

# DAVID LLOYD, PENN'S GREAT LAWMAKER

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**W**HAT has been said in a previous article on Penn as to the antiquarian and historical attitudes is as true for Lloyd as it is for the Founder.<sup>1</sup> The merely antiquarian attitude cannot find either one, except in spots, so to speak. Lloyd cannot be understood without grasp of the greatness of Penn, who like Washington, was great enough to have in his cabinet men representing opposite fields such as Hamilton and Jefferson. Lloyd was one of Penn's Welsh London lawyers, who knew his private affairs. While from a family of Quakers, he was not himself a Friend when selected to go to Pennsylvania to guide her in constitution and law as a leader of the people. In five years, however, he became a Quaker and adopted all the Quaker modes of civil disobedience that constituted the chief instrument of the defense of their liberties, their reason for coming to these colonies. Within ten years Lloyd had won from Penn's governor the almost too republican constitution of 1696. Then, Penn, in his wisdom in leading Quaker colonies to liberties in the midst of that great revolution whose climax was 1688, feeling compelled to keep near enough to English institutions not to arouse suspicion and antagonism greater than he already had, picked out a learned, conservative Scotchman, the son of an educator, as his secretary and property representative—James Logan. Penn selected his leaders and builders well.

In 1699 Penn came over to annul the too republican constitution of 1696, and to quiet the too successful Lloyd, who was attracting the irritated attention of the Lord Chancellor to his successes, even against his vice-admiralty court on the Delaware. Penn reluctantly yielded to a demand for his removal from the office of attorney-general, pleading for Lloyd even in his yielding. With civil disobedience, the people, however, kept him as their

<sup>1</sup> Burton Alva Konkle, "A New View of William Penn," *Pennsylvania History*, IV (April, 1937), 103-105.

attorney-general and made him their greatest law-giver of that first half-century, so that the first published laws of 1714 and the second of 1728 contained almost exclusively those written or secured by David Lloyd, their editor. Lloyd contended for "The Excellent Privilege of Liberty," while James Logan stood for that of "property," as the Founder in his anonymous pamphlet had urged them to do. Penn, the statesman, must have exulted as the years moved on to find that his choice of leaders proved so successful.

Laws, however, are one thing, but constitutions are far more important, and a substitute had to be at once found for the annulled constitution of 1696. It was a delicate problem, with many elements. Lloyd and the people were intent on a constitution that permitted Pennsylvania to stand on her own solid basis, unattached to the uncertain title of Delaware. They desired to secure the supremacy of the Assembly by the power of the purse, as Parliament had done in 1688, and to reduce eight obstacles to any law desired by the people to two. Penn had in his pocket a copy of a charter for Delaware from James II, giving him power to raise money without an assembly, but he had refused the right. Yet he would be misunderstood if he showed it as proof of the Crown's intention to give a good title; while the charter he did try to give, was lost in 1688, and both Parliament and Crown claimed Delaware! So when, in 1701, Lloyd and the people demanded a constitution removing the council as a legislative body, which removed three obstacles to a law they wanted, and also proposed separation from Delaware except to have the same person as governor, which paved the way for the law of the agent making the governor's signature sufficient without Penn's consent, thus securing the power of the purse by making the governor dependent upon the Assembly, Penn yielded. However, he so feared the ranks in London, that even on board his vessel homeward, he tried to modify it by an ordinance creating a governor's council. This better served to quiet London fears but it never worked in Philadelphia, where as years moved on, the colony became practically as free as Canada is today.

The constitution of 1701 lasted for seventy-five years, and was so beloved by the people that one of its later defenders, George Bryan, led in having it made the basis of the first state constitu-

tion of 1776, where it lasted for another dozen years, when it required the adoption of the national constitution to dislodge it. Such was the basal solidity that Lloyd's stand for "The Excellent Privilege of Liberty" brought to Pennsylvania. He did for his time what James Wilson did for his own, and paved the way for it. One of the laws for which he was responsible was the Judiciary Law of 1722, which by a mode of civil disobedience in not publishing it to avoid submission of it to London, and offering to London another, which was expected to be disallowed, caused this law to become the foundation of our state judiciary system of today. It was one feature of that law, that stopped the Homestead riots when all other means failed, namely enabling the Chief Justice to act as a justice of the peace when there were local intimidations. William Penn did better than he thought when he selected his Welsh lawyer to build his colony.

Penn and Lloyd knew the inside happenings in both England and in the Delaware colonies better than any one else; and both realized that much of their extreme complexity could not be publicly discussed because so liable to distortion and misunderstanding in both countries. There was misunderstanding of both Penn and Lloyd as it was. Even Logan did not understand fully many of Penn's affairs and problems as well as Lloyd did; and, when that became evident, Logan was called to London for awhile. The patience, understanding, tenacity and wisdom of both Penn and Lloyd, in the midst of necessary misunderstanding on both continents, are something for the people of Pennsylvania to be proud of. When Penn would find it necessary to quiet the Crown or Parliamentary parties by appearing to be against Lloyd's course in a given case, Lloyd understood and never had any retort, because he understood! And an antiquarian attitude has ever since brought misunderstanding—as people in both countries misunderstood at the time—so difficult is it to find the roots of liberty in America. Penn, as has been shown in a former article in this periodical, was full of suggestion and "experiment." To him Pennsylvania and the two other Delaware colonies were "an holy experiment"; a constitution was "experimental." Not so to Lloyd, the lawyer and statesman. His constant purpose was the building of permanent institutions desired by the people. Lloyd and the Quakers, who dominated Pennsylvania government for three-

quarters of a century, were so unostentatiously busy laying these firm foundations, they did not provide for a capitol for nearly a half-century. It was on May 14, 1729, with Chief Justice Lloyd in the Speaker's chair, and within three years of his death, an appropriation was made for Pennsylvania's first capitol, which thereby became a lasting monument to his half-century of structural work in constitution and law. The structure should be given the title of "Hall of Liberty and Law" and a portrait representing Lloyd hung on its walls! For it was to be not only a monument to liberty and law, but was to become the birthplace of higher liberty and law of a new nation, erected on these foundations laid by Penn, Lloyd and the Quakers' dominance down to 1756, and others to full fruition in 1776. April 6, 1931 was the 200th anniversary of the passing of David Lloyd<sup>2</sup> and May 1st, 1937 was the 206th anniversary of the birth of the "Hall of Liberty and Law" or "Independence Hall."

<sup>2</sup> Lloyd was buried in the Friends Burial Ground at Chester. Like James Wilson, he has no descendants living, and like most leaders, he left no portrait. In 1811, however, when Nicholas Biddle was editing the *Portfolio* magazine, a medallion was proposed to be issued, representing the figures with Penn in West's "Penn's Treaty With the Indians," and having the standing figures represent Story, Lloyd, and Logan, the one with the face clearest, made from that of West's father as a model, to represent David Lloyd. Mr. Vivian Chappel has isolated that person in an excellent photograph; and Mr. Horace T. Carpenter of Independence Hall has made a preliminary excellent study for a fuller portrait, based upon it, with Chief Justice David Lloyd descending from his seat.