

A Great Statesman: Reclaiming Gouverneur Morris

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“The true Object of a great Statesman is to give to any particular Nation the kind of Laws which is suitable to them and the best Constitution which they are capable of.”

—*Gouverneur Morris to William Carmichael, November 5, 1792*¹

“I have liv’d too long to regard men’s Expressions: so that all Sentences rounded off by fair or foul Words, such as Liberty, Patriotism, Virtue, Treason Aristocracy[,] Crime, are to me the Equivalent of blank Paper.”

—*Gouverneur Morris to Madame de Lafayette, July 29, 1793*²

In these days of cynical disillusionment with many of our long-revered Founders, Gouverneur Morris has perhaps found his moment. For the past 200 years, his virtual exclusion from the historical picture and the denigration with which he continues to be characterized has flattened our perception of that period of American history. It is very gratifying to think this may be ending. It should end. Restoring Morris doesn’t just help complete the record, it enriches it in many ways: by his speeches in the Convention and later in the Senate, his truly extraordinary diary of the French Revolution, his letters, and the actual events of his life. His acute observations were made in a modern voice, and his political comments, whether humorous or agonized, were expressed with an eloquence that resonates today—sometimes very painfully.

It seemed to me that the best use of this paper would be to offer a selection of what I have found most enlightening, moving, or unexpected while studying Morris’s time in France and his later diaries, hoping that it will help fan the new-kindled interest reflected by this colloquium³ by enhancing an appreciation of his character and the sophistication of his views. Various eminent historians have for too long dismissed Morris offhandedly as a “lightweight” and the political principles he expressed at the Convention as no more than “lawyerly solipsism.”⁴

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1. GOUVERNEUR MORRIS, OFFICIAL LETTERBOOK AUG. 1792–APR. 1793 (collection of the Library of Congress) [hereinafter OFFICIAL LETTERBOOK I].

2. GOUVERNEUR MORRIS, OFFICIAL LETTERBOOK, APR. 1793–JAN. 1795 (collection of the Library of Congress) [hereinafter OFFICIAL LETTERBOOK II].

3. And by an excellent upcoming book by Dennis C. Rasmussen, *The Constitution’s Penman: Gouverneur Morris and the Creation of America’s Basic Charter*, forthcoming in 2023.

4. Comment of John Catanzariti, an editor of the Jefferson papers, made to the author. See also JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 76 (1996). In the last 20 years there have been a few excellent biographies of Morris that demonstrate the fallaciousness of those assessments (e.g., by William Howard Adams and Richard Brookhiser); and an

Dr. Treanor's article demonstrates why those superficial assessments are a disservice to Morris's brilliance and his importance that summer in Philadelphia. But one needs to go further: the years I have spent studying Morris have brought me to agree with Madame de Damas, a Frenchwoman whom Morris sheltered during the Terror, who left us a candid verbal portrait of him in which she said, "Were I called upon to distinguish him by a single trait, I should say, *he is good*." She saw "the exercise of this virtue in every action of Mr. Morris's life."⁵ I am convinced that it will take knowing more about Morris himself and dispelling the falsehoods circulated about him during his life and repeated today for people to begin to truly appreciate and properly respect his contributions, as well as value and study his writings. This paper is a chance to give some of the reasons why that is so.

As a preliminary matter, however, here is a brief discussion of the way in which the field of documentary editing enables a more complete and accurate view of Morris. Gouverneur Morris clearly enjoyed sex, and the most tantalizing but possibly least significant element of his papers is the infamous inked-out text in his Paris diaries. As anyone who has taken even a cursory look at books on Morris knows, there are a number of places where words or passages, generally relating to sex, were covered over with black ink, and in some cases pages were even torn out. It could have been done by Morris himself in later, more circumspect, years or by his wife, who made a note in the diaries after he died that she had read them before giving them to Jared Sparks. Sparks too felt free to write in the diaries, but in pencil, so he seems less likely. Or it could have been Morris's Victorian-era descendant, Anne Carey Morris.

An example is a passage from the diary entry of June 5, 1789. Morris had arrived in Paris in February, on what was supposed to be a relatively short business trip, hoping to salvage financier and Founder Robert Morris's tobacco contract with the French Farmers General, sell land, and perhaps arrange a major purchase of the American war debt to France. Morris had spent the morning at the studio of Jean-Antoine Houdon posing for a statue of George Washington and agreed to return on June 9 to have a life mask taken of his face. Although Morris told Houdon he had no intention of buying a bust, Houdon did make a terracotta bust from the mask, and it is thanks to him that we have an extraordinary living image of Morris just as he was on that day over 230 years ago, seen in Illustration 1.⁶

extremely useful compilation of Morris's published speeches and essays by J. Jackson Barlow. If you compare the few inches of Morris-related books on a university library shelf with the multiple shelves sagging with volumes dedicated to the other Founders, however, it is obvious that the attention of scholars and educators has long been fixed elsewhere.

5. Madame de Damas, *Portrait de M. M******, American Philosophical Society, Smith Family Papers, 1659–1985 (early 1790s, date unknown), series 41.

6. 1 GOUVERNEUR MORRIS, A DIARY OF THE FRENCH REVOLUTION 107 (Beatrix Cary Davenport ed., 1939) [hereinafter 1 PARIS DIARY]. See Lois Madison Reamy, *In Search of Gouverneur Morris*, 40 BRONX CNTY. HIST. SOC'Y J. 82 (Fall 2003). The bust's vitality is a sharp contrast to the more familiar paintings of a puffy-faced older gentleman, rendered by later artists. Illustration 1: Jean-Antoine Houdon, *Bust of Gouverneur Morris*, unfired clay (1791). Private collection; photograph courtesy of Daniel Katz Gallery, London.



Illustration 1

After leaving the studio, Morris went to pick up Thomas Jefferson and Jefferson's secretary William Short, and they went to dinner. Later that day, Morris recorded that he went "to the Palais Royal," a public entertainment mecca with gardens and shopping arcades, but what happened there was scribbled over, as shown in Illustration 2.⁷

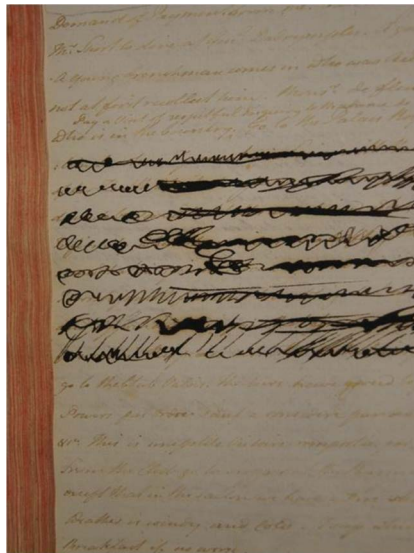


Illustration 2

7. Gouverneur Morris diary entry of June 5, 1789, photograph. Public domain via Library of Congress.

At our project's request, the Library of Congress's Preservation and Testing Division used a technique called hyperspectral imaging to try to uncover what was under the blots. Hyperspectral imaging involves exposing an object to very low light and low heat LEDs at different wavelengths and taking a series of images. The spectral response unique to each ink allows separation of the original writing from the blots. Illustration 3 is one of the images of the June 5, 1789 entry, but, as you may be able to discern, it was of limited, though definitely some, help.⁸

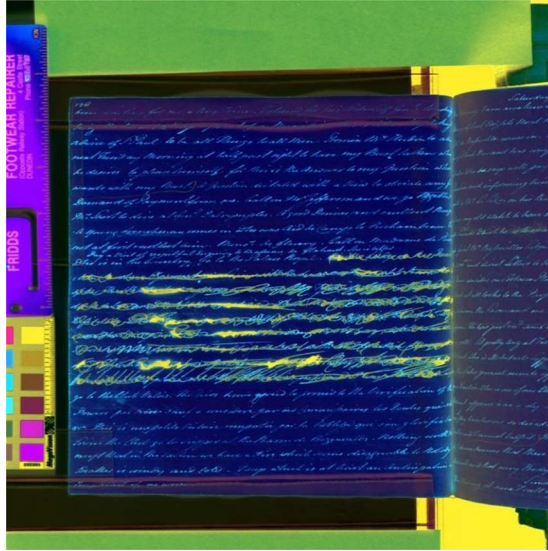


Illustration 3

That is because the original ink and the blotting ink were both iron gall ink, meaning the spectral responses from the two were pretty much the same. Perhaps there will be another means available in the future, but to reconstruct this passage now, we had to rely primarily on our knowledge of Morris, his handwriting, and his style. The best we were able to glean was:

Go to the Palais Royal. Visit a Lady on her Invitation to whom I present six Livres with the [humble?] Request to know the State of her Health which she assures [few words illegible] desire to be somewhat better [one line illegible] Infirmary which [three lines illegible] Votary, at whose Feet I worship with [about eight words illegible] [Devotion] [few words illegible] and apprehend [two lines illegible]. The [Actions] performed I leave [illegible word] and go to the Club Valois.⁹

8. *Hyperspectral image of Gouverneur Morris diary entry of June 5, 1789*, photograph. Public domain via Library of Congress.

