A VALUABLE ACQUISITION IN CONGRESS:
THOMAS MCKEAN, DELEGATE FROM
DELAWARE TO THE CONTINENTAL
CONGRESS, 1774-1783

BY G. S. ROWE*  

ABBÉ RAYNAL once observed that the most substantial strides toward American independence and the creation of a permanent foundation for freedom had been made less by visionary, passionate, and mercurial revolutionaries than by tenacious and methodical men. He was not particularly surprised by this development. The history of republics had convinced him that, while the "multitude have almost always great impetuosity and heat at the first moment," the political, social, and moral struggles leading to the betterment of mankind invariably had been directed by "a small number of chosen men, qualified to serve as chiefs." In such men, he concluded, "... reside those constant and vigorous resolutions which march, with a steady ... step, towards some great and worthy end, never turning ... from the path; and never ceasing, most stubbornly to combat all obstructions that they meet with from fortune, ... misery, ... and man."

Among those of the American revolutionary generation who most stubbornly pursued policies in the interest of independence and union, few were more dedicated than Thomas McKean. Blessed with neither the sense of history nor the talent of a Jefferson or John Adams, McKean was nonetheless among the best of a second line of leaders who utilized their abilities to the utmost in the service of the young nation. His experience encompassed much of the political and judicial history of Pennsyl-

*The author is an Assistant Professor of History at the University of Northern Colorado.

vania and Delaware in the three decades prior to the ratification of the federal constitution. Most of his involvement in the events surrounding the creation of the new republic, however, stemmed from his tenure as a delegate from Delaware to the Continental Congress, a tenure that extended, save for one year, from 1774 to 1783. McKean's career in Congress provides more than a substantiation of Raynal's observation. It furnishes insight into a variety of forces at work in revolutionary America. Because he was the chief judicial officer in Pennsylvania during the greater part of his congressional service to Delaware, his story sheds light on the eighteenth-century practices of pluralism and non-resident representation. His behavior is accordingly of interest to the historian examining the nature of American representation, and its evolution under the impact of revolutionary exigencies. Equally important, McKean's career provides a convenient example against which to test recent assumptions concerning the structure and motivation of factions within the Continental Congress.

Although McKean's name is indelibly linked to the political events of Delaware's revolutionary and immediate post-revolutionary years, he was not a native of that state, nor was he, after 1775, a permanent resident of the Lower Counties. Born in Chester County, Pennsylvania, and educated at Francis Alison's New London Academy, he moved to Delaware in 1750 at the age of sixteen to live and study law with his cousin, David Finney, a practicing lawyer with a substantial law library. David's father, Dr. John Finney, was a man highly esteemed by the proprietary governor and a holder of reputable offices in New Castle's political and military life. The opportunities afforded McKean by his association with the Finneys combined with his own perspicacity and resourcefulness to quickly draw to him an impressive number of public offices, a lucrative law practice.

and, if we can believe his later recollections, not a little envy from his less aggressive colleagues at the bar.  

When Delaware joined with other colonies after 1763 in protesting imperial policies McKean, by then a prominent figure in the Delaware Assembly, played a leading role. He represented his colony in the Stamp Act Congress, acted on its committee of correspondence, and sought to create the local sentiment necessary to align Delaware with the most advanced Whig program emanating from the Continental Congress. He, as much as any other individual, was responsible for securing Delaware's official commitment to independence in July of 1776. Even after moving his permanent residence to Pennsylvania and becoming that state's first chief justice, he continued to serve Delaware, working "double-tides" as he called it, for he provided leadership in that state in September of 1777 following the capture of its president by the British, and he remained a member of its Assembly until 1779. More important, until America's independence was assured, he remained Delaware's principal voice in the national government.

Delaware was fortunate in securing McKean's services in Congress after 1774. Much to the exasperation of the congressional leadership, Delaware, despite its proximity to the Congress, found it impossible to maintain adequate representation in that body. Not only did its small population produce few truly qualified, experienced men, and its limited resources render it difficult to compensate adequately those who did serve, but a tradition of plural office holding made it inexpedient for men to assume the added responsibilities demanded of congressional

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3 Rowe, "Thomas McKean," chapter 1. McKeans own assessment of his early career can be found in his autobiographical sketch, McKeans Papers, Historical Society of Pennsylvania.

4 McKean represented New Castle County. Beginning his legislative career in 1762, he became an important figure in that body almost immediately. His activities there can be followed in Thomas McKeans and Caesar Rodney, eds., Votes and Proceedings of the House of Representatives of the Government of the Counties of New Castle, Kent and Sussex Upon Delaware at a Session of the Assembly held in New Castle on the 20th Day of October, 1762 (Wilmington, 1930), and the records for the years between 1765 and 1770, edited by McKeans and George Read. McKeans used the nautical expression to describe his two jobs in a letter to Caesar Rodney, April 28, 1778, in George H. Ryden, ed., Letters to and from Caesar Rodney, 1756-1784 (Philadelphia, 1933), 265.
delegates, and frequently exhausted those who tried.5 Nonetheless, another factor—political apathy—accounted as much as did any factor for Delaware’s conspicuous laxity in promoting and maintaining effective representation in Philadelphia. “Such in our State do not incline to serve,” Nicholas Van Dyke admitted to McKean in 1781,

and altho I believe they desire the Welfare of America, yet I can not help saying that they prefer their own Ease & Interest to the Promotion of the good of their Country by Exertion which might be in a degree incompatible with such Ease & Interest.6

That these were in Delaware but “. . . few to be found that are possessed of great talents, who will devote them(selves) entirely to the public service solely for the public benefit . . . ,” came as no revelation to the over-worked McKean.7

Some men, when called upon to serve, simply refused. Most, however, remained content to bemoan their own limitations, to protest the inconvenience of service in Congress, and to view McKean as the palliative for Delaware’s representational woes in Philadelphia. Samuel Patterson expressed to Caesar Rodney what soon became, if it were not already, a commonplace sentiment: “I will push McKean,” he wrote, “. . . he will not refuse”8 To the chagrin of his enemies and the relief of his friends, he never did. In McKean one finds a type of individual whose ambition for office and craving for power and adulation is so intertwined with a personal sense of obligation to public service that he himself could rarely distinguish the primary motivation behind his quest for office.9 Despite a sincere desire after

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6 Nicholas Van Dyke to McKean, February 14, 1781, McKean Papers.
Van Dyke was referring specifically to John Dickinson and George Read.
7 McKean to John Dickinson, December 25, 1780, McKean Papers.
8 James Sykes to George Read, September 10, 1777, in William T. Read, The Life and Correspondence of George Read (Philadelphia, 1870), 162; Samuel Patterson to Caesar Rodney, August 17, 1778, in Ryden, Letters, 280. Patterson’s comment actually referred to pushing McKean for a seat in the Assembly but it typifies Delaware Whig attitudes towards his willingness to serve.
9 McKean never admitted seeking an office. If one believes his letters and autobiographical sketch, he merely agreed to serve in various offices when
1779 to curb his activities in Congress in order to devote his full
energies to his judicial duties and his growing family, an in-
clination that increased with the years, he did not refuse when
year after year Delaware turned to him to serve it in the na-
tional government.

