

## NEW JERSEY IN THE AMERICAN REVOLUTION

### 7 Chief Justice Frederick Smyth to the Middlesex County Grand Jury

[Smyth Papers, American Philosophical Society Library.]

With Governor William Franklin living in constant fear of arrest by rebels and with former Attorney General Cortlandt Skinner in exile, Chief Justice Frederick Smyth emerged as the leading opponent of independence in New Jersey during the spring of 1776. He took advantage of the opportunity afforded by the April session of the supreme court to denounce notions of secession from the empire, decry the chaos that would follow separation, and defend the virtues of the British constitution and the necessity for law and order. Smyth utterly rejected independence not out of fear or personal interest but because of deep convictions about man and government; his remarks would have been received enthusiastically by most Jersey conservatives. At the same time, it is apparent that Smyth—whatever his personal beliefs—was wholly insensitive to the political realities of the day and the ideological imperatives of the Whigs. For the reply of the grand jury, see Doc. 8.

April 1776

Gentlemen of the Grand Jury

. . . . I observed just now Gentlemen that it is a distinguishing mark of the good Sense of the Inhabitants of this Province that they so strenuously urge the necessity of supporting the authority of Courts of Justice, and the administration of the Laws; as indeed all legal rights must depend upon the Laws, and all Laws for their authority upon Government. And when Government is at an end, all Laws that concern it, must be so too, because a power to put the Laws in Execution, whereby the rights of the Subject are protected is essential to all Laws, as it is also essential to all Government, on which the Laws depend; and without such a power, no civil Society, and consequently no Civil Laws, can Subsist. These Gentlemen are established Truths and applicable to all Governments, and every System of Laws. But when we consider ourselves as British Subjects, members of a constitution, the envy and admiration of all the World, subject to, and under the Government of a system of Laws famed for Wisdom, Justice and Equity, and better calculated perhaps than any upon earth, to secure to the subject the compleatest enjoyment of rational Liberty, and the most ample Security for our persons and properties, the same good sense which suggest the necessity for the execution of Laws, and administration of Justice, upon the plan of our present Government, must also suggest, that those sentiments, and opinions, at this time held out, by artful designing Men, in the rage of faction, sedition and Licentiousness, to alienate our minds from a love of, and veneration for our excellent constitution, and inculcate the necessity, or propriety, of a seperation from, or independence on, our present Government, ought to be heard by every wise and good Man, every lover of his Country, with the utmost disdain and abhorrence, and spurned at with contempt and detestation.

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The best Criterion by which we can Judge of the excellency or usefulness of any system is, by observing how well it answers the end of its Institution, and produceth the effect for which it was established. If this is a fair and honest Test surely the most Enthusiastic Republican, the most furious Stickler for Independency must want assurance to deny, but that the Inhabitants of the British Colonies under British Government till within a short time past, have enjoyed a degree of Liberty, serenity, public tranquility, personal security, prosperity, plenty and happiness, beyond the Subjects of any Country or dominion upon Earth. Will these modern discontented Scribblers promise us better days, under their new fangled Ideal Mode of Government? Those learned Writers who have most considered, and best know the excellency of the British Constitution never fail to speak of it in raptures, as superior to all that History hath recorded or present times can boast. Let not your Sons Gentlemen have ever occasion to blush for the Conduct of their Fathers. Your Ancestors transmitted to you the blessings of the British Constitution, be it your Care to transmit the same inviolate to your children, as their birth right, and as our great oracle of the Law calls it their best Birth right. Tell them also that to be a Subject of Great Britain with all its Consequences is to be the freest Member of any Civil Society in the known World. It is not from inclination Gentlemen to engage in Subjects of political disquisition, that I have called your attention to these observations on our Government and constitution: but Magistrates and public Ministers of Justice ought to be considered as the guardians of the Laws, the Centinels of the State, and as such, they would ill discharge their duty, if they are not only ever ready to defend the Laws, but also watchful to give the alarm at the first Approach of an Enemy; and indeed Gentlemen I have but repeated the Alarm already given by your representatives, your constitutional representatives, who at the last Sessions of Assembly (whilst as yet sentiments of independency, and seperation from Great Britain were but faintly whispered) in language which speaks their abhorrence of such a measure, to their lasting honor be it recorded, unanimously Resolved and enjoined their Delegates "utterly to reject any proposition if such should be made that may seperate this Colony from the mother Country or change the form of Government Whereof."<sup>1</sup> And allow me Gentlemen to assure you, that I am well persuaded his Majesty's Council of this province, would consider it an insult to their understanding as well as their honor, to be even suspected capable of harbouring the most distant wish of innovation in our present constitution or Government; it is too absurd to suppose that the Governor of the Province can entertain any other Sentiments. Be this then our establishment, upon the Pillars of Governor and Council appointed by the Crown and an Assembly of representatives of the free choice of the People may our constitution rest for Ages to come upon those Pillars. Our Government has long been supported with safety and happiness to the people—too much is it to be feared that desolation and havock, ruin and confusion, would accompany their fall in these days . . . .