9. Brackets indicate what we were pretty sure it says but cannot swear to, or notes when we could not pin it down at all. To the extent that our project was able to fill in other instances of blotted out text, it can be seen in the online version of the Davenport edition on the University of Virginia Press's Rotunda

Even without all the details, you have a good general idea of what happened that day at the Palais Royal. The important point, however, is that none of Morris's earlier editors—neither Jared Sparks, nor Anne Cary Morris, nor Beatrix Davenport—the least priggish of the Paris diary editors—put this material in.¹⁰ Modern documentary editing principles would hold that all the material needs to be available, to the extent possible, for each reader to know about and utilize as he or she chooses. In this particular case, the material contained in the June 5 entry is relevant because it establishes that Morris went to prostitutes, something he mentions again a few more times in Europe, and gives information about the possibility of the effect on his health. Morris suffered and probably died from a blockage in his urethra, and it may have been due to venereal disease, which he could, as shown here, have contracted in Europe.¹¹

Researchers also need to be alert to the possible imposition of an editor's style preferences onto the original text. Anne Morris was the worst transgressor of documentary editing ethics in her 1888 edition of Morris's diaries. Morris felt free to drop entire passages from the diaries and merged entries from different dates to make them appear as though they occurred on the same day. Sparks, who published his edition in 1832, also showed no qualms about omitting paragraphs and entire entries. Until we began transcription of the original diaries, we did not know that Morris was too ill to keep his diary for ten months, from December 1812 to the following October. These episodes were not mentioned in either Morris's or Sparks's edition of his diaries. But what I consider an equally damaging aspect of their editing is that they both felt free to reduce Morris's consistently capitalized nouns to lower case and to insert a great deal of their own punctuation. In my opinion, this alteration of the text greatly diluted the force of Morris's prose.¹²

That such alterations can be pernicious is relevant in connection with an interesting campaign by a gentleman from the Alexander Hamilton Appreciation Society, as well as with an issue raised in William Treanor's article. The campaign—perhaps “crusade” is more accurate—concerns the cover letter that accompanied the Constitution sent to the states for ratification. The delegates approved the letter on September 12, 1787, and Illustration 4 shows the version

Founding Era website. See *The Diaries of Gouverneur Morris: Digital Edition*, UNIV. OF VA. PRESS, ROTUNDA, <https://rotunda.upress.virginia.edu/founders/default.xqy?keys=GRMS-info-about> [<https://perma.cc/J4MP-2SLX>] (last accessed Jan. 15, 2023). A discussion of the Library of Congress's efforts is in the supplemental introduction.

10. 1 JARED SPARKS, *THE LIFE OF GOUVERNEUR MORRIS, WITH SELECTIONS FROM HIS CORRESPONDENCE* 311 (Jared Sparks ed., 1832); 1 *GOUVERNEUR MORRIS, THE DIARY AND LETTERS OF GOUVERNEUR MORRIS* 81–82 (Anne Cary Morris ed., 1888).

11. Morris later referred to having visited a brothel in Amsterdam, and there were other episodes with London prostitutes, partially lined out. See 1 *PARIS DIARY*, *supra* note 6, at 454, 554.

12. Beatrix Davenport, to her credit, did not do this in the Paris diary. Perhaps the first Morris “editor” was Henry W. Livingston, Morris's secretary when Morris was the minister to France, who copied most of Morris's official correspondence into the official letterbooks (Morris did not use him for other types of correspondence). Livingston seems to have capitalized nouns as the whim took him, once in a while changed a word, and, occasionally, punctuation.

that was published by the printers Dunlap & Claypoole in the Pennsylvania Packet the following week, on September 19.¹³

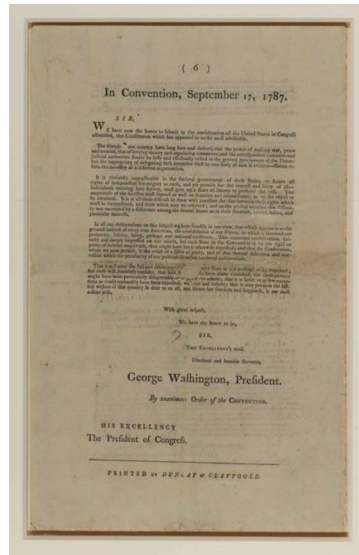


Illustration 4

The gentleman contacted me because he believes Hamilton, not Morris, drafted (or dictated) the cover letter, and he sent me a printed copy. At the time, I was not familiar with the letter, and my associate editor and I were disconcerted because the style didn't seem to be quite Morris's (although it did not seem like Hamilton's either). However, when he provided images of the draft of the letter—Illustration 5¹⁴—we knew Morris wrote it. Of course, this only meant we were joining the ranks of the scholars who have long known and published this fact.¹⁵

13. The letter "was read once throughout, and afterwards agreed to by paragraphs." 2 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 582 (Max Farrand ed., 1911). Dunlap and Claypoole were the printers of the various drafts and final Constitution. Illustration 4: *September 19, 1787 Pennsylvania Packet*, parchment (Dunlap & Claypoole 1787) (printed version of cover letter sent to the states with the Constitution). Courtesy of the Historical Society of Pennsylvania Digital Library.

14. Second Constitutional Convention, *Draft of the letter from the Convention to Congress to accompany the Constitution*, parchment (September 12, 1787). Official Records of the Constitutional Convention, Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360; National Archives and Records Administration.

15. See, e.g., 5 THE PAPERS OF GEORGE WASHINGTON, CONFEDERATION SERIES (1 JAN. 1784–23 SEP. 1788) 330–331 (W.W. Abbot ed., 1997).

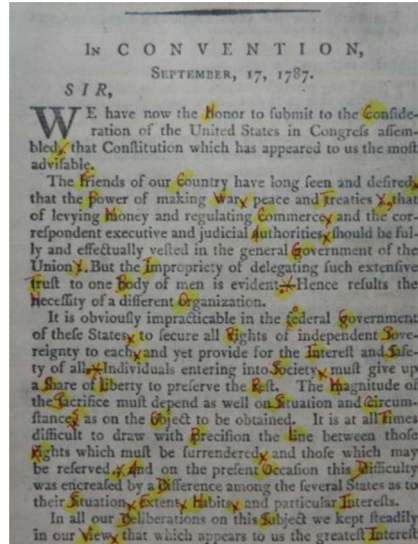


Illustration 6

In the entire letter, something like twenty-eight commas were added—in the original draft there is only *one* comma.¹⁷ There are *no* semicolons in the original (in our experience, Morris rarely utilized semicolons), but the printer added *six*; one colon and two em dashes were added. Morris’s characteristic capitalized nouns were changed to lowercase, and some plural nouns were made singular.

I think these changes dull the dignified tone of the letter. However, unlike the allegedly inserted semicolon identified by Gallatin in Article I, Section 8 of the Constitution itself, an episode discussed in Treanor’s article, it does not appear that the meaning of the letter has been changed substantively. Regardless, punctuation doesn’t figure into Treanor’s discussion of the cover letter. Nonetheless, I consider the evidence of printers’ changes relevant in evaluating Gallatin’s claim. Having been through the cover letter exercise beforehand, we were alert to the possibility that printers of the various committee drafts and the “final” version may have taken liberties to adjust or, as they probably assumed, “improve” the handwritten drafts of the Constitution.¹⁸

The Convention records and notes do not specify what Jacob Shallus, who engrossed the final Constitution onto parchment for the delegates to sign, was

17. Morris did add (or, on rare occasion, remove) commas and colons when copying from his letterbook drafts into the version he sent to the recipient.

18. Leonard Rapport, *Printing the Constitution: The Convention and Newspaper Imprints*, Aug.–Nov. 1787, in PROLOGUE: J. OF THE NAT’L ARCHIVES 2, 69–89 (Fall 1970). Rapport notes several inconsistencies in newspaper versions of the Constitution and an episode in the winter of 1822–23 in which John Quincy Adams was accused of having deliberately changed a colon for a semicolon in his edition of the Journal of the Convention but, as Adams wrote in his diary, established to the accuser’s satisfaction that it was a “mere error of the Press.”

copying from. But it seems logical that it was Morris's handwritten draft of the Style report, with the changes made in accordance with the delegates' review of it, rather than the printed one, because Shallus capitalized all the nouns. Illustration 7 is of the printed version of the September 12 report of the Committee of Style.¹⁹

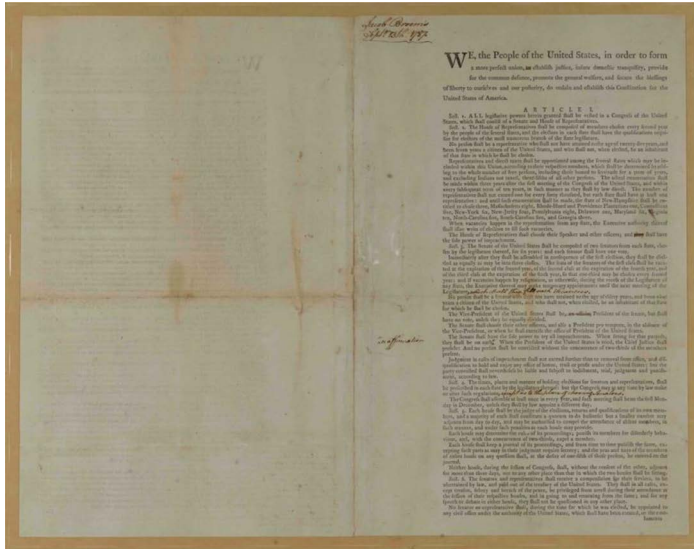


Illustration 7

The printers did not capitalize the nouns, nor did they do so in the published final version.²⁰ Moreover, there is no comma after “We” in “We the People” in the parchment Constitution but there *is* in the printed Style report and in the printed Constitution. We do not think Morris would have put a comma there, just as he would not have written lowercase nouns. There are, however, a lot of commas in the parchment version, and many of them look as though they were inserted after the document had been engrossed, perhaps with reference to the *printed* Style report. The engrosser could not change capitalized nouns to lower case, that is, but could insert commas. If it had been decided that they should be there, and that the parchment copy should be as close as possible to the printed copy by Dunlap & Claypoole—well, that *may* explain it.