The historian of the Continental Congress correctly described
McKean's attendance after 1777 as "irregular." The demands of
his judicial post frequently prevented him from attending Con-
gress, and he often neglected congressional matters. In addition
to normal judicial obligations, the chief justice, accompanied by
several judges and lawyers, rode the circuit twice a year for
periods sometimes lasting several months, administering to the
judicial needs of the Pennsylvania backcountry. Non-judicial
concerns similarly distracted McKean from congressional affairs,
for revolutionary circumstances in Pennsylvania encouraged an
ad hoc response on the part of that new state government to
the problems confronting it, and the judiciary, smaller and
consequently often more efficient, was able to act more decisively
than either the Assembly or the Executive Council. It thus drew
to itself functions that would in more normal times have re-
ained with the other departments. McKean's influence and
prestige as chief justice, bolstered by his many important com-
mittee assignments in Congress, aided in the gradual increase of
power by the judiciary.10

Yet even with his "irregular" attendance in Congress and the
proliferation of his duties in Pennsylvania, in contrast to his
Delaware colleagues in the Congress, he exhibited a conscientious
concern for his duties, frequently at the expense of health and
family tranquility. More often than not, when he was absent
Delaware went unrepresented in the national government. Of
the 478 congressional votes recorded for Delaware between 1778
and 1783, he participated in 343, or 74.7 percent, and in 40.4
percent of Delaware's votes in the same period, he cast the
only vote attributed to his state. In 1780 and 1781 alone, of the

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10 Edmund C. Burnett, ed., Letters of Members of the Continental Con-
gress (8 vols., Washington, 1921-1936), III, lii; Rowe, "Thomas Mc-
Kean," 2-179; John M. Coleman, "Thomas McKean and the Origin of an In-
119 votes cast by Delaware delegates, 90 were single votes and he cast 75 of those. He participated in 104 of the 119 votes recorded. It was no doubt with such facts in mind that John Dickinson, president of Delaware in 1782, pressed for a drastically new system of representation.\textsuperscript{11}

If Delaware Whigs looked with favor upon McKean's willingness to work "double-tides," there were those in Delaware—and in Pennsylvania—who did not. The opposition to him in Delaware was based on local considerations rather than on any concern with his Pennsylvania connections. Some antipathy was personal and dated from the period preceding the imperial crisis. Much of the opposition, however, stemmed from his response to conditions following 1763. Provoked by his early commitment to the more radical Whig programs in Congress between 1774 and 1776, and stung by his recent opposition in Delaware's constitutional convention, conservatives used their strength in the new state government to deny him his congressional post between November of 1776 and December of 1777, when they named John Evans and John Dickinson in his stead.\textsuperscript{12} The very conservative never reconciled themselves to his serving in Congress, but the more moderate among them—men like George Read and Dickinson—recognized McKean's value to the state.

Opposition in Pennsylvania to McKean's dual roles stemmed as much from constitutional grounds as from political considerations. Those most responsible for the creation of the Pennsylvania constitution of 1776, and those most ardently in support of it, found themselves in a quandary, for as advocates of a one-man, one-office ratio, and the concept of rotation in office as essential for a truly democratic government, they were faced with a flagrant violation of those principles by a man who had been a vital factor in their success. McKean's acceptance of the chief justiceship in July of 1777, when prominent men were seeking to render the government stillborn through a boycott of their services, had given a substantial boost to radical hopes for survival. Ironically enough, those in opposition—the Repub-

\textsuperscript{11} Votes were not systematically recorded in the Journals until 1778. I have counted all votes even when in some instances votes were somewhat repetitious. For Dickinson's move, see Minutes of the Council of the Delaware State, 1776-1792 (Wilmington, 1886), 700.

\textsuperscript{12} Caesar Rodney was also left out. Cf. Ryden, Letters, p. 135n.
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licans—conceded the right of a public figure to more than one office and lent their support to the harassed chief justice. Pennsylvanians were thus treated to the spectacle of watching supporters of the constitution fulminating against their own chief justice while their political enemies rallied to his defense.  

It was with McKean primarily in mind that the Constitutionalist-dominated Assembly in February of 1779 voted 42 to 12 in support of a resolution asserting that the Pennsylvania constitution clearly prohibited anyone from holding more than one public office simultaneously. The bitterness over his pluralism was exacerbated still further in July of 1781 when he accepted the presidency of the Congress while retaining his chief justiceship. "Tenax," writing in the Freeman's Journal, reminded the people of the Assembly's earlier vote against pluralism, especially McKean's pluralism, and argued that the constitution had very wisely guarded not only against the corruption of sinecure, but against the growth of enormous power in the hands of one man, or a few men, by providing that a man should hold no more than one position at a time. The critical article 23 of the constitution which proclaimed that the judges of the Pennsylvania supreme court "shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor . . . hold any other office civil or military," was debated at great length. "Legality" protested that it clearly prohibited McKean from serving in both capacities and asked, "Is it not his duty, as a patriot, to resign his seat in Congress and on the bench, equally tained with impassiable (sic) illegality?" While the Constitutionalists sought to create a precedent for Pennsylvania politics, McKean remained firmly wedded to the practices of the past.

Never one to countenance opposition, nor to rely on others willing to come to his aid, McKean vehemently denounced those seeking to terminate one or both of his careers. In vigorous, albeit strained argument, he observed of the Assembly's vote

against pluralism, that "though every man is obliged to know the laws of the country he resides in, and to square his conduct by them, yet no man is legally bound to know or take notice of any resolve, vote or minute of an house of assembly, unless duly served with a properly authenticated copy..."

He conceded that a chief justice of Pennsylvania could not also be a representative in Congress from Pennsylvania, but article 23 did not preclude, or mean to preclude, that judge from being a member of Congress, of Council, or Assembly from another state. Intensely combative—almost brutally so at times—McKean rejected any though of reducing his commitment to Congress in the face of this criticism, and cavalierly resisted any effort to limit his officeholding. He reminded his detractors that his being a judge while sitting in Congress as a representative from Delaware constituted neither misbehavior nor maladministration of office, thus talk of impeachment was both irresponsible and futile. As he had no intention of resigning either post, the issue at least as far as he was concerned was closed. If the battle against a man holding two public offices simultaneously was to be won, it would have to be won at the expense of someone other than Thomas McKean.  

Even if McKean's opponents were on sound constitutional grounds, few could ignore the conflict arising from his dual roles. Although he scrupulously sought to avoid misunderstanding resulting from his legislative, judicial, and executive powers, and showed a desire in whatever capacity he worked to separate that function from the other two, the nature of his tasks, the tenor of the times, and the character of the man made some confusion and conflict inevitable. In no other instance was the difficulty and bitterness derived from his multiple officeholding more evident than in his confrontation with General William Thompson. He became involved with Thompson when, in September of 1778, Congress was negotiating the exchange of John McKinly, the former president of Delaware and McKean's predecessor in
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that office. Convinced that McKinly was not unhappy with his captivity, McKeen initially dragged his feet in the matter. "I was told the other day;' he wrote Read, "that (McKinly) lodged at Widow Jenkins, along with his old friends Robinson and Manlove, and seemed very happy. . . ." Soon, however, entreaties from Delaware, especially from Caesar Rodney who argued that McKinly, for all his failings, was "... an old man and (could) illy (sic) support himself under the present misfortune,' changed McKeans mind, and on September 14, 1778, he joined Van Dyke in resisting a move to substitute Thompson for McKinly in an arranged exchange.\(^{18}\)

Thompson, captured by the British during Benedict Arnold's Canadian campaign of 1776 and paroled to Pennsylvania, had been watching the exchange of prisoners with considerable chagrin. Eager to return to action and discouraged with Congress' willingness to arrange exchanges for others he considered less deserving, he eventually vented his frustration on McKeen whom he thought was more interested in obtaining releases for Tories like McKinly than patriots like himself. His unhappiness with McKeen continued even after his own exchange had been arranged. On November 18, following confirmation of Thompson's exchange, the two men met in a Philadelphia coffee house. Details of the meeting are highly charged and contradictory, but most witnesses agreed McKeen approached Thompson in good humor apparently under the impression the news of the exchange would be well received. Witnesses agreed, too, that Thompson soon became abusive toward either McKeen or Congress, calling one or both, "damned rascals," and using other "low expressions." The two men then exchanged heated words and a scuffle ensued, one onlooked recalling, "... that McKeen said, aye Strike me if you dare, I will make your heart ake if you do, to which Thompson replied, damn you, I will make your bones ake first." Thompson's subsequent efforts to provoke a duel failed when McKeen protested Thompson "was no gentleman, merely a bully and a brute," but the chief justice made it clear to

\(^{17}\) McKeen to George Read, February 22, 1778, in Read, Read, 299.