The public disorders consequent upon our unhappy contest with Great Britain, are now grown to a most alarming height. I consider the inhabitants of the Colonies as rushing on towards a tremendous precipice—nay on the very brink of an abyss of inconceivable misery, horror and destruction—and nothing but some sudden stop, some speedy interposition, can possibly save us. That my apprehensions are by no means Ideal, a contemplative view of the present Melancholy scene around us, must evidently demonstrate. A serious reflection on the variety of wretchedness

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which has already befallen our fellow subjects in other Colonies, ought to afford the most striking lessons of the fate which may await ourselves, for the operation of the same destructive causes, must necessarily produce the same calamitous consequences. If then we turn our eyes towards the Ocean, from whence of late each revolving tide brought a sure return of treasure to our merchants, Alas! what a dismal void; or if the Sight is intercepted, it is only by objects to frighten Commerce from our Shores. If we take a view of our Cities, once the happy retreat of busy Industry, Arts and Commerce the abode of opulence ease and Elegance, now deserted, neglected and Abandoned to the grievous incursions of hostile depredation. Will the Country afford us a safe retreat? Shall we there find Peace and Order established? Alas! even there the utmost we can promise ourselves, is a doubtful Joy of temporary security. Vain perhaps Gentlemen may be your toil and Industry. Who will insure you the wished for returns of your Labors? You may sow, but who shall reap? You may Plant, but who shall gather? Soon, too soon perhaps may an armed host fly like the Lightnings blast over your promised harvest. Happy for you if this is to be the measure of your misfortunes. But roused perhaps by the call to Arms, you meet the approaching Foe where Arrows of destruction are thickly scattered round. Shield us gracious heaven from these complicated Woes. Let not the Widows cries and Orphans tears proclaim the wretched fate of Fathers, Husbands, Brothers slain. But do thou Almighty disposer of all events, save us from the danger that threaten us; prevent the effusion of blood in our Land; reconcile all our Disensions; and may Peace and harmony, plenty and tranquility, be again restored to this afflicted Country.

If I have here given you Gentlemen a just picture of our present distressed situation, if my apprehensions of encreasing miseries are well founded, if in my wishes for peace I express the language and Sentiments of every wise and good American, is it not devoutly to be wished, that those in whose power it is to compose our differences, may with one heart and one mind pursue those means which may lead to so happy an end? But perhaps it may be asked, shall we at once lose Sight of the occasion of our Contest? Are all our claims of Liberty to be at once forgot? In silent terror then are we to wait our fate from the hands of Conquerors? God forbid. May the true Spirit of Liberty be forever unconquerable in the Minds of Americans. Liberty is the Inherent right of every British Subject in every part of the British Dominions. Liberty may be ingrafted by the arts of Policy in other Countries but on British Ground it shoots as from its natural Climate Stock and Soil. But Gentlemen admitting the claim of Americans as Subjects of the British State, to the blessings of British liberty in the utmost extent, it can never exempt them from the discretionary authority of the British Legislature.

Whether this discretionary power of Parliament has or has not been rigorously exerted over the Colonies it is neither proper or necessary for me to declare; but if reconciliation be really the object with Americans, I must be of opinion that far other Language than is now held forth, far other measures than those now pursued, must take place. If the Parliamentary declaration of a right to bind the Colonies in *all* cases whatsoever, be answered by a denial of such claim to operate in *any* case whatsoever; if the Parliamentary requisition of an American Revenue towards the defence of the State, continues to be utterly refused; if the Colonies who at the commencement of the contest with Parliament were content to fix one foot of the compass on Taxation (and where indeed it was properly fixed), but have since extended the other to most

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unreasonable bounds, without describing any circumference at all; in short if the Spirit of *American Liberty* suggest claims, which neither the constitution can admit, or can consist with our provincial dependance, the natural inference will be, that the Colonies are determined on a total Separation from Great Britain, and grasp at supremacy. In such case they must expect their claims and pretensions will be answered in the Language of one of our Ancient Kings of England<sup>2</sup> in a Controversy with a Pope of Rome: "Be it known that by Gods assistance the Authority and usages of the Kingdom of England shall never be diminished; but if I would so debase myself (which God forbid) my Nobles, and the whole People of England would by no means suffer it." If this National spirit to assert the Claims of the State, glowed with such Ardor in the breast of Britons in ages past, can it comport with the intrepidity and Giant Strength of that mighty Nation in these their heroic days, to relinquish, much less admit the Jewells of the Diadem to be wrested from them by force?