Other punctuation inconsistencies among the various versions show up. For example, in the last sentence of Article I, Section 3, the parchment copy says,

19. Delegate Jacob Broom’s copy can be seen on the website of the Historical Society of Pennsylvania. *Printed copy of Committee of Style Report belonging to Jacob Broom*. Courtesy of the Historical Society of Pennsylvania Digital Library.

20. James Wilson’s manuscript copy of the Committee of Detail report also had capitalized nouns, but the printer of that report also dispensed with those.

“profit under the United States;” but the printed Constitution says, “profit under the United States;”. And so on.

I will not belabor this further. I just want to note that it is quite plausible, as Madison much later suggested, that Gallatin’s complaint derived from a semicolon that was most likely to have been inserted *by the printers* when they printed copies of the Committee of Style report. Morris, on the other hand, likely stayed with his own habits of capitalization, etc., and did not, as he was accused of doing, insert a semicolon into his draft. Thus, there is no semicolon in the parchment copied by the engrosser or in the final printed version. Sherman could certainly have seen it in his printed Style copy and (assuming Gallatin had the story right) made sure it wasn’t in the printed final version. The idea that Sherman was outraged by this “trick” is unconvincing and the vitriol with which Gallatin apparently made the claim is, to me, a bit bizarre. Morris, of course, was not there to defend himself.

I will end this part of the paper with an excerpt from a letter Morris wrote in 1814 to Timothy Pickering, one of the few in which he discussed his part in the Convention. Treanor discusses another part of the letter in connection with Morris’s apparent textualist approach, but for me, this letter is unforgettable because of this searing paragraph, born of Morris’s long experience with constitutions and legislatures, state, national, and foreign:

But, after all, what does it signify that Men should have a written Constitution containing unequivocal Provisions and Limitations? The legislative Lion will not be entangled in the Meshes of a logical Net. It will always make the Power which it wishes to exercise, unless it be so organized as to contain within itself the sufficient Check. Attempts to restrain it from Outrage, by other Means, will only render it more outrageous. The Idea of binding Legislators by Oaths is puerile. Having sworn to exercise the Powers granted according to their true Intent and Meaning, they will, when they feel a Desire to go further, avoid the Shame, if not the Guilt, of Perjury by swearing the true Intent and Meaning to be according to their Comprehension that which suits their Purpose.²¹

I will now turn to Morris’s time in France. While Morris’s political philosophy and humanitarian views remained unchanged, it is in the French Revolution that they can be seen in play, directing his conduct and writing as events unfolded. Many of the falsehoods about Morris mentioned at the outset of this paper originated during his time in Europe. These falsehoods are still repeated today and have belittled and distorted his legacy in every regard.²²

21. Letter from Gouverneur Morris to Timothy Pickering (Dec. 22, 1814), in *PRIVATE LETTERBOOK, MARCH 1814–OCTOBER 1816* (collection of the Library of Congress). The letter was written during the War of 1812, a war that disgusted and dismayed Morris, and brought him to the point of advocating secession by the northern states. He already considered the Constitution “broken” by the repeal of the Judiciary Act in 1802.

22. To the extent that Washington’s opinion still carries weight, and I trust it does, I recently learned of a private comment Washington made in the margins of a self-aggrandizing self-defense by James

There were a number of sources of these attacks, and their motives varied. Probably the first person who significantly damaged Morris's reputation was William Short, Jefferson's secretary, who stayed in Paris as interim chargé when Jefferson left.²³ Although Jefferson made it clear to Short that he should not expect to be appointed as his successor, Short preferred to listen to his French friends, including the Marquis de Lafayette, who all assumed that being the protégé of someone as powerful as Jefferson was enough to assure Short the position. Short wrote Jefferson many letters between 1789 and the time news of Morris's appointment arrived in 1792, in which he alternately demanded that Jefferson obtain the appointment for him, reproached him for not doing enough, and criticized Morris because he believed that Morris was a possible competitor for the position. Short's letters are, as he himself described them, jeremiads—long, tedious, and self-pitying epistles. They are not, frankly, fun to read. To Jefferson's credit, he did not falsely raise Short's hopes and continued to discourage him, but he seems to have nonetheless believed what Short had to say about Morris. Short included complaints, ironically, that he was sure Morris was criticizing him to friends in the United States. In reality, Morris treated Short with respect and friendship and even reprimanded the British ambassador's wife for being rude to him. Only in a letter to Hamilton did Morris express frustration about Short's handling of the American debt to France, when Short tried to put the blame on Morris for actions Hamilton directed Short to take.²⁴

Even after news of Morris's confirmation arrived, Short did not give up and pushed for Morris to be recalled. A typical example is a letter of July 26, 1792, which takes up nine single-spaced pages in the Jefferson Papers. Short repeatedly speaks of Morris's "pretensions" and "vanity" and expresses aristocratic distaste for Morris's commercial activities, which he implied made Morris unqualified for a diplomatic post and an insult to the French who, he said, called Morris "the last kind of person who could enjoy the confidence of such a government as ours." Short claimed Morris had known well in advance he would get the post (Morris's

Monroe, after his failure as minister to France. Monroe had reviled Morris as a "partizan of royalty" and enemy to revolution and excoriated his conduct as minister. Washington noted, "Was not [France] (as has been observed before) at the time, & long after Mr. Morris's appointment a Monarchy? Whatever may have been his political Sentiments, he pursued steadily the honor & Interest of his [Country] with zeal and ability, & with respectful firmness asserted its rights." 2 THE PAPERS OF GEORGE WASHINGTON, RETIREMENT SERIES 196 (Dorothy Twohig et al. eds., 1998). Reference courtesy of Dennis Rasmussen.

23. For the full story of Short's years-long assault, see Melanie R. Miller, *Gouverneur Morris and the French Revolution* (2000) (Ph.D. dissertation, George Washington University) 299–330 [hereinafter Miller dissertation], or, in less detail, see MELANIE R. MILLER, *ENVOY TO THE TERROR: GOUVERNEUR MORRIS AND THE FRENCH REVOLUTION* 96–104 (2005) [hereinafter MILLER, ENVOY]. Short asked Jefferson to destroy his letters; fortunately for us, he did not comply. 22 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 216–17 (Charles T. Cullen et al. eds., 1950).

24. Letter from Gouverneur Morris to Alexander Hamilton (Dec. 24, 1792), in 13 THE PAPERS OF ALEXANDER HAMILTON 377 (Harold C. Syrett ed., 1961–1987). Morris also passed on some snide remarks made by William S. Smith about Short's indecisiveness to his old friend William Carmichael. See Letter from Gouverneur Morris to William Carmichael (Nov. 5, 1792), in OFFICIAL LETTERBOOK I, *supra* note 1 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

diary and letters show he was taken by surprise) and had misled Short about it. He also made sure that Jefferson—and thus, Washington—knew that Lafayette was displeased.²⁵

I will end this mention of William Short by noting that his long-time lover Rosalie de la Rochefoucauld²⁶ was imprisoned in Paris during the Terror, and Morris sent a frantic Short every bit of news he could obtain, arranged for Robert Morris to manage the family's estate in Haiti, and passed letters back and forth between her and Short.²⁷

Next on the list of those who damaged Morris's reputation is Alexander Hamilton. This might be surprising, since their long friendship is well known. Unfortunately for Morris, and unknown to him, Hamilton was prepared to sacrifice him in pursuit of his own ideas about what was best for American foreign policy.²⁸ In 1790, Washington sent Morris to London to talk to the British about fulfilling the peace treaty ending the war with Britain, exchanging ministers, and pursuing a commercial treaty.²⁹ Hamilton, who considered a commercial treaty a high priority, urged Washington to choose Morris. Morris's personal descriptions of his discussions with the British demonstrate that he held his own and was clear and firm about Britain's need to fulfil its obligations and the beneficial impact on Anglo-American relations that would result.³⁰ When Morris reported to Jefferson and Washington that the British were uninterested, they were not surprised and approved of Morris's handling of the talks. Hamilton, however, was unwilling to accept this disappointing result and proceeded with a series of unauthorized, secret meetings with a British intelligence officer, George Beckwith. Hamilton had

25. Letter from William Short to Thomas Jefferson (Jul. 26, 1792), in 24 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 249–259 (John Catanzariti ed., 1990) [hereinafter 24 JEFFERSON].

26. The wife of the Duc de la Rochefoucauld; she became Short's lover in 1790. The duke was murdered in front of her and the duke's mother in September 1792. See Letter from Gouverneur Morris to Thomas Jefferson (Sept. 10, 1792), in 2 GOUVERNEUR MORRIS, A DIARY OF THE FRENCH REVOLUTION 540 (Beatrix Cary Davenport ed., 1939).

27. See Letters from Gouverneur Morris to William Short (Apr. 18, 1794; May 19, 1794; and June 16, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston]; Letter from Gouverneur Morris to Robert Morris (Mar. 28, 1793), in COMMERCIAL LETTERBOOK, JUNE 1791–NOVEMBER 1795 (collection of the Library of Congress). Short was in Spain, having been sent to join William Carmichael in talks.

