THE ORIGIN OF THE PENNSYLVANIA
CONSTITUTIONAL CONVENTION OF 1873

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THE movement for constitutional reform in Pennsylvania emerged quite suddenly in the summer and autumn of 1870. It did not develop slowly and painfully over a long period of time. Rather, within a short period of approximately six months, opinion in favor of a convention emerged in certain influential circles. The articulation of this opinion led almost immediately to favorable action by both Governor and legislature. The drive for constitutional reform did not originate among the masses of the people, but instead it came from a small group of influential business and political leaders. In this sense, the movement was aristocratic rather than democratic in character.

Indeed, it may be wrong to speak of a movement for constitutional reform. For there was no statewide organization promoting this cause, there was no association of private organizations seeking this end, and there was no newspaper campaign developing popular enthusiasm for this purpose. No real opposition came from either of the major political parties. Indeed certain elements within the Republican party actively sought a convention. There is evidence to indicate that some local leaders of the Democratic party were reluctant to join this movement. But this reluctance may be ascribed to their political conservatism and their hostility to proposals which originated among Republican leaders rather than to a formalized opposition to constitutional reform as such.

No evidence has been found to indicate that the struggling labor unions and the newborn Grange expressed interest in constitutional reform as a means of achieving their goals. From the available evidence it would seem that industrial and commercial leaders, after years of patient suffering, determined upon reform to end certain abuses. They realized that this reform required changes in the constitution. Their decision was transmitted to the political

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leaders of the state, and within two years, the convention met in Harrisburg.

The Beginnings

The Philadelphia Public Ledger became convinced of the need for constitutional revision as it reviewed the work of the 1870 legislature. Its editors protested against the high-handed proceedings by which hundreds of local and private bills were passed by legislators who were ignorant of their contents. Legislative courtesy had led to a great evil—the enactment of bills vitally affecting local interests against the protests of local authorities and newspapers. As a result, local interests were at the mercy of the legislative delegation which represented a city or county at Harrisburg. The rules of procedure were grossly disregarded—particularly in the last days of a legislative session as hundreds of special bills awaited action. A reporter of the Public Ledger described the proceedings of the last day of the 1870 legislature in these terms:

Harrisburg, April 1.—The Legislature which had just adjourned has been in session sixty-five working days. In that time 2,168 bills were introduced into the House, and 2,118 in the Senate. The whole number actually passed by both Houses and sent to the Governor was 1,498.

The session was distinguished by a recklessness on the part of the majority of the members which has found no parallel since 1852, when “omnibus legislation” was in vogue. The system of passing bills merely by reading their titles, was not tolerated in 1866-7 and 8, but adopted as a practice in 1870, and has proved itself to be the most infamous fraud ever practiced upon a community, and the chief instrument of bad legislation and deception.

The following is given as the entire process by which hundreds of bills were transformed into laws in the respective houses:

"Clerk—(reading the title)—A supplement of the act incorporating the city of Philadelphia.

Speaker—There being no objections to this bill, it will be laid aside for a second reading.

1 Philadelphia Public Ledger, April 1, 2, and 4, 1870.
Clerk—A supplement to the act incorporating the city of Philadelphia.
Speaker—Will the House agree to the bill? (voices anywhere)—Aye, Aye.
Speaker—Will the House transcribe the bill, suspend the rules, and read the bill a third time by its title?
(Voices)—Aye, Aye.
Speaker—the Bill passes."

The *Public Ledger* reporter found that several abuses of the legislative process had become common: first, bills were reported from committees without having been considered by those committees; second, many bills were introduced with the same title; third, new manuscript bills were substituted for printed bills already on file; and fourth, hasty amendments of the most important character were adopted without a public reading. So disorganized had the proceedings become that on two occasions in the 1870 session both houses had twice passed the same bills on the same day. All this had led to a system by which the legislators cheated one another and the public.\(^2\)

The reporter concluded his article by suggesting reforms which could be accomplished only by amendment of the constitution: first, no bill could be passed without recording the ayes and noes; second, no local bill could be approved by the Governor unless published for a certain length of time in the county affected; third, each county in the state (not each assembly district) and each ward in Philadelphia and Pittsburgh should elect at least one representative; fourth, it should be a penal offense for a legislator to have a direct or indirect interest in any bill; and fifth, the legislature should meet once every three years unless convened by the Governor.\(^4\)

With this article a long-developing dissatisfaction with the legislature became articulate. The *Public Ledger* was not the first nor the only voice raised in protest of abuses which abounded in the legislative halls at Harrisburg. But its protest was significant as that of a leading newspaper which was associated with the industrial and commercial interests of Philadelphia and with orthodox Republicanism. However, it must be noted that the *Public Ledger*’s

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\(^2\) Philadelphia *Public Ledger*, April 8, 1870.
\(^3\) Ibid.
\(^4\) Ibid., April 8, 1870.
criticism was directed only against corruption and abuses of the legislative process arising from the pressure of enacting special legislation. The attack upon other problems was to come later.

An early, perhaps the earliest, formal statement by an organization asking for constitutional reform was a resolution adopted by the Republican County Convention of Allegheny County on August 30, 1870. This resolution held:

11 That we believe the time has come for the revision and amendment of our State Constitution, so as to make it keep peace [sic] with the progress of a free people, and present such safeguards as will best protect the people in their rights.6

Other resolutions adopted by this convention called for the prohibition of special legislation and demanded that all corporations should be created and controlled by general laws. Of significance is another resolution which proclaimed the principle that railroad corporations were public servants and which called upon the legislature to protect the public from the abuses of such corporations by the enactment of appropriate legislation. It must be remembered that these resolutions were adopted by one of the most powerful and important Republican county organizations in the state, by the organization which controlled the government of Allegheny County and the city of Pittsburgh. Again the demand for the reform came from a group of “haves” rather than one of “have-nots.”