\(^{18}\) Caesar Rodney to McKeen and Van Dyke, August 24, 1778, in Ryden, Letters, 281-282; Worthington C. Ford, ed., Journals of the Continental Congress, 1774-1789 (34 vols., Washington, 1904-1937), XII, 912-913. Thomas Robinson and Boaz Manlove were notorious Delaware Tories.
Thompson he would soon have occasion to repent of his conduct.\textsuperscript{19}

As good as his word, McKean reported the incident to Congress the next day. Claiming Thompson's behavior "to be a gross insult to Congress," and "to have a tendency to destroy the freedom of voting in Congress," he left the issue on Congress' doorstep. He was not the only one to take umbrage at the General's actions; Joseph Reed and the Executive Council of Pennsylvania, as well as many members of Congress expressed concern over the treatment meted out by Thompson to a member of their official family. Animated by a desire to maintain its dignity, yet perplexed as to whether it should judge Thompson's conduct as a challenge to McKean, a congressman, or as a challenge to McKean, a state officer, Congress fell to quarreling. If the ensuing investigation clarified anything, however, it established that Thompson was his own worst enemy. He managed to antagonize many in Congress initially critical of McKean's role in the affair, maneuvered himself into a situation where Congress judged him guilty of a breach of privilege, then impulsively libeled McKean in an article printed in the Pennsylvania Packet.\textsuperscript{20} Even so, McKean's response to the whole affair brought little credit to himself; his actions forced Congress to devote precious time to this matter at the expense of more pressing concerns, and they undoubtedly detracted from the offices he held.

The upshot of the Thompson affair—and similar ones involving McKean—was to keep the issue of pluralism alive in the Philadelphia press and to surround McKean in controversy until he left Congress in December of 1782. His tumultuous career as Pennsylvania's chief justice and his explosive personal confrontations with powerful figures in Pennsylvania have obscured his contributions to the legal history and growth of that state. In a like manner the controversies surrounding his simultaneously

\textsuperscript{19} Papers of the Continental Congress, Item 159, No.'s 286-315; Pennsylvania Packet, February 2, 1779. McKean's quote is from Papers of the Continental Congress, Item 159, No.'s 292-293.

\textsuperscript{20} Nathaniel Scudder to Richard Henry Lee, December 9, 1778; Gouverneur Morris to Joseph Reed, April 9, 1779, in Burnett, Letters, III, 523; IV, 152; Pennsylvania Packet, December 29, 1778; Journals, XII, 1146-1148, 1249-1250, 1254-1255. McKean took Thompson and the Packet editor to court and won a judgment of 5,700 pounds. He refused the judgment explaining it was justice, not money, he sought.
exercising power in two governmental agencies while representing two separate states obscured his contributions to the history of Delaware and the national government in the revolutionary years.\textsuperscript{21}

On one level his service in Congress allows the historian some judgment on the nature of eighteenth-century representation, on the degree to which McKean was controlled by, or considered himself restrained by, those wielding power in Delaware. It also furnishes some judgment on whether or not, as Gordon Wood has argued, the relationship of the representatives to the general population changed perceptibly under the impetus of revolutionary developments.\textsuperscript{22} Did McKean’s actions and voting record in Congress accurately mirror the will of the people? The state representatives? Was it apparent that he was influenced by the factional divisions within Delaware? Was there significant disagreement within Congress among Delaware delegates when more than one was in attendance?

As the highest judicial officer in Pennsylvania, a man intimately connected by the nature of conditions in Pennsylvania with the political developments in that state, while representing another state, McKean’s congressional activity is important on another level. Was there a correlation between his voting record and that of the Pennsylvania delegates? Did McKean represent more accurately the voting pattern of Pennsylvania’s Constitutionalist or Republican delegates?\textsuperscript{23} Was there a correlation between the party in power in Pennsylvania and McKean’s congressional posture at any given time?

On still another level it would be instructive to see if McKean allied himself with any particular faction within Congress; to determine his relationship to the two prominent congressional

\textsuperscript{21} Historians have been slow to appreciate the many original contributions made by McKean to the judicial history of Pennsylvania. John M. Coleman treats one aspect of his career in “Thomas McKean and the Origin of an Independent Judiciary,” 111-130.

\textsuperscript{22} Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, 1969); Cf. also Jackson Turner Main, The Upper House in Revolutionary America (Madison, 1967).

\textsuperscript{23} H. James Henderson, Jr., has argued persuasively that there was a significant correlation between party battles in Pennsylvania and those in Congress, that Constitutionalist congressional delegates aligned with one bloc in Congress, Republicans another. “Constitutionalists and Republicans in the Continental Congress, 1778-1786,” Pennsylvania History, XXXVI (April, 1969), 119-140.
juntos: the Lee-Adams faction and the nationalistic group centering around the program of Robert Morris. How wedded to either was McKean? Did allegiance to one preclude support of the other? Was his alignment with or against these factions motivated by forces generally attributed to the partisans and opponents of each?

II

In August of 1774, when the Delaware Assembly chose delegates to the forthcoming Congress, it turned to George Read and the two men—Caesar Rodney and McKean—who nine years earlier had represented that province in the Stamp Act Congress. It is now impossible to determine with precision how active each Delaware delegate was in the political maneuvering which occurred before and during the Congress, or how enthusiastically each endorsed the specific strategems promoted by individuals and groups within the Philadelphia gathering. But what is demonstrable is that once a policy and approach had been formulated and a vague consensus achieved, the triumvirate from Delaware acceded to it regardless of any personal reluctance they might have had. All three signed the Association and the Petition to the King, acts not inconsistent with their directives to redress colonial grievances while making clear Delaware's "... most earnest desire that the connexion, which subsists between Great Britain and her Colonies, whereby they are made one people, may continue. . . ."25

The program emanating from Congress was remarkably restrained in light of the ascendency of the "violent party" there. Though there is little substantial contemporary evidence to connect McKean with the faction noticeable for its "forwardness and zeal," it seems clear that he aligned himself rather early with those delegates whose temper and policies were feared by the followers of Joseph Galloway and John Dickinson. John Adams, closely identified with those attacked by Galloway for their eagerness "... to incite the ignorant and

21 The gathering that chose the three delegates was in reality a convention rather than the Assembly, although its membership was the same. Cf. Ryden, Letters, 7, 43.
22 Ibid.; Journals, 1, 80.
vulgar to arms, and with those arms to establish American inde-
pendence," remembered in his later years that in 1774, when
he became "... acquainted with McKean, Rodney and Henry
... those three appeared ... to see more clearly to the end of
business than any others of the whole body." He recalled never
having voted in opposition to McKean in the first Congress, a
fact confirmed by McKean.26 In all likelihood McKean was privy
to at least some of the maneuvering by "radicals" before the com-
mencement of Congress in September of 1774. He was acquainted
with many involved in the embryonic Lee-Adams faction and
he had attempted in his speeches prior to the Congress to lay
the foundation for an acceptance of an integral part of their
strategy against Great Britain.27 No advocate of independence at
this stage, he nonetheless seemed receptive to a deepening
radicalism.

The proceedings and programs of Congress, restrained though
they were, did not meet with unanimous approbation; many
people harbored fears that they would lead to disaster either
in the form of mob rule on the local level or large-scale mili-
tary conflict with England. The Lower Counties did not escape
the divisiveness elicited by congressional actions, and even as
Congress met, many Delawareans were apprehensive over the
outcome and sought through local elections to check what they
considered an unwise course. The opposition and bitterness
within the three counties continued to mount, rendering obsolete
old political ideas and transforming factional alignments. Amidst
increasing violence over what many though to be the vigilante-
type activities of local committees established to enforce con-
gressional directives, the Delaware Assembly, upon hearing the
report of its representatives on the accomplishments of Con-
gress, unanimously approved their actions and thanked them
for their "judicious & faithful discharge of the trust in them."

