THE ORIGIN OF THE BAN ON SPECIAL LEGISLATION IN THE CONSTITUTION OF 1873

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IT IS a well-known fact that the nineteenth century witnessed a serious decline in the esteem in which the people of the states held their legislatures. Among the many reasons for this development two may be mentioned as representative. In the first place, the legislatures had burdened the states with enormous debts arising from construction of canals and railroads. In Pennsylvania, for instance, the treasury was unable to pay the interest on state bonds for several years in the early 1840's; finally in 1857 the constitution of 1838 was amended to limit the borrowing power to seven hundred and fifty thousand dollars for casual deficiencies. In the second place, venality and corruption had become so common in the legislatures, particularly in Pennsylvania, that the outraged people of that state looked upon their assembly "as a great sore upon the body politic, as a sort of disease." 2

Instead of relying on piecemeal amendments the people voted in 1871 to rewrite the entire constitution. Even a hasty perusal of the nine volumes of Debates reveals that page after page is devoted to speeches on the legislature and that the chief reason for the constitutional convention of 1872-1873 was the desire to restrain the excesses of the assembly from which the people of the state had suffered so much. These debates, when read today, are startling in their forthright, unabashed admission of legislative sordidness. Delegate followed delegate in stating that the legis-

1 The framers of the constitution of 1873 raised the limit to a million dollars. This restriction handicapped the state during the depression of the 1930's. In two messages to the legislature (January 15 and January 21, 1935), Governor Earle criticized the limitation severely.

2 The words are those of Delegate George Lear of Bucks County, in Debates of the Convention to Amend the Constitution of Pennsylvania: Convened at Harrisburg, November 12, 1872; Adjourned, November 27, to meet at Philadelphia, January 7, 1873, nine volumes (Harrisburg, 1873), vol. i, p. 404. Future citations from the Debates will appear in the text, instead of in footnotes.
lature had been corrupt and that the convention must try to better its reputation. Many were former members of that body. Delegate Harry White of Indiana County told the following story.

A distinguished friend of mine, a colleague in the Senate, not many years ago, paid a visit to the sister Commonwealth of Connecticut. He made bold to call upon the party in charge of the rooms in the Legislative hall, and asked the privilege of an entrance there, premising his request with the remark: "I am a member of the Pennsylvania Legislature, and I ask the courtesy of the privilege of inspecting your hall." The party looked at him, as he told me, with some degree of concern and distrust, remarking at the same time: "Sir, in Connecticut the reputation of a member of the Pennsylvania Legislature is not very high," apprehensive, possibly, that the presence of this honorable representative of the people of Pennsylvania might be dangerous to the security of some of the personal property in the building. (I, 386)

John M. Broomall of Delaware County said he did not think that the Pennsylvania legislature was as bad as commonly believed, and yet he added: "I admit that I have been in places in my life time where I would not acknowledge that I had been a member of a Pennsylvania Legislature unless closely pressed upon the question." (I, 388)

One explanation frequently given for the situation was the evil influence of lobbyists. Jeremiah S. Black, who was a delegate from York County and who had been Attorney-General and Secretary of State under Buchanan, said:

The fact cannot be questioned that our Legislature is and has been utterly corrupt. For years the three Houses (counting the lobby as a House) have been weltering together in one disgusting mass of moral putrefaction. No man dares to deny this. The evidence of it is conclusive, irresistible and overwhelming. (VI, 177)

Frank Mantor of Crawford County also condemned "the class of men who are aggregated into the third house, ... a class of political shysters and hangers-on, who come to Harrisburg with their pockets full of money to contaminate the Legislature of this
Commonwealth.” (I, 391) D. N. White of Allegheny County gave the following testimony:

A distinguished man, who is now at the head of one of the largest railroads in the United States, when I doubted that there was as much corruption in the Legislature as has been asserted, said he to me: “I know there is.” “How do you know it, sir?” “I have taken money there myself to corrupt the Legislature.” Says I to him: “How do you know that the members of the Legislature received the money?” “I know that they received it.” (I, 392)

George Lear of Bucks County likewise thought lobbying was the cause.

