American Revolution," in *Magna Carta: History, Context, and Influence*, 82.

¹⁸⁶ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 126.

¹⁸⁷ *Ibid.*

Dickinson sought reform that would preserve constituted government, with the proper acknowledgement of the rights of Americans. He wrote that the colonists were “the best judges in all cases what suits us” and their laws were “founded on the immutable and unalienable rights of human nature, the principles of the constitution, and charters and grants made by the crown at periods, when the power of making them was universally acknowledged by the parent state, a power since frequently recognized by her,--subject to the control of the crown as by law established.”¹⁸⁸ Dickinson asserted that the legislatures were best at making law for the colonies. The king’s grant of charters was the part of the constitutional system that allowed for the colonists to establish their own laws, and allowing local governments to make laws would restore the system.¹⁸⁹

This would not mean that Parliament had no role to play. Parliament would retain its power of trade regulation, because that power was held over all of the colonies, and was essential to the whole empire. As he had in the *Letters from a Farmer*, Dickinson acknowledged Parliament’s right to regulate trade. But he condemned the Parliamentary legislation that restricted free worship and taxed the colonists. These taxes were collected “by their own officers,” and were “enforced” by admiralty courts. Parliament also had “abolish[ed]” jury trial, established a standing army without legislative consent, and changed the constitution of Massachusetts. Dickinson cited all of these statutes, demonstrating that Parliament’s overreach was no longer hypothetical, as it largely had been in the 1760s.¹⁹⁰ The Boston Port Acts had changed Dickinson’s assessment of the danger Britain’s infringements posed.

¹⁸⁸ Ibid., 68-72.

¹⁸⁹ Reid, ““In Our Contracted Sphere,”” 24-25.

¹⁹⁰ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 63-67.

The division of power was of great importance to Dickinson, especially since it had become clear that virtue had failed and reinforcing the constitution was the only way to restrict this power.¹⁹¹ The only true security came from the constitutional preventing the king and Parliament from infringing upon the colonial legislatures. Parliament's status as the empire's law making body was dangerous to liberty because "a supreme sovereign legislature as eternally superintending the whole empire is a notion equally unjust and dangerous." Dickinson argued that it was not necessary for Parliament to exert this authority because American legislatures taxed themselves already. The good of the empire would be served, too, because self-taxation would draw the most revenue because local officials would calculate how much people would be willing to pay.¹⁹²

One of the most dangerous acts of Parliament was the stationing of troops in America. During the Stamp Act crisis, Dickinson had told his audience that British would not station troops to enforce the Stamp Act, because the expenditure would outweigh the cost, and it would lead to armed conflict. In Britain, Dickinson wrote, Parliament would need to give its consent before the army could be raised by the king.¹⁹³ British troops stationed in America though, were not authorized by an American legislature. There was no check on their potential excesses, because those who paid them were different from those among whom they were stationed. Just as in his *Letters from a Farmer*, Dickinson argued that the threat posed by Parliament was dangerous because colonists' rights were being taken by people accountable to a government an ocean away.¹⁹⁴ Once more, the question of virtual representation reared up. If the British

¹⁹¹ Bailyn, *Ideological Origins of the American Revolution*. Virtue in politics continued to concern other thinkers. Dickinson, too, believed virtue was a problem. However, in this work, Dickinson focused his attention on the balance of power in government and the ways in which that created danger.

¹⁹² Dickinson, *Essay on the Constitutional Powers of Great Britain*, 82.

¹⁹³ John Dickinson, "An Address to 'Friends and Countrymen' on the Stamp Act," 205.

¹⁹⁴ Dickinson, *Letters from a Farmer*, 54.

constitution intended representation it must be “complete” representation. His argument stretched for twelve premises, laying out an explication that culminated in the assertion that the colonies could not be taxed because they had not consented.¹⁹⁵ It was no longer enough, as it had been in the 1760s to argue that this practice in particular was unconstitutional, Dickinson now claimed that the British government needed to read the constitution more liberally.

