

## RETHINKING WOMEN'S SUFFRAGE IN NEW JERSEY, 1776-1807

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For a brief period after the American Revolution, some women were allowed to vote, in one of the thirteen new states. The New Jersey Constitution of 1776 enfranchised not only men who met the property requirement but women as well. The specific language:

[A]ll inhabitants of this Colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other public officers, that shall be elected by the people of the county at large.<sup>1</sup>

This piece of early American political, legal, and gender history was so exceptional that for many years historians wrote it off as an oversight or accident of wording. As Mary Beth Norton put it, “[T]he constitution’s phraseology probably represented a simple oversight on the part of its framers.”<sup>2</sup>

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1. N.J. CONST. of 1776, para. IV.
2. MARY BETH NORTON, *LIBERTY’S DAUGHTERS: THE REVOLUTIONARY EXPERIENCE OF AMERICAN WOMEN, 1750-1800* 191 (1980); *see also* *THE FEMALE EXPERIENCE: AN AMERICAN DOCUMENTARY* 323 (Gerda Lerner ed., Oxford Univ. Press 1992) (1977) (describing “an ambiguity in the law and the indifference of the community”). Thomas Fleming explained the enfranchisement of women by calling the constitution “hastily written.” THOMAS FLEMING, *NEW JERSEY: A HISTORY* 94 (1984). “The case of New Jersey was an anomaly.” DOROTHY A. MAYS, *WOMEN IN EARLY AMERICA: STRUGGLE, SURVIVAL, AND FREEDOM IN A NEW WORLD* 383 (2004). Richard P. McCormick said that “[w]hether the term ‘inhabitants’ included women, aliens, Negroes, and slaves was unclear, and was to be a source of confusion and controversy.” RICHARD P. MCCORMICK, *THE HISTORY OF VOTING IN NEW JERSEY: A STUDY OF THE DEVELOPMENT OF ELECTION MACHINERY, 1664-1911*, at 69-70 (1953) [hereinafter MCCORMICK, *VOTING IN NJ*]. J.R. Pole contended that the enfranchisement of women in New Jersey was the result of “a gap in the constitution,” which “had been drawn up with haste.” J.R. Pole, *The Suffrage in New Jersey 1790-1807*, 71 *PROC. N.J. HIST. SOC’Y*, 51-52 (1953). Nineteenth-century American feminists, however, were well aware that women had voted in New Jersey, which, they argued, was the intent of the 1776 constitution; they used this history to argue for the enfranchisement of women. ELIZABETH CADY

More recently, historians have come to understand that the enfranchisement of single, propertied women was no accident or oversight, but that instead, New Jersey legislators had intended propertied women to vote. Thus, Delight Wing Dodyk in her article on “Woman Suffrage” in the *Encyclopedia of New Jersey* notes matter-of-factly the gender-neutral provision of the state constitution and that “women of property are known to have voted in several elections in the late eighteenth and early nineteenth centuries” until the right was rescinded in 1807.<sup>3</sup> Dodyk relied upon two relatively recent articles, one by Irwin Gertzog and the other by Lois Elkis and Judith Klinghoffer.<sup>4</sup> These historians, along with Rosemarie Zagarrri in her recent book *Revolutionary Backlash: Women and Politics in the Early Republic*, have filled in much of the thirty-one-year history of women’s voting in New Jersey.<sup>5</sup>

Although it is now widely understood among historians that New Jersey’s enfranchisement of women was not an oversight, it still remains, as Zagarrri puts it, “the New Jersey Exception.”<sup>6</sup> New Jersey is the outlier, lonely and a bit inexplicable. Set within the context of post-Revolutionary struggles to set the bounds of the political community, however, New Jersey’s history makes more sense. Like the other states in the new nation—and the nation itself—it had to define the boundaries of membership.<sup>7</sup> As the history of voting rights in the United States makes clear,<sup>8</sup> this has been an ongoing process, highly malleable and responsive to internal and external trends. This is the proper context for understanding New Jersey’s brief history of women’s voting, as part of the process by which Americans defined the boundaries of their political community in the decades immediately after the Revolution. In recounting this history, I will put New Jersey at the center of American history rather than the periphery, my way of honoring the legacy of John M. Payne.

Although some historians subsequently argued that women

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STANTON ET AL., HISTORY OF WOMAN SUFFRAGE 731-32 (1881); see Charles B. Waite, *Who Were Voters in the Early History of This Country?* 2 CHI. L. TIMES 397, 411 (1888). I am indebted to Professor Ann Gordon for the last reference.

3. Delight Wing Dodyk, *Woman Suffrage*, in ENCYCLOPEDIA OF NEW JERSEY 881, 882 (Maxine N. Lurie & Marc Mappen eds., 2004).

4. Irwin N. Gertzog, *Female Suffrage in New Jersey, 1790-1807*, 10 WOMEN & POL. 47, 47-48 (1990); Judith Apter Klinghoffer & Lois Elkis, “*The Petticoat Electors*”: *Women’s Suffrage in New Jersey, 1776-1807*, 12 J. EARLY REPUBLIC 159, 159-193.

5. ROSEMARIE ZAGARRRI, *REVOLUTIONARY BACKLASH: WOMEN AND POLITICS IN THE EARLY AMERICAN REPUBLIC* (2007); see also ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 5 (2000).

6. ZAGARRRI, *supra* note 5, at 30.

7. Michael Walzer notes that each political community is a “bounded world.” MICHAEL WALZER, *SPHERES OF JUSTICE* 28-31 (1983).

8. See KEYSSAR, *supra* note 5.

slipped in—i.e., were not explicitly included—because the legislators were sloppy, writing in haste,<sup>9</sup> we can see that the provision setting out the qualifications for voters was rather carefully crafted, the product of compromise. Filled with Revolutionary ardor, some New Jerseyans had wanted suffrage extended to every taxpayer, while others were willing to extend the vote – but not quite so far. One New Jerseyan, writing as Essex, in 1776 explicitly argued for liberalized qualifications for voting, declaring that “widows, paying taxes, should have an equal right to a vote, as men of the same property.”<sup>10</sup> The important point is that successive Provincial Congresses debated the qualifications for voters from late 1775 through the first half of 1776, altering the property requirement several times and deciding finally on a fifty-pound threshold in either possessions or cash, rather than the more restrictive land.<sup>11</sup> One of the 1776 drafts used the word “he” to identify voters,<sup>12</sup> but subsequent language was gender neutral. All of this, as Klinghoffer and Elkis argue,<sup>13</sup> suggests strongly that the New Jersey legislators intentionally enfranchised property-owning single women, or, at the very least, made no efforts to disenfranchise them.