28. He was not, of course, Secretary of State, and his aspirations for British commercial connections were different from Jefferson's. It was Julian Boyd, editor of the Jefferson Papers, who uncovered Hamilton's skullduggery and wrote about it. See NUMBER 7: ALEXANDER HAMILTON'S SECRET ATTEMPTS TO CONTROL AMERICAN FOREIGN POLICY, WITH SUPPORTING DOCUMENTS (1964). Boyd clearly had no respect for Morris and made frequent criticisms in the volumes he edited, usually in the form of unflattering comparisons with Jefferson; but he disliked Hamilton even more. See 1 PARIS DIARY, *supra* note 6, at 191–235; MILLER, ENVOY, *supra* note 23, at 48–72.

29. The British still held the northwest posts and had not paid compensation for slaves freed by British troops. On its side, the U.S. was now, having adopted the Constitution, in a position to pay agreed-upon compensation to British creditors.

30. Morris recorded the conversations every evening in his diary when they were fresh in his mind, then copied them into his letters to America. For an example of Morris's mastery of the discussions, see the record of his talk with William Pitt. See 5 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES 434–35 (Dorothy Twohig et al. eds., 1987).

already hurt the United States' bargaining position through his discussions with Beckwith, in which he appeared (falsely) to be presenting Washington's views and intentions.³¹ After receiving Morris's reports, Hamilton tried to undermine them by falsely claiming Beckwith had told him the British ministry had been offended by Morris—actually, they were impressed with him—and that this was the only reason they were not willing to pursue discussions.³² Hamilton presented these claims to Washington and they clearly achieved general circulation, for they surfaced again at Morris's confirmation hearing, and historians still repeat them.³³ Washington believed Hamilton's ersatz reports but only to a point. He disdained the alleged British unwillingness to treat with Morris, and believed Morris's description of their position, but he decided against appointing Morris as the American minister to London, nominating him instead for the position in Paris. Washington also wrote a letter of gentle reproof to Morris for supposedly being indiscreet and offending people with his wit.³⁴

So, to put it plainly, Hamilton stabbed Morris in the back, and quite effectively. It is important, therefore, to describe two occurrences which illustrate *Morris's* treatment of Hamilton. One is that after Hamilton's death in 1804, Morris found he had left his financial affairs in dire straits and immediately went to work to set up a trust fund to support his widow and children, seeking contributions from Hamilton's friends and contributing on his own behalf. Second, at Eliza Hamilton's request, Morris (very reluctantly) agreed to go through Hamilton's papers to organize them and weed out any he felt would harm his friend's reputation or embarrass his family were they to come to light. This took Morris several

31. Hamilton indicated to Beckwith that the U.S. would acquiesce in response to the British warning of retaliation against threatened U.S. shipping restrictions and allowed Beckwith to infer that he was officially authorized to give this assurance. See "*The War Crisis of 1790*," *Editorial Note*, in 17 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 35–161 (John Cantanzariti ed., 1990) [hereinafter 17 JEFFERSON].

32. Beckwith was the Governor of Canada's aide-de-camp, who had been sent to New York to make contacts with the American "British interest." See 7 THE PAPERS OF ALEXANDER HAMILTON 84–86 (Harold C. Syrett ed., 1963); "*The War Crisis of 1790*," *Editorial Note*, in 17 JEFFERSON, *supra* note 31, at 35–161. Morris was unaware of Hamilton's role, though he heard about (and rejected) the falsehoods. Letter from Gouverneur Morris to Robert Morris (Nov. 14, 1791), in PRIVATE LETTERBOOK, JULY 1789–AUGUST 1795 (collection of the Library of Congress) [hereinafter PRIVATE LETTERBOOK I].

33. Aaron Burr, one of the senators at the hearing, referred to the "fact" that Morris had "conducted himself so offensively in his intercourse with the Eng. Ministers, that they were offended & refused, after an abrupt breaking up of an interview, to renew it." See 1 THE LIFE AND CORRESPONDENCE OF RUFUS KING 421 (Charles R. King ed., 1894).

34. See 9 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES 515 (Philander D. Chase et al. eds., 2000). Washington might have been justifiably chagrined if he had known that at the same time Morris was talking to the British ministry, he was sending letters to France to encourage the French to attack England. Morris saw this as a way to advance both French and American interests, by helping to shore up the tottering French monarchy with what he called "that great friend to sovereignty, a foreign war," and to nudge the British closer to treating with the U.S. It doesn't appear that he advised Washington or Jefferson (or Hamilton) that he was doing this, and the idea got nowhere. For its part, Britain was secretly trying to detach Vermont and Kentucky from the United States, using commercial treaties as a lure. See "*The War Crisis of 1790*," *Editorial Note*, in 17 JEFFERSON, *supra* note 31, at 39, 66.

months to complete and was a dreary chore to say the least. These two undertakings, in my view, confirm what Eliza told Morris at her husband's death bed, that he was indeed "Hamilton's best friend"³⁵—but the episode of the British negotiation makes it clear that the reverse was not true.

Next on the list is Thomas Paine, who also made a secret but effective effort to undermine Morris as minister plenipotentiary, attacking both his integrity and his efforts on behalf of Americans trapped in the chaos of the French Revolution. Paine's biographers repeat not only his contemporary slanders, but also the myth, originated by Moncure Conway in 1895, that Morris conspired to have Paine imprisoned in France and that Morris's general treatment of Paine was mean-spirited and base. These specious allegations are still cited as fact, but Morris's papers prove otherwise.³⁶

Morris and Paine had dealings with each other as early as 1778, during the Silas Deane-Arthur Lee controversy. Paine had leaked documents about France providing support to America when it was officially neutral. For this reason, Morris demanded he be fired from his position on the Continental Congress foreign affairs committee in an insulting speech that didn't do Morris a lot of credit. Later in the war and afterwards, however, they worked together on efforts to institute national taxes and then on rechartering the Bank of North America. They saw each other in London and Paris and Paine visited Morris regularly, usually in order to eat a meal and borrow money, which Morris provided, though he noted in his diary that he had no confidence he would be repaid.³⁷

In Paris, Paine became a friend of the Girondin leader Brissot de Warville and an enthusiastic contributor to Warville's revolutionary newspaper, *Le Patriote Français*. After Paine wrote his famous "Rights of Man," extolling the French Revolution and attacking the British constitution, Morris, who admired the work as well as Burke's *Reflections on the French Revolution*, was concerned that Paine would be arrested in England. He told Lafayette that Paine had a "wonderful pen to write but an indifferent head to think" and noted repeatedly in his diary that the writer drank too much.³⁸ Paine's writings made him a celebrity in France,

35. See THE DIARIES OF GOUVERNEUR MORRIS: NEW YORK, 1799–1816, at xxvii (Melanie R. Miller ed., 2018) [hereinafter MORRIS DIARIES: NEW YORK].

36. Craig Nelson and Richard Buel provide a typical (and recent) condemnation of Morris's dealings with Paine. See CRAIG NELSON, THOMAS PAINE: ENLIGHTENMENT, REVOLUTION, AND THE BIRTH OF MODERN NATIONS 178–79 (2006) (speaking of Morris's "duplicity" regarding Paine's imprisonment); RICHARD BUEL, JOEL BARLOW: AMERICAN CITIZEN IN A REVOLUTIONARY WORLD 180 (2011). For details on this writer's contrary findings, see Miller dissertation, *supra* note 23, at ch. 10; MILLER, ENVOY, *supra* note 23, at ch. 8.

37. See 1 PARIS DIARY, *supra* note 6, at 570, 572.

38. See 2 GOUVERNEUR MORRIS, A DIARY OF THE FRENCH REVOLUTION 156 (Beatrix Cary Davenport ed., 1939) [hereinafter 2 PARIS DIARY]; 1 PARIS DIARY, *supra* note 6, at 389. One of Morris's better-known diary entries describes a Fourth of July dinner with Lafayette and the other Americans in Paris, after which, Morris wrote, "Paine is here, inflated to the Eyes and big with a Litter of Revolutions." 2 PARIS DIARY, *supra* note 38, at 212–13.

and the National Convention conferred citizenship on him, and he was elected as a deputy.³⁹

Brissot de Warville did not like Morris, viewing him from the time of his arrival in France as an obstacle to his own speculation in the American debt to France and later as a threat to Girondin policies. When Morris's appointment was announced, Paine published an anonymous letter in Brissot's paper denouncing Morris and wrote to Jefferson, who thought highly of Paine, to tell him Morris should be recalled.⁴⁰ Paine did not tell Morris what he was up to but continued to visit him to get dinner and borrow money. When Morris was struggling with the delicate task of trying to help Americans and American ships caught by the French embargo and seized by French privateers without making demands that might lead to war, Paine told the captains that Morris was incompetent and indifferent and encouraged them to go directly to the French government. This strategy backfired badly for the captains and Paine, while simultaneously damaging Morris's authority as minister in dealing with the French. Paine also wrote to the Committee of Public Safety and told them Morris was "badly disposed" towards them, wanted to be recalled, and had set the Americans who were in France "against him" by his conduct.⁴¹

In 1793, the Girondins, who had pushed France into war with the rest of Europe and helped dethrone the King, were overthrown by the more extreme Jacobins, led by Robespierre. Paine's Girondin friends, including Brissot, were arrested and guillotined. Paine himself was arrested at the end of 1793 and sent to the Luxembourg Prison. Although he had voted as a deputy to convict the King, he also had voted against executing him, which was considered traitorous. Paine was, rather remarkably, outraged that he wasn't considered an American, and as such immune from arrest, and he demanded that Morris get him out.