Dickinson still believed that it was possible for Parliament to retain sovereignty. He pointed to the economic success Great Britain had enjoyed since it had acquired the colonies. This was evidence, he claimed, that the “happiness” of the colonies was not detrimental to the economic well-being of the mother country, which was after all, the entire point of having colonies in the first place.¹⁹⁷ Trade regulations would still bind the colonies to Britain, and the colonies would still be dependent. Trade regulations were constitutional because of the “constitutional check” that kept Britain from enacting overtly harmful policies. If they did, they would suffer equally. Unlike with legislative powers, Britain could not act without also affecting its own people. This power of trade regulation also had its origins in the constitutional duty to deal with sovereign nations.¹⁹⁸

How then, to resist these incursions. Dickinson believed, as he had expressed in his writings before, that colonists had to resist because as Englishmen, they had rights that were being denied to them. The most effective way to resist was to make it economically painful for the British to continue to oppress them. Resistance was necessary because it was only to “*divine authority*” that they were ultimately accountable to. It was not the “*assumed authority* on which the unjust sentences were founded” that compelled obedience. And so “*when* submission

¹⁹⁵ Dickinson, *Essay on the Constitutional Powers of Great Britain*, 46-48.

¹⁹⁷ *Ibid.*, 54-55.

¹⁹⁸ See *Ibid.*, 126.

becomes inconsistent with and destructive to the *public good*, the same veneration for and duty to the *divine authority* commands us to oppose.” Dickinson believed that resistance was absolutely urgent, as he had before. Their rights were too important for them to be taken without any resistance. His insistence on the protection of rights was consistent with this theory of the constitution of Great Britain. As a lawyer, it was clear that the right to resist did not come from anywhere specific in the constitution. It was not the case that the way the British government was constituted gave this right. The balance of power needed to be restored. This was the philosophical reason for resistance, but what of the practical means for this resistance?

These can be found in the “Instructions,” of which the *Essay* was originally a part. Dickinson drafted the “Instructions” for the convention where he offered suggestions meant to sustain the constitution. The convention, citing Montesquieu, wrote that “despotism, unchecked and unbounded by *any laws*” threatened, and that they had a duty to ensure a “CONSTITUTIONAL FOUNDATION” for Britain and the colonies.¹⁹⁹ They proposed that the Assembly nominate delegates to a congress who would “obtain a renunciation” of internal and external duties, any regulation on internal trade, the quartering of troops, the establishment of admiralty courts, the 35th act of Henry VIII, section 2, 5th act of George II, the 22nd, 23rd, and 29th of George II, and all of the act pertaining to Massachusetts that Parliament had passed in the “last session.” They propose as a concession, that the colonial legislatures write into law obedience to the “acts of navigation,” and every act other than “those above mentioned.” They also suggested paying damages to the East India Company, whose tea had been damaged, and setting aside annual sums for the king. This was a concession to taxation as a grant to the king, but they added a caveat that they would collect the money themselves. They also promised troops and assistance

¹⁹⁹ Dickinson, *Essay*, 15-16.

in any future war. They acknowledged the constitutionality of trade regulations as they “have felt the benefits of a subordinate connexion with her.”²⁰⁰ Dickinson and his fellow committee members worked to find a workable solution that would preserve what Dickinson had always believed was the legitimate authority of Britain, while stopping the abuses of power.

Dickinson and the rest of the convention worked within a constitutional system of checks and balances, and by acknowledging Britain’s rightful authority, they were able to secure important rights. They pledged that “[o]ur union, founded on mutual compacts and mutual benefits, will be indissoluble, at least more firm, than an union perpetually disturbed by disputed rights retorted injuries.” In order to incentivize agreement, the colonies should agree to “*permanent*” “non-importation and non-exportation.” Unanimity was vital, and they stressed the importance of a unified front. If Britain repealed some, but not all, of the acts, the colonists should then trim down the trade restrictions. They believe that in keeping up the restrictions in this way, they could maintain a “CONTINUAL CLAIM AND ASSERTION OF OUR RIGHTS.”²⁰¹ It was through a combination of the virtue of the people, who would of be the ones to actually carry out nonimportation, but also concessions that the colonies could offer in order to tie the empire together. The delegates understood the economic power of the colonies and harnessed it. The Stamp Act and the Townshend Act had been repealed only after great economic pressure had been exerted. Dickinson and his fellow delegates thus concluded that economic pressure was the best way to achieve their goals.