Moreover, the implicit inclusion of women, as well as blacks and aliens, in the term “inhabitant” is consistent with New Jersey’s generally liberal construction of the franchise. Nine of the original thirteen states required voters to be freeholders, and only three established property requirements that were lower than New Jersey’s.<sup>14</sup> The residency requirement of one year in the county was not the most liberal at the time—some states required only six months and several had no residency requirement at all—but it was less restrictive than the citizenship requirement that would become

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9. See FLEMING, *supra* note 2, at 94.

10. MARC W. KRUMAN, BETWEEN AUTHORITY AND LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 105 (1997) (quoting *Essex to Common Sense*, No. IV, N.Y. JOURNAL, Mar. 7, 1776). Kruman notes that the author may have been William DeHart. *Id.* at 191 n.83.

11. MCCORMICK, VOTING IN NJ, *supra* note 2, at 66-71; Klinghoffer & Elkis, *supra* note 4, at 165-67.

12. MINUTES OF THE PROVINCIAL CONGRESS AND COUNCIL OF SAFETY OF THE STATE OF NEW JERSEY 373 (1879). Other authors give 231 as the citation, but that page records a different proposal before the Provincial Congress—one from Salem County that, along with Freeholders, “some householders or reputable single men, as are possessed *bona fide* of a personal estate of the value of fifty Pounds Proclamation money, or upwards, and have been resident at least one year in the County, may be admitted to vote.” See Klinghoffer & Elkis, *supra* note 4, at 165. However, this additional evidence reinforces that however quickly the state constitution may have been drafted, for a number of months the Provincial Congress debated proposals to liberalize the suffrage, and in some of them, suffrage was explicitly restricted to men.

13. Klinghoffer & Elkis, *supra* note 4, at 166.

14. KEYSSAR, *supra* note 5, at 340-41 (Table A-1).

the norm by the middle of the nineteenth century.<sup>15</sup> Only four states, all in the South, restricted the vote to whites (although by 1855, all states but five banned blacks from the polls).<sup>16</sup> New Jersey's enfranchisement of women, along with that of blacks and aliens and its low property threshold for voting, marks it as one of the most liberal jurisdictions at the time, making its subsequent restriction of the franchise a useful case study for those who would want to understand the ways in which early national jurisdictions defined membership in the political community.

To return to the enfranchisement of women: Had there been any ambiguity, subsequent legislatures (and I use the generic term legislature and Provincial Congress interchangeably) would have had ample opportunity to clear it up. As Zagarri has noted, only five of the first state constitutions explicitly restricted the vote to men, but nowhere other than in New Jersey did women actually vote.<sup>17</sup> Indeed in 1777 and 1783, legislators used the pronoun "he" in election laws, seemingly restricting the vote by gender, but perhaps we should consider the use of the male pronoun as the ambiguity.<sup>18</sup> Two women's names appear on a 1787 Burlington County poll list, although we do not have evidence that women voted during the confederation period.<sup>19</sup> Nor have historians found any discussion of the issue.<sup>20</sup> In 1790, however, the vote was explicitly extended to (propertied single) women in seven counties of the state, by use of the phrase "he or she," referring to voters,<sup>21</sup> and then to all propertied single women in the state in 1797,<sup>22</sup> only to be rescinded (along with the vote for free blacks and aliens as well) a decade later, in 1807.<sup>23</sup>

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15. *Id.*

16. *Id.* at 55.

17. ZAGARRI, *supra* note 5, at 31 (Table A-1).

18. An Act for Regulating the Election of the Members of the Legislative-Council and Assembly, Sheriffs and Coroners of the State of New Jersey, ch. XXX, 1777 N.J. Laws 54; An Act for Regulating the Election of Members of the Legislative-Council and Assembly, Sheriffs and Coroners, of the State of New Jersey, and of Delegates to Represent the Said State in the Congress of the United States, ch. XI, 1783 N.J. Laws 15.

19. MCCORMICK, VOTING IN NJ, *supra* note 2, at 78 n.45.

20. *See e.g.*, ZAGARRI, *supra* note 5, at 35; Klinghoffer & Elkins, *supra* note 4, at 164-68.

21. An Act to Regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners, in the Counties of Bergen, Monmouth, Burlington, Gloucester, Salem, Hunterdon and Sussex, ch. CCCXXII, 1790 N.J. Laws 669.

22. An Act to Regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners, in this State, ch. DCXXXIV, 1796 N.J. Laws 171.

23. A Supplement to the Act Entitled "An Act to Regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners in this State,"

It may be helpful to repeat this chronology:

- 1776 constitution uses gender neutral language<sup>24</sup>
- 1777 and 1783 election laws speak of voter as “he”<sup>25</sup>
- 1790 statute for 7 counties refers to voter as “he or she”<sup>26</sup>
- 1797 statute now uses “he or she” for voters in all NJ counties<sup>27</sup>
- 1807 statute restricts the vote to “free, white, male citizens”<sup>28</sup>

When we look at the chronology, it may give the appearance of a muddle. If we retrace the history, however, the intent of successive legislatures becomes more clear. New Jersey was attempting an experiment in democracy, tweaking the formula every few years. Let us start from the premise that the gender neutral language of 1776 was not a mistake or an oversight. After all, the language of the 1790 statute clearly enfranchised propertied single women, and in so doing built upon the constitution's foundation. A few years later, when some New Jerseyans decided that the vote should be taken away from women, they pointed anxiously to the constitution, which, they believed, *did* enfranchise women.<sup>29</sup> Nor am I sure that the use of the pronoun “he” in 1777 and 1783 should be read as limiting the franchise to males.<sup>30</sup> Let's look closely at the 1790 statute. Paragraph 11 begins by repeating the standard constitutional qualifications of voters: “all free Inhabitants of this State of full Age, and who are worth Fifty Pounds Proclamation Money clear Estate in the same, and have resided with the County . . . for twelve Months” and adds an innovation, that “no Person” may vote in a county other than that “in which he or she doth actually reside.” So that's clear: voters may be both men and women. But paragraph 9, describes the process by which every voter should “deliver his Ballot” on which were to be the

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Passed at Trenton the Twenty-Second Day of February, One Thousand Seven Hundred and Ninety-Seven, ch. II, 1807 N.J. Laws 14.

