THE TEXT OF THE GREAT LAW OF 1682

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On April 5, 1689, the provincial council of Pennsylvania at the request of the new governor, John Blackwell, resolved

That the Rolls of all the Laws and ingrost lawyes of this Province & Countyes annexed, appoynted by the King's Letters pattents, to be published under the seale, shall be brought before this board by the Keeper & master of the Rolls, or his deputy, in order to the consideration of them, whether they have that Sanction which the Patent and Charter requires.¹

Thomas Lloyd, master of the rolls and keeper of the seal, submitted a written reply on the following day.

Truely I know nt any such Laws, wither in Rolls or ingrossemt, so appointed to be published [he stated], neither can I understand by your Order what Seal is meant, whether the Greater or Lesser: neither have I declined my Duty in inrolling or legally recording any laws wch the Govr & Councel, or General Assembly, have 'Recommended or directed to my Office; The Truest ingrossed Copy of the Laws wch I know of is that which belongeth to & was used at the Board by the Proprietarie & Goverr, & as I suppose, may Conteyn all the Laws made since, & which Copy was generally perused upon Legislation.²

Governor Blackwell inquired to whether any laws had been passed under the great seal, and Lloyd made the rather startling answer that so far as he knew, none had except the Act of Union, "but he knows not where that is, or whether it were past under the Great Seale or not."³ The governor then asked if the laws

¹Colonial Records (Philadelphia, 1852), vol. i, p. 274.
²Ibid., vol. i, p. 275.
³Ibid., vol. i, p. 276. According to a statement at its close the Act of Union was passed under the great seal.
were enrolled on parchment as required by the charter and by Lloyd’s commission, whereupon the master of the rolls replied: “None but ye first 60 Laws past at Chester had been inrolled; That their inrollmt was before his time; and he could not say that those Rolls were authentique Coppyes; and that he did not know any better Copy of the Laws than that wch the Councill hath.”

As far as the minutes of the council reveal, no one seems to have been shocked by this revelation of the illegal status of the provincial laws, but Griffith Jones did propose “that the Inrolled Coppyes of the first 60 Lawes might be compared with the Coppy used at the Councill, and the Councill’s book of Laws might be sett right for so farre.” A committee sent for the laws returned with “three parchmt Rolls, conteyning the Enrollment of 69 Lawes, according to the numbring of them with figures.” The secretary, William Markham, was directed to compare these rolls with the council’s book of laws. At the next session he reported that he had “found little agreemt, and that ye sayd Rolls, as ye Keeper sayd last sitting of ye Councill, were not authentique; So that there was no depending on them.”

This whole incident had grown out of a quarrel between Blackwell and Lloyd, and the casual dismissal of the presumably official parchment rolls was probably due to the council’s desire to favor Lloyd. Certainly the council made no great effort to reconcile the two conflicting versions of “The Great Law,” the legislation proposed by William Penn and passed by Pennsylvania’s first assembly at Chester in December, 1682.

The repudiated parchment rolls are preserved in the archives division of the Pennsylvania State Library at Harrisburg. Although they have now returned to their original status of seven separate sheets, they were probably once pasted into a single roll, which by 1689 had become three rolls. What was apparently the council’s book of laws is in the same depository, but its pages have been so eaten by the acid in the ink that only those containing the index still survive. Fortunately a manuscript copy also, which appears on the basis of comparison with the council’s

*Ibid., vol. i, p. 276.*
index to be a page-for-page reproduction, is with it. The only identification is an inscription inside the front cover: "Saml Carpenter Bought of Patrick Robinson." Evidently the copy was made for Samuel Carpenter, a member of the council, by Patrick Robinson, who became secretary to the council in 1693. It has only sixty-one numbered laws or "chapters," whereas the parchment has sixty-nine. The first six agree, but after that the parchment contains some not given in the council's version.

Pennsylvania's eminent historian Samuel Hazard had occasion to examine these documents in the course of the preparation of his *Annals of Pennsylvania*. Unluckily he did not take time to notice the discrepancies between them and published the text of the parchment with the footnote: "These laws are recorded in an old book in Secretary's office at Harrisburg, and also transcribed on a long roll of parchment."9

A quarter of a century later Benjamin Nead when he was compiling the "Historical Notes" for the official publication of Pennsylvania's laws before 1700 studied these manuscripts. He pointed out Hazard's error in assuming the two texts to be identical and decided in favor of the council's version, citing as his reasons: first, a note at the end of the printed journal of the assembly for 1682 listing the numbers and titles of the laws passed at that session, with the titles corresponding to the sixty-one-chapter version;11 second, an engrossed copy of the laws passed in 1682, certified by Patrick Robinson in 1693, containing the sixty-one-chapter text;12 and, third, the still legible portions