Morris knew that even if Paine were viewed as an American, he was still subject to French law for his actions as a Convention deputy; or indeed, for any activity: there was—and is—no diplomatic immunity for private citizens. As Morris wrote to Jefferson:

Thomas Paine is in Prison where he amuses himself with publishing a Pamphlet against Jesus Christ.⁴² I do not recollect whether I mentioned to you that he would have been executed along with the rest of the Brissotins if the adverse Party had not viewed him with Contempt. I incline to think that if he is quiet in prison he may have the good luck to be forgotten. Whereas should he

39. See JOHN KEANE, *TOM PAINE: A POLITICAL LIFE* 350 (1995); DAVID V. ERDMAN, *COMMERCE DES LUMIÈRES: JOHN OSWALD AND THE BRITISH IN PARIS, IN 1790–1793*, at 187, 224 (1986).

40. See *No. 972, Sunday, April 8, 1792*, 6 *LE PATRIOTE FRANÇOIS*, 8 VOLS., 1792, at 397 (Melanie Miller trans., 1989).

41. See Letter from Thomas Paine to Citizen Barrère (Sept. 5, 1793), in 2 *THE COMPLETE WRITINGS OF THOMAS PAINE* 1332 (Philip S. Foner ed., 1945) [hereinafter 2 *PAINE*]; Miller dissertation, *supra* note 23, at 323–361; MILLER, *ENVOY*, *supra* note 23, at 105–121.

42. This was Thomas Paine's *The Age of Reason*.

be brought much into notice the long suspended Axe might fall on him. I believe he thinks that I ought to claim him as an american Citizen but considering his Birth his Naturalization in this Country, and the Place he filled I doubt much the Right and I am sure that the Claim would be (for the Present at least) inexpedient and ineffectual.⁴³

Two months later, Morris wrote again to Jefferson:

[W]hether he be considered as a Frenchman or as an American he must be amenable to the Tribunals of France for his conduct while he was a frenchman, and he may see in the Fate of the Brissotins that to which he is exposed.⁴⁴

Nonetheless, Morris forwarded Paine's demands to the foreign minister, who rejected them. Paine was unable to believe Morris could not get him released and concluded his continued imprisonment was engineered by Morris. Paine was not freed until the fall of 1794 during the general opening of the prisons that came after Robespierre fell; by that time, James Monroe had replaced Morris.⁴⁵ Sometime after Paine's release, the new National Assembly invited him to be a deputy again, and he agreed.

I continue to feel surprised that historians still make (or let stand) the claim that Paine, a deeply involved Girondin, had no reason to expect to be jailed or executed despite the fate of virtually every one of his fellows, and that it was the hostile interference of the American minister—whose influence with the French government Paine had done his best to nullify—that had somehow managed to get him in jail and keep him there.

Again, there is a coda of interest: Morris made no further mention of Paine in his diaries or letters in Europe, so we were surprised, while working on the diary entries of May 1808, to find Morris writing that he had been subpoenaed to testify in a case by Paine against an election supervisor in New Rochelle. The official had refused to let Paine vote on the basis that Paine was a French citizen.⁴⁶ The case did not come on for a year after that. Morris attended as *amicus curiae* and wrote a very interesting legal analysis in his diary on the question of limitations on the right to relinquish one's citizenship, concluding that Paine could only be

43. See Letter from Gouverneur Morris to Thomas Jefferson (Jan. 21, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

44. See Letter from Gouverneur Morris to Thomas Jefferson (Mar. 6, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

45. Monroe did not hurry to make demands for Paine, and did not answer his first letters after he took over as minister. He waited over a month before writing an unctuous letter assuring him that he was working for his release, that he did not believe Paine could have legally acquired French citizenship, and that he had always considered him an American citizen, as did "the people of America." See 3 THE PAPERS OF JAMES MONROE 80–81 (2003).

46. Paine may have been the one to request the subpoena, for he had written to George Clinton on the matter. See 2 PAINE, *supra* note 41, at 1487–88.

deprived of the right to vote in the United States by legislation, not by a judge's decision.⁴⁷

There were several other unlikely characters in France who secretly did their best to get Morris recalled, among them the poet and future minister to France Joel Barlow, John Adams's ambitious son-in-law William Stephens Smith, the ill-fated Venezuelan hero Francisco de Miranda, and the enterprising rascal Stephen Sayre. Barlow had come to Paris in 1789 to sell American land and was soon a revolutionary enthusiast, growing close to Paine and the Girondins. Morris quickly realized that Barlow's land sale scheme (the infamous "Scioto Company") was deeply flawed, writing in his diary that the émigrés who bought into it "will have too much Reason to complain of the Delusion" and that it would hurt bona-fide land sales.⁴⁸ After Morris's appointment, Barlow, who had been sending Jefferson material extolling the "glorious" course of the revolution, which Jefferson welcomed, told the Secretary of State that the choice was "unfortunate" for the cause of liberty and American interests.⁴⁹ Barlow's condemnations progressed to the point at which, in 1798, he wrote that Washington had grossly mishandled French matters thanks to Morris, and that Morris's nomination had been an insult to France. Morris, Barlow said, was a "wide-mouth'd bawler" in Paris and had misled Washington about the principles and events of the Revolution and, later, had been a spy for the Austrians and English.⁵⁰

Unlike Paine, Barlow had the sense to get out of Paris before he could be arrested.⁵¹

The primary interest motivating the others in this list of ill-wishers against Morris was pecuniary and specifically related to a plan for American provisioning and arming of an attack on Spanish colonies, possibly utilizing the American debt to France to pay for it. Smith and Sayre hoped to rake in huge commissions, and Miranda hoped to lead the liberating troops. Their letters to America denounced

47. See MORRIS DIARIES: NEW YORK, *supra* note 35, at xxxvii, 540–41, 540 n., 596–97, 596 n. Paine died a few weeks later.

48. One recent biographer of Barlow asserts that Morris's criticisms of the Scioto enterprise were intended to further his own land sales. See RICHARD BUEL, *JOEL BARLOW: AMERICAN CITIZEN IN A REVOLUTIONARY WORLD* 126 (2011). Neither Morris's papers nor work on the Scioto Company support this claim. A 1907 article, which remains perhaps the most comprehensive and useful one to date on the scheme, concludes that Barlow had "mediocre" business talent and details the misrepresentations and doubtful legitimacy of the project. See Theodore Thomas Belote, *The Scioto Speculation and the French Settlement at Gallipolis*, 3 UNIV. STUD., UNIV. OF CINCINNATI Series 2, No. 3, at 22 (Sept.–Oct. 1907). For example, only a preemptive right of purchase was being sold but customers believed they were buying title, and the quality of the prospective lands was grossly exaggerated. *Id.*

49. Letter from Joel Barlow to Thomas Jefferson (Oct. 1, 1792), in 24 JEFFERSON, *supra* note 25, at 430.

50. Barlow's letter, which was written to his brother-in-law, Abraham Baldwin, was published. See JOHN DOS PASSOS, *THE GROUND WE STAND ON* 346–58 (1941). Barlow sent a copy of the letter to Jefferson on March 12, 1798. See Letter from Joel Barlow to Thomas Jefferson (Mar. 12, 1798), in 30 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 174 (John Cantanzariti ed., 1990). Note the irony that Morris was being denounced on the one hand for offending the British and on the other for being a spy for them.

51. SAMUEL BERNSTEIN, *A CONNECTICUT YANKEE IN AN AGE OF REVOLUTION* 99–100, 159 (1985).

Morris as inimical to the French ministry (the succeeding French ministries, that is) but, like Paine and Barlow, they themselves did their best to contribute to that situation by vilifying him to the French. Sayre wrote a pamphlet denouncing Morris's appointment for Miranda, who had become a general in the French army, to distribute ("his nomination has given great disgust," he told Miranda).⁵² The complaints, like Barlow's, were always framed in terms of Morris having opposed the Revolution, having criticized the Constitution of 1791 (which had been universally condemned and discarded not long after its adoption) and having deliberately sabotaged American-French relations. The real reason, however, was that Morris was in the way of their commercial schemes.⁵³

Last of all is the Marquis de Lafayette, for whom seventeen counties in the United States have been named, along with scores of cities, townships, and towns, colleges, squares, etc., etc. As the young hero of the American Revolution, he is well-established in America's Founding tradition. Yet the story of Lafayette and Morris has aspects that reflect on the character of both men that I believe are not generally known, even to those who are familiar with their interactions during the French Revolution.

Lafayette and Morris's relations in Paris have been described in other biographies, so I will quickly review them here. Morris arrived in Paris in February 1789 to find Jefferson counseling Lafayette, who was the head of the "Patriots," the party leading the early days of the Revolution. Lafayette assumed Morris would be equally helpful and supportive, but Morris's initial enthusiasm for the revolutionary movement was quickly dampened by what he observed, and his assessment of Lafayette's conduct as the Revolution ignited was critical. Most of the time, as events proved, he was dead right. He did not mince words with his old comrade and gave increasingly unwelcome advice every time they were together. At the end of June 1789, he went to a dinner at Versailles where Lafayette complained to him that his comments "injure[d] the Cause, for that my Sentiments are continually quoted against the good Party." Morris wrote:

I seize this Opportunity to tell him that I am opposed to the Democracy from Regard to Liberty. That I see they are going Headlong to Destruction and would fain stop them if I could. That their Views respecting this Nation are totally inconsistent with the Materials of which it is composed, and that the worst Thing which could happen would be to grant their Wishes. He tells me that he is sensible his Party are mad, and tells them so, but is not the less

52. Letter from Stephen Sayre to Francisco de Miranda (Sept. 15, 1792), in 6 ARCHIVO DEL A GENERAL MIRANDA, 202–203 (Caracas: Editorial sur America, 1929–1950).