On the next day, March 16, 1775, McKean, along with Read and

26 Joseph Galloway, quoted in Merrill Jensen, The Founding of a Nation:
27 Peter Force, ed., American Archives (9 vols., Washington, 1837-1853),
ser. 4, I, 658-662; Rowe, "Thomas McKean," 34-36, 41-47.
Rodney, was reappointed by the Assembly to serve in the next Congress scheduled to convene May 10.28

The instructions drawn to guide the Delaware triumvirate in the forthcoming Congress differed from earlier directives in that the delegates were now to insist upon the equality of the Lower Counties with other governments in Congress. Yet the Assembly remained prudent in its instructions, emphasizing that the three men were to avoid "... everything disrespectful or offensive to our most gracious sovereign, or ... any measure evasive of his just rights and prerogatives." Similarly prudent resolutions were adopted in June of 1775 and March of 1776.29 Although these instructions which accurately reflected the caution of the Lower Counties would govern—should have governed—McKean's conduct in the second Congress, he attended that body as a resident of Pennsylvania. When the Congress commenced in May of 1775, McKean, his wife, and their six children were living in Philadelphia.30

If his congressional instructions encouraged a cautious approach to imperial problems, no such restraints curbed McKean in Pennsylvania politics. By 1775 many Pennsylvania Whigs argued that the most serious efforts to foment and implement resistance to British legislation in that province originated less in the Assembly than in extra-legal committees springing up in opposition to that body. McKean, familiar with Pennsylvania politics and already a prominent figure in Philadelphia law circles, gravitated almost immediately to those groups rapidly undermining the Assembly's position in Pennsylvania life.31 One month before he took his seat in the second Continental Congress, responding to the quickening crisis, he also enlisted as a

28 Force, American Archives, ser. 4, II, 27-28; III, 1072; Thomas Rodney to Caesar Rodney, September 11, 1774, in Ryden, Letters, 46; McKean to Mrs. McKean, March 16, 1775, McKean Papers; Journals, II, 12.
31 Alexander Graydon considered McKean one of the most conspicuous members of the Philadelphia bar by 1774. J. S. Littell, ed., Memoirs of Alexander Graydon (Philadelphia, 1846), 120.
private on the roll of Captain John Little's Company of the Second Battalion of Philadelphia.²²

Between May of 1775, when it reconvened, and July of 1776, when it declared American independence, Congress took full advantage of McKean's talents, resourcefulness, and enthusiasm, naming him to four standing committees and a number of ad hoc ones. Indeed, at one point the ubiquitous McKean was a member of thirty-eight different committees, five of which he chaired.³³ His position on the committees for Accounts and Claims, Clothing, Prisoners, Qualifications, and the Secret Committee enabled him to become intimately familiar with the innermost workings of the national government. It is now impossible to recreate the full range of his activities and the scope of his influence, but even a partial reconstruction suggests a pattern of involvement matched by few of his colleagues. Engrossed as he was with his duties within Congress, he managed to participate in the training of his militia unit, and in August of 1775, became, along with Joseph Reed, George Clymer, and Samuel Meredith, chairman of the Philadelphia Committee of Independence and Observation. The committee's rapid acknowledgement of his ability is attested to by the fact that his involvement in that organization had begun not long before his election to the chair. By January, 1776, he could justifiably complain that he found himself "... almost worn down ... owing to the multiplicity of business."³⁴

It was during this period, too, that McKean's alignment with the more radical or violent element within Congress became more pronounced. Despite John Harvey Powell's suspicion that McKean endorsed Dickinson's approach—in fact, was a key figure supporting Dickinson's program until the critical months


³³ Peeling, "Thomas McKeen," 31. It should be remembered that in most cases the greatest part of the work load for any committee fell on the shoulders of its chairman. Jennings B. Sanders, Evolution of the Executive Departments of the Continental Congress, 1774-1789 (Chapel Hill, 1935), 4-5.

³⁴ Journals, VI, 1063-1064, 1066-1068; Marshall, Diary, 37; McKeen to George Read, January 19, 1776, in Burnett, Letters, I, 319.
of June or July, 1776—Dickinson, who was familiar with the maneuvers in Congress and who worked closely in committee with McKean must have known long before June or July that McKean did not support his efforts. Edward Tilghman told him in early February that "Colonel McKean is a true Presbyterian, and joins the violents... (He is) suspected of independency." Of all the delegates from the "middle states," McKean was probably the most closely wedded by the beginning of 1776 to the program of the "violents." He lent his support to the Canadian military expedition, encouraged the closing of all American ports on an equal basis to stress American unanimity, and pressed the need for obtaining foreign allies. In at least one instance he advocated a program that would have been detrimental to the economic interests of his own colony. He also indicated a willingness to use Congress as a base of power for promoting new state governments where necessary to guarantee a more forceful response to British policies. Outside Congress, as a member of the Committee of Inspection and Observation, he sought to usurp the prerogatives of the Pennsylvania Assembly by helping to arrange for a province-wide conference with powers to lay the ground work for a new political edifice in the state. When this strategem was stalled through a combination of conservatives and timid Whigs, and the more radical forces were defeated in the hotly-contested May 1 elections, he became one of the principal liaisons between radical elements in Pennsylvania and Congress seeking new impetus for their goals.

Congress provided the necessary impetus on May 10, by adopting John Adams' resolution calling upon the "respective assemblies and conventions" of the colonies "where no govern-

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36 H. James Henderson, Jr., "Political Factions in the Continental Congress, 1774-1783" (doctoral dissertation, Columbia University, 1962), 64. McKean's advocacy that Delaware give up its position as a favored colony and put itself on equal footing with other colonies would have at least short range repercussions. Journals, III, 493.

37 Marshall, Diary, 77-78.
ment sufficient to the exigencies of their affairs have been hitherto established' to adopt new governments conducive to the people's "happiness and safety." A preamble to this resolution, adopted on May 15, held that "It appears absolutely irreconcilable to reason and good Conscience, for the people . . . now to take the oaths and affirmation necessary for the support of any government under the Crown," a sentiment Adams thought "independence itself." Whether or not McKean concurred completely with Adams' assessment of the May 10-15 Resolve, he ardently supported it, warning his colleagues in Congress that, "We shall loose (sic) our Liberties, Properties and Lives too, if We do not take this Step." 38

On May 10, James Wilson, clearly perceiving the relationship of the congressional action to the future of Pennsylvania politics, had expressed concern that

if that preamble passes, there will be an immediate dissolution of every kind of authority; the people will be instantly in a state of nature. Why then precipitate this measure? Before we are prepared to build a new house, why should we pull down the old one and expose ourselves to all the inclemencies of the season?39

McKean was prepared to construct a new edifice and did not fear, or perhaps, did not anticipate the inclemencies of which Wilson spoke.40 The day the preamble passed he chaired a meeting "where was debated the resolve . . . respecting the taking up and forming new governments in the different colonies," and supported the calling of still another meeting, this for the State House yard on May 20. He was the principal speaker at the May 20 meeting where he attacked the Assembly, denying its authority to continue or to create a new government. He called upon it to step aside and allow the people to form a

40 That is not to suggest McKean supported all the political and social views held by those most ardently pressing for a revolution in that state, merely their efforts to seek a government more aggressive than the current one in dealing with imperial issues. Cf. Rowe, "Thomas McKean," 67-68.
government of their choice. Following his speech plans were laid for a convention and representatives chosen to take the news to the backcountry. As chairman of the Committee of Inspection and Observation, he implemented the directives of the May 20 meeting by helping to draft memorials to the Assembly and the justices of the Philadelphia quarter sessions calling upon them to bow to the committee's authority. He then traveled to the backcountry—he was in Reading on May 29—to apprise the people there of the May 10-15 Resolve and to act as a special pleader for the committee's actions. There were more important figures than McKean in Pennsylvania's revolutionary movement, but his role was a central one. Benjamin Rush, pleased over the committee's successes, wrote his wife that true Whigs were relying "chiefly upon Colonel McKean and a few more of us for the salvation of this province."

That McKean's activities troubled his Delaware constituents—at least a large portion of them—is clear. Even before Delawareans heard the disturbing news of the resolve's passage many were openly espousing the British cause. Disaffection increased with the acceptance of the May 10-15 Resolution, convincing some Whigs that "... Congress must either disarm a large Part of Kent & Sussex, or see their Recommendation treated with Contempt." Religious divisions exacerbated the political bifurcation, with Anglicans and Presbyterians accusing each other—with ample justification—of using the imperial crisis to achieve domination in Delaware. By June open rebellions existed in Kent and Sussex and McKean was forced to relate the embarrassing news to Congress.