24. N.J. CONST. of 1776, para. IV.

25. An Act for Regulating the Election of the Members of the Legislative-Council and Assembly, Sheriffs and Coroners of the State of New Jersey, ch. XXX, 1777 N.J. Laws 54; An Act for Regulating the Election of Members of the Legislative-Council and Assembly, Sheriffs and Coroners, of the State of New Jersey, and of Delegates to Represent the Said State in the Congress of the United States, ch. XI, 1783 N.J. Laws 15.

26. 1790 N.J. Laws 669.

27. 1796 N.J. Laws 171.

28. 1807 N.J. Laws 14.

29. Edmund Raymond Turner, *Women's Suffrage in New Jersey: 1790-1807 in SMITH COLLEGE STUDIES IN HISTORY I* 165, 173-74 (John Soencer Bassett & Sidney Bradshaw Fay eds., 1916).

30. 1777 N.J. Laws 54; 1783 N.J. Laws 15.

“Names of the Persons for whom he votes.”<sup>31</sup>

How can this confusion be explained? I think perhaps by the genuine novelty of the enfranchisement of women.<sup>32</sup> This was so radical, so much an innovation that the legislators could not keep their pronouns straight.

Make no mistake, what New Jersey did was radical.<sup>33</sup> It carried Revolutionary doctrine to its furthest—but logical—extreme. As a general proposition let me state that the problem—or the possibility—of Revolutionary thought was that it could not easily be contained. Once revolutionary principles were articulated, there was no controlling them.<sup>34</sup> Anyone could pick them up and use them for their own purposes. Even no taxation without representation. It was, of course, among the most hallowed principles of British constitutional thought, and aggrieved colonists threw it back at Britain to protest what they considered the unfair taxation of the Sugar and Stamp Acts.<sup>35</sup> There ensued a long debate about the nature of representation. But it was not too complex for women to pick up on, and in 1778, the widow Hannah Lee Corbin, sister of the famous Virginia patriot, Richard Henry Lee, asked her brother to explain just why it was that she, a propertied widow, was not allowed to vote. He squirmed, unable to give her a good answer: “The doctrine of representation is a large subject, and it is certain that it ought to be extended as far as wisdom and policy can allow; nor do I see that either of these forbid widows having property from voting . . .”<sup>36</sup>

When New Jersey enfranchised single propertied women, it effectively answered the question that Hannah Lee Corbin would ask two years later: why should not a widow with property vote? The underlying assumption was republican: the ownership of property in one’s own name made for the independence that was thought necessary for citizens of a republic.<sup>37</sup> The property qualification that New Jersey set was, as we have seen, among the lowest in the new nation, and anyone who held that minimal amount in his or her own right—including blacks, aliens, and single women—was considered a

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31. 1790 N.J. Laws 669.

32. ZAGARRI, *supra* note 5, at 31.

33. *Id.*

34. *See, e.g.*, GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* (1992).

35. EDMUND S. MORGAN & HELEN M. MORGAN, *THE STAMP ACT CRISIS: PROLOGUE TO REVOLUTION* 13, 15 (1953).

36. Letter from Richard Henry Lee to Hannah Lee Corbin (Mar. 17, 1778) (on file with the DuPont Library, Stratford Hall), *available at* <http://press-pubs.uchicago.edu/founders/documents/v1ch13s11.html>.

37. *See* KEYSSAR, *supra* note 5, at 4; *see also* GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 46-90 (1969) (discussing republicanism).

member of the political community entitled to vote.<sup>38</sup>

Having now discussed the doctrine behind the enfranchisement of women in New Jersey, we can turn to the politics, how it played out on the ground. New Jersey politics was rough and tumble, more than a little corrupt.<sup>39</sup> Much has been written about the politics of the 1790s, the trouble that Americans had in establishing both the mechanisms and culture of a functioning democratic republic.<sup>40</sup> In New Jersey, women voters got caught up in the maelstrom that was democracy being born. Consider what happened in 1790. The statute of that year explicitly enfranchised women—"he or she"—but only in seven counties, most of them in the south and west.<sup>41</sup> I do not believe that this meant that propertied single women necessarily could *not* vote elsewhere, but even so, it is worth looking at what happened to get a sense of New Jersey politics. The explicit enfranchisement was one of the outcomes of the reforms instituted after the tumultuous first congressional election of 1789. The West Jersey conservatives, who were then known as the Junto (and who would later become Federalists once there was a Federalist party), used every means at their disposal to elect their slate in the at-large election. They kept the polls in their region open—for months, until after the votes in the northern counties had been counted so that they would know just how many votes they needed to prevail. They even succeeded in getting Essex County's vote thrown out.<sup>42</sup>

When the legislature convened the next year, it decided that some sort of reform was necessary. By a wide majority, it adopted a number of electoral reforms,<sup>43</sup> the combined effect of which was to make voting easier but more orderly. Voting would now take place in townships, rather than the larger counties, but voters could vote only in the township of their residence. In fact, it was in this provision

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38. See N.J. CONST. of 1776, para. IV.; MCCORMICK, VOTING IN NJ, *supra* note 2, at 70; RICHARD P. MCCORMICK, EXPERIMENT IN INDEPENDENCE: NEW JERSEY IN THE CRITICAL PERIOD, 1781-1789 (1950) [hereinafter MCCORMICK, EXPERIMENT IN INDEPENDENCE] ("[Dropping the property qualification to £50] marked a fundamental departure from the concept that political rights were connected with landed property."); see also KEYSSAR, *supra* note 5, at 14.