53. For the convoluted details, and other bizarre characters in the chorus denouncing Morris, see Miller dissertation, *supra* note 23, at 362–95; MILLER, ENVOY, *supra* note 23, at 122–131. Not all were commercially minded, but simply zealots, such as American John Cusack, who enlisted in the French army and wrote to Robespierre to announce his commitment to the glorious French cause and to denounce Morris. Two months later he was in a Paris prison, writing to Morris to ask his help in getting out. See Miller dissertation, *supra* note 23, at 592–94.

determined to die with them. I tell him I think it would be quite as well to bring them to their Senses and live with them.⁵⁴

By July 1789 he described Lafayette as a “Lover of Freedom from Ambition, of which there are two Kinds, the one born of Pride, the other of Vanity, and his partakes most of the latter.”⁵⁵ A month later he wrote, “I have known my Friend Lafayette now for many Years and can therefore estimate at the just Value both his Words and Actions . . . He means Ill to no one, but he has the *Besoin de briller* [the need to stand out].”⁵⁶ Morris watched with dismay as Lafayette’s popularity soared, writing in November 1789 that he displayed:

[V]aulting Ambition which o’erleaps itself. The Man’s Mind is so elated by Power, already too great for the Measure of his Abilities, that he looks into the Clouds and grasps at the Supreme. From this Moment every Step in his Ascent will I think accelerate his Fall.⁵⁷

Unsurprisingly, Lafayette came to see Morris as an impediment. Lafayette was dismayed by his appointment as minister and wrote to Washington asking him to recall Morris.⁵⁸

Morris’s warnings, of course, bore out. By the spring of 1792, France had declared war on Austria. Lafayette had been put in charge of the Army of the Center, and the initial maneuvers turned out poorly for France. Meanwhile, the monarchy was now in danger of violent overthrow, which had never been Lafayette’s intention.⁵⁹ After the events of June 20, 1792, when a mob, influenced by an increasingly powerful Jacobin Club, invaded the Tuileries Palace and cornered the King, Lafayette left his troops and came to Paris to try and lead the National Guard in opposition. Morris spoke to him forcefully, telling the discouraged general that if he did not return to his troops soon, he would be imprisoned and tried as a traitor: “[H]e must determine to fight for a good Constitution or for

54. 1 PARIS DIARY, *supra* note 6, at 121.

55. *Id.* at 156.

56. *Id.* at 223. Jefferson was also aware of Lafayette’s “canine appetite for popularity and fame” but assured Madison that the Marquis would overcome this weakness. See Letter from Thomas Jefferson to James Madison (Jan. 30, 1787), in 11 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 95 (Julian P. Boyd ed., 1955). After his return to America, Jefferson’s view of Lafayette and the French Revolution in general transformed into uncritical support.

57. 1 PARIS DIARY, *supra* note 6, at 306.

58. Letter from Marquis de Lafayette to George Washington (March 15, 1792), in 10 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES 116 (Robert F. Haggard et al. eds., 2002).

59. He wanted the King to remain, though only as a figurehead. Morris had noted with dismay that Lafayette told him he wanted to be given authority by the Assembly that would constitute a “Kind of Dictatorship such as Generalissimo.” 1 PARIS DIARY, *supra* note 6, at 306.

that wretched Piece of Paper which bears the Name [I]n six weeks”—Morris had it down to the very day—“it will be too late.”⁶⁰

On August 10, the palace was attacked and the King’s guard was slaughtered. On August 13, the royal family was taken to the Temple and confined.⁶¹ On August 19, Lafayette, unable to rally his troops, was decreed a traitor by the National Assembly and fled. He was captured by the Austrians, found guilty of *lèse-majesté*, and imprisoned in the Prussian fortress of Wesel. From there he importuned the three American ministers in Europe to claim him as an American citizen and get him out, an appeal which agonized them with its impropriety. “He has spent his Fortune on a Revolution, and is now crush’d by the wheel which he put in Motion,” Morris wrote to Jefferson.⁶²

With this brief recapitulation, I will turn to the *rest* of the story about Morris and the Lafayettes, one which is little-mentioned (though Anne Cary Morris’s edition includes some excerpts from the relevant, and in some cases mis-dated by her, correspondence). His diaries from his time in Europe and after his return to America, supplemented by his correspondence, make it evident that Morris did a great deal for the Lafayettes and that their treatment of him was shameful. After Lafayette was captured, Morris recorded in his diary that Madame de Lafayette had asked him to requisition money from the American government to pay what she called her husband’s “debts of honor.” Morris immediately concluded that it would be inappropriate to have his government cover the debts of a man designated as a traitor by a government America continued to recognize. Instead, he gave her a loan of 100,000 livres of his own money, constituting “the utmost” he could afford of his personal assets and which was equivalent to his entire salary for his two years as minister.⁶³

60. 2 PARIS DIARY, *supra* note 38, at 457. Two weeks earlier, in sharp contrast, Jefferson had written to Lafayette:

Behold you then, my dear friend, at the head of a great army, establishing the liberties of your country against a foreign enemy. May heaven favor your cause, and make you the channel thro’ which it may pour it’s favors [Y]ou are exterminating the monster aristocracy, and pulling out the teeth and fangs of it’s associate monarchy

Letter from Thomas Jefferson to Marquis de Lafayette (June 16, 1792), in 24 JEFFERSON, *supra* note 25, at 85.

61. JOHN HARDMAN, *THE LIFE OF LOUIS XVI 426* (2016). “The Tyranny of deceas’d Monarchs is expiated on their Progeny,” Morris wrote to Short. Letter from Gouverneur Morris to William Short (Aug. 13, 1792), in OFFICIAL LETTERBOOK I, *supra* note 1.

62. Letter from Gouverneur Morris to Thomas Jefferson (Aug. 22, 1792), in 24 JEFFERSON *supra* note 25, at 85.

63. This was more than \$18,000 at the rate of exchange in 1792. 25 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 175 (John Catanzariti ed., 1993). It was the “utmost which my Fortune will permit, and I am indeed incommoded in getting the money to fulfill my Engagements,” he told Thomas Pinckney, the American minister in London, asking him not to tell anyone else. Letter from Gouverneur Morris to Thomas Pinckney (Oct. 15, 1793), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston]. Morris’s annual salary as minister was \$9,000. Letter from Thomas Jefferson to Gouverneur Morris (Jan. 23, 1792), in 23 THE PAPERS OF THOMAS JEFFERSON, MAIN SERIES 56 (Charles T. Cullen ed., 1990).

Morris did what he could to keep her advised of her husband's whereabouts and wellbeing, but resisted proposals she passed on about escape attempts for Lafayette, which he considered extremely dangerous, and, when she reproached him for not doing more, he told her:

Time will show that I have done all in my Power but I do not make Professions because I think them of no Value, and I do not adopt the Plans of Zeal or Affection when they do not meet the Approbation of my Judgment for I will not injure a Man for the Sake of appearing to be his Friend.⁶⁴

On June 10, 1794, the first day of the “Great Terror,” when more than 1,500 people would be executed in a period of six weeks, Mme. de Lafayette was arrested and brought to Paris. As her sisters and Mme. De Staël later acknowledged, it was Morris's efforts on her behalf with the Committee of Public Safety that saved her from the guillotine.⁶⁵

A major part of the reason that Morris stayed in Europe after his recall was to try to free Lafayette. Though Lafayette and Mme. de Stael credited Napoleon for the Austrian Emperor's decision to release him, Morris—who as far as I have seen to date only wrote to two people about it and did not claim credit publicly—knew it had instead been *his* efforts and *his* suggestions to the Austrian court for the face-saving rationale and a plan to free him that were adopted.⁶⁶ He was present in Nienstedten (now a suburb of Hamburg) when Lafayette was released at the end of September 1797.⁶⁷ He urged the Marquis to go to the United States, where he was confident the American government would provide money to support him as well as pay any debts. Lafayette showed little interest: “he told me he should have enough after paying what he owed to support him in a moderate Stile which was all he desired.” It does not seem to have occurred to Morris that Lafayette would fail to honor the debt to *him*, and back in New York, Morris went forward with heavy expenditures on the long-neglected house at Morrisania.⁶⁸

In fact, Lafayette and his wife apparently decided that the debt to Morris did not need to be repaid. After he heard nothing back in the United States, Morris

64. Letter from Gouverneur Morris to Madame de Lafayette (July 29, 1793), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

65. 2 PARIS DIARY, *supra* note 38, at 561 n.

66. THE DIARIES OF GOUVERNEUR MORRIS: EUROPEAN TRAVELS, 1794–1798, at 495, 495n (Melanie R. Miller ed., 2011) [hereinafter MORRIS DIARIES: EUROPEAN TRAVELS]; see Letter from Gouverneur Morris to John Marshall (June 26, 1807), in 7 THE PAPERS OF JOHN MARSHALL 54–56 (Charles Hobson ed., 2006).