It is somewhat surprising, then, that when on June 14, he hurried to the Delaware Assembly which had begun its delibera-
tions four days earlier, to place before that body a copy of the May 10-15 Resolve, and to plead its case, the Assembly reacted favorably. Despite severe divisions over the measure within Delaware society and within the legislature itself, the Assembly approved it “unanimously,” and accordingly suspended the proprietary government on June 15. No doubt at McKean’s urging, but certainly also animated by Rodney’s acquiescence, the Assembly then initiated new instructions for its congressional delegates, the wording of which, while not directing a vote for independence, allowed for such latitude. That McKean clearly interpreted his instructions as permitting such a vote is attested to by his actions. On July 2 he cast his vote for independence and, by his own account, ensured Delaware’s official commitment to that course by sending for the absent but agreeable Rodney. The action of Rodney and McKean on July 2 did not pervert the Assembly’s directives but it is highly questionable in light of conditions in the Lower Counties both prior to and following America’s declaration of independence that the instructions represented the general will in Delaware. McKean was well aware that the majority of Delawareans disapproved of his conduct. He candidly admitted; he in fact took great pride in confessing that he and his fellow Whigs had maneuvered Delaware toward independence and revolution against the wishes of the majority, an observation given credence by contemporaries in Delaware and elsewhere.

While America’s acceptance of independence meant for his friend, Dickinson, a period of brooding and despair, it was for McKean a time of widening experience and increasing fame. The months following July saw him adding military affairs to his already crowded agenda. On July 5 he chaired a meeting attended by congressional delegates from New Jersey, New York, and Pennsylvania, as well as various Philadelphia political and military figures, to map the defense of New Jersey and Penn-

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4 Ryden, Letters, 91-92. The records note a “unanimous” vote here but it like many other unanimous votes in this period no doubt actually represents a final effort to reflect a consensus after bitter battles had taken place. It is highly unlikely in this case that true unanimity existed.

4 McKean to John Adams, November 15, 1813, in Adams, Works, X, 81-82; Harold Hancock, Delaware Loyalists (Wilmington, 1940), I. For a detailed discussion on McKean’s role in the declaration of independence, Cf. Peeling, “Thomas McKean,” 49-57.
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sylvania. Then, as colonel of the fourth battalion, he accompanied his associates to New Jersey in support of Washington's troops until such time as it would take to organize and supply a flying camp of some ten thousand men. His letters from Perth Amboy suggest a greater anxiety over events in Delaware than those in Philadelphia, a fact somewhat surprising in view of his diminishing social and economic involvement in that state. Of special concern to him was the fate of the convention called for August 29 to create a new state government, for letters from his wife and Caesar Rodney led him to believe his political enemies would dominate the gathering. Although his military obligations made it impossible for him to campaign in Delaware and unlikely that if elected he could serve, the people of New Castle County selected him as one of their delegates. It was with considerable relief that he was eventually able to terminate his military career and to hurry to New Castle at Rodney's urging to confer on potential strategy for the upcoming convention.

A lengthy conference on August 27 with Rodney, who had not been elected to the convention, confirmed McKean's suspicions and raised new fears on his part regarding the structure of the new government and the future of the revolution in Delaware. At stake, too, was his fate and Rodney's in the national government. Desiring to reduce his public obligations, McKean was nonetheless determined to resist any move on the part of his enemies to deny him his congressional seat, telling Rodney that if those in the convention should attempt such a step, he was resolved to "... Try the strength of the County with them Even at the Risk of the Court House." His fulmination and threats—impressive as they were—had little effect on the outcome; the convention quickly produced a constitution he found unsatisfactory, then laid the ground work for a government which, on November 8, chose not to return him to Congress. Another dimension of disappointment was added later when, upon returning to Philadelphia, he discovered that the con-

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"Journals, V, 519-520; McKean to Mrs. McKean, August 7, 1776, McKean Papers. McKean's rise to Colonel had taken a little more than a year. No doubt his rapid military advancement was attributable to his political influence.

"Caesar Rodney to Thomas Rodney, August 28, 1776, in Ryden, Letters, 105.

"Ibid."
The winter of 1777-1778 brought little to cheer Delaware Whigs, the British invasion and the subsequent turmoil having prostrated the judicial system and rendered the Assembly impotent. To mitigate the despair and promote a degree of tranquility and security, Delawareans turned for leadership to staunch Whigs, the Assembly choosing in December of 1777 to return McKean and Van Dyke to Congress, and electing the dependable Rodney in the following March to head the state. McKean had not been idle in the months following his dismissal from Congress in November of 1776. Accepting the post of chief justice in Pennsylvania despite threats and pressure sufficiently real to cow others from taking it, he immediately pursued a judicial course independent enough in respect to Quaker pacifists to antagonize his state government and Congress. He then doubled up on his duties to serve Delaware as president when that state was overrun by the British in September, 1777. In his latter capacity he nearly exhausted himself in an effort to bring order to chaos, all the while being "... hunted to the borders of Pennsylvania, by refugees and emissaries sent out by the enemy. ..." He nevertheless consented to serve in Congress when chosen, later telling Read, "I thought it my duty, though I confess, I am almost tired of serving my country as much at my own expense."50

The administrative changes brought about in late 1777 and early 1778, though helpful, produced few immediate improve-

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49 For McKean's difficulties within the convention, see Rowe, "Thomas McKean," 99-107; Proceedings of the Delaware State Held at New Castle on Tuesday, the 27th of August, 1776 (Wilmington, 1927). It is important to remember that McKean's criticisms were not so final as to preclude his claiming in his later life to have been the sole author of the Delaware constitution. McKean's activities in opposing the Pennsylvania constitution can be partially followed in Marshall, Diary, 111; Pennsylvania Gazette, October 23, 1776.

50 Minutes of the Delaware Council, 165, 168, 207; Rowe, "Thomas McKean," 115-116; McKean to John Adams, September 19, 1777, McKean Papers; Bruniouse, The Counter-Revolution in Pennsylvania, 43; Timoleon (James Tilton?), "The Biographical History of Dionysius, Tyrant of Dela- vare," in Delaware Notes (1958), 95. McKean's own account of his troubles as Delaware's president can be followed in his letter to Adams, dated November 8, 1779, McKean Papers.
ments and even before McKean appeared in Congress on January 30, Delaware Whigs were requesting that he return to instill in their Assembly some much needed energy and vision. It was a plea that was still being made five months later. McKean fully shared the anxiety of his fellow Whigs in Delaware but congressional exigencies—between January 30 and March 27 he was a member of thirteen committees and chaired six others—and his judicial duties in Pennsylvania made any prolonged personal visit to Delaware impossible, restricting his activities in Delaware’s behalf to offering advice. Never was Delaware’s reliance upon McKean’s services more evident than in the first months of 1778. When his role in the Delaware Assembly and in the general political life of the Lower Counties is more fully assessed, the elitist nature of the political environment will be firmly established.

By April he was holding court and attending Congress in Yorktown, a town thought by most Congressmen to be a “...most inhospitable scandalous place.” In the bleakness and isolation that was Yorktown, assumptions that had governed the conduct, structure, and tempo of Congress were calculatedly reassessed and redefined by those few in attendance. Even amid the gloom of April, 1778, the potential for recommitment and reformation was clear. Shaken by deteriorating conditions in Delaware and exhibiting pessimism over congressional problems, McKean nonetheless shared the conviction that a reformation of Congress was both possible and desirable. To this end he sought first to frustrate those in Congress and elsewhere succumbing to British reconciliation efforts, then joined those in the national government urging reforms essential to Congress’ efficacy. Finally, he allied with those seeking a more formidable

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51 Journals, X, 100 ff.; McKean to Read, February 12, April 3, 1778, in Read, Read, 298, 307; Samuel Patterson to McKea, January 8, 1778, McKean Papers; Caesar Rodney to McKea, April 18, 1778, in Ryden, Letters, 261.

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and permanent union among the states. His efforts during this period, exhibiting his customary diligence and indefatigability, convinced Henry Laurens that he was a "... valuable acquisition in congress."  