Pre-eminent in Mercy and Magnanimity, our gracious Monarch, in language worthy the King and Father of his People, in the genuine Spirit of peace and reconciliation, seeks not to conquer, but reclaim. If he is compelled to pursue in Arms those who have presumed to take up Arms against him, he pursues them like disobedient Children whom he seeks to reclaim, and not like irreconcilable Enemies to be exterminated. "When my unhappy Subjects shall become sensible of their error, I shall be ready to receive the misled with tenderness and Mercy—the constant employment of my thoughts, and the earnest wishes of my heart, tend wholly to the safety and happiness of all my people, and to the re-establishment of order, and tranquility thro' the several parts of my dominions in a close Connection and constitutional dependence."<sup>3</sup> Is this the Voice of Despotism, this the Language of Tyranny? Can a Monarch with such sentiments of clemency and forbearance, wish to die the Royal Ermines in the Blood of his Subjects? In short Gentlemen if reconciliation be your wish, you have every thing to hope from the humanity, Justice, Generosity, and sincerity of the British Nation. A constitutional dependence is all that is required, under which state of dependancy, these Colonies were established, have grown up, and flourished; under which you Gentlemen and your forefathers have enjoyed all the happiness, safety and prosperity, which could be expected or wished for, under any government. Instead therefore of keeping up a destructive ruinous and unequal contest with the incensed power of a Country, which in our own days we have seen carrying the terror of her arms into every quarter of the World, is it not fervently to be wished, that some prudent plan of accomodation, worthy a grateful and loyal People, may be proposed, worthy the dignity and Wisdom of the parent State to attend to? Then may we hope that past Offences will be no more remembered; that the Colonies convinced of the necessity of an happy union with Great Britain, their submission will be paid to the Laws of the State on principles of Gratitude, manly Obedience, and willing dependence, but never extorted by abject fear, or slavish submission. May this Union be such as flows from an unshaken trust and confidence between Sovereign and Subject, Parliament and People; from a due reverence and Obedience to the Authority of Government and Laws; from an awfull care not to remove the antient land marks, nor to disturb those constitutions which time, and the public convenience hath settled; from a Zeal to preserve the whole frame and order of the Government, upon the old foundations; and from a perfect detestation and abhorrence of all such as are given to change. From such an Union and Connection we may reasonably hope that Concord and

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Commerce will [then] return to our Cities, will diffuse peace and prosperity through the Colonies; joy may then be seen sitting in every face, content be felt in every heart; the Colonies will then exhibit a people unoppressed, undisturbed, unalarmed, busy to improve their private property and the Public Stock; then may be seen Commercial fleets traversing the Ocean under the lordly Auspices of the British Flag bringing home Wealth the returns of Industry triumphantly displaying to wondering Nations the Opulence and enterprise of British Colonies.

1. See Sec. V, Doc. 13.
2. Probably Henry VIII during the break with Rome and the establishment of the Anglican Church.
3. Excerpts from George III's speech to Parliament of October 26, 1775, in which he urged Lords and Commons to take whatever steps might be deemed necessary to suppress the American rebellion. See the *Journals of the House of Commons*, 35:397-98.

### 8 The Middlesex County Grand Jury to Chief Justice Frederick Smyth

[Smyth Papers, American Philosophical Society Library.]

As the remarks of the Middlesex Grand Jury reveal, defense of the English constitution did not preclude participation in or support of the rebellion. Indeed, rebellion traditionally was considered a legitimate political response to arbitrary or despotic rule. The contest between Britain and America was basically a constitutional dispute, with both rebels and royalists claiming to be defenders of the constitution. They differed, of course, not only in interpretations of parliamentary taxation but in their perceptions of the nature of constitutional government itself. The fundamental debate raged over conflicting answers to questions such as these: what is the proper means of redressing grievances and preserving liberties? are certain specific freedoms more valuable than the system as a whole? whence does government derive its authority? do citizens enjoy political rights only at the sufferance of government or are there natural rights which government can neither grant nor deny? The exchange between Chief Justice Smyth (see Doc. 7) and the jurymen clearly reveals the political chasm created by different attitudes toward constitutionalism.