67. MORRIS DIARIES: EUROPEAN TRAVELS, *supra* note 66, at 495, 496.

68. Letter from Gouverneur Morris to James Le Ray de Chaumont (Jan. 9, 1800), in COMMERCIAL LETTERBOOK, NOVEMBER 1795–JUNE 1800 (collection of the Library of Congress) [hereinafter COMMERCIAL LETTERBOOK I]. Later in the letter, he told Le Ray “[W]hen I was led to look forward to the Receipt of this Money I did Things on the Faith of it which other wise [sic] I should not have done so that to loose it now is much worse than if no such Expectation had been rais'd.” *Id.*

asked James LeRay de Chaumont, his longtime friend and business associate, to approach the couple.⁶⁹ The response came from Mme. de Lafayette, who wrote with sarcasm about Morris's "generosity." She initially told Morris he would have to ask his own government for repayment since he had failed to secure the loan, with a callousness and ingratitude which stupefied him. Eventually she grudgingly agreed to pay him an amount that was about half of what he had loaned them and far less than the interest would have been on the whole over the nearly 10 years since he made it. In making this offer, she relied on a recent French depreciation law, a law which Morris told Le Ray absolutely did not apply because the loan had been made in "cold hard cash." He was shocked that they would try to take refuge in the law in order to shortchange him, telling Le Ray that "[i]t is worse to my Feelings than the Loss I must sustain."⁷⁰

In the end, Morris's letters to an agent in Paris, including one on May 12, 1804, indicate that he agreed to accept that sum.⁷¹ Anne Cary Morris and others assumed he received this payment, but his 1791–1808 ledger shows that as of 1808 he had not. We have not yet seen any evidence that he actually received it and, in a letter of July 20, 1804, to Jonathan Dayton, Morris appears to state—though without naming the Lafayettes—that he had found out he would receive *nothing*.⁷²

69. Letter from Gouverneur Morris to James Le Ray de Chaumont (Dec. 2, 1799), in *COMMERCIAL LETTERBOOK I*, *supra* note 68.

70. Letter from Gouverneur Morris to James Le Ray de Chaumont (Sept. 1, 1801), in *COMMERCIAL LETTERBOOK*, JUNE 1800–AUGUST 1804 (collection of the Library of Congress) [hereinafter *COMMERCIAL LETTERBOOK II*]. The Lafayettes falsely claimed at one point to have offered the full amount and that Le Ray had unfairly insisted on receiving the interest. Morris commented:

[T]o put themselves in the Right they must put me in the Wrong to which Effect they must grossly misrepresent. This however is easy for the Maxim les absens on toujours Tort [absentees are always in the wrong] is never more true than in the Societies of Paris

Id. Two years later, he wrote about it to his good friend John Parish, who had helped facilitate Lafayette's release, remarking, "God forgive him and if possible reconcile him to himself." Letter from Gouverneur Morris to John Parish (Nov. 29, 1803), in *COMMERCIAL LETTERBOOK II*, *supra* note 70. See also Gouverneur Morris's letters to Henri Labarte, who negotiated the final amount of about 53,000 livres on his behalf. Letters from Gouverneur Morris to Henri Labarte (Aug. 16, 1802; June 1, 1803; Aug. 12, 1803; Aug. 20, 1803; Dec. 1, 1803; May 12, 1804), in *COMMERCIAL LETTERBOOK II*, *supra* note 70.

71. A book by George Morgan attempts to defend the Lafayettes, urging that they were in difficult financial straits, and that depreciation had been reasonable for them to claim because payment had been "made in assignats." See GEORGE MORGAN, *THE TRUE LAFAYETTE* 394–397 (1919). The money Morris provided out of pocket had been "cold hard cash" (Morris's words) through his Dutch bankers, which must have been changed to assignats in paying Lafayette's debts since those were the only permissible legal tender in France at that time. *Id.* Assignats, of course, were depreciating and continued to do so after Morris made the loan. *Id.* Morris was clear in his letters that after Lafayette's release he had received an assurance of repayment; and the fact that Lafayettes never expressed any concern or sense of responsibility (let alone gratitude) regarding the debt (or Morris's work to get him out of prison), Lafayette's utter silence, the rudeness of his wife's letters to Morris, and the lack (so far) of any indication that Morris received any repayment does not do much to rehabilitate the couple or legitimize Morgan's claim of their honest intentions. *Id.*

72. Letter from Gouverneur Morris to Jonathan Dayton (July 20, 1804), in *COMMERCIAL LETTERBOOK II*, *supra* note 70. Morris wrote in response to a request for a loan from Dayton that he was

Lafayette himself apparently never wrote Morris after their last meeting in Europe.

Finally, to complete this survey of Morris and his French experience, I put together a number of quotes from his diary and letters that have stayed with me over the years of working on his papers. First, I'd point out that Morris could be quite aware of his own failings, including the uninhibited expression of his opinions, something that clearly got on some people's nerves on the Convention floor in Philadelphia and in Paris drawing rooms. He confessed in his diary, after a conversation in a Paris home about "Men and Measures" that "I am so weak and absurd as to express many Opinions which I ought to conceal and some of which I may perhaps find Reason to Alter."⁷³ After a dinner with the minister for foreign affairs and his wife discussing politics and the proposed provisions for a constitution, he told them that the conditions on the King's veto made it an "absurdity" and that a single chamber was likely to result in "that worst of all Tyrannies, the Despotism of Faction in a popular Assembly." Both were prophetic comments, but he added to himself in his diary, "I had better let this alone but Zeal always gets the better of Prudence."⁷⁴ My favorite remark of this sort came in late 1791, while Morris was immersed in drafting a proposal for a new French constitution. He was interrupted by a man "who tells me that he sent in July last the Form of a Constitution for America to Genl. Washington."

That he knows America perfectly well tho he has never seen it, and is convinced that the American Constitution is good for Nothing. I get Rid of him as soon as I can but yet I cannot help being struck with the Similitude of a Frenchman who makes Constitutions for America and an American who performs the same good Office for France. Self Love tells me that there is a great Difference of Persons and Circumstances but Self Love is a dangerous Counsellor.⁷⁵

Morris's reflections on human nature and government as France's revolution began to destabilize and violence ignited must also resonate with modern readers. In May 1792, shortly after Morris returned from London to take up his duties as minister in Paris, he wrote to William Carmichael in Madrid:

You know that I do from the Bottom of my Heart wish well to this Country and will therefore easily judge what I have felt in seeing them long since on the high Road to Despotism. They have made the common Mistake that to enjoy Liberty it is necessary only to destroy Authority and the common Consequence results viz. that the most ardent Advocates for the Revolution

not in a position to comply and that he had "expected to receive about five thousand Dollars from one who owes me near twenty thousand but I shall not touch a single Penny." *Id.*

73. 1 PARIS DIARY, *supra* note 6, at 29.

74. 1 PARIS DIARY, *supra* note 6, at 219.

75. 2 PARIS DIARY, *supra* note 38, at 322–23.

begin now to wish and pray and even cry out for the Establishment of despotic Power as the only Means of securing the Lives and Property of the People.⁷⁶

Morris's involvement with the attempts to help Louis XVI escape Paris in the summer of 1792 is a complicated story and does not lend itself to a satisfactory summary, though it raises fascinating issues about whether this was an appropriate course of action for the American minister to France to take, actions he did not tell his government about.⁷⁷ He believed that an enlightened monarchy was France's only hope for orderly reformation of its corrupted and unjust system, though he was not at all optimistic that Louis could achieve this. He also felt compelled to try to help Louis escape Paris, for he felt considerable pity for the royal family. It was a dangerous choice: many of those he worked with were killed when the King fell, including Louis's former minister of foreign affairs, whom Morris had become close to. The other associates were also executed or imprisoned, or fled. The foreign diplomats also fled—Morris was the only minister who remained throughout the following two years, the most turbulent years of the Revolution, including the Terror.

On August 13, 1792, the day the royal family was imprisoned, Morris wrote to Thomas Pinckney, the American minister to London:

We have had here within these few Days some serious Scenes at which I am not surpriz'd because I foresaw not only a Struggle between the two Corps which the Constitution had organized viz. the Executive (so called) and the Legislative but I was convinced that the Latter would get the better. Such is the natural and indeed the necessary Order of Things. It is nevertheless a painful Reflection that one of the first Countries in the World should be so cruelly torn to Pieces. The Storm which lately raged is a little subsided but the Winds must soon rise again and perhaps from the same perhaps from another Quarter but that is of little Consequence since in every Case we must expect a like Rape and Devastation. A Man attach'd to his fellow Men must see with the same Distress the Woes they suffer whether arising from an Army or from a Mob and whether those by whom they were inflicted speak french or german. An american has a stronger sympathy with this Country than any other Observer and nourish'd as he is in the very Bosom of Liberty he cannot but be deeply afflicted to see that in almost every Event this Struggle must terminate in Despotism yet such is the melancholy Spectacle which presents itself to my Mind and with which it has long been occupied. I earnestly wish and pray that

76. Letter from Gouverneur Morris To William Carmichael (May 14, 1792), in PRIVATE LETTERBOOK I, *supra* note 32.

77. See Letter from Gouverneur Morris to Thomas Pinckney (Feb. 12, 1793), in OFFICIAL LETTERBOOK I, *supra* note 1 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston]; Letter from Gouverneur Morris to Thomas Pinckney (Sept. 21, 1793), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston]. His correspondence was not safe in the diplomatic pouch, however, even if he had wanted to tell them about it.