McKean held in contempt those who would render the revolution stillborn in 1778 by responding sympathetically to the overtures of Lord North and his commissioners. "I am determined never to give up on the Independence of the United States after so much expence (sic) of blood and treasure, whilst I have a breath to draw," he wrote Rodney, "I shall neither be allured nor intimidated into it." He told Rodney that if his sentiments were odious to the Delaware Assembly, it should remove him; if not, it should act quickly to ensure additional representation in Congress to thwart those swayed by the current proposals. Typically, no help was forthcoming, but when Congress stood firm in June, forcing the commissioners to treat with it as they would an independent nation, he rejoiced that he had "... lived to see the day, when, instead of 'Americans licking the dust from the feet of a British Minister,' the tables are turned."  

Individual efforts to promote reconciliation did not terminate with Congress' rebuff, however, and he considered it necessary on June 17, to warn Rodney to guard against letters from the enemy, letters seeking to "... seduce, corrupt and bribe by every method possible." There was little chance such efforts would seduce or corrupt McKean. A man of powerful passions, his antipathy toward the British by this time was total. He called them "... the enemies of mankind," accusing them of "... committing actions of cruelty hitherto unthought of even by themselves, such as murdering old men, ravishing women & little girls, burning houses with the inhabitants in them. ..."  

In part to revivify the war effort McKean supported the assertion of equal American rights to the Newfoundland fisheries in any understanding with England, an issue many thought to be the chief stumbling block to reconciliation. Not only was he intent upon securing this right, but he was anxious to commit...
Congress to a policy whereby if England reneged and undermined American interests in the fisheries after such an understanding was reached, American commissioners abroad would be instructed to conclude treaties with France designed to strip Canada, Nova Scotia and Bermuda from English hegemony. He stressed the need for such a policy in congressional debate on July 29, 1779. Convinced that America must achieve independence and do it on terms conducive to its future prosperity and security, he remained a 'hardliner' on peace terms until the end.56

Of paramount interest to him in 1778-1779 was the relationship of the army to Congress, specifically the issue of military subordination to civilian control. He consistently opposed any concession to military leadership at the expense of civilian checks, and he shared to a degree the fear many held of a standing army. His own experience at Perth Amboy, where he had associated with "... some of the most rude, turbulent, impudent, lazy, dirty fellows ... that (he had) ever beheld," no doubt contributed to his uneasiness.57 Whenever military and civilian authority clashed, he threw himself, whether as a judge or a member of Congress, on the side of civilian supremacy. His enthusiasm in this regard brought him into conflict with such proud and contentious individuals as Count Casimir Pulaski, Nathaniel Greene, Robert L. Hooper, William Thompson and Thomas Proctor, and in none of these contests, though the confrontations were often spectacular in their bitterness, did the vain and resolute McKean come out second best. "You gentlemen of the army hold your head too high," McKean told Proctor after listening to the colonel justify his beating of a Pennsylvania election official, "but I will teach you how to behave. . . . I will bring you down, we shall be overrun else." Whatever it would take to bring them down, he would endure. Even if his actions in this regard exacerbated congressional divisions.58

His preoccupation with civilian control of the army did not spring from a blind hatred of the army, or from an opposition

56 Journals, XIV, 749-752, 851, 896-897, 924-926.
57 McKean to Joseph Reed, August 29, 1780, in William B. Reed, The Life and Correspondence of Joseph Reed (2 vols., Philadelphia, 1847), I, 250. See also his letter to Washington, August 10, 1776, McKean Papers.
58 Rowe, "Thomas McKean," 185-191; the quotation is from the Independent Gazatteer, October 1, 1782.
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McKean neither disliked Washington nor feared him. There is no evidence linking McKean with those intriguing at York against Washington, or with those who later championed his rivals. In fact, he responded favorably in the Spring of 1778 to pressure from Washington to guarantee a more effective army through allocation of officer pensions. Initially disapproving of Congress’ passage of a half-pay provision for a period of seven years following the war, he joined the successful effort in the following year to extend the half-pay guarantee for life. On this critical issue—an issue sharply dividing factions within Congress—he broke ranks with his previous associates.

By nature a reformer, McKean was driven by an almost puritanical zeal to improve society. His enthusiasm for congressional reform at York and after was nothing more than an extension of his concern in Pennsylvania although, eschewing radical innovation, he was certainly no social revolutionary. He was cast instead in a more narrow, conservative mold, a man who would root out of society inefficiency and corruption. No where do we see any intent to destroy existing institutes, to rend the existing fabric, to seriously jeopardize personal and property rights. In one sense, Thomas Rodney’s unflattering description of McKean as a man “... entirely governed by passions, ever pursuing the object present with warm enthusiastic zeal without much reflecting or forecast,” was accurate. Essentially motivated after 1776 by the dual desires to see America’s independence established on a firm republican basis, and to guarantee the salvation of America’s republican experiment by promoting a more moral and responsible society, he voted and associated with anyone seeking similar ends, regardless of how uncomfortable such alliances were in respect to other matters. Because changes in Congress were fundamental to a more aggressive military undertaking, he collaborated with those

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26 Journals, XI, 495, 502-503, XIV, 949; Henderson, “Political Factions in the Continental Congress,” 175. McKean insisted that the national government not the states be responsible for such pensions.

27 Later in his life McKean was fond of saying he “... dislike(d) innovation, especially in the administration of justice; and ... would avoid tampering with constitutions of government, as with edge tools,” but it was true of his earlier life as well. His rhetoric was always more radical than his deeds. McKean to Timothy Pickering, January 14, 1804, McKean Papers, III. The wording here is identical to that used in a letter to John Adams in April, 1787.
pressing for substantial reforms. He was dismayed by the staggering number of congressional failings and complained to Read that "... peculation, neglect of duty, avarice, and insolence in most departments abound."\textsuperscript{61}

His determination to "drag forth and punish the culprits, though some of them are high in ranks," led him to precipitate inquiries into the workings of the Clothier General and Quartermaster departments. He chaired the committee subsequently formed to look into the Quartermaster's activities and he was instrumental in writing that committee's report which vitriically denounced past practices and procedures. He was equally effective in moving for a congressional court holding appellate jurisdiction over all maritime cases, the need for which his judicial duties in Pennsylvania made abundantly clear. He helped draft the commissions for the court's judges once the court was established. He was three times nominated to serve as judge on this court which he had helped fashion, but he failed in each instance to receive the necessary support. He also devoted an inordinate amount of time and energy to matters of congressional finances during this period. At one time he considered selling some of his own lands in order to loan Congress money, but these private thoughts like his public acts concerning congressional money matters came to naught. His ardor for reform in this matter as in others unfortunately far outran his capacity or opportunity to affect it. What with his inconsistent attendance, judicial obligations, and congressional workload, a concerted reform effort on his part was impossible. It was enough merely to appear, do what one could under the circumstances, and go home again. Significant reforms within Congress, when they did occur, were largely the successes of others.\textsuperscript{62}

Any delegate committed to a redefinition of congressional powers as well as to a reformation of its internal structure could not fail to appreciate the implications of the Articles of Con-

\textsuperscript{61} Burnett, \textit{Letters}, VI, 20; McKean to Read, April 3, 1778, in Read, \textit{Read}, 309.