39. See CARL E. PRINCE, NEW JERSEY'S JEFFERSONIAN REPUBLICANS: THE GENESIS OF AN EARLY PARTY MACHINE, 1789-1817 (1964).

40. See John R. Howe, *Republican Thought and Political Violence of the 1790's*, 19 AM. Q. 147 (1967); Marshall Smelser, *The Federalist Period as an Age of Passion*, 10 AM. Q. 391 (1958); JOANNE B. FREEMAN, AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW REPUBLIC (2001).

41. KEYSSAR, *supra* note 5, at 328-29; MCCORMICK, VOTING IN NJ *supra* note 2, at 91.

42. See Richard P. McCormick, *New Jersey's First Congressional Election, 1789: A Case Study in Political Skulduggery*, 6 WM & MARY Q. 237 (1949).

43. MCCORMICK, VOTING IN NJ, *supra* note 2, at 91.

that the language clearly enfranchising women appeared: “no Person shall be entitled to vote in any other Township or Precinct than that in which he or she doth actually reside at the Time of the Election.”<sup>44</sup> These reforms also limited the number of days the polls could remain open and set rules for counting votes. In addition, for the first time, voting was restricted to “free Inhabitants.”<sup>45</sup>

These reforms applied to only seven of New Jersey’s counties. Historians do not agree about why this should have been the case. Richard P. McCormick noted that the reforms passed by a significant majority and hence do not seem to have been designed to punish the Junto counties. He suggested that the seven counties essentially volunteered to adopt the reforms.<sup>46</sup> Irwin Gertzog believes that there may have been some political horse-trading in the drafting of the legislation, with some of the provisions making voting more difficult and others—the establishment of polling places in each township, the explicit enfranchisement of women—designed to increase the Junto/Federalist vote. He implies that this was the first New Jersey law explicitly to enfranchise (propertied single) women.<sup>47</sup> However, if the 1776 New Jersey Constitution had in fact enfranchised single propertied women, then the insertion of “he or she” into the 1790 legislation, which applied to only seven counties, should not be considered as a change or reform of the existing laws governing elections.<sup>48</sup> In any event, the phrase “he or she” was repeated in the 1797 statute, which applied to all thirteen of New Jersey’s counties,<sup>49</sup> suggesting that New Jersey was reiterating explicitly its 1776 commitment to the enfranchisement of propertied single women—and keeping in place the enfranchisement of free blacks and aliens (if explicitly excluding for the first time slaves).

Although the names of two women appeared on one poll list in 1787,<sup>50</sup> until 1797, when the franchise for propertied single women was extended explicitly to the northern counties as well, there is no record that any New Jersey women voted.<sup>51</sup> But after 1797, there is

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44. An Act to Regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners, in the Counties of Bergen, Monmouth, Burlington, Gloucester, Salem, Hunterdon and Sussex, ch. CCCXXII, 1790 N.J. Laws 669.

45. PRINCE, *supra* note 39, at 9; Klinghoffer & Elkis, *supra* note 4, at 172.

46. MCCORMICK, VOTING IN NJ, *supra* note 2, at 91. Only three legislators voted against the reforms. Turner, *supra* note 29, at 168.

47. Gertzog, *supra* note 4, at 51-52; *see also* Klinghoffer & Elkis, *supra* note 4, at 172.

48. *See* 1790 N.J. Laws 669.

49. *Id.*

50. *See supra* text accompanying note 19.

51. *Id.* at 193 n.39. It is impossible to tell, from the available evidence, whether the increase in women's voting was a result of the explicit enfranchisement of propertied



abundant record of women voting in New Jersey. It is not clear why this was the case, but it seems most likely that it resulted from the growth of the first parties.<sup>52</sup> New Jersey was split between Federalists and Democratic Republicans, and many elections were hotly contested. Both parties began competing for the votes of women, or, as the critics of women's voting had it, dragging in women voters to add to their party's totals. To a certain extent, this is what's to be expected in competitive elections: each side will try to expand the electorate in order to increase its number of voters.<sup>53</sup>

Consider what happened in Essex County in 1797. The polls were open for two days. By the second day, when it appeared to the Federalists that they were about to be outvoted, they began, it was reported, to round up their voters, many of them supposedly indifferent:

They sent carriages into the country to bring out the farmers. They were obliged to beg them, even to treat them, so indifferent are the people to their privileges. [i.e., they bought the votes with cheap drink] In spite of all their efforts . . . they received news that the opposing party . . . was prevailing. In this extremity they had recourse to the last expedient; it was to have women vote. . . . They scurried around collecting them. I need not say that the number was very small.<sup>54</sup>

Historian Carl Prince believes that the actual number of women who voted in New Jersey was small, because once the vote was withdrawn, there was no discernible impact on voting totals.<sup>55</sup> Yet the numbers may not be as important as the change wrought in the political culture. Customary toasts to the "fair sex," a staple of political rallies in the period,<sup>56</sup> took on a different meaning when some of those women were potential voters, not merely ornaments to the political process. Thus, in Stony Hill, New Jersey, Republicans saluted "the fair daughters of Columbia, those who voted in behalf of Jefferson and Burr in Particular," while in Bloomfield, the toast was offered to "the Republican fair; May their patriotic conduct in the late elections add an irresistible zest to their charms."<sup>57</sup> According to one

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single women in all counties in the 1797 statute or because "increased party strife" drew more voters to the polls. Klinghoffer & Elkis, *supra* note 4, at 175.

52. Klinghoffer & Elkis, *supra* note 4, at 175.

53. PRINCE, *supra* note 39, at 76-78.

54. Klinghoffer & Elkis, *supra* note 4, at 176.

55. PRINCE, *supra* note 39, at 134. Neale McGoldrick and Margaret Crocco say that "estimates suggest that as many as 10,000 women voted in New Jersey in some years between 1790 and 1807." NEALE MCGOLDRICK & MARGARAT CROCCO, RECLAIMING LOST GROUND: THE STRUGGLE FOR WOMAN SUFFRAGE IN NEW JERSEY 2 (1993).