In preparation for the Continental Congress, other plans of action had been written in response to the Intolerable Acts, including by Thomas Jefferson of Virginia and Dickinson’s political opponent Joseph Galloway. Thomas Jefferson’s *Summary View of the Rights of British*

²⁰⁰ Dickinson, *Essay*, 17-25.

²⁰¹ Dickinson, *Essay*, 25-30.

America was addressed the king, asking him to “redress” their grievances with an eye toward restoring “fraternal love and harmony.”²⁰² Jefferson argued like an equity lawyer, demonstrating the injury that had been done. Galloway was skeptical of any move the Congress might make, and came prepared with his plan of union. He proposed an intricate plan that subordinated the colonies to Britain, but gave them protection against Parliament with a General Council that functioned like the House of Commons.²⁰³ Thus, lawyers at the time were considering how a reformed government structure might work, looking to remain within the British empire, but on more equitable terms.

The Continental Congress likewise believed that the imperial relationship had to be reconstituted in some way, since clearly it had become unworkable in the wake of the Boston Port Acts.²⁰⁴ Dickinson similarly viewed the failings of the British government as structural; they read the constitution too narrowly, and therefore did not give rights enough consideration. However, Dickinson also believed that the British constitution, when read correctly, was a bulwark against despotism, and so all effort needed to be made to reconcile. His solution was a reformation of the checks and balances within the wider British empire. The opinion of the Continental Congress, though, had shifted from reconciliation, with thinkers like John Adams believing that that the Congress needed to strike a more aggressive tone than Dickinson believed was prudent. Dickinson, newly reelected to the Assembly in early October and immediately dispatched to Congress, was appointed by the Congress to rewrite the petition penned by Richard Henry Lee to the king. His petition was conciliatory, asking the king to stop listening to the counsel of the “designing and dangerous men” of his ministry, and emphasizing that they were

²⁰² Thomas Jefferson, *A Summary View of the Rights of British America*, ed. Paul Leicester Ford (Brooklyn, NY: Historical Printing Club, 1891), 31

²⁰³ Hoffer and Hoffer, *Clamor of Lawyers*, chap. 4

²⁰⁴ Mary Beth Norton, *1774: The Long Year of Revolution*, (New York: Alfred A. Knopf, 2020), 195.

not asking for the dissolution of the prerogative or the granting “any new right,” but instead pressing from their due as “English freemen.”²⁰⁵ Already in the fall of 1774 sentiments were shifting away from conciliation, as Adams’s rapidly changed opinion of Dickinson indicated.²⁰⁶ The Congress adjourned on October 26th.

Dickinson’s position on resistance had significantly broadened since 1764. In his *Essay on the Constitutional powers of Great Britain*, as well as in the “Instructions,” Dickinson advocated for a broader reading of the English constitution to include Blackstone’s “evident consequences.” He continued to believe that it was vital that the solutions respond to the reality of the situation, and was unwilling to go further than public buy-in would allow. Dickinson believed that a proper reading of the constitution would reduce the power of ambitious men. Dickinson offered a coherent philosophy of the constitution in 1774, one that would continue to be evident in his political work going forward. Dickinson had understood the ancient English constitution to have been corrupted over the centuries, but believed that now there was an opportunity to read it properly and maintain the empire.

²⁰⁵ Worthington Chauncey Ford, ed. *Journals of the Continental Congress, 1774-1789*, (Buffalo: NY, William S. Hein. Co., 2005), 1:118.

²⁰⁶ Bernard Knollenberg, “John Dickinson vs. John Adams: 1774-1776,” *Proceedings of the American Philosophical Society*, 107, no. 2 (April 1963): 139-140.