I have been told . . . [he stated, that] when a United States Senator is to be elected, or a State Treasurer chosen, or some other great thing is to be done which has money in it, in the language of the members of that institution, each man has an agent at Harrisburg and each agent has a grocery in his room, and the members of the Legislature are invited to this room, and the agent links his hand into the loop of his elbow and says: “What do you want; what is your price?” Just as he goes into the cattle market at West Philadelphia to ask the price of a steer or a hog, does the agent say to the members of the Legislature, “what do you want.” I understand that that is the very language that is used to these men. They do this unblushingly. (I, 404)

Others maintained that legislative weakness arose out of short terms which produced too many novices. D. N. White of Allegheny County disagreed. Like many others, he attributed the evil repute of Pennsylvania’s lawmakers to special legislation. He declared:

Men come up there that are not satisfied with general laws. They want special privileges. They find that the Legislature is not willing to grant special privileges, and then they put to work all their machinery, and, by bribery, by trickery, by rushing a bill through the Legislature without reading it, or without printing it, taking advantage of the ignorance of members, they get laws passed which are a disgrace to the statute books. But take away special legislation and you cut up corruption at the
J. W. Boyd of Montgomery County, who maintained with Delegate Black that "corruption was like a tidal wave sweeping over the country," also blamed special legislation, whose iniquity he tried to prove by using the Credit Mobilier as a horrible example:

Why should gentlemen forget that it has been said the Legislature of Pennsylvania, for the paltry sum of $50,000, created the Credit Mobilier corporation, which was refused to be done by the Legislature of New York for less than $200,000 and over, by the Legislature of New Jersey for less than $150,000? But when they got over to the Legislature of Pennsylvania, it was done for the insignificant sum of $50,000, and then it was transported to Maine, and it ran its slimy course over the entire Union. (I, 412)

Henry G. Smith of Lancaster County endeavored to defend the Pennsylvania legislature with the oblique argument that the Credit Mobilier bill had slipped through in the form of a skeleton charter. (I, 419-20) Boyd thought this a lame defense and in a long speech returned to the charge, proving at least to his own satisfaction that "this Credit Mobilier of America is a Pennsylvania institution; that it was concerned [sic] in the Legislature of Pennsylvania; [and] that it was born there. . . ." (I, 483-85) Smith again attempted to defend the legislature in its Credit Mobilier dealings. (I, 488-90)

Wayne MacVeagh of Dauphin County doubted that Pennsylvania's legislature was worse than that of any other state. He submitted that corruption obtained everywhere; in fact, he asserted, "this is the crying evil, the menacing peril of free institutions in America." He denied that special legislation was the cause. (I, 423-24) While there were a few other delegates who agreed, practically every member admitted that special legislation was vicious. The constitution of 1838 allowed the state law-making body to pass acts dealing with one person, one company,
one county, or even one horse-protective association—hence the name "special legislation," although the system was called also "private legislation" when it applied to individuals and "local legislation" when it applied to a single county, city, or town. The opposite is general legislation which covers everyone in the state or everyone in a group or a class.

Inasmuch as in Pennsylvania the evil of special law does not exist today, it is difficult for the present generation to understand how people in the 1870s felt about the matter. At that time it was widely believed that the power of the legislature to pass special enactments had created a cancer which was gnawing at the very vitals of the body politic. The criticisms made against the practice were legion. It was charged, for example, that valuable franchises slipped through the legislature without proper protection to future generations; that lobbyists bought and sold special privileges for one company or one person; that every member thought it necessary to get as many local laws for his own district as possible lest he be defeated at the next election; and that lawmakers spent most of their time dealing with special measures for individuals and separate companies instead of

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4 In the files of the Snyder County Historical Society is the original manuscript, signed by Governor Curtin on April 8, 1862, of a special act creating the Snyder County Mutual Horse Protective Association. This organization existed for the purpose of retrieving horses stolen from its members. See George E. Fisher, "The Snyder County Mutual Horse Protective Association," in The Snyder County Historical Society Bulletin, vol. 2, no. 4 (1943), pp. 59-64.