56. ZAGARRI, *supra* note 5, at 85.

57. Klinghoffer & Elkis, *supra* note 4, at 181.

account, even Alexander Hamilton actively campaigned among women. Apparently, he and Senator Matthias Ogden had “so ingratiated themselves in the esteem of the Federal ladies of Elizabeth-town, and in the lower part of the state, as to induce them . . . to resolve on turning out to support the Federal ticket” in 1800.<sup>58</sup> Both parties competed actively for women’s votes.<sup>59</sup>

The enfranchisement of women was controversial, however. I have suggested that this enfranchisement was the logical and furthest extension of Revolutionary ideology, and thus, female enfranchisement was debated in that context. One supporter of women’s voting explained:

Our daughters are the same relations to us as our sons; we owe them the same duties; they have the same science, and are equally competent to their attainments. The contrary idea originated in the same abuse of power, as monarchy and slavery, and owes its little remaining support to stale sophistry.<sup>60</sup>

Others worried, however, that the revolution would go too far (a concern that was exacerbated by the French Revolution). An 1806 Fourth of July orator in Morristown recognized that “our constitution requires a voter to be possessed of 50 pounds” (the minimum property requirement for voting). Echoing orthodox Revolutionary thought, he continued, “The prevailing theory is that taxation and representation should go together.” But revolutions might go too far.

Our practice outstrips them both, in its liberality, and makes no invidious exceptions. It admits to the pole [sic] people of all sexes, colors, tongues, characters, and conditions. In our unbounded generosity, we would admit to a participation in our choicest rights the lame, and the halt, and the blind [as well as] . . . the worthless and the penniless;—as motley a group as the day of Pentecost or the pool of Bethesda ever witnessed.<sup>61</sup>

Here was the explicit statement that the boundaries of the political community were too expansive; rights were not for all.

This was a debate that had been going on for several decades, between those who welcomed the liberalizing tendencies of the Revolution and those who feared they would go too far, undermining order.<sup>62</sup> The 1790s debate over naturalization of new citizens has particular bearing. The first Naturalization Act (1790), whose terms were rather liberal—offering citizenship to any “free white person”

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58. *Id.* at 179.

59. *Id.* at 176-82.

60. *Id.* at 179 (quoting *Genius of Liberty*, Aug. 7, 1800).

61. ZAGARRI, *supra* note 5, at 33.

62. *See id.*; LARRY TISE, *THE AMERICAN COUNTERREVOLUTION: A RETREAT FROM LIBERTY, 1783-1800* (1998).

who had resided in the U.S. for two years, was of “good character,” and swore to uphold the Constitution<sup>63</sup>—was itself the product of a debate about what it meant to be an American. Was it a matter of volition and consent, or was it a matter of character, itself the product of experience and culture?<sup>64</sup> As immigration, the prospect of war with France, and partisan conflict all increased, the nation twice tightened the qualifications for naturalization, increasing the probation period in 1795 to five years and then, in 1798, to fourteen years (the highest it has ever been).<sup>65</sup> In the 1798 debate, the most conservative Federalists argued against admitting any aliens at all to full citizenship and instead advocated a two-tier system of residents, who could own property but not vote or hold office, and full citizens.<sup>66</sup> Even Jeffersonians favored stricter qualifications for citizenship. They merely worried, as one put it, “that gentlemen . . . will go too far in this business.”<sup>67</sup>

So too with women: Should they be eligible for full participation in the political community? How far should the principles of the Revolution be taken? One of the most well-known, and revealing, discussions on this topic was that between Abigail Adams and her husband John. Abigail, by the way, noted with approval New Jersey’s enfranchisement of women. In 1797—just a short time after the enfranchisement of women was explicitly extended to all New Jersey counties, so the news must have spread like wildfire—Abigail Adams told her sister that if the Massachusetts constitution had been as “liberal” as New Jersey’s “and admitted the females to a vote,” she’d have certainly voted for her sister’s friend.<sup>68</sup>

By this time, Abigail Adams had been advocating expanded women’s rights for more than two decades. In a famous letter to her husband, then in Philadelphia leading the colonies to independence, she had said:

I long to hear that you have declared an independancy—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not

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63. See An Act to Establish an Uniform Rule of Naturalization, 1 Stat. 103 (1790).

64. Rogers M. Smith, *Constructing American National Identity: Strategies of the Federalists*, in *FEDERALISTS RECONSIDERED* 19, 19-21 (Doron Ben-Atar & Barbara Oberg eds., 1998); Rogers M. Smith, *Civic Ideals: Conflicting visions of Citizenship, in U.S. History* 153-64 (1997); Jan Ellen Lewis, *Defining the Nation: 1790-1898, in SECURITY V. LIBERTY: CONFLICTS BETWEEN CIVIL LIBERTIES AND NATIONAL SECURITY IN AMERICAN HISTORY* 117, 120-22 (Daniel Farber, ed. 2008).

65. Lewis, *supra* note 64, at 122-26.

66. *Id.* at 126.

67. *Id.* (quoting 7 ANNALS OF CONGRESS 1789 (1798)).

68. ZAGARRI, *supra* note 5, at 33.

put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If particular care and attention is not paid to the Ladies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation. That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute. . . . Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity.<sup>69</sup>

John replied two weeks later, in a jocular, flirtatious manner, refusing to engage seriously with her views. He did raise, however jokingly, the concern that *everyone* had become rebellious.

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle has loosened the bands of Government every where. That Children and Apprentices were disobedient—that schools and Colledges were grown turbulent—that Indians slighted their Guardians and Negroes grew insolent to their Masters.

But your Letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown discontented.—This is rather too coarse a Compliment but you are so saucy, I wont [sic] blot it out.<sup>70</sup>

It was only in a letter a month later to James Sullivan, however, that John Adams treated seriously the question of equality, asking how far Revolutionary principles should be extended. He began with Locke—and agreed: “It is certain in Theory, that the only moral Foundation of Government is the Consent of the People.” This is the starting point. But, he asked, “to what an extent shall we carry this principle?”