Epilogue and Conclusion

Dickinson dealt with a new reality after 1774. America declared its independence and needed a new constitution, and Dickinson, who, as we have seen, had thought deeply about the purpose of the British constitution, threw himself into the process of constituting the new American polity. After 1776, Dickinson also became more religious. The turmoil of the war and the time spent with his Quaker wife and daughters led him to a deeper appreciation of Quakerism, which in turn deepened his appreciation of the importance of societal bonds. He drafted the Articles of Confederation and participated in the devising and ratification process for the federal Constitution. Dickinson maintained his view of the importance of a constitution to the protection of rights. Critically, though, the constitution he was dealing with was no longer the British constitution. He also sustained his view of the importance of checks and balances, a lesson learned from the overreach of Parliament in the 1760s and early 70s.

The Articles of Confederation were first drafted in June of 1776, before independence was declared. Dickinson drafted the Articles of Confederation, placing emphasis on checks and balances as a security against violations of rights. Dickinson maintained his belief that a government properly constituted, with power distributed amongst various parties, was good protection against governmental excess. Dickinson's Articles of Confederation draft articulated in a new government the principles he had advocated in 1774. The individual states were allowed broad discretion within their borders to make and enforce laws. Dickinson did not want to elucidate the rights individuals and states had, because as long as the states were given wide latitude, and the central government was adequately checked, there could be no infringement.²⁰⁷

²⁰⁷ John Dickinson, "Drafts of the Articles of Confederation by John Dickinson," Preserving American Freedom: The Evolution of American Liberties in Fifty Documents, Historical Society of Pennsylvania, accessed 4/16/2021, <http://digitalhistory.hsp.org/preserving-american-freedom>.

Dickinson was not involved in the process after July 2nd, since he left to lead his regiment after he refused to vote on the Declaration of Independence.²⁰⁸ Dickinson did not cast a vote against independence, allowing it to pass, He had made his argument against it in forceful terms, but seeing that the motion would pass, decided it was best if it could go through unanimously. His decision not to vote for independence was consistent with his record of paying close attention to the facts of the case. Dickinson understood what would motivate a power like France to involve itself, and wanted to be sure America was securing its best chance not only of French involvement itself, but also of France not moving in on American land in the aftermath.²⁰⁹ His argument against the Declaration was like his argument in 1764 in its emphasis the timing and the need to act cautiously with such a serious matter.

After a brief time in the military, he returned to Philadelphia, where, though out of favor with the new government because of his opposition to independence, he continued to participate in the process of creating a new constitution.²¹⁰ Dickinson maintained his view that the constitution needed a strong base of government by the people. Alarmed at the radical new Pennsylvania constitution, he penned an *Essay on a Frame of Government for Pennsylvania*, an alternate constitution to the one written by the Committee of Correspondence. Dickinson included here many of the principles of a balanced government, and was sure to emphasize the people of Pennsylvania as the source of the constituted government. Dickinson's plan gave the power of taxation and impeachment to the Assembly, and the Senate the power of originating all bills except for money bills, impeachment trials, and the power to "finally determine on appeals

²⁰⁸ David Jacobson, *John Dickinson and the Revolution in Pennsylvania*, 117; Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 241-242.

²⁰⁹ Paul H. Smith, ed. *Letters of Delegates to Congress, 1774-1789*. (Washington, DC: Library of Congress, 1979), 4:351-356.

²¹⁰ Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 263.

from the Supreme Court.” His plan was rejected, and, perhaps out of desire to prove his patriotism as radicals questioned it, he joined the Delaware militia as a private.²¹¹

Dickinson continued to believe that power was corrupting, and thus a system of checks and balances on the government was necessary to its functioning. Dickinson’s Whig politics, though, underwent a shift as he became more devout. Where before he did not mention society as a force for good, after the war, Dickinson emphasized the duty people owed to each other, which coincided with a Quaker ethic. For instance, he gave money to various causes, including abolition and the education of poor children.²¹² Politically, he was very active, serving in the new government at both the state and federal level. In 1779, Dickinson was chosen as delegate to the Confederation Congress, where he advocated for the adoption of the Articles of Confederation, which he believed were imperfect but necessary.²¹³ For a brief period from 1781 to 1782 he was both President of Delaware and President of Pennsylvania. He resigned his office in Delaware and served out his term in Pennsylvania.²¹⁴ In 1786, believing the Articles of Confederation too weak, he attended the Annapolis Convention, a gathering of twelve men from five different states. He was elected chairman, and it was this group that called for a convention to discuss emending the Articles of Confederation.²¹⁵ Dickinson was continually committed to the importance of a durable constitution, despite his doubts about declaring independence.