Another gathering which made an important contribution to the movement for constitutional reform met in Reading in the late summer of 1870. This was a convention of Republican leaders from the eastern counties. Politically speaking, these were Democratic counties, where Republicans generally were not elected to posts in the county government nor to the legislature or Congress. The convention was called to decide upon a plan of minority representation in the legislature and to urge the calling of a constitutional convention to implement this reform.7

The call for the convention had been issued in July, 1870, by E. J. Moore of Allentown. Behind this action lay the desire of Republican leaders of these counties to free themselves from de-

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6 Pittsburgh Gazette, August 31, 1870.
7 Philadelphia Public Ledger, August 31, September 1, 1870, and Pittsburgh Gazette, September 3, 1870.
dependence upon Democratic legislators for the enactment of special or local laws which were required by their business interests. They insisted that the absence of minority representation had made possible the tyranny of local political bosses of the majority party. This opinion was expressed in a resolution of the convention which declared that:

Resolved, That the practice which has grown up in the Legislature of Pennsylvania of submitting all matters of local legislation to the exclusive control of local representatives has practically placed the local, political and business interests of minority constituencies requiring legislation at the mercy of majority local representatives, and has afforded such a continued series of wrong and petty oppression as loudly call for reform.

The economic growth of cities and boroughs located in these counties had led to this opinion. For example, Allentown had become a thriving industrial center. The Republican party had developed considerable strength in the city. But this strength was nullified by the Democratic preponderance in the rural sections of Lehigh County, and this majority elected the state legislators who represented the county at large. This meant that an Allentown banker such as William Ainey, a pillar of the Republican party who was to become a Republican delegate-at-large to the constitutional convention, could not secure election to the House or Senate from Lehigh County. Indeed he would have to go to the local Democratic legislators to secure the enactment of special laws.

When the convention assembled on August 31 sixty-one delegates from nineteen counties were in attendance. A number of Democrats were there as well as Republicans. Their presence proved somewhat embarrassing to the organizers of the meeting until it was decided that they might attend the sessions without having the privilege of voting. George Lear of Bucks County was elected chairman and Joseph Ritner of Cumberland County secretary of the convention. One Democratic leader was present by invitation. This was Charles Buckalew, who had been asked to describe his proposed system of cumulative voting as a means of providing for minority representation.

*Debates of the Convention to Amend the Constitution of Pennsylvania* (Harrisburg, 1873), VII, 71.

*Philadelphia Public Ledger*, September 1, 1870.
Lear's opening speech set the tone of the convention. He described the existing system of majority representation as a system of partial representation. Such a system was tyrannical; it made for a large and selfish majority in certain counties that could be manipulated by political leaders for their own ends. Legislation could not provide an adequate solution to this problem, for laws could be repealed. Constitutional reform was required. This reform should be accomplished by a convention itself based on the principle of minority representation. He called for a convention.

... so that all citizens may be heard at the ballot box, the Legislature protected from corruption, and the volume of private legislation that now fills the statute book be driven from existence.9

The resolutions adopted by the convention followed the propositions advanced by Lear. Minority representation from each legislative district was proposed as the means of ending the evil of majority party tyranny; minority representation was to be applied also to the election of county commissioners, directors of the poor, county auditors, and township officers; the legislature was petitioned to call a constitutional convention based on the minority principle—a convention which would embody that principle in the new constitution; Illinois was congratulated for having provided for this reform in its new constitution. A committee of five was appointed to take these resolutions personally to the next legislature.10

Buckalew closed the proceedings by describing the cumulative or free vote as the answer to the problem of minority representation.11 He made the case for this reform which he was to make again in the legislatures of 1871 and 1872 and in the constitutional convention. Partisanship was forgotten as he was repeatedly applauded by his audience. Incidentally, a letter from John W. Forney was read in which he expressed his support of the convention's purpose and of Buckalew's ideas.

The Philadelphia Public Ledger gave its approval to the purpose of the convention. It agreed that the existing system of majority representation was both unjust and impolitic, and it extolled the
virtues of a legislative body with a strong minority delegation. In reviewing the current application of the principle of minority representation to the election of certain local officers, it concluded:

... that the principle is applied in an awkward way, and the method of working out the principle is very defective. It is for the Convention at Reading to hit upon a better plan, and to extend its operation to all officers to which it is possible to apply it.12

The movement for constitutional reform received its greatest impetus when the Union League of Philadelphia urged the calling of a convention for that purpose in a special meeting on October 18, 1870. This organization probably enjoyed a prestige greater than that possessed by any similar body in the state. It was composed of prosperous business and professional men of Philadelphia and was dedicated to the task of preserving Republican control of the federal and state governments. If any group could be described as being a significant part of the power-structure of Pennsylvania, it would be this organization. Then why was it concerned with constitutional reform? The answer can be found in a resolution adopted by the Union League during the meeting of October 18:

And whereas, the history of the legislation of Pennsylvania for many years past is strongly marked by the corruptive power of corporations, seeking special favors by the temptations of bribery; the franchises of the State are bartered for money, and our legislative halls have often been converted into market-places, where important public offices have been sold to the highest bidders by faithless and venal public servants; vested rights have been threatened and assailed for the sole purpose of extorting ransom from their lawful proprietors; and public acts which concern the common welfare are passed or rejected without intelligent consideration, and thus the safety and happiness of the people are frequently impaired and imperilled by dishonest and incompetent representatives. . . .13

Here again is found full-blown a major argument for constitutional revision. This argument was to be repeated frequently in the next

12 Ibid., August 31, 1870.
two years: that corporations were responsible for much of the corruption in the legislature as they bribed legislators to secure the grant of special privileges, that legislators had blackmailed businessmen by threatening to enact laws injurious to their interests, that public offices under the control of the legislature were sold to the highest bidder, and that the passage of general public laws was neglected in the scramble to enact profitable special and local legislation.