Shall We Say, that every Individual of the Community, old and young, male and female, as well as rich and poor, must consent, expressly to every Act of Legislation? No, you will Say. This is impossible. How then does the Right arise in the Majority to govern the Minority, against their Will? Whence arises the Right of the Men to govern Women, without their Consent? Whence the Right of the old to bind the Young, without theirs.<sup>71</sup>

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69. Abigail Adams to John Adams, March 31, 1776, in ADAMS FAMILY CORRESPONDENCE 369-70 (L.H. Butterfield ed., 1963). For a somewhat different reading of this letter and Abigail Adams's subsequent exchange with her husband John, see Elaine Forman Crane, *Political Dialogue and the Spring of Abigail's Discontent*, 56 WM. & MARY Q. 745-74 (1999) (Crane has demonstrated that many of Abigail Adams's phrases were either direct quotations from or allusions to the works of contemporary or recent writers and political theorists).

70. John Adams to Abigail Adams, April 14, 1776, in ADAMS FAMILY CORRESPONDENCE 382-83 (L.H. Butterfield, ed. 1963).

71. Letter from John Adams to James Sullivan, May 26, 1776, in 4 PAPERS OF

So where do we draw the line, Adams asked Sullivan. He answered his own question: with women, for they cannot be admitted into government

because their Delicacy renders them unfit for Practice and Experience, in the great Business of Life, and the hardy Enterprises of War, as well as the arduous Cares of State. Besides, their attention is So much engaged with the necessary Nurture of Children, that Nature has made them fittest for domestic Cares.<sup>72</sup>

For Adams, women were the easiest case. Nature disqualified them from voting and actively giving their consent to government. And once one group had been excluded, then the basis had been laid for excluding other groups as well, by establishing it as a principle that some could be excluded. Adams's greatest concern, incidentally, was not slaves but poor men, who frightened him. He needed a rationale for excluding them from participation in government.<sup>73</sup> In fact, Adams would just as soon not talk about it. "Depend upon it sir, it is dangerous to open so fruitful a source of controversy and altercation, as would be opened by attempting to alter the qualifications of voters. There will be no end of it."<sup>74</sup>

Yet there was New Jersey, opening up the issue. Not only had it enfranchised single, propertied women but it had also admitted to the polls free blacks and aliens as well.<sup>75</sup> And, over the years, it had effectively eliminated the property requirement for voting as well. The fifty-pound requirement could be cash, not land; moreover, it was up to the local election inspectors to determine whether a person actually voted or not.<sup>76</sup> Richard P. McCormick estimated that by the mid 1780s, as many as nine out of ten adult white men were eligible to vote.<sup>77</sup>

As a result, in hotly-contested elections, the electorate swelled—

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JOHN ADAMS 208 (1977) [hereinafter PAPERS OF JOHN ADAMS].

72. *Id.* at 210.

73. WOOD, *supra* note 34, at 27; KEYSSAR, *supra* note 5, at 19.

74. PAPERS OF JOHN ADAMS, *supra* note 71, at 211.

75. For a period, even slaves may have been enfranchised. See Turner, *supra* note 29, at 178; see also MCCORMICK, VOTING IN NJ, *supra* note 2, at 93 (implying slaves may have been enfranchised when he noted that the 1790 statute inserted the word "free" for the first time: "Thus slaves were for the first time explicitly barred from voting . . ."). In 1802, one Jeffersonian alleged that Federalists had secured election "by the illegal votes of proxies, boys, beggars, foreigners, and slaves." Turner, *supra* note 29, at 180; see also Turner, *supra* note 29, at 180 n.67 (alleging that Federalists obtained the votes of African American slaves). These allegations that slaves voted may, however, be an expression of partisan hysteria more than fully reliable evidence.

76. MCCORMICK, EXPERIMENT IN INDEPENDENCE, *supra* note 38, at 81; MCCORMICK, VOTING IN NJ, *supra* note 2, at 77.

77. MCCORMICK, EXPERIMENT IN INDEPENDENCE, *supra* note 38, at 90-91.

something characteristic of modern democracies.<sup>78</sup> Newspapers began to report that, in some cases, women provided the decisive margin. It was said that Federalist women had provided 150 votes for Jonathan Dayton, who became Senator.<sup>79</sup> Under such circumstances, expediency could trump conviction. Joseph Bloomfield had been reported as pledging “in the most positive manner that not a female should be brought on the election ground,” but “he was seen rallying the PETTICOAT ELECTORS, and hurrying them and others to the polls.”<sup>80</sup>

Not all of these accounts, many of which come from the partisan press, can be taken at face value. The one from a Democratic Republican paper that in 1802 claimed that “in some townships” women “made up *almost a fourth* of the total votes”<sup>81</sup> seems dubious, while the worry of a Federalist opponent of women’s voting that no fewer than 10,000 women were eligible and might be presumed to vote is sheer hysteria.<sup>82</sup> It does seem clear, however, from several reports, that election inspectors were lax in the enforcement of the qualifications for voters.<sup>83</sup> There was effectively no property qualification for voting; there were occasional reports of slaves voting; and it is not clear that female voting was restricted to unmarried propertied women only.<sup>84</sup> Let us look again at what Abigail Adams said—that she would have voted for a particular candidate had Massachusetts had the same law as New Jersey.<sup>85</sup> But she could not have voted under New Jersey law—she was a married woman. There was clearly some slippage in the popular understanding of the law and some slippage in the enforcement as well. In 1797, one newspaper complained about the “husbands and

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78. See, e.g., MICHAEL E. MCGERR, *THE DECLINE OF POPULAR POLITICS: THE AMERICAN NORTH, 1865-1928*, at 3 (1986).

79. Klinghoffer & Elkins, *supra* note 4, at 185 (misspelling his name as Drayton).

80. *Id.*

81. *Id.* at 183.

82. *Id.* at 177. Neale McGoldrick and Margaret Crocco misread this hysterical exaggeration as if it were credible, claiming that “[e]stimates suggest that as many as 10,000 women voted in New Jersey in some years between 1790 and 1807.” MCGOLDRICK & CROCCO, *supra* note 55, at 2.