6 While such legislation is almost a thing of the past in Pennsylvania, the federal Congress handles private bills in large numbers. The House has a private calendar which is considered on Fridays. This calendar includes bills granting pensions, removing political disabilities, charging desertion, and paying claims. It will be recalled that President Cleveland became very unpopular with veterans because he read each private pension bill through and vetoed many of them. In the seventy-third Congress 1,048 private bills were introduced and referred to the committee on claims. Of these, 426 were passed, carrying total appropriations of $906,999.43. The House of Commons handles the problem of private legislation in a different way. See Ramsay Muir, How Britain is Governed, third edition (Boston and New York, 1937), pp. 213 ff.

6 An interesting relic of the days of local legislation is Bloomsburg, the only town in the state. Incorporated by special charter as a town in 1870, it has never qualified under the borough code. The residents are proud of its unique status. The member of the legislature from Columbia County must be on the alert to see to it that every law which grants advantages to boroughs is made to apply also to Bloomsburg by the insertion of the proper words in the bill. In some cases when this had not been done, the people of the town lost sundry advantages that had been granted to boroughs. See Sunbury Daily, March 7, 1935.
legislating for the general welfare of all the people of the state.

A study of the blight of special legislation as it affected Snyder County in the early 1870's not only shows the pernicious results in general but also demonstrates how the system reached down into the cities, boroughs, and counties to create bitter feuds of a personal and political character. Major John Cummings, the Snyder member of the lower house, was supposed to be a Democrat; he had Republican leanings, however, which antagonized Franklin Weirick, editor of the Democratic Selinsgrove Times. In the session of 1871 Cummings offered a plethora of local and special bills in order to assure his reelection. Many of these bills, some of which became laws, bordered on the absurd, but they were no different from those being pushed through for political purposes by members from other counties. One, for instance, proposed to exempt the First Lutheran Church of Selinsgrove from payment of taxes on collateral which had been bequeathed to the congregation. At once a similar measure was presented in the senate for the Reformed and Lutheran congregation at Hassinger's in Franklin Township. Cummings introduced an even more discreditable bill to the effect that the islands in the Susquehanna River opposite Selinsgrove need not be fenced in. His political enemy, the editor of the Selinsgrove Times, explained that this was a step towards annexing the islands to Snyder County. A certain John Fry of Selinsgrove owned one of the islands, all of which were in Northumberland County since the west shore of the river was the county boundary. Although a Republican, he was believed to have agreed to work and vote for Cummings in exchange for the latter's efforts to bring the islands into Snyder County, where taxes were lower than in Northumberland. Whether this explanation was true or not, the bill was an example of special legislation at its worst. Even the members of the house made fun of it. One facetiously tried to amend the measure by providing that only licensed cattle with conspicuous tags might graze on the islands; a second wanted to add a clause to prohibit the tides from overrunning the islands; and a third wished to prevent boys from wallowing in the river. Cummings likewise made himself famous for his attempts to get railroads for every township in the county. It was for this

activity that Weirick dubbed him a statesman, the appellation always appearing in quotation marks. On June 9, 1871, the editor wrote:

The grand era of railroads in Snyder county has dawned upon us. Our able “statesman” during the past winter secured the enactment of a charter for a railroad from Selinsgrove to Northumberland; one from Selinsgrove to the Junction on the Juniata; and one from Beavertown to Troxelville. All right if ever built; but then every man of good sense will know that all this Chartering is a mere delusion to humbug people to vote for the re-election of the “statesman.”

Such antics disgusted all right-thinking people, regardless of party, and both the Democratic and the Republican organs of Selinsgrove criticized the entire practice. On February 24, 1871, the Democratic Selinsgrove Times commented: “Special legislation has run mad, and Tom, Dick and Harry all look to Harrisburg for relief from taxation in one shape or another.” The Republican Snyder County Tribune on April 6, 1871, pointed out what was all too obvious: “Very little actual progress is made from week to week by our State Legislature. Nearly all the sessions are consumed in acting on private bills, and indeed this seems to be the only class of legislation on which the two branches can agree.”