At a meeting of the League Board of Directors held September 13, 1870, J. Gillingham Fell had moved the appointment of a committee of ten to study the question of reforms in the state constitution. The committee was appointed and reported on October 8 a recommendation that an application be made to the legislature to call a constitutional convention. This recommendation was the subject of the special meeting of October 18.14

Editorials which appeared in a Philadelphia and in a Pittsburgh newspaper on the morning of the eighteenth indicate that the purpose of the meeting was a matter of considerable interest in those two cities.15 These editorials agreed that constitutional reform was badly needed and that it was earnestly desired by the people. Both agreed that the foremost problem was that of legislative corruption and that the basic source of legislative corruption was special legislation. Still other reforms were needed: the rights of cities should be protected from the depredations of local politicians, civil service reform should be established throughout the state government, and public officials should be paid fixed salaries rather than fees. The manner in which the legislature of 1870 had disregarded the required procedures of the legislative process was also cited as evidence of the need for reform. The people were reminded that reform could not be accomplished by the governor through the exercise of his veto power nor by the election of honest men to the legislature. One editorial concluded that:

... there is no possible chance of our people guarding against corrupt special legislation, save by ridding the legislature of the power to do evil as far as possible.16

15 Philadelphia Public Ledger, October 18, 1870, and Pittsburgh Gazette, October 18, 1870.
16 Pittsburgh Gazette, October 18, 1870.
The Union League meeting on the evening of October 18 was chaired by Morton McMichael. Charles Gibbons presented the resolutions which the board of directors had agreed upon and made a speech urging their acceptance by the members. The resolutions described legislative corruption as the great evil which required a revision of the constitution, called upon the legislature to submit the question of holding a convention to the people, and suggested that the League set up a committee of ten to urge the legislature to act. In his supporting speech Gibbons graphically described the corruption of the legislature which resulted from its power to enact special laws. He suggested these reforms: the abrogation of the power to pass special legislation, the creation and regulation of corporations by general laws, and biennial sessions of the legislature. He also described other matters which required consideration by a constitutional convention: the protection of the rights of political minorities, the conferring of political patronage upon the courts, and the strengthening of the system of public education. He concluded:

It is impossible to close our eyes to the necessity of some popular endeavor to check corruption in public places, which is confined to no party, and has grown so bold that it seems to challenge the virtue of the people to an open contest for supremacy.

Frederick Fraley also spoke in support of the resolution. He held that a constitutional convention was needed because of the economic development which had taken place in Pennsylvania:

... the changes which are continually going on, caused by the increase of population, the enlargement of material interests, the advance of civilization, and the conflicts of corporate and individual rights, the relations between capital and labor, furnish new forms for legislation, which, if unguarded by constitutional provisions, must be left to the omnipotent discretion of legislators.

Among others speaking in support of the resolutions was Francis Jordan, Governor John W. Geary's secretary of the commonwealth.

17 Philadelphia Public Ledger, October 19, 1870.
18 Ibid.
19 Ibid.
The Union League adopted the resolutions; it took also the unusual step of inviting the Democratic party to cooperate with its committee of ten in presenting its petition to the legislature. Constitutional reform was to be undertaken under the leadership of the conservative, propertied class which regarded itself as the conservator of the cultural and social heritage of Pennsylvania.

The movement for constitutional reform received further impetus in November, 1870, when a letter was published in which former Governor Andrew Gregg Curtin endorsed the cause. At this time Curtin was serving as minister to Russia. In his letter he gave vigorous support to the proposal that constitutional reform be accomplished through a state convention. He believed that such a movement would receive the support of both parties. He wrote:

For the necessity of thorough reform is painfully apparent to all. It is not in any sense a question of party politics. . . . It is most vital to our vast and varied material interests, and equally so to our future honor and advancement, that the public should be enabled to perfect their sadly needed reforms in the most unbiased and dispassionate manner, and therefore special elections, as far removed as possible from the annual political struggles, should be held, not only for the election of delegates to the convention but also for the ratification or rejection of the amendments which may be matured or proposed.

Such a Convention at this time could not fail to elevate the character of our legislation and to redeem our political system from many of the debauching influences which have become so closely interwoven with it.

Inasmuch as Curtin was still popular among the rank and file of the Republican party, it is reasonable to assume that his statement stimulated popular interest in constitutional reform.

Certain legislators had evidenced a concern for constitutional reform several years before the Philadelphia Union League held its important meeting. In the 1867 legislature Matthew S. Quay presented a bill to the House to provide for the calling of a constitutional convention. A special five-man committee was ap-

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18 Lathrop, History of the Union League of Philadelphia, p. 106.
19 Pittsburgh Gazette, November 19, 1870.
20 House Journal 1867 (Harrisburg, 1867), p. 156.
pointed to consider this measure. However, nothing came of the effort. In the following year John S. Mann, representing Tioga and Potter counties, presented a similar bill to the same body. Later Mann became one of the leaders of the constitutional reform movement and served as a delegate to the convention. His proposal was referred to the House Committee on the Judiciary, General. It, too, was lost when it was reported negatively by that committee. In 1869 Harry White of Indiana proposed to the Senate a bill for the calling of a constitutional convention. This bill was reported favorably by the Senate Committee on the Judiciary, General, but the Senate took no further action on the measure.

White was one of the younger leaders of the Republican party; he had already acquired a considerable experience in the Senate and his prospects for political advancement were bright. He was not content to leave his concern for constitutional revision in the Senate chamber. He took the issue to the public. In 1870 he delivered lectures on the need for constitutional reform in various parts of the state. He held that politics had fallen into control of the insincere demagogue. Men of principle, as a rule, shunned public office, especially election to the legislature. The situation could not be improved merely by the election of honest men, for the forces of corruption were too deeply entrenched. He argued:

Today there is a want of confidence in the legislative department of government. This confidence should be restored. The remedy, I have thought for years, is a constitutional convention.

In this lecture White proposed that the minority party be adequately represented in the constitutional convention. Among his suggested reforms were: an increase in the number of senators and representatives, abolition of special legislation, placing all corporations under general laws, holding biennial rather than annual sessions of the legislature, and an increase in the number of courts and judges.

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24 *Senate Journal 1869* (Harrisburg, 1869), pp. 231 and 822.
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THE LEGISLATURE TAKES ACTION

The action of the legislature of 1871 would be decisive for the cause of constitutional reform. Shortly before it assembled, Senator William W. Watt of the first Philadelphia district died.27 His death placed Republican control of the Senate in jeopardy, for the October, 1870 election had left the Republicans with a bare majority of one in that body. On December 20 Colonel Robert Dechert, the Democratic candidate, won the special election over his Republican opponent, Joseph H. Lyndall, by 14,187 votes to 12,896.28 This result gave the Democrats control of the Senate for the first time in many years. Senate Democrats were now in a position to bargain with House Republicans over the provisions of the apportionment bill which this legislature was to enact and over amendments to the Registry Act of 1869. But consideration of other measures, such as the one providing for the calling of a constitutional convention, might wait upon the negotiation of a compromise on these issues.