83. MCCORMICK, *EXPERIMENT IN INDEPENDENCE*, *supra* note 38, at 81.

84. See *supra* note 75 and accompanying text. Turner asserted that in 1806, “Women and girls, black and white, married and single, with and without qualifications, voted again and again. And finally men and boys disguised as women voted once more, and the farce was complete.” Turner, *supra* note 29, at 182. It is difficult to assess the credibility of this assertion. In its form—with men dressing in drag—it conforms to the image of the world turned upside down. However, Carl Prince notes that in this election, turnout in Elizabethtown was 279% of eligible voters and that “obviously women and perhaps Negroes voted freely in this election.” PRINCE, *supra* note 39, at 134.

85. See *supra* note 68 and accompanying text.

sweethearts” who ushered their women to the polls, while in 1802, when one election was contested, it was claimed that “married women voted.”<sup>86</sup> It should be noted that this evidence comes from complaints, typically from those who lost the elections. There were also claims that unpropertied black women were voting, as well.<sup>87</sup>

It is a bit hard to disentangle these issues—the fact that women voted at all and the fact that unqualified women might have been voting, particularly since the issues were often conflated at the time. But almost from the moment that women began voting in any discernible numbers after 1797, there were complaints about the practice and calls for the franchise to be rescinded. One writer insisted that permitting women to vote was “in direct violation of the spirit and intention of the law.”<sup>88</sup> Yet even when the propriety of women’s voting was challenged, New Jersey continued actively to affirm that right. In 1800, the assembly turned down as redundant a recommendation to amend the constitution to make clear that propertied single women were entitled to the vote: “Our Constitution gives this right to maids or widows *black or white*.”<sup>89</sup> Two years later, the assembly refused to overturn an election that was contested on the grounds that “married women voted,” and, two weeks after that, it voted down a proposal to “exclude all persons from voting excepting free white males.”<sup>90</sup>

By 1807, however, the tide had turned. The impetus was the raucous Essex county referendum in that year to determine whether the new courthouse would be built in Newark or Elizabeth. This was an intraparty squabble among Democratic Republicans.<sup>91</sup> Corruption was rampant, the likes of which, according to Carl Prince, had not been seen since 1789. Newark won, even though voter turnout in Elizabeth was 279%.<sup>92</sup> Some number of the extra voters were women—or men impersonating them. According to one account, written some decades later:

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86. Turner, *supra* note 29, at 175. See also William A. Whitehead, *Female Suffrage*, in 1 HIST. MAG. 360 (1857) (reporting that Chief Justice [Joseph Coerten] Hornblower had told him that he could recall only one instance of a woman's voting “and that was when a husband and wife happened to differ *politically* . . . and in order to neutralize the vote of the former, the latter resolved to exercise the elective franchise”). Slippage would continue even after the franchise had been restricted. According to one report from 1871, election officials sometimes let the occasional woman, alien, or black person vote. Lucius Q. C. Elmer, *History of the Constitution of New Jersey*, in 1 PROC. N.J. HIST. SOC'Y 133, 153 (2nd series, 1871).

87. Turner, *supra* note 29, at 175.

88. *Id.* at 174.

89. *Id.*

90. *Id.* at 174-75.

91. Pole, *supra* note 2, at 55.

92. PRINCE, *supra* note 39, at 133.

Men usually honest seemed lost to all sense of honor, so completely were they carried away by the heat of the strife. Women vied with the men, and in some instances surpassed them, in illegal voting. Only a few years ago there were living in Newark two ladies, who, at the time of the election in their 'teens, voted six times each. Married women, too, indignant, perhaps, at being placed on the same political level as children and idiots, in defiance of the law, voted six times each. Governor Pennington is said to have escorted to the poles a "strapping negress." Men and boys disguised themselves in women's attire, and crowded about the polls to assist in winning the day for Newark.<sup>93</sup>

This corruption—most of which must have been committed by white men—was the last straw for those who had been opposed to New Jersey's expansive franchise. The next legislature passed a statute that effectively amended the constitution by legislation.<sup>94</sup> The argument was that the constitution never could have intended to enfranchise blacks, women or aliens so that a statute stating that the vote was limited to "free, white, male, citizens" would be sufficient.<sup>95</sup> By easy majorities, the new law passed. Its preamble explained the rationale:

Whereas doubts have been raised and great diversities in practice obtained throughout the state in regard to the admission of *aliens*, *females*, and *persons of color*, or *negroes* to vote in elections, and also in regard to the mode of ascertaining the qualifications of voters in respect to *estate*. – And Whereas, it is highly necessary to the safety, quiet, good order and dignity of the state, to clear up the said doubts by an act of the representatives of the people, declaratory of the true sense and meaning of the constitution, and to ensure its just execution . . . according to the intent of the framers thereof.<sup>96</sup>

Henceforth, the vote would be restricted to free white male tax-paying citizens.<sup>97</sup>

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93. 1 WILLIAM H. SHAW, HISTORY OF ESSEX AND HUDSON COUNTIES, NEW JERSEY 213 (1884). A contemporary account, in the form of rhyming verse, depicted the election in similar terms. See Pole, *supra* note 2, at 56 ("For they call'd in bog trotters, and negroes I am told, And young boys and girls of a dozen years old . . ."); see also William A. Whitehead, *A Brief Statement of the Facts Connected with the Origin, Practice and Prohibition of Female Suffrage in New Jersey*, in 8 PROC. N.J. HIST. SOC'Y, 104 (1858); JOHN LAMBERT, 2 LAMBERT'S TRAVELS THROUGH CANADA AND THE UNITED STATES OF NORTH AMERICA, IN THE YEARS 1806, 1807, & 1808, at 313-15 (1814).

94. Alexander Keyssar noted, "New Jersey seemed uniquely cavalier about altering suffrage requirements by statute rather than constitutional amendment." KEYSSAR, *supra* note 5, at 32.