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8 The Historical Society of Pennsylvania owns a similar manuscript copy.
9 *Annals of Pennsylvania* (Philadelphia, 1850), pp. 619-634. The printing in this volume is carelessly done. Spelling and capitalization are modernized, and chapters are misnumbered. Chapters 2 and 3 are combined as one, 4-54 thus becoming 3-53; the correct numbering is resumed through the expedient of calling an unnumbered chapter 54. In addition chapters 56 and 57 are interchanged, and an unnumbered chapter after 62 is printed as part of 63.
10 Known to lawyers as *The Duke of York's Laws* but more correctly cited as *Charter ... and Laws of Pennsylvania*. The full title is *Charter to William Penn, and Laws of the Province of Pennsylvania, Passed between the Years 1682 and 1700, preceded by Duke of York's Laws in Force from the Year 1676 to the Year 1682*. Harrisburg, 1879.
11 See *Votes of Assembly* (Philadelphia, 1752), vol. i, p. 6, reprinted in *Pennsylvania Archives*, Eighth Series, vol. i, p. 11. In the original it is clear that this note was added by the printer, although the reprinting obscures this fact.
12 This may be the Samuel Carpenter copy now in the archives, although it is not certified. No book answering Nead's description exactly is now to be found in the state's records.
of the "old and delapidated law book" presumed to be the council's book of laws.\textsuperscript{13} Nead therefore printed the text given in the certified copy, which up until the present time has been accepted as the official version of "the Great Law" of 1682.\textsuperscript{14} He admitted, however, that one matter still puzzled him. The journal of the assembly clearly stated that William Penn had proposed ninety "written Constitutions," of which seventy-one had been passed.\textsuperscript{15} Why the text in the council's law book contained only sixty-one of these laws Nead did not undertake to say.

It is now possible to explain at least a part of this mystery of the ten lost laws. The repudiated parchment sheets themselves offer the first clue. A close study reveals that the clerk actually engrossed seventy-one laws, although he carelessly neglected to number the chapter after fifty-four and the one after sixty-two. As further confirmation that the parchment contains seventy-one laws there is a contemporary paper copy of the same laws in the archives in which every chapter is correctly numbered. This seems to be the "fair copy" from which the parchment rolls were engrossed. Since the parchment thus contains the same number of laws as passed by the first assembly, the next step is to compare this text with the house journals. The journal of the first session, while it contains no mention of any of the laws by title, includes a record of the addition of certain phrases to various laws. These phrases appear in the correspondingly numbered chapters of the parchment but not in those in the council's law book.\textsuperscript{16}

Final proof that the parchment embodies the correct version of the laws enacted by the first assembly may be found in the journal of the second session in 1683. At this meeting "the

\textsuperscript{12} Charter . . . and Laws of Pennsylvania, pp. 478-480.
\textsuperscript{13} Ibid., pp. 107-123.
\textsuperscript{14} Pennsylvania Archives, Eighth Series, vol. i, pp. 7-11. Of the original 90 chapters those rejected were numbers 36-39, 41-48, 51, 62, 64, 66, 71, 72, and 83, or a total of 19. Chapter 1 is not specifically mentioned, but it is presumed that it was passed. There is no hint as to the text of any of the rejected laws.
\textsuperscript{15} "Shall be publicly whipt" is added to chapter 9, "to be Whipt &c" to chapter 11, the same to chapter 12, and "to Drunkenness" to chapter 15. The corresponding phrase in chapter 11 on the parchment is "shall be wipped" and in chapter 15 is "unto drunkenness"; the other two phrases appear exactly. Chapter 9 of the council's version contains the phrase "shall be whipt," but the other phrases do not appear in the correspondingly numbered chapters.
Great Law" was brought in and read for reenactment, and the clerk of the house recorded the numbers and titles of almost all the chapters.17 Wherever they are named individually, there is exact agreement with the laws as they should have been numbered on the parchment. In three places where several laws are listed in groups, the numbers do not correspond altogether with the titles, but the discrepancies, apparently due to carelessness, are minor.

The ten laws passed by the first assembly which have been omitted from the official record and have never been published correctly are, as they appear on the parchment:

Cap: 7mo And bee it further enacted by ye Authority aforesd. that if any person shall with Malice or Premeditation Kill or be accessory to ye Death of another person man Woman or Child being Legally convicted thereof Shall according to ye Law of God and all Nations suffer Death and that ye Estates of all Capitall of-offender shall go one half to ye next of Kin of ye Suf-fferer & ye remainder to ye next Kin of ye Criminall.

Cap 8vo And bee it further enacted by ye Authority aforesd. that all persons Guilty of Manslaughter or Chance-medly shall be punished according to ye nature & Cir-cumstance of Offence.

Cap: 13. And be it further enacted by ye Authority aforesd. that whosoever shall be convicted of uncleanness or Committing of fornication that is if any Single Man shall defile a Single woman they shall suffer three Months Imprisonment in ye house of Correction at hard Labour and after ye Expiracon of ye Said Terme Shall take one another in Marriage & Live as man & wife together but if ye man be married he shall forfeit one third of his Estate & both be Imprisoned as aforesd. And whosoever shall be convicted of speaking an Ob-scene or an unclean word shall for every such offence pay one Shilling or sitt in ye Stocks two hours.