Events may prove all my Reasonings to have been falacious and all my Apprehensions vain.⁷⁸

“[T]he great decided effective Majority is now for the Republic,” Morris told Jefferson in late October 1792, but whether it would endure for even six months “must depend on the Form of Government which shall be presented by the Convention” and whether it could

strike out that happy Mean which secures all the Liberty which Circumstances will admit of combin’d with all the Energy which the same Circumstances require; Whether they can establish an Authority which does not exist, as a Substitute (and always a dangerous Substitute) for that Respect which cannot be restor’d after so much has been to destroy it; Whether in crying down and even ridiculing Religion they will be able on the tottering and uncertain Base of metaphisic Philosophy to establish a solid Edifice of Morals, these are Questions which Time must solve.⁷⁹

In November 1792, he wrote again to Carmichael, reflecting on the causes of the failure of the French reformers, particularly the naive embrace of universal equality as a bulwark in forming a new government for a society with a long history of corruption and oppression:

Before the People will assent to the Form of Government, which in Hypothesis shall be supposed the most fitting for them, they must be convinced of the Fitness. No easy Task beleive me even if Man were a reasonable creature but he is not. He is a sensible Creature and governed invariably by his Feelings. Now you can easily make him feel that in Point of Right he is equal to every other Man. Vanity may even whisper to him that he is so in point of Talent, and if Vanity were remiss, the Prompter Flattery is at Hand: but the more he feels his Equality of Rights and Talents, the more must he feel his Inequality in Point of Possessions. Where these are wanting he has Rights which he cannot exercise Talents which he cannot employ Desires which he cannot gratify and in Consequence Resentments which he cannot allay. Now the severe Law of Property is that in any well settled Country, a few must soon possess All and the Majority, the great Majority, Nothing. Between that Economy which constitutes the Tyranny of the Rich, and that Misery which enslaves the poor, let the Form of Government be what it may there is a constant struggle which forms great Men and great Men are generally ambitious Men. Their equals in

78. Letter from Gouverneur Morris to Thomas Pinckney (Aug. 13, 1792), in 2 THE PINCKNEY STATESMEN DIGITAL EDITION (Constance B. Schulz ed., 2016) [hereinafter PINCKNEY PAPERS], available at <https://rotunda.upress.virginia.edu/founders/default.xqy?keys=PNKY-print-01-02&mode=TOC> [<https://perma.cc/GDA2-XRPG>].

79. Letter from Gouverneur Morris to Jefferson (Oct. 23, 1792), in 24 JEFFERSON, *supra* note 25, at 529–30. He also thought the U.S. should consider its treaties with France to remain in force. His measured tone was in decided contrast to reports from Short, who argued that America should recall Morris to indicate its disapproval of the August revolution.

Property are as much enslaved by their Pleasures as the poorer Kinds can possibly be by their Wants. In such a State of Things where the Constitution is not ballanced in its structure and supported by strong Props of private Interest it must be overturned.⁸⁰

In December, after major French victories against the Prussians and Austrians, Morris wrote one of his most eloquent appraisals of the Revolution to Thomas Pinckney:

Success as you will see, continues to crown the French Arms, but it is not our Trade to judge from Success . . . You will soon learn that the patriots [i.e., Lafayette and his party] hitherto adored were but little worthy of the Incense they received. The Enemies of those who now reign treat them as they did their Predecessors and as their Successors will be treated. Since I have been in this Country I have seen the Worship of many Idols and but little [illegible] of the true God. I have seen many of those Idols broken, and some of them beaten to Dust. I have seen the late Constitution in one short Year admired as a stupendous Monument of human Wisdom and ridiculed as an egregious Production of Folly and Vice. I wish much, very much the Happiness of this inconstant People. I love them. I feel grateful for their Efforts in our Cause and I consider the Establishment of a good Constitution here as the principal Means, under divine Providence, of extending the blessings of Freedom to the many millions of my fellow Men who groan in Bondage on the Continent of Europe. But I do not greatly indulge the flattering Illusions of Hope, because I do not yet perceive that Reformation of Morals without which Liberty is but an empty Sound.⁸¹

Two months later, after the execution of Louis, France had declared war on Britain and would soon declare war on Spain. The French army was again in distress. General Dumouriez (one of those who denounced Morris's appointment) had gone over to the Austrians after a major defeat at Neerwinden. There were food riots in Paris.

For the next year and a half, Morris struggled to obtain the release of American citizens and ships and their cargoes, a task that was extraordinarily difficult in the chaos of war.⁸² During his thirty-two months as minister, there were eight different representatives of foreign affairs, representing a series of usually bloody shifts of power. Six of the men he dealt with under the different regimes were condemned by the successor government as traitors; of them, one was murdered by a

80. Letter from Gouverneur Morris to William Carmichael (Nov. 5, 1782), in OFFICIAL LETTERBOOK I, *supra* note 1 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

81. Letter from Gouverneur Morris to Thomas Pinckney (Dec. 3, 1792), in PINCKNEY PAPERS, *supra* note 78.

82. His official letters and the mass of incoming letters in the American Philosophical Society are incontrovertible evidence of the pressures he was under and his unstinting efforts to help those in distress. He asked Jefferson repeatedly for instructions but got little in return; there was a 9-month gap in 1793–94, the height of the Terror, during which he heard nothing from the American government.

mob, one was guillotined, one was imprisoned, and one escaped to the Austrians. As he commented in a letter to Washington, “The different Parties pass away like the Shadows in a Magic Lanthorn, & to be well with any one of them would in a short Period become Cause of unquencheable Hatred with the others.”⁸³ Decrees and judges’ verdicts providing relief were quickly reversed, and the Committee of Public Safety was scarcely able to focus on American complaints while trying to keep a country at war with foreign powers from dissolving into civil war.

Two days after Marie-Antoinette’s execution in October 1793, Morris wrote to Washington:

The revolutionary Tribunal establish’d here to judge on general Principles gives unlimited Scope to Will. It is an emphatical Phrase in Fashion among the Patriots that *Terror is the order of the Day*. Some Years have elapsed since Montesquieu wrote that the Principle of arbitrary Governments is *Fear*.

He received pleas for help from French people and from the families of British citizens jailed in France but could do little for them beyond passing on letters and messages and sometimes money. He wrote to Pinckney during the height of the Terror:

I must observe to you that whatever may have been the Liberality heretofore felt and exercised by the french their critical Situation seems lately to have prevented its Effects. Suspicion is tremblingly alive which I do not wonder at for such is the moral State of the Country that all Ground of mutual Confidence is long since destroyed. Some virtuous Years must roll over the Heads of the new Generation before it can be restored and yet it seems to be essential to the Establishment of freedom and the defense of the State. . . . People abroad can form no Idea of what passes here nor do I think any force of Description would convey it.⁸⁴

And, two weeks later, he wrote:

We are now in the Midst of a Revolution or Reformation or Organization for as yet it is a Deed without a Name . . . Disorder and Injustice go often together indeed the one gives Pretext Means and Temptation for the other.⁸⁵

83. Letter from Gouverneur Morris to George Washington (Feb. 14, 1793), in 12 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES 142–43 (Christine Steenberg Patrick & John C. Pinheiro eds., 2005).

84. Letter from Gouverneur Morris to Thomas Pinckney (Mar. 22, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

85. Letter from Gouverneur Morris to Thomas Pinckney (Apr. 6, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

When Danton was guillotined along with a general who had led the invasion of the Tuileries, Morris wrote to Edmund Randolph, Jefferson's replacement as Secretary of State:

Some one observed the other Day in Conversation that all the Men of the tenth of August have passed away already, and those also of the second of September. . . . Oliver Cromwell understood well the value of mob Sentiment when he replied to his Chaplain, vain of the applauding Crowd which thronged round his masters Coach, 'there would be as many, and as glad, to attend me at the Gallows.['] I do not beleive that a good Man in America can feel all the Force of that Expression. And therefore, I beleive it is very difficult to form on certain Subjects a just Opinion.⁸⁶

I will end this paper by reiterating the conviction with which I started: the often condescending dismissal and ignorance of Morris and his contributions has, for more than two hundred years, been a disservice to America and our understanding of American history and of our Constitution. Morris's principles, his humanity, and his knowledge of human nature as they guided his constitutional philosophy and his life are an invaluable resource for all of us as lawyers, lawmakers, judges, justices, scholars, and, most of all, as citizens.⁸⁷

The disregard for Morris has also deprived us of a great deal of enjoyment, for Morris could be very funny. He loved life and he comes vividly alive on the page. As he wrote to a distressed friend in the dark month of November 1792:

But do not say madame that Life is a sad Thing; without Reverses it would be boring, and we constantly see that the happiest Mortals are those who have learned through sad experience the true value of objects of this world.⁸⁸

Morris deserves respect and recognition in another regard: his dedication to *true* public service, often at considerable sacrifice, and without ambition for power or fame, runs like a bright thread through his life. Not only the Lafayettes are still in debt to him.

86. Letter from Gouverneur Morris to Edmond Randolph (Apr. 15, 1794), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston].

87. Morris's knowledge of political history and political theory appears far superior to that of our average member of Congress today, let alone the average citizen. The lessons he took from antiquity seem no less valid today.

88. Letter from Gouverneur Morris to Comtesse d'Albani (Dec. 17, 1792), in OFFICIAL LETTERBOOK II, *supra* note 2 [copied into the OFFICIAL LETTERBOOK by Henry W. Livingston] [translation by author].