95. Turner, *supra* note 29, at 183-84.

96. Whitehead, *supra* note 86, at 362.

97. The first paragraph restated the longstanding property requirement of fifty



The statute noted doubts and uncertainties in voting practice in New Jersey, but resolved them in different ways. Thus, difficulties in determining the status of women and blacks were resolved by withdrawing the right to vote of all women and all black people. Difficulties in determining the wealth of white men were resolved by making all taxpaying men eligible to vote. And these changes were billed as progressive reform—just as was the removal of the vote from blacks in the Jim Crow era.<sup>98</sup>

Many historians have noted that the nineteenth-century expansion of voting rights for white men came with restrictions upon those of free blacks and, in the case of New Jersey, women and aliens as well.<sup>99</sup> This is an important chapter in the history of gender and American politics as well: increasingly, the American voter was defined as white and male, and this change is, in fact, intrinsic to what Sean Wilentz has called “the rise of American democracy.”<sup>100</sup>

In New Jersey, these changes were clearly part of the continuing efforts to reform New Jersey’s electoral process. The ostensible goal was to eliminate corruption. But why exclude some groups while embracing others? Several historians have suggested that the limitation of the franchise was a kind of deal struck between Federalists and Democratic Republicans, each side jettisoning a portion of its constituency. Women and blacks, it was believed, tended to vote Federalist, and the 1804 enactment of a gradual emancipation plan promised to increase the number of eligible black voters, while aliens voted Democratic.<sup>101</sup>

Yet Federalists such as William Griffith and Republicans such as John Condit both argued for the exclusion of women, with Condit adding blacks<sup>102</sup> and Griffith, aliens to those who were to be

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pounds, clear estate, and the second paragraph effectively redefined that requirement downward by saying that any man who paid taxes was to be “adjudged . . . to be worth fifty pounds.” *Id.*

98. MICHAEL MCGERR, *A FIERCE DISCONTENT: THE RISE AND FALL OF THE PROGRESSIVE MOVEMENT IN AMERICA, 1870-1920*, at 189 (2003).

99. Jacob Katz Cogan, Note, *The Look Within: Property, Capacity, and Suffrage in Nineteenth-Century America*, 107 *YALE L.J.* 473 (1997); NANCY F. COTT, *THE BONDS OF WOMANHOOD: “WOMAN’S SPHERE” IN NEW ENGLAND, 1780-1835*, at 98-100 (1977). Such discussions focus on the shift toward “natural,” supposedly inherent qualities as the basis for citizenship, which, however, does not explain the exclusion of aliens from the polls. Smith, *supra* note 64, and KEYSSAR, *supra* note 5, discuss aliens, however.

100. See SEAN WILENTZ, *THE RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN* 186-87, 192-95 (2005) (describing the disenfranchisement of blacks, but not recognizing its connection to the expansion of the franchise for white men).

101. Gertzog, *supra* note 4, at 56; Klinghoffer & Elkins, *supra* note 4, at 12, 18.

102. See Marion Thompson Wright, *Negro Suffrage in New Jersey*, 33 *J. NEGRO HIST.* 168, 175 (1948) (spelling Condit’s name as “Condict”); Turner, *supra* note 29, at 183-84.

excluded.<sup>103</sup> The agreement to limit the franchise required a rationale, as well, and this can be found in the preamble to the statute. These changes were also necessary, it was argued, “for the safety, quiet, good order and dignity of the state.”<sup>104</sup> Here was the language not of rights or obligations but of propriety.

The comments of several of the advocates of franchise restriction suggest that they regarded it as a matter of sensibility, then, as much as fundamental principles. Condit railed against “the vote of a negro slave, herself the property of another slave.”<sup>105</sup> A federalist bemoaned “a melancholy picture of the morals of the people . . . excites the most unpleasant sensations in the breast of every person favourably disposed to free, elective government.”<sup>106</sup> Another observer thought “a more wicked and corrupt scene was never exhibited in this State, or in the United States.”<sup>107</sup> William Griffith was similarly offended: “It is perfectly disgusting,” he observed, “to witness the manner in which women are polled at our elections. Nothing can be a greater mockery of this invaluable and sacred right, than to suffer it to be exercised by persons, who do not even pretend to any judgment on the subject.” Likewise, the enfranchisement of aliens necessarily had a “degrading and baneful tendency. . . . scandalous . . . outrage upon the rights of American suffrage.”<sup>108</sup> The enfranchisement of women, blacks, and aliens was, on its face, such men suggested, offensive to white male citizens.

Yet how could New Jersey’s constitution be squared with this “mockery” of the “invaluable and sacred right” to vote? Griffith struggled with the contradiction. On the one hand, there was “the *letter* of the charter,” and on the other “*political right* and the nature of things.”<sup>109</sup> Legal scholar Jacob Katz Cogan has argued that increasingly voters were identified by who they were, that is their presumed inherent qualities, rather than what or how much they owned, and those inherent qualities were those of the white American male citizen.<sup>110</sup>

And so, if New Jersey’s franchise of women (and blacks and aliens) was contrary to “the nature of things,” then surely it could not

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103. See WILLIAM GRIFFITH, *EUMENES: BEING A COLLECTION OF PAPERS, WRITTEN FOR THE PURPOSE OF EXHIBITING SOME OF THE MORE PROMINENT ERRORS AND OMISSIONS OF THE CONSTITUTION OF NEW-JERSEY* 33-39 (1799); RUDOLPH J. PASLER & MARGARET C. PASLER, *THE NEW JERSEY FEDERALISTS* 14 (1975).

104. See sources cited *supra* note 18.

105. Wright, *supra* note 102, at 175 (quoting John Condit).

106. Turner, *supra* note 29, at 183 n.85.

107. *Id.* at 183.

108. GRIFFITH, *supra* note 103, at 33, 35.

109. *Id.* at 33.

110. Cogan, *supra* note 99, at 473.

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have been the intent of the constitution's framers to enfranchise these groups.<sup>111</sup> By this logic, the 1807 statute restricting the franchise for these groups (while expanding it for white male citizens) was not a fundamental change but instead merely a restatement of "the true sense and meaning of the constitution" designed to "ensure its just execution . . . according to the intent of the framers thereof."<sup>112</sup>

In ten short years it had become unimaginable to New Jersey's legislators that their predecessors had ever intended to enfranchise any women, or any blacks or aliens, either. And so the perimeters of the republic were pulled in, and New Jersey's brief experiment in an inclusive franchise was redefined as bad interpretation, and a piece of its history reimagined as nothing more than a bad dream.

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111. GRIFFITH, *supra* note 103, at 33.

112. Sources cited *supra* note 18.