\textsuperscript{62} \textit{Ibid.}; \textit{Journals}, XI, 495, 502-503; XIV, 949, 1002, 1013-1014; XVI, 32, 60, 62, 77, 165, 357; XVII, 165, 519, 604-608; XIX, 312; \textit{Papers of the Continental Congress}, Item 159, No. 22; McKean to Mrs. McKean, July 16, 1779, McKean Papers.
federation to those goals, or to the nature of the American union. Content as the Delaware government was with McKean's enthusiasm for reform elsewhere, it did not fully share his favorable opinion of the Articles. He had been assigned to the committee established on June 12, 1776, to consider the best form of government to be permanently instituted among the states, and although present on June 26, 1778, when a form of ratification was settled upon and also when nine states signed their acceptance of the new government on July 9, 1778, he had not participated in the important maneuvering preceding the adoption of the final plan in November 1777. It is difficult therefore to ascertain his response to Dickinson's original draft or to the changes wrought in that draft under the goad of Thomas Burke. It is clear McKean was eager to affix his signature to the ratification early in 1778 even though Delaware, fearful that the confederation would work against its interests, withheld permission. Upon returning to Congress in January of 1778, he sought to allay fears held by Delawareans in respect to the Articles, patiently explaining to Read his own confidence in the new union, and offering to obtain a satisfactory explanation of any question the people of Delaware might have regarding the Articles. Not personally involved in western land speculation, nor close to those who were, he saw no danger in landed states, telling Read that if a state like Virginia increased its size two things could happen, neither injurious to Delaware. The state would simply assume greatened tax burdens as it grew, or the people within that area could seek to create new, smaller states. In any case, Delaware would have the right to apply for townships in Virginia to satisfy her troops. He made clear to Read his exasperation with Delaware's intransigence in this matter, arguing that the time for serious objections had been in 1776 and 1777 when Delaware had seen fit to send men to Congress who were less energetic and less persuasive than the present delegates. Further delay would serve no purpose. Delaware, convinced by February that McKean was right, changed

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63 Journals, IX, 907-928; XI, 657, 677; Munroe, Federalist Delaware, 97.
64 McKean frequently paid homage to the "people of Delaware" yet it is clear he did not consider many of them worth notice. He often excluded from consideration many "illiterate, ignorant and bigoted" Delawareans, especially those in Sussex.
its instructions and permitted him to sign the Articles on the 22nd of that month.65

When he took his seat in Congress on January 1, 1780, to begin his sixth year in that body, McKean seemed wedded to the interests of the Lee-Adams junto with its essentially radical orientation, a junto only then losing its cohesiveness and impact. His voting pattern closely paralleled such radicals as William Whipple, Samuel Holten, Richard Henry Lee and Samuel Adams. His level of agreement with Pennsylvania Constitutionalists in Congress was also high. In 1779 alone his lowest rate of agreement was with Samuel J. Atlee and even in that case the two men voted along similar lines 73 percent of the time. But such figures can be misleading. McKean's erratic attendance and scattered voting make any systematic quantitative analysis inconclusive, but an examination of his votes does suggest he more often than not—at least on significantly partisan issues such as the fisheries question and the Lee-Deane controversy—aligned himself with congressional radicals.66 On these same issues his conflict with his more conservative colleague, Dickinson, was clear. The two men split Delaware's vote nineteen out of forty-one times in 1779.67

If his voting pattern does not make his allegiance to the Lee-Adams faction abundantly clear, his conduct and personal correspondence during the Lee-Deane wrangling does. As a member of both the Secret Committee which in 1775 initiated many of America's first foreign contacts, and the committee later formed to investigate the actions of American commissioners abroad, McKean was in an excellent position to understand the

65 McKean to Read, April 3, 1778, in Read, Read, 308-309; Minutes of the Delaware Council, 404; Journals, XIII, 236; XIV, 548. Delaware still insisted that the Articles were "unequal and disadvantageous to this State," and that its objections were "just and reasonable." Delaware's other two delegates signed on May 5. Cf. Ryden, Letters, 294.

66 McKean voted with Whipple and Holten 75 percent of the time, slightly less with Lee and Adams. His record against Pennsylvania Constitutionalists included: Boerdeaux, 84 percent (1778) and 78 percent (1779); Clingan, 67 percent (1778) and 75 percent (1779); Searle, 100 percent (1778) and 84 percent (1779); Shippen, 82 percent (1779); Armstrong, 94 percent (1779); Muhlenberg, 89 percent (1779); Wynkoop, 93 percent (1779); and McLene, 92 percent (1779). But he also agreed with the Republican Morris 84 percent of the time (1778). This last figure is based on only fourteen votes. The percentages here were figured on the basis of all votes.

67 Journals, XIV, 791 ff.
issues and personalities involved. His sympathy for the Lees in this affair was obvious, and though he was not present when some members of Congress sought to recall Arthur Lee, it is clear he opposed such a move. "When I reflect on the assiduity, the zeal, the fidelity, the abilities and patriotism of Doctor Arthur Lee," he wrote, "I cannot help deploring his fate and reprobating the ingratitude of Congress." He assured Richard Henry Lee that Arthur Lee had "... many unshaken friends, still remaining in that Body . . .," and expressed the hope that the double dealing, artful pretenders" who opposed him would be "discovered." The Lees reciprocated McKean's admiration, Richard Henry Lee describing McKean as a man "... whom I have found uniformly firm, sensible, and attached to the cause of America upon the best principles." Samuel Adams, closely allied to the Lees, looked upon McKean as one "... who well understands his Duty and is a Gentleman of Spirit." When, in March of 1780, McKean referred to the "virtuous band" in Congress, he meant the remnant of the Lee-Adams faction.

McKean's alignment with the more radical elements in Congress prior to September, 1777, had offended many within Delaware's leadership, but it brought no reproach, at least no official reproach, after that date from Rodney's administration, a government with a distinctly radical bias. McKean's own enthusiasm for the Lee-Adams group was augmented by Van Dyke's when he attended Congress, the two voting along similar lines and seldom voting in opposition to each other when both were in attendance. Because instructions were vague or non-existent except in the case of major issues prior to 1782, there was great leeway in how Delaware's congressional delegates could act.

The fact is, however, that McKean opposed most recall attempts, even those involving members of the Deane-Morris faction, for he thought to remove such men would be to announce American discord and weakness to the enemy. He claimed to have saved Franklin from recall on the basis of his vote, and he later charged his enemies within Congress were deliberately raising the issues of recall when he was away from that body. McKean to Richard Henry Lee, March 25, 1780, Burnett, Letters, V, 95; McKean to William Atlee, November 17, 1779, in ibid., IV, 518.


John H. Powell, "John Dickinson, President of the Delaware State," 17. No modern biography of Caesar Rodney exists and no full-length study of his political administration is available.
This met with McKean's satisfaction; it was consistent with his own view of representation, a concept holding that a delegate's constituents must defer to his judgment—his superior judgment—in all those cases where he had not been specifically directed how to act. Nonetheless, the reasons for Delaware's satisfaction with McKean were obvious. He was attending when others would not. He carried out his administration and clerical duties with alacrity. And in those instances where he aligned himself with the Lee-Adams faction, he did so with the tacit approval of Rodney and his followers. 71

It would be misleading, however, to assume that McKean was blindly bound to any faction or group in Congress. Neither in his judicial capacity nor in his congressional association does one find evidence of a consistently partisan posture despite the vigor with which he often supported individual partisan measures. Indeed, he appears to have grown more independent in his congressional alliances as his judicial stature in Pennsylvania increased. If Republicans in Pennsylvania were convinced he was a thorough-going Constitutionalist, his efforts to establish an independent judiciary, his issuance of writs of habeas corpus to Quakers in defiance of his Executive Council and Congress, his apparent moderation toward those accused of treason, his lukewarm protection for purchasers of confiscated estates, and his judicial opinions regarding Penn's lands suggest it was no blind fanaticism. Similarly, the Lee-Adams faction could not take him for granted. He did not share its enthusiasm for removing Washington, for opposing half-pay measures for life, or its rampant Francophobia. He also blatantly ignored the opinions of Adams and Richard Henry Lee respecting the fate of Pennsylvania Quakers in 1777, and supported Franklin in his efforts to maintain his post against the wishes of many in the Lee-Adams junto. If commitment to the New England bloc was a clue to a man's radicalism, as H. James Henderson contends, McKean failed the test. 72 McKean did associate with congres-

71 Journals, XII, 881 passim. With the exception of Thomas Rodney's rather ambiguous comment on McKean in 1781 (cf. Burnett, Letters, VI, 20), Delaware leaders of both factions had little but praise for McKean. 72 Rowe, "Thomas McKean," chapters vi-vii; Henderson, "Political Factions in the Continental Congress," chapters v-vi. When there were clearcut divisions between New England and Southern blocs in Congress, McKean aligned with the New England bloc 38 percent of the time in 1778.
sional radicals. He certainly proved to be more radical than his colleague, Dickinson. But his overall behavior suggests those who would label him radical must do so fully aware that the term is inadequate to describe the complexity of McKean's response to revolutionary exigencies.