²¹¹ John Dickinson, *Essay on a Frame of Government for Pennsylvania*, (Philadelphia, James Humphreys Jr., 1776), 9-13; Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 256-257; Jane Calvert and Liz Covart, “John Dickinson and the Making of the U.S Constitution, 1776-1788,” (seminar, Library Company of Philadelphia, Zoom, October 21, 2020) <https://librarycompany.org/seminars/>.

²¹² Jane Calvert, “Liberty Without Tumult: Understanding the Politics of John Dickinson,” *Pennsylvania Magazine of History and Biography*, 131, no. 3., (July, 2007): 237-238.

²¹³ Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 273-274; David Jacobson, *John Dickinson and the Revolution in Pennsylvania*, 122.

²¹⁴ David Jacobson, *John Dickinson and the Revolution in Pennsylvania*, 122.

²¹⁵ Jane Calvert and Liz Covart, “John Dickinson and the Making of the U.S Constitution, 1776-1788,” (seminar, Library Company of Philadelphia, Zoom, October 21, 2020) <https://librarycompany.org/seminars/>.

Dickinson's work at the Constitutional Convention was predicated on the same principles that had guided him through his early career defining the British constitution. He relied on the historical understanding of the role of the constitution in balancing the government to allow for rights to flourish.²¹⁶ Dickinson participated in the Constitutional Convention, where he advocated for a stronger central government than the one that had been established by the Articles of Confederation. His notes from the convention reveal that he continued to be concerned about a balance of power that would allocate responsibilities and rights appropriately to avoid the overextension of either the state or federal authorities.²¹⁷ Dickinson forwarded a plan for a legislature comprised of two houses, with one representing the people, and the other representing the states. He opposed the Virginia Plan because it allowed for the central government to intervene in a state's affairs and allowed for the federal and judiciary branches to override the national legislature. He also objected to William Paterson's plan, which called for a unicameral legislature.²¹⁸

His most famous contribution to the Constitutional Convention were the letters he wrote in support of the Constitution under the penname Fabius. Like his *Letters from a Farmer in Pennsylvania*, these letters were written as an appeal to ordinary people who might have doubts about a strong federal system. Fabius, unlike the Farmer, was advocating for a specific system of government, not writing in opposition, and was therefore constrained by the document he was defending. Like the Farmer, Fabius addressed the concerns of those opposed to the Constitution, and refuted them. He emphasized that the power of the federal government was circumscribed by

²¹⁶ Gregory S. Ahern, "The Spirit of American Constitutionalism: John Dickinson's *Fabius* Letters," *Humanitas*, 11, no. 2 (1998): 75-76.

²¹⁷ Robert G. Natelson, "The Constitutional Contributions of John Dickinson," *Penn State Law Review*, 108, no. 2 (2003): 453-454.

²¹⁸ Forrest McDonald and Ellen Shapiro McDonald, *Requiem: Variations on Eighteenth-Century Themes*, (Lawrence: University Press of Kansas, 1988), 96-97; James H. Hutson, ed., "John Dickinson at the Federal Constitutional Convention," *The William and Mary Quarterly*, 40, no. 2, (1983):, 264, 279.

the law, comparing it favorably to the Magna Carta.²¹⁹ His letters, especially letter three, rely more heavily on religion than his earlier writings.²²⁰ Dickinson wrote about the duties people owed to each other, and the necessity of social bonds.²²¹ He also reiterated his theory of the constitution condensed to “parts in the organization of the contributed rights” of the people.²²² Dickinson maintained his beliefs about the importance of well-checked government to the preservation of rights, arguing that a bill of rights was unnecessary with a government dependent on the people for its power.²²³