Cap: 35. And to prevent Clandestine loose & unseemly proceed-ings about Marriage be it enacted by ye Authority

aforesd that all marriages not forbidden by ye Laws of God shall be encouraged but ye Parents or Guardians Shall be first consulted and ye Partys clearness of all other engagemts assur'd by a Certificate from credible persons & ye marriage shall be published before it be Solemnized and it shall be solemnized by taking and owning one another as Husband & wife before Sufficient Witnesses & a certificate of ye whole under ye hands of Parties & Witnesses shall be brought to ye proper Register of ye County where they are married & Shall be Registered in his office.

Cap: 36 And bee it further enacted by ye Authority aforesd. that no person be it either Widdower or Widdow shall contract marriage much less marry under one year after ye decease of his wife or her Husband.

Cap.: 40: And bee it further Enacted by ye Authority aforesd. that no person presume to keep an ordinary without a License first obtain'd of ye Governt. and to ye end yt all Travellers and Such as are not Housekeepers may be reasonably accomodated in places where ordinaries now are or shall be hereafter erected no such keeper of such ordinary shall demand above Six pennys a meal by ye head which meal shall consiste of Beef or Porke or Such Like produce of ye Country & Small Beer & of a footman he shall not demand above two pence per night for his bed & of a horseman nothing he paying Six pennys a night for his horses hay.

Cap. 42 And be it further Enacted by ye Authority aforesd to ye end yt Justice may be faithfully and openly done according to Law that all Courts of Justice shall be open and Justice shall not be Sold denied nor delayed And in every County there Shall be one Court erected to which ye inhabitants thereof may every month repair for Justice and in case any person shall hold himself agreived by ye Sentence of ye Said County Court that such persons may appeal to ye Provinciaill Court which Shall sitt Quarterly and consist of not Less than five Judges ye Appellant giving Security for ye Charges of ye Sute & no further appeal to be ad-
mitted till ye appellant deposits in Court ye Summe he is Condemned to pay & give Security in case he be cost by ye Last Jusidiction which shall be ye Provinciall Councill.

Cap: 43 And bee it further Enacted by ye Authority aforesd. that in all Courts all persons of all perswasions may freely appear in their owne way and according to their owne manner & there personally plead their owne cause themselves or if unable by their friends and ye first process shall be ye Exhibition of ye Complaint in Court fourteen days before ye Tryall and that ye defendant be prepared for his defence he or she Shall be Sumonned no less than tenn days before & a Copy of ye Complaint delivered him or her at his or her dwelling house to answer unto but before ye Complaint of any person shall be received he or She Shall Solemnly declare in open Court that he or she believes in his or her conscience his or her Cause is Just and if ye party complained against shall not withstanding refuse to appear ye Plaintiffe shall have Judgemt. against ye Defendent by Default.

[Cap. 55] And bee it further Enacted by ye Authority aforesd. that ye estates of Intestates shall goe to ye wife and to ye Children and if no wife be living at ye time of Death all ye estate shall go to ye Children and if no children one third to ye Governt & two thirds to ye next of Kin.

Cap: 57. And be it further Enacted by the Authority aforesd [actually that Servts Shall not be Kept Longer than their time and Such as are carefull shall be both Justly & Kindly used in their Service and putt in fitting equipage at the expiration thereof according to custome and Such as runn away and Serve not their time when caught shall serve twice ye time he or she was absent & pay ye Charges or Serve out ye value after their time is expired and if any Master abuse his Servt. on complaint to ye next Justice of ye Peace he shall take care to redress ye Sd. Greiviance.]
How these ten chapters came to be omitted from the council’s law book cannot be entirely explained. Apparently the law book was prepared at the close of the assembly’s second session in 1683, for there was no council prior to March of that year, and the final chapter of the laws passed at the second session includes some of the laws numbered as in the council’s law book. The laws must therefore have been left out at that time. Certainly they were not all omitted because the assembly did not reenact them since chapters seven, eight, and forty are mentioned both by number and by title and chapters thirteen, thirty-six, and fifty-eight by number alone as having been passed. Presumably they were dropped by the council on account of the legislation of 1683 which provided that the laws passed at Chester should stand, “Except such Laws, or part of Laws, as are by any of the following Laws, repealed, Varied, explained, or added unto.” Of the ten laws eight were amended and in effect repealed at the session of 1683; chapter seven by chapter one hundred and eighteen; eight by one hundred and seventeen; thirteen by one hundred and twenty; thirty-five by one hundred and thirty-three; forty by ninety-nine; forty-two by seventy; fifty-four A by one hundred and ten; and fifty-seven by one hundred and thirty-nine. Oddly, chapter forty-three appears almost word for word as chapter sixty-six of the laws passed in 1683. Why chapter thirty-six was dropped from the official record despite its apparent reenactment by the assembly remains to be discovered.

283 Pennsylvania Archives, Eighth Series, vol. i, pp. 28, 29, and 34.
30 The chapter numbers of the laws for 1683 are as given in the Charter . . . and Laws of Pennsylvania, pp. 128-153.