The truth of this statement is borne out by the following figures, placed in the Debates by Frank Mantor of Crawford County:

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<tr>
<th>Year</th>
<th>General Laws</th>
<th>Special Laws</th>
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<td>1872</td>
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Thus in seven years there were 8,755 special laws and only 475 general laws. Between 1866 and 1871 at least 450 acts granting special privileges to railroads were enacted. Mantor declared that unless the evil was abolished, “we shall find that our political
rights will be swallowed up by granting special privileges to soulless corporations.” Furthermore, he said, “it is not democratic to give one man special privileges which are denied to all others.” (II, 592)

The practice of special legislation as evidenced in Snyder County was characteristic of the entire state. Many examples were given in the convention. William B. Hanna of Philadelphia described the scheme of a few interested persons in his city who desired to run Prune Street to the Delaware River in spite of the fact that to do so would require demolition of buildings worth half a million dollars. They knew it would be useless to apply to the city councils, and so they used their influence in the legislature. Fortunately the bill proposing the action was defeated. (II, 594) Henry C. Parsons of Lycoming County told of a law, slipped through the legislature on the last day of the session, ordering the opening of a road from Williamsport to a certain cemetery a mile from town. On the refusal of township officials to build the road the cemetery company did so and then sued the township for damages. The case was carried to the Supreme Court, which ruled that the law was constitutional and directed the township to pay $800 for the cost of construction. (II, 594) It is little wonder that Parsons declared:

In the locality in which I reside we have had special legislation until we are sick of it. There are a few persons who go to Harrisburg every winter, and before anybody is aware that they have left us, a special bill of some sort is passed. An act was passed in that way two years ago, abolishing our judicial district in two hours. (II, 622)

Samuel Minor of Crawford County deposed that while he was away from his home for two months, a ferry and a bridge had been established on his property as a result of a special law. (II, 496-97) The Debates are replete with other instances.

Manley C. Beebe charged that the current legislature was overwhelmed with special and private bills which were being requested by members of the convention itself before the prohibition against them was enacted. He frankly admitted that as an assemblyman from Venango County he had sponsored numerous such “little ‘williams’” or “little ‘bills.’” He also stated baldly that as a member of the legislature he had tried to push through as many
of them as possible before the convention met. Nevertheless he went on record as being opposed to the system and demanded that the prohibitory section under discussion be inserted into the new constitution "at a 'two-forty' pace, word for word, and line for line, and if anything is needed to make it complete, let us add it quickly and cheerfully." (II, 596)

So universal was the disgust with the evil of special legislation that the convention was already in the process of stopping it "at a 'two-forty' pace" when Beebe made his demand. As early as the sixth day of the convention the first resolution had been presented asking the proper committee to include in its report a section forbidding special legislation, and others had followed in its wake. (I, 91, 95, 432) Frank Mantor, who was a leading proponent of the idea, said truthfully that no other question before the body seemed to be of more importance to the people of the state than this one. (II, 590) Finally the convention in committee of the whole proceeded to consider section eleven of the article on legislation, which prohibited special legislation of some twenty-seven kinds. (II, 589-90)

In reading the arguments and debates on section eleven one gathers the impression that opposition was totally absent and that every member was anxious to add his bit to strengthen the wording. So far as the constitution of 1838 was concerned, the committee on legislation had nothing to work on. It was plowing new ground. According to various members some of the wording of the section had been copied verbatim from the constitution of Indiana, which had pioneered in prohibiting special laws. (V, 253) Most of it was borrowed bodily from the constitution of Illinois. (V. 258) Proponents referred also to the constitution of Ohio, which had successfully done away with the system. (II, 591).8

8Franklin Spencer Edmonds, "Fiscal Aspects of Constitutional Revision," in The Annals of the American Academy of Political and Social Science, vol. 181 (Sept., 1935), p. 137, lists seven states which had already ended special legislation. They were: Indiana, 1851; Iowa and Oregon, 1857; Maryland and Nevada, 1864; Missouri, 1865; and Illinois, 1870. He does not mention Ohio, but members of the convention frequently referred to its constitution of 1850 as a model in this respect (for instance, V, 255). In addition to these Charles Chauncey and Binney names the following which had placed restrictions of some kind or other in their constitutions: Kansas, Michigan, Minnesota, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. See his Restrictions upon Local and Special Legislation in State Constitutions (Phila. 1894), pp. 130-131.
The committee's wording became section seven of article three of the completed constitution. That is not to say that the convention accepted the committee's version without alteration, but the changes were in the main devoted to clarifying certain words and adding restrictive phrases.