In one sense, Congress itself was becoming more conservative when McKean took his seat in January of 1780. The continuing economic dislocation, a deteriorating civilian morale, the increasing speculation in and out of Congress, and the slothfulness of the military all combined to encourage a change in leadership. The conservative or Nationalist group headed by Robert Morris sought to promote greater efficiency and increased congressional authority through a reorganization of the army and the creation of separate departments of war, foreign affairs, and finance. It also sought to place those departments under private, independent control and to garner influence in those offices to carry out their obligations, a move guaranteed to antagonize many congressmen. Fiscal reform, a vital part of its program, was seen as a means to the larger goal of restructuring the union to the satisfaction of the commercial interests. McKean's reaction to these new currents was inconsistent and colored by his personal distrust of Morris. He endorsed most of the Nationalists' program—their exertions to promote a more effective army, the excise tax, the pension for officers, and departmental reforms—but he complained bitterly of Morris' growing influence. "There are some amongst us," he told Samuel Adams, "who are so fond of having a great and powerful Man to look up to that, tho' they may not like the name of King, seem anxious to confer kingly powers, under the titles of Dictator, Superintendent of Finance, or some such. . ." Power per se did not frighten McKean. He feared it only when it was exercised by those he distrusted or disliked. Typically, he accepted the creation of a department and 69 percent of the time in 1779. A fresh look at McKean's role in the attempt to recall Franklin can be found in H. James Henderson, "Congressional Factionalism and the Attempt to Recall Benjamin Franklin," William and Mary Quarterly, XXVII (April, 1970), 246-267.

of marine but assiduously sought to prevent it from falling under Morris' authority.\(^7\)

It was in July, 1781, during a time that "... the most trifling thing [could] not be done in any department but through Mr. Morris," that the presidency of Congress was offered to McKean. The current president, Samuel Huntington, had asked to be excused because of failing health and the press of personal business.\(^7\) The office was declined by several members before Congress finally brushed aside McKean's protestations that he hoped to retire, and prevailed upon him to accept the post. One cynical observer commented that, "The chair went a begging & many refus'd the dignity: but that must be owing [sic] to a consciousness of their unworthiness—an objection which can by no means apply to the present case." The observation, while accurate to a point, is misleading. McKean's hesitancy in accepting the post was sincere; as late as July 8 he did not anticipate being chosen, nor was he anxious for the additional work. Nonetheless, he took office on July 10, accepting the post on the condition he could step down in time for the October circuit. Ironically enough, among his first tasks was to plead with his own state for more effective representation in Congress.\(^7\)

Although president during the American victory over the British at Yorktown and consequently the recipient of much of the praise and honor elicited by that success—to his delight—McKean's presidency was notable neither for its innovation nor its long-range impact on the office. McKean may have wished to challenge Morris' sway over Congress either because of personal animosity or in the interest of an opposition faction, but there is no evidence he used whatever prestige his office had to that end. If his tenure differed markedly from his predecessors it was in his dedication to the minutia associated with the office and in his capacity for organization. He proved more successful than Huntington in establishing a satisfactory correspondence

\(^7\) McKean to Samuel Adams, July 8, 1781, McKean Papers; Journals, XX, 764-766.
\(^7\) William Irvine to Col. Walter Stewart, August 26, 1781, quoted in Ferguson, Power of the Purse, 119; Papers of the Continental Congress; Presidential Letterbook, Item No. 16, 38.
\(^7\) Joseph Harrison to Mrs. John Lawrence, July 16, 1781, Pennsylvania Magazine of History and Biography, XIV (1890), 82 Burnett, The Continental Congress, 524.
with Washington, sending the General whatever pertinent information came his way as well as his own personal assessment of British strategy. But his efforts to more effectively correlate state and national strategems, despite some tentative steps, eventually came to nothing. Plagued by an Executive Council in Pennsylvania bent on resisting his push for a truly independent judiciary, harrassed by those in Pennsylvania critical of his pluralism, and upset over the lingering illness of a daughter, he found the added duties of the presidency especially onerous.  

Even after a tumultuous two decades as Pennsylvania's chief justice and one term as its governor, he looked back upon this period as one of the most trying of his life. He stepped down from the presidency on November 3, 1781, having extended his original resignation date at the urging of his congressional colleagues.

In his presidential correspondence, McKean frequently exhorted Americans to have faith that the nation was “then at the eve of great Events.” Few in Delaware, even after Yorktown, shared his optimism, however. Conditions there seemed to be deteriorating and its relations with Congress worsening. The promise of an energetic government, the end of anarchy and the creation of an aggressive and disciplined militia looked for in the leadership of Caesar Rodney had by 1781 gone largely unfulfilled. The people of the Lower Counties were still subject to frequent depredations by Delaware loyalists as well as marauders from Pennsylvania and elsewhere. The judicial system, particularly on the local level, was clearly unable to cope with current conditions. The unhappiness in Delaware gave rise to an increasing conservatism. It is not clear that the state government was becoming more responsive to the wishes of the people by 1781, or that the people had forced the state representatives to a closer adherence of their will, but a ragged correlation between the temper of the people and the make-up of the Assembly did continue to exist. Read and his followers,

77 McKean's presidency can be reconstructed from his sources found in the McKean Papers, Papers of the Continental Congress: Presidential Letterbook, Item No. 16, and the Journals.
78 McKean to John Dickinson, June 23, 1800, McKean Papers; Journals, XXI, 1070-1071.
79 Cf. for instance, Burnett, Letters, VI, 196, 198, 206.
always more conservative than the Rodney-Van Dyke coalition in their response to the revolution, seized upon the deepening discontent to affect a change in government. They successfully backed for the presidency of the state John Dickinson whose semi-retirement from politics had allowed him to escape the enemies accruing to more active public figures. Dickinson took office on November 13, 1781, just ten days after McKean resigned the presidency of Congress.80

Thomas Rodney, anticipating the end of his brother’s presidency, concerned with the changing climate in Delaware, and apprehensive over the growing nationalism in Congress, pressed for more states-conscious delegates in Congress. His anxiety did not apparently stem from anything McKean had done—McKean had been the only Delaware representative in Congress after August 20—but rather from a general awareness that in any concerted effort to strengthen the national government, the interests of Delaware must suffer. Dickinson shared Rodney’s desire to promote the efficacy of the state government and to establish a more effective congressional delegation, but with different goals in mind. Whereas Rodney would bolster the state’s power for that end alone, Dickinson viewed such a move as a necessary first step toward ensuring the success of the American union. Dickinson knew that until the individual state governments were vigorous and capable, the American union would remain enfeebled. To bring to Delaware greater stability he instituted an aggressive new program. To secure more effective representation in Congress he successfully advocated a plan whereby four men rather than the usual three would be chosen. Largely at his urging, Delaware on February 2, 1782, chose Philemon Dickinson, Samuel Wharton, Caesar Rodney and McKean as congressional delegates for the year. It was also largely at Dickinson’s prompting that instructions were then drawn up to guide the new delegates, instructions far more comprehensive and restrictive than previous ones.81 This was a move by the Dickinson government to wed the delegates more closely to the Dickinson government, not an outgrowth of a

80 Powell, “John Dickinson, President of the Delaware State,” 7-9, 33-35. A growing conservatism was noticeable in Pennsylvania and other states as well.

81 Minutes of the Delaware Council, 700, 709-710, 713, 715-717.
Some two years before becoming president of Delaware, when he was a congressional delegate from that state, Dickinson had sought clarification from state leaders on his primary allegiance as a member of Congress. He questioned whether or not his intent to “. . . prefer the general Interests of the Confederacy to the partial Interests of Constituent Members, how many soever they be, & however respectable and meritorious . . .” was acceptable to his government. His subsequent career in Congress confirmed his appreciation of priorities as stated to Rodney, and it was clear to all in November of 1781 that his presidency would exhibit a similar inclination. Some of the more radical Whigs in Delaware, including Thomas Rodney, condemned Dickinson’s “new system of Politics,” and raged against the naming of men like Philemon Dickinson and Samuel Wharton to the congressional posts. Wharton, according to the embittered Rodney had “. . . no Knowledge