In the 1790s, Dickinson was retired from public office, and his work tended to observations and advice on foreign policy concerns, where he prioritized the welfare of the body politic, exhorting the people to be watchful of their rights, much in the way his earlier writings in the 1760s did. Dickinson’s Quakerism became even more prominent in his writings, with many of these later writings referencing divinity and the Quaker ethic that informed his concern for the overall society’s wellbeing.²²⁴ His *A Caution; or Reflections on the Present Contest between France and Great Britain* was written in support of the French. Dickinson relied heavily on ancient examples, as well as current policy. Though in retirement, he had not stopped paying attention to international affairs. He concluded by recommending that Americans hold “a just regard for our own peace and welfare” and recognize that any war between France and Britain would be “disastrous.” Dickinson included in this document a poem entitled “Ode, on the French Revolution,” which praised the French for their commitment to liberty.²²⁵ His final work, *An*

²¹⁹ John Dickinson, *The Letters of Fabius, in 1788, on the Federal Constitution; and in 1797, on the Present Situation of Public Affairs*. (Wilmington, DE: From the office of the *Delaware Gazette*, 1797), 15.

²²⁰ *Ibid.*, 17.

²²¹ Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 282

²²² Dickinson, *The Letters of Fabius*, 29.

²²³ *Ibid.*, 23.

²²⁴ Jane Calvert, *Quaker Constitutionalism and the Political Thought of John Dickinson*, 280.

²²⁵ John Dickinson, *A Caution; or, Reflections on the Present Contest between France and Great-Britain*. (Philadelphia: Benj. Franklin Bache, 1798), 12, 14.

Address on the Past, Present and Eventual Relations of the United States to France, published in 1803, asserted that the French Revolution had been pursued to an extreme end. He condemned France's "ambition" and warned Americans to be on "guard" against impressment and potential invasion. He recommended "negociation," and failing that, alliances with other nations against France. Dickinson wrote that "no nation can be safe that stands by itself" against France.²²⁶

Scholars have labelled John Dickinson a conservative. Others have rooted his politics in his Quakerism. But while Dickinson was surely conservative in the sense that he believed in conserving the constitutional order, and was undoubtedly a Quaker to varying extents throughout his life, his legal education was essential to his political thought. His politics were informed by a broad legal-mindedness that emphasized rights as part of a constitutional structure; a Whig political ideology that buttressed these rights; and a belief that common people needed to understand the law, and could be convinced to defend or reform the constitution. He was a complicated thinker, who maintained a commitment to the preservation of the constitution throughout the crisis within the British empire. He was consistent in his application of principle, but not static. He changed his approach and his argument as circumstances changed, like a lawyer convincing a jury. Dickinson's political thought throughout the 1760s and 70s was greatly influenced by his legal knowledge.

Studies of Dickinson's political thought during the Constitutional Convention and the ratification should be informed by the knowledge that Dickinson was thinking about

²²⁶ John Dickinson, *An Address on the Past, Present and Eventual Relations of the United States to France*. (New York: T. and J. Swords, 1803), 12-14.

constitutions throughout his career. Dickinson's work on the Federal constitution was shaped by decades of work studying the law and British constitutional history. In order to fully appreciate his later career, it is important to understand his consistency in his concern for rights and the best means of preserving them. He came from a British legal tradition, as all the Founders had, and understanding that legacy is key to grasping his politics.

Further research on Dickinson's legal work needs to be done to more fully understand the influence of the law on his career. In-depth studies into the legal influences of each document could bring forward subtleties that this thesis could not necessarily explore. Dickinson's law practice should also be incorporated into studies of his politics, as that would surely reveal more depths to his political decisions. Dickinson thought about the law a great deal, and the influence of his legal philosophy constantly shaped his politics. His thought was important to the Revolution, and it is essential to understand Dickinson better to more fully understand the causes of the Revolution itself. His story did not end or begin on July 1st. 1776, when he appeared to retreat and refused to sign the Declaration of Independence. It is critical to look beyond that one decision explaining John Dickinson.

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