The list of twenty-seven clauses is too long to quote here. A few, however, will be mentioned in order to show how unanimous was the intention of the members to pass a prohibition that would actually prohibit. A clause ending special laws relating to liens, one barring local laws in reference to units of government and others outlawing special acts to alter the names of persons or places, and to change venue in civil and criminal cases were accepted without open discussion. There was a little debate on the clauses which estopped the assembly from enacting laws for individual roads, highways, streets, alleys, ferries, and bridges. Delegate William J. Baer of Somerset County asked for and received permission to make a long speech on an amendment forbidding divorces except on the grounds of adultery. His amendment was voted down, and the ban on divorces by special law was agreed on unanimously. The entire section was read clause by clause, debated, and accepted in toto in one sitting of the committee of the whole. The chief alteration was the addition of two more limitations to the committee's list. (II, 589-622)

The committee of the whole then proceeded on the same day to section twelve, which provided that no local or special law might be passed by the legislature unless it had been properly published in the locality concerned. The reason for including this section was that since only twenty-seven (later twenty-nine) kinds of special legislation had been specifically forbidden, other types were still possible. The committee on legislation was determined to control the remainder and offered section twelve for that purpose. The section produced enough discussion about details

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9 Legislative divorces were permitted under article 1, section xiv of the constitution of 1838. Unless courts had been so empowered by law, the legislature was permitted to grant divorces. Thus a legislative bill of divorce, signed on June 2, 1870, freed Rebecca Stahl and Stephen Templin of Chapman Township, Snyder County. Among other reasons given in the preamble for a legislative instead of a judicial proceeding it was stated "that the cause of her desired separation from him is insufficient to obtain a decree of divorce in the courts of this state."

10 Regrouping of items finally resulted in the list of twenty-eight species of prohibited legislation as are now found in the constitution.
to make it necessary to carry the debate over until the next day, when the wording was accepted substantially as originally offered. (II, 622-629) It ultimately became section eight, article three of the present constitution.

When the clauses against special legislation came before the convention on second reading (V, 248 ff.), there were practically no changes. Theodore Cuyler of Philadelphia caused some debate when he objected to the item which prohibited fixing the interest rate by special law. He felt such a provision would adversely affect all industries in the state. However, the clause remained as it was. (V, 258-259; 260-265)

On third reading the entire section was accepted without much trouble save the clause dealing with counties. The prohibition read that special laws in re "locating or changing county seats, erecting new counties or changing lines" were not to be allowed. The delegates from Carbon and Luzerne led quite a campaign against this ban. (VII, 346-347) William Lilly of Carbon maintained that the prohibition against change of county lines was too rigid and would prevent forever the division of any county, no matter how desirable. Others answered that a general law on procedure to divide counties could be passed, but he denied that general legislation could cover such a special situation. A leading opponent of Lilly's motion was George W. Woodward of Philadelphia, who said, "I do not know of any greater source of iniquity and corruption in Pennsylvania than the attempt to make new counties by special legislation."

Lilly's motion was turned down by a large vote. Some of the Luzerne delegation, however, refused to accept defeat. Abraham B. Dunning offered a resolution to permit a special law in case any county of not less than 160,000 in population and 1,200 square miles in size desired to be divided. Admitting that his was the only county that would fit the requirements, he asserted that the people should be allowed to split into two or more counties if they wished. After much debate and the consumption of considerable time the Luzerne-Carbon group had its way, and the amendment was accepted. (VII, 401-407) Several of the Luzerne delegates were not in favor of the change. One of these was H. W. Palmer, who tried to tone down the concession with still another amendment, requiring that division of a county by special law must be accompanied by a vote of the electors con-
cerned. (VII, 425-433) This addition was accepted by the convention.

Dunning's success in getting special privileges for Luzerne was a distressing backward step for the proponents of general legislation, who bided their time and gathered their forces to remove the amendment. Toward the end of the convention Palmer secured unanimous consent for deletion of the Luzerne proposal, which he termed "a blot on the fair face of our Constitution." (VIII, 75-76) Thus at the last minute the clause was reduced to its original wording; special legislation was prohibited for "locating or changing county seats, erecting new counties or changing county lines."

When the committee of the whole proceeded to hear the report of the committee on private corporations, it was again faced with the problem of special legislation. Sections two, three, and four of the report prohibited the granting of exclusive rights, privileges, or immunities to any person, company, or corporation. (IV, 577) At once objection arose that this had already been covered in the article on legislation, and the sections were rejected forthwith. (IV, 578-579)

Section five of the report, providing for the annulment of any existing charters under which bona fide organization had not taken place, provoked a great deal of discussion. John H. Campbell of Philadelphia said in its defense: "It is well known that of late years it is a regular practice for certain persons in the legislature and out of it, to have acts of Assembly passed that they could afterwards sell to persons who wished to get up corporations, and it was made a regular matter of traffic, to the disgrace not only of the Legislature, but of the fair name of the Commonwealth."

Dunning's idea had been a sort of classification in embryo, based on population and area. As will be seen shortly, classification when it came into use rested on population alone. After the constitution went into force, those who favored division of Luzerne succeeded in getting the enactment of a general law which suited their purposes. This act of April 17, 1878, provided for division of counties and erection of new ones. Any county with a population of 150,000 or over might be divided if a majority of the qualified electors of the proposed new county gave their consent at an election called for that purpose. After the necessary election had been held and other requirements had been fulfilled, Governor John F. Hartranft, proclaimed the establishment of the new county of Lackawanna on August 21, 1878. Created out of Luzerne, Lackawanna was the sixty-seventh and last county to be formed in the state; and it was the only one created under the provisions of general law as required by the constitution of 1873. See Warren J. Daniel, "Etymology and Genealogy of Pennsylvania Counties," in Monthly Bulletin: Department of Internal Affairs [of Pennsylvania], vol. xii (April, 1944), pp. 29, 32.
William Lilly of Carbon County believed that from one to ten thousand such charters were in the hands of individuals who were looking for buyers. He declared that he had recently desired to get a certain mining bill passed but had failed because he would pay no money. “Within three weeks after the defeat of that bill,” he went on, “I received twenty letters offering charters to me that could be utilized for the very purpose that we desired, in the hands of the professional borers who hang around Harrisburg and secure the passage of such bills by the score and hold them in their pockets ready to sell them out to anybody who is willing to buy. The Credit Mobilier bill was a specimen.” (IV, 580) Samuel C. T. Dodd of Venango County asserted that these floating charters were on sale at the office of the Pennsylvania Railroad in Philadelphia “at rates from $5,000 down.” “I know it,” he stated, “because I was present when one of them was purchased, not six months ago, by certain individuals who wanted it.” (IV, 582) Silas M. Clark of Indiana County maintained that the legislature had often refused to pass new charters in order to raise the price of those already in existence. (IV, 587)

Doing away with these charters that had been granted legally if unwisely by the legislature presented some difficulties to the convention. There was, however, general agreement that a reform ought to be effected. To be sure, some feeble attempts were made by a few members to show that the situation was not as bad as was believed. Certain legislative efforts, it was pointed out, had been made to control the floating charters. For instance, a recent law required that the recipients of a bank charter to keep it from lapsing must pay to the state an enrollment tax before May 1 following passage of the law granting the charter. But it was admitted that this measure did little good, for as long as the tax was paid, the charter was valid. (IV, 580) Cuyler of Philadelphia thought it unnecessary for the convention to take any action on the matter because as a member of the legislature he had obtained passage of a bill providing that if no organization had taken place within five years after such a charter had been granted, the franchise became null and void. (IV, 581) His point was answered by the obvious truth that some sort of paper organization was usually made in order to keep the charter alive (IV, 581)
Another objection was that the section if accepted would repeal all unused charters, good and bad; John M. Broomall, while he was willing to prevent the legislature from making mistakes in the future, held that to nullify by constitutional action those franchises that had already been granted was violation of contract. (IV, 581) Dodd admitted that a charter in operation was a contract which could hardly be abrogated even by the constitution. He declared that the section under discussion was dedicated to the purpose of canceling spurious ones under which no *bona fide* organization had taken place but which were being hawked about for money. (IV, 581-2) Charles O. Bowman of Erie opposed the section because it would place legislative matter in the constitution and because it would be a repeal of laws already legally passed. He called attention to the fact that in the Bill of Rights the legislature was restrained from enacting *ex post facto* laws, a power the convention was claiming for itself. (IV, 584-85) J. W. F. White of Allegheny County observed that the convention could not interfere with charters wherein organization had already occurred and predicted that if the section went through, thousands of floating charters would increase in value after the constitution was put in force. (IV, 585) This argument brought up the question of what constituted valid organization. One prominent query was whether a charter was good if officers had been elected under it or if stock had been sold. In the end the majority had its way, although the section was reworded to take care of cases in which honest attempts had been made to use charters. All special franchises under which *bona fide* organization had not taken place at the time the new constitution was adopted were voided. (IV, 588)

In ending the misuse of special legislation the convention did a highly creditable piece of work in line with public demand. It wrote new constitutional law so far as Pennsylvania was concerned, pushing the reform through expeditiously, with a minimum of opposition. Luckily the members had the benefit of the experiments of Indiana, Illinois, and Ohio, without whose pioneering their task would have been infinitely more difficult than it was. Once again the cautious and conservative East, as had happened many times before, became indebted to the liberal Middle West.

*Not the least important result was a saving in the state printing bill. Whereas in 1871 it took 1,414 pages to publish all the laws and resolutions of that year, in 1874 only 285 pages were required.*
Commendable as the achievement was, later experience proved that the convention had accomplished too much in making some limitations tighter than necessary. The clauses barring private laws have worked well enough; these prohibitions were all desirable, and no one wants to revive special legislation in reference to corporation franchises, divorces, or changes in the names of individuals. It was in relation to local laws that the ban soon raised trouble. In fact, a few members had predicted difficulty in this respect when they stated that some local legislation might not merely be desirable but absolutely essential. Legislation for units of local government had to be passed as general law. Frequently the application was not satisfactory. A general enactment providing a frame of government for all cities in the state might be entirely unsuited to the needs of a small city, for instance; and it was absurd to expect that all the officials necessary for a large heavily populated urbanized county would be necessary likewise for a small sparsely inhabited agricultural one.

The outcome of this situation was classification on the basis of population, at first without express constitutional mandate until an amendment was ratified in 1923. Its result was that local laws meeting the requirements of cities, townships, boroughs, counties, and school districts of various sizes could be enacted. Thus to some degree local legislation was restored; a measure for first-class cities is actually a local law applying only to Philadelphia. According to one authority the prohibition against local and special laws has never afforded large municipalities "any appreciable measure of protection." In consequence there has developed a definite trend in the thinking of experts toward favoring some forms of special legislation. William A. Schnader has suggested a reasonable stand in his statement: "The evils of special legislation inspired by corrupt methods of soliciting favors should continue to be banned; but the entire series of prohibitions of local and special legislation should be reexamined in the light of conditions of today."

See William Backus Guitteau, Constitutional Limitations upon Special Legislation Concerning Municipalities: Thesis Presented to the Faculty of Philosophy of the University of Pennsylvania, in partial fulfillment of the requirements for the degree of Ph.D. (Toledo, 1905), pp. 49-61.


The state assembly was seriously restricted in power by the prohibitions herein discussed, which, incidentally, were not the only limitations placed upon it. The over-all significance of these onslaughts against the lawmaking body is that they reflected the prevalent suspicion of the times against the people’s own representatives. Distrust of legislative bodies is not a good omen for democracy. In effect the legislature, composed as it is of individuals chosen from and by the people to act for them, is the people. Because they deserved that fate, there can be no criticism of the popular desire to hamstring the legislators in 1873. It is questionable, however, that the bonds should be so tightly drawn as they are today. A naughty child may deserve spanking, but spanking is discontinued as he grows up and learns how to behave. There is little wonder that M. Clyde Shaeffer has called Pennsylvania “A Commonwealth in Bondage.” Someone has said that the legislature should no longer be punished for mistakes committed eighty years ago. Indeed, it is generally agreed that one way to improve legislative efficiency is to cut the apron strings so that the legislators can legislate.

Ibid., p. 115.