On the first day of the 1871 legislative session, January 3, the first steps were taken to secure the passage of a law providing for a constitutional convention.29 In the Senate, Senator George Contell of Philadelphia introduced a bill for this purpose, and Buckalew secured the adoption of a motion empowering the chair to appoint a committee of seven on constitutional reform. On the following day Governor Geary's annual message was presented to the legislature.

In this message the Governor recommended to the legislature that it "make provision for a convention to thoroughly revise and amend the Constitution of the State."20 His supporting argument held:

This is a progressive period and our State has outgrown its fundamental law. That law should, therefore, be made to keep pace with the age in which we live. The existing constitution, including the amendments of 1857 and 1864, impose many wholesome restrictions on the power and jurisdiction of the Legislature; but experience has demon-

27 Pittsburgh Gazette, November 19, 1870.
28 Ibid., December 21, 1870.
29 The Legislative Journal containing the Debates and Proceedings of the Pennsylvania Legislature for the Session of 1871 (Harrisburg, 1871), First Series, in the Senate, p. vii. (Hereafter called The Legislative Journal.)
30 Pennsylvania Archives, Fourth Series (Harrisburg, 1902), VIII, 1127.
strated their inadequacy to protect the people against the evils to be remedied, and especially those of corporate power, and of special and local legislation.\textsuperscript{31}

Geary found the authority for calling a convention in the second section of the ninth article (the Bill of Rights) of the constitution, which declared:

That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have, at all times, an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.\textsuperscript{32}

He pointed out that over a period of years through the enactment of local laws many separate codes of law had been established for the various counties. As a result, on moving from one county to another, people found themselves under an almost entirely different set of laws. Such matters as roads, bridges, schools, elections, and poor-houses should be operated and regulated by general laws “operating uniformly upon all.”\textsuperscript{33} He insisted that the concern of legislators with the enactment of special and local laws had almost destroyed the theory of representative government. The lawmakers gave little attention to the enactment of general or public measures. They did not inquire into the purpose or contents of special and local bills. They gave their approval to such bills as a matter of legislative courtesy. Geary described the character and result of this practice in these words:

By what is called courtesy, it is considered a breach of etiquette for any member of the Senate or House to interfere with or oppose a merely private or local bill of any other member. The result is, the bills were passed as originally prepared without examination or comparison of views—often crude and ill-digested, and without regard to constitutional requirements, or sound public policy.\textsuperscript{34}

There was only one remedy for this condition, and that was a constitutional prohibition upon special and local legislation.

The governor also agreed that the revised constitution should

\begin{itemize}
\item \textsuperscript{31} Ibid., p. 1128.
\item \textsuperscript{32} Ibid., p. 1127.
\item \textsuperscript{33} Ibid., p. 1128.
\item \textsuperscript{34} Ibid., p. 1129.
\end{itemize}
provide for minority representation. However, he made no specific recommendation as to the plan by which this purpose was to be accomplished. He suggested that the legislature should be increased in number, and that the state treasurer, the superintendent of common schools, and a lieutenant governor (this was to be a new office) should be elected by the people. In order to eliminate the use of out-of-state "floaters" in Pennsylvania's October elections, this election should be done away with and only the November election should be continued. The security of public funds should be more adequately provided for than was possible under the Constitution of 1838. Some "fundamental limitation to the powers of corporations was urgently needed." Finally the state constitution should be brought into conformity with the amended federal constitution; in short, the new constitution should bestow the suffrage privilege upon qualified adult males without reference to race or previous condition of servitude.

Governor Geary was convinced that informed persons and the press, without regard to party, sanctioned the calling of a constitutional convention in the near future. Amendments to the existing constitution would not prove adequate. A convention was necessary to meet the exigency of the situation. Editorial comment in two prominent newspapers strongly endorsed his recommendation. The Democratic Senate and Republican House acted independently of each other in maturing legislation to provide for calling a constitutional convention. Partisan political interests were responsible in part for the position which was taken by the majority in each house. The House Republicans wished to conduct the referendum on the holding of a convention and the election of delegates simultaneously at the earliest possible moment. The Democrats charged that this procedure would result in a Republican majority in the convention, inasmuch as the delegates would be elected according to the 1864 apportionment. This apportionment, according to the Democrats, had resulted in gerrymandered election districts. On the other hand, the Republicans argued that the Democrats were interested primarily in forcing Republican acceptance of a new apportionment law which would

Ibid.
Pittsburgh Gazette, January 5, 1871, and Philadelphia Public Ledger, January 5, 1871.
make possible Democratic control of the next legislature. By postponing the election of delegates the Democrats might be able to control the convention.

The original House bill reported by the constitutional reform committee headed by John Mann provided that the referendum and election of delegates be held in June, 1871. In the second debate on the measure, held on February 2, the House adopted an amendment proposed by Republican William Elliott, to change the date of the election to the second Tuesday in October. The Democrats made an unsuccessful effort to put through another amendment which would have limited the October election to a referendum on holding a convention. The House adopted the bill perfected by the Republican majority on February 27, by a strict party vote. This measure called for a popular referendum and the election of delegates in October, 1871. One hundred forty-three delegates were to be elected: forty were to be elected at large with no elector to vote for more than twenty; the remaining 103 were to be elected from the various senatorial districts. The act also provided that the finished constitution be submitted to the people for ratification or rejection.

In the several debates held on this bill, spokesmen for both parties expressed their adherence to the cause of constitutional reform and the hope that the convention be free of partisan influence. In the floor speeches emphasis was laid upon the need to curtail the flow of special legislation and to place restraints on large corporations. However, some representatives expressed doubt as to the extent of popular demand for reform. At least one hoped that control of the convention would fall into conservative hands so that only limited changes would be made.

In the Senate a committee on constitutional reform chaired by Buckalew had been appointed in January. Senator Elias Billingfelt, a Republican maverick from Lancaster County, made an earnest but fruitless effort to instruct this committee to provide for the equal representation of both political parties in the proposed convention. Only by this method, said Billingfelt, could the

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40 *Ibid., Second Series*, in the House, p. 117.
Not until February 17 was a bill reported by the Senate committee. It revealed clearly the imprint of Buckalew’s ideas. It provided for a popular referendum and the election of delegates in June, with the convention to meet in September. The convention was to consist of 140 delegates; thirty-two were to be elected at large, no voter to vote for more than sixteen; and 108 delegates were to be elected from specially created convention districts with each elector entitled to as many votes as the number of members to be chosen in his district—votes which he might cumulate upon one candidate or distribute among several or all candidates as he might see fit. The amendments proposed by the convention were to be submitted to the people for their approval or rejection. Moreover, one-third of the delegates could require the separate submission of a proposed amendment to the people.12

This bill was not debated until April 11. Consideration of the measure, along with many others, was postponed by the Senate Democrats until agreement could be reached with the House Republicans on a new apportionment bill. The debate of April 11 has some importance in that two men who were leaders of their respective parties and advocates of constitutional reform, Charles Buckalew and Harry White, took the occasion to make forceful speeches for the movement.

Buckalew spoke directly to the provisions of the bill.13 He admitted that a June date had been impractical and that it might be advisable to conduct the referendum on holding a convention in October, 1871 and to elect the delegates in October, 1872. He insisted that the apportionment of convention districts as provided for in his bill would give each party about one-half of the district delegates; as a result, the convention could not be controlled by either party. He justified the action enabling one-third of the delegates to require the separate submission of an article or section on these grounds: first, the people would not have to accept an unpalatable section in order to get the reforms they wanted; and second, no political majority could ride roughshod over a minority in the convention.

11 Ibid., Second Series, in the Senate, p. 36.
13 Ibid., pp. 667-668.
White was more concerned with the general need for constitutional reform. His speech seems to have followed the outline which he employed in his public lectures on that subject. Reform was necessary because of the poor reputation of the legislature. The confidence of the people in the legislature had to be restored; no longer could this be done by the legislature itself. Now it could be accomplished only by a constitutional convention. Despite lengthy debate, the bill was not adopted by the Senate at this time.

A crisis occurred in the proceedings of May 18 when Buckalew deserted his Democratic colleagues to join the Republicans in bringing up the House bill for consideration. On this occasion several senators, both Democrats and Republicans, expressed opposition to the idea of constitutional reform. The Democrats were able to secure postponement. By May 22 the Democrats had re-organized their ranks; at that time Buckalew proposed a substitute for the House bill. His bill provided for a popular referendum on calling a convention to be conducted in the October, 1871 election. The substitute bill was adopted unanimously by the Senate. Thus each house had adopted its own measure. The principal difference between the two lay in the fact that the House bill provided that the referendum and election of delegates take place simultaneously in October, 1871, while the Senate bill provided that only the referendum be conducted at that time. At first the House Republicans refused to accept the Senate bill. But on May 26 the House accepted Mann's motion to concur in the Senate measure.

As the action of the legislature of 1871 on the issue of constitutional reform is reviewed, two conclusions may be reached. The first is that a large measure of agreement on the need for a convention existed in both houses. The second is that there was general agreement that the convention should not be made a tool of partisan politics. Certainly partisan considerations affected the maturation of a bill acceptable to both houses, but these considerations were not permitted to prevent the enactment of such a bill.

The election campaign of 1871 was highlighted by the contest

**Notes:**

"Ibid., pp. 668-669.
"Ibid., pp. 1131-1152.
"Ibid., pp. 1209-1210.
"Ibid., Second Series, in the House, pp. 1265-1266.
over the election of the auditor-general and surveyor-general, and by the struggle for control of the legislature and of Philadelphia's municipal government. Although the state chairmen of both parties endorsed a constitutional convention, the referendum attracted little attention. Editorials reminded the voters of the importance of this issue. One urged the voters to end the bane of special legislation by voting for a convention. The writer pointed to the benefits which would result from a convention: the legislative session could be reduced to a fortnight; in turn, this reduction would relieve businessmen of the fear that legislation harming their business interests might be passed; and the inducement for bribery and corruption in the legislature would be removed. Another editorial described other reforms which would come from a constitutional convention: greater representation for minorities in public bodies and on corporation boards of directors, strict limitation of municipal debt, and restriction of legislative power to enact private laws. It urged its readers to protect themselves against "gross abuses and the scandalous burlesque of legislation ... by voting for a convention." These exhortations had some effect. On election day 332,119 votes were cast for and 69,738 against calling a convention. However, about 150,000 voters who cast a ballot for auditor-general did not vote in the referendum. Only two counties, Berks and Greene, reported a majority opposed to calling a convention. In several other traditionally Democratic counties, such as Montgomery, Fayette, Lehigh, and Northampton, substantial opposition to a convention manifested itself in the election returns. But it would be wrong to assume that the Democratic party throughout the state opposed a convention. For instance, both York and Luzerne gave a ten-to-one majority for a convention, and Columbia County recorded only thirty-eight opposition votes to 3,835 in favor. Both Philadelphia and Allegheny counties gave substantial majorities for calling a convention. The movement for constitutional reform had won a decisive victory.

The election of October, 1871 returned the Republicans to control of the Senate by a one-vote majority. They also increased
their majority in the House. But on October 23 George Connell, a Republican Senator from the fourth senatorial district in Philadelphia, died.\footnote{Public Ledger Almanac for Years 1870, 1871, 1872, 1873 (Philadelphia, 1873), pp. 164-168.} In the special election held on January 30, 1872, Henry Gray, the regular Republican candidate, was declared the winner over Alexander McClure, who had carried on a vigorous campaign as an independent concerned with political reform.\footnote{Contested Election McClure against Gray (Philadelphia, 1872), “Minority Report,” p. 30.} McClure contested the seat before the Senate and a committee was appointed to investigate the election. The committee was formed in this manner: the Senate elected White, Munnas, and Fitch, Republicans; and Dill, Buckalew, and Davis, Democrats, and then chose a seventh member by lot. This proved to be Brodhead, a Democrat. On March 27, after conducting extensive hearings in Philadelphia, the majority report of the committee declared McClure elected.\footnote{Ibid., “Majority Report,” p. 22.} He was sworn in that same day. This result meant that a combination of sixteen Democratic votes and that of the independent, McClure, could determine the decisions of the Senate. It meant also that the combination of Buckalew and McClure could exercise a strong influence in forming the legislation which would provide for the election of delegates to the constitutional convention.

Geary presented his annual message to the legislature on January 3, 1872. He called upon the lawmakers to provide the necessary machinery for the assembling of a convention. As in 1871 he concluded:

> A careful revision of our fundamental law, by men qualified for that duty, is imperatively demanded by the highest consideration of public welfare.\footnote{Pennsylvania Archives, Fourth Series, IX, 75-76.}

However, on this occasion there was no editorial comment on this phase of the Governor’s message. The newspapers were too much concerned with Geary’s attempt to explain his involvement in the Evans war claims scandal to give much attention to his interest in constitutional reform.

The legislature of 1872 had to adopt legislation providing for...
the election of delegates, defining the powers of the convention, establishing the compensation of the delegates, and deciding the day on which the convention would begin its work. The first of these problems involved a basic political problem—to what degree was the apportionment of the convention delegates to be organized so as to equalize the representation of the two major parties?

On the first day of the session David White, Republican of Allegheny County, offered a resolution in the House instructing the speaker to appoint a special committee on constitutional reform. The following day the newly-elected speaker of the Senate, James Rutan, declared in his opening address:

> Important duties are to be performed during the session now opening, the first of which is to provide for an election of delegates to a convention to amend the State Constitution in obedience to the overwhelming voice of the people expressed at the ballot-box. Many reforms are demanded, such as prohibitory (sic) local legislation, improvement of our judiciary system, and regulating representation, that can only be secured by an amended constitution. There should be no delay in passing a bill calling this convention.\(^5\)

Political controversy enveloped the bill reported by David White’s committee to the House on February 15.\(^5\) This bill provided that the election of delegates was to take place on May 14, 1872, and that the convention was to meet in June to effect its organization and then return in November so that its work would be completed by January 1, 1873. It also provided for ninety-nine delegates: thirty-three were to be elected at large, each voter being permitted to vote for eighteen; sixty-six were to be elected from the existing thirty-three senatorial districts, each voter to vote for one candidate. Thus, through the use of the limited rather than the cumulative or free vote, minority representation would be provided for and the better men of each party from all sections of the state would be elected to the convention.

No sooner had this bill been read in committee of the whole than William Elliott, now the Speaker of the House, offered a

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\(^5\) Philadelphia Public Ledger, January 3, 1872.

substitute which, in effect, was a new bill. This proposal called for the election of delegates in October, 1872 and the convening of the delegates on April 15, 1873. The voters were to elect delegates on the basis of the existing senatorial and assembly districts. The convention was empowered to prepare either a new constitution or amendments to the existing constitution. One-third of the delegates were to be permitted the right to require the separate submission of any article or section of the proposed constitution. The ratifying election was to be conducted as the general elections of the state were then being conducted.

No committee chairman could be treated more cruelly than was David White on this occasion. Control of the matter given to his committee was taken from him, his bill was set aside in favor of another, and all this was carried through by the majority party of which he was a member. The reason for this action is clear. White wished to provide for a convention which would not be dominated by one party and for a convention in which would sit the better men of both parties from all sections of the state. This goal required the use of some plan of minority representation. The House Republican majority was opposed to both principles. By basing the convention apportionment upon existing districts, they could reasonably expect to elect a decisive majority of Republican delegates. Moreover, they could prevent the election of Democratic delegates from cities such as Philadelphia and Pittsburgh and from certain counties. To achieve this end they were willing to accept complete Democratic control of delegations from other counties. The debate which followed the reading of Elliott's substitute was bitter and filled with partisan feeling, but the Republican majority stood firm behind Elliott, and his substitute was accepted by the committee of the whole.

The House resumed its consideration of this bill on February 19. Several efforts were made to amend certain of its provisions—to substitute a May election for the October election, to permit the people to elect women delegates, to increase the number of delegates, and to provide some plan of minority representation. But these efforts failed. The bill passed on second reading, the

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The Senate did not begin its consideration of the House bill until March 13, because of the absence of Buckalew and other Senators who were conducting hearings in Philadelphia on the McClure-Gray election contest. On this day the Senate went into committee of the whole to debate the troublesome matter of apportionment. A different atmosphere prevailed in this debate from that which had marked the proceedings of the House. Harry White suggested an amendment to section one of the House bill, to provide for 131 delegates, ninety-nine to be elected either by the limited or cumulative vote in the senatorial districts and thirty-two to be elected in the state at large by the limited vote. White's plan would provide for minority representation from the state at large and from each convention district. Billingfelt renewed his effort to provide an equality of party strength in the convention. He would have 132 delegates elected from the state at large, with each voter permitted to vote for sixty-six candidates. It must be noted that the White proposition could have made possible control of the convention by a majority party, while the Billingfelt proposal would have divided the convention equally between the two parties. The Senate took no action on this day.

But the next day with Buckalew present the Senate perfected its bill. As to apportionment it agreed to a convention of 158 delegates: twenty to be elected from the state at large, each voter to vote for no more than ten candidates; six to be elected from Philadelphia at large, no elector to vote for more than three; and 132 delegates to be elected from the existing senatorial districts, four delegates per district, each voter to vote for two. The date of the first meeting of the convention was set at the second Tuesday of November. Two amendments offered by William Wallace were accepted: the first preserved inviolate the ninth article, the Bill of Rights, of the existing constitution, and the second forbade to the convention the power to establish any courts of exclusive equity jurisdiction. Another amendment proposed by Buckalew was accepted; this gave to the convention the power to determine...
the time or times and manner in which its proposed amendments would be submitted to the people. This addition proved later to be of great significance; it was to be crucial in making possible the ratification of the new constitution. The bill also provided for filling vacancies in the convention by leaving these appointments to the delegates-at-large of the party to which the former delegate had belonged. But the House refused to consider the amendments which the Senate had made to its bill.62

In an effort to end the deadlock between the two houses the bill was referred to a conference committee. David White was not appointed to the House delegation because he had voted with the minority in opposition to the Elliott bill. Two proposals came from the conference committee. The first was refused by the Senate on April 1.63 Among other things, it would have provided for the election of three delegates from each senatorial district without provision for minority representation. This proposal was strenuously opposed by Buckalew and Billingfield as making possible political control of the convention and denying representation in the convention to the political minorities of the various counties. The Senate instructed its representatives to the committee to stand firm for this principle and also to secure approval of a provision which would make the secretary of the commonwealth a member of the convention. But the next day the House refused a measure which contained the provisions which the Senate had insisted upon.64

The conferrees returned to their work, and on April 3 both houses agreed by substantial majorities to another compromise measure.65 It provided for the election of 133 delegates by use of the limited ballot. Twenty-eight were to be elected from the state at large, each voter to vote for no more than fourteen; six were to be elected from Philadelphia at large, each voter to vote for no more than three; and ninety-nine were to be elected from the senatorial districts. Of the latter number nine were to be elected from Allegheny County with each voter entitled to vote for six candidates, and six were to be elected from Luzerne County with each voter to vote for four; and three were to be elected from the remaining sena-

62 Ibid., p. 885.
63 Ibid., pp. 1047-1049.
64 Ibid., pp. 1076-1079.
65 Ibid., pp. 1090-1092 for Senate action, and p. 1117 for House action.
Editorial comment in one newspaper on the enactment of a constitutional convention law was considerably less than enthusiastic. This editor congratulated the legislature upon passing this act, but he also pointed out to his readers that this action had been obligatory upon that body. Another editor reminded his readers that there was nothing partisan in the questions to come before the convention. The next task for all voters would be to elect the best possible men of both parties as delegates to the convention.66

On Wednesday, April 10, the Republican party held its annual state convention.67 William Mann of Philadelphia served as chairman of the convention, which selected delegates-at-large to the constitutional convention. The following men were nominated for that office: William M. Meredith and J. Gillingham Fell of Philadelphia, William Lilly of Carbon, Lin Bartholomew of Schuylkill, H. N. McAllister of Centre, William H. Armstrong of Lycoming, William Davis of Luzerne, James L. Reynolds of Lancaster, Samuel Dimmock of Wayne, George Lawrence of Washington, David N. White of Allegheny, William H. Ainey of Lehigh, and John H. Walker of Erie. Harry White was nominated by the convention for both congressmen-at-large and delegate-at-large. He gave up the former nomination in order to accept the latter.68

The convention also adopted a resolution congratulating the people for calling a constitutional convention and urging the election of district delegates "committed to the policy of incorporating in that instrument a clear and decisive prohibition of special legislation."69

On May 21 the Citizens Municipal Reform Association of

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66 Pittsburgh Gazette, April 10, 1872.
67 Philadelphia Public Ledger, April 11, 1872.
68 Ibid., July 27, 1872.
69 Ibid., April 11, 1872.
Philadelphia held a convention in which it nominated a slate of
candidates for local offices to be filled in the October election,
and in which it called upon the people of Philadelphia to elect
incorruptible men to represent their city in the forthcoming con-
stitutional convention. A resolution was adopted which called
upon the convention "to so limit the powers of the Legislature
as to relieve us from a tyranny which is rapidly destroying all
semblance of local self-government." The convention did not
nominate candidates for the office of delegate from Philadelphia,
but it did suggest that men such as Eli K. Price, George W.
Biddle, John O. James, and John C. Bullitt would make worthy
delegates.

On May 31 the Democratic State Convention made its nomina-
tions to the office of state delegate-at-large to the constitutional
convention. Among the nominees were several of the leaders of
the party of the recent past as well as younger men with newly-
won local reputations. The nominees included George W. Wood-
ward, Franklin B. Gowen, John H. Campbell, and George Dallas
of Philadelphia; Jeremiah S. Black of York; William Bigler of
Clearfield; William Baer of Somerset; William Smith of Al-
legheny; Samuel Reynolds of Lancaster; James Ellis of Schuyl-
kill; S. C. T. Dodd of Venango; Robert Lamberton of Dauphin;
Andrew Purman of Greene, and William Corbett of Clarion. The
convention failed to make any reference to the cause of constitu-
tional reform in its platform.

Neither the State Labor Reform Convention, which met at
Williamsport on May 7, nor the State Temperance Convention,
which met at Altoona on June 14, made reference to the approach-
ing constitutional convention in their platforms, nor did they
nominate candidates for state delegate-at-large.

Colonel Francis Jordan, the secretary of the commonwealth, be-
came an important spokesman for constitutional reform in the
winter of 1871-1872. In September, 1871, as the referendum on
calling a convention was approaching, a letter was forwarded to
him by a bipartisan committee of prominent Philadelphians who
asked him to describe "some of the most notorious cases of official

\textit{Ibid.}, May 22, 1872.

\textit{Ibid.}, June 1, 1872.

irregularity, of which you are cognizant, and which would be potent arguments in favor of calling a 'Convention of revision.'”

Among the signers of the letter were several men prominent in the life of Philadelphia and active in the affairs of the Citizens Municipal Reform Association: Morton McMichael, Henry C. Lea, Daniel M. Fox, Charles Gibbons, and George Biddle.

Jordan’s reply was dispatched from Harrisburg on September 30. He held that constitutional reform must not be permitted to become a party issue. He suggested that two types of proposed reforms could be described: the first consisted of suggestions about which much difference of opinion already existed; the second included proposals about which considerable unanimity of opinion would develop once the facts were fully understood. Among the latter were the deletion of the word “white” in describing the qualifications of voters and the provision of an article clearly establishing a public school system. Among the former Jordan listed proposals to increase the number of legislators, to limit the legislature to biennial sessions, to provide for minority representations, to eliminate the October election, to modify the pardoning power, and to place further restrictions upon corporations.

He added that constitutional revision was necessary because the state had outgrown the Constitution of 1838. Indeed, its seventeen amendments had been laid as a patchwork upon the original document. Revision was needed to systematize and harmonize as well as to add new provisions. Certain evils could be dealt with only by a convention: the corruption which accompanied the annual election of the state treasurer, and “the great and gigantic evil of the day—special legislation.” Jordan suggested these solutions: the state treasurer should be elected by the people, the governor should be provided with an item veto to strike out obnoxious provisions of general appropriations bills, and local and special legislation should be prohibited in all cases where the same ends could be attained by general laws. The letter concluded with this statement:

“For these reasons, and for many others which might be presented did time and space permit, I cordially and


Ibid., pp. 25-39.

Ibid., p. 30.
earnestly unite with you in an appeal for constitutional reform; and demand it as early a day as is consistent with the respectful regard for the due forms of law.\textsuperscript{70}

Several months later, on February 15, 1872, while the legislature was working upon a measure to provide for the election of delegates to the convention, Jordan delivered an address on constitutional reform to the Social Science Association of Philadelphia.\textsuperscript{77} This same address was later presented to the Pittsburgh Law Association on April 30.\textsuperscript{78} In proposing thirteen specific reforms Jordan covered much the same ground as in his letter. However, he did make other observations. He held that the forthcoming convention should build upon the existing constitution, “making only such alterations and improvements as time, experience, advanced intelligence and expansion have made necessary.”\textsuperscript{79} Interestingly enough, he devoted most of his attention to minor reforms: amendment of the sinking fund sections of the existing constitution, changing the time of electing aldermen and justices of the peace, fixing the compensation of members of the General Assembly in the constitution, changing the regulations for filling vacancies in the legislature, providing a different mode of choosing the speaker of the Senate, and increasing the residence requirements of electors from ten to thirty days in an election district. But he did not hesitate to demand that “some further guarantee against fraud and peculation must be incorporated into our organic law.”\textsuperscript{80} He described his society in these terms:

We live in a mercenary age. The besetting sin of our day is covetousness, and especially as manifested in the making haste to be rich. This is the corrupt fountain whence issues a stream of poison throughout the whole body politic. Robbery by violence is not more frequent than heretofore, in proportion but to our population; but embezzlement, peculation, and all the varied forms of fraud are rampant everywhere.\textsuperscript{81}

He called upon the convention to make these reforms:

All frauds at elections should be punished by disenfranchisement of the perpetrators; and all embezzlements and

\textsuperscript{70} Ibid., p. 39.
\textsuperscript{77} Philadelphia Public Ledger, February 16, 1872.
\textsuperscript{78} Pittsburgh Gazette, May 1, 1872.
\textsuperscript{79} F. Jordan, Statistical Information, pp. 41-42.
\textsuperscript{80} Ibid., p. 52.
\textsuperscript{81} Ibid.
peculations should thereafter exclude the wrong doers from all offices or posts of honor, trust or profit.\textsuperscript{92}

On June 25, 1872, the views on constitutional reform of Eli Kirk Price, a distinguished citizen of Philadelphia, were published in that city.\textsuperscript{88} Price had long been a leader in civic affairs in Philadelphia. He had played a prominent role in the passage of the Consolidation Act of 1854 which made the City of Philadelphia coextensive with the County of Philadelphia. The Citizens Municipal Reform Association had asked him to suggest proposed amendments to the constitution. His proposals were contained in a letter sent to Henry C. Lea, who was then serving as chairman of the executive committee of the C M R A. These proposals were concerned with municipal government. They were meant to provide safeguards against municipal corruption and legislative interference with local government.

In his letter Price suggested three unique needs of cities: the first would be “stability of charter against sudden changes by the legislature, actuated by politics or corrupt motives”;\textsuperscript{89} the second would be prompt judicial protection against municipal corruption; and the third would be strict safeguards of the large sums of money which cities must raise and spend for vital public improvements and services. Among the specific amendments which he suggested were the following: the division of cities into wards of contiguous territory, possessing as nearly as possible an equal number of taxable inhabitants; limiting the power of the General Assembly to alter or repeal a city charter except by a two-thirds majority of its members; a complete prohibition upon the creation of public commissions; placing safeguards about borrowing of money; establishing a sinking fund inviolably pledged to the repayment of loans; and granting to each city council power to investigate the transactions of every municipal department or commission.\textsuperscript{85} These proposed amendments were meant to enable a municipality to deal with various conditions which had plagued Philadelphia in the postwar years.

The election of delegates to the constitutional convention aroused

\textsuperscript{92} Ibid., p. 53.
\textsuperscript{88} Philadelphia Public Ledger, June 25, 1872.
\textsuperscript{89} Jordan, Statistical Information, p. 20.
\textsuperscript{85} Ibid., pp. 20-23.
little interest in the 1872 election. This is understandable as one recalls the tremendous popular feeling engendered by the presidential and gubernatorial struggles of that year as a coalition of Democrats and Liberal Republicans sought to unseat the Simon Cameron-led Republicans. Then, too, it must be remembered that the composition of the convention had been determined largely by the nomination of the state and district party conventions. Because of the limited vote there was no contest for election of the state delegates-at-large or of the Philadelphia delegates-at-large, and because of the established supremacy of one party in the various senatorial districts there was little question as to who would be the majority and minority delegates from each district. As a consequence organized activity on behalf of various candidates for election to the convention was non-existent.

On election day, October 8, the Republican party won a decisive victory. The Republican candidates for state delegate-at-large ran about 45,000 votes ahead of the Democratic candidates. The aggregate vote for the state delegates-at-large was about 663,000 votes, which compared favorably with the total of about 672,000 votes cast in the gubernatorial election. The voters elected sixty-nine Republican, sixty-one Democratic, and three Liberal Republican delegates to the convention. The three Liberal Republicans were former Governor Andrew Gregg Curtin of Bellefonte, T. H. B. Patterson of Pittsburgh, and Gideon W. Palmer of Luzerne County. Curtin had been given a place on the Democratic slate of candidates for state delegates-at-large when William Bigler had withdrawn in his favor. Their landslide enabled the Republicans to improve upon the pre-election estimates of a three-vote Republican majority in the convention.

The personnel of the convention had been chosen. On November 12 it convened in Harrisburg to begin its work.

86 Philadelphia Public Ledger, October 22, 1872.
87 Ibid., September 27, 1872; and William H. Bigler Papers, Bigler to Curtin, October 23, 1872, and Curtin to Bigler, October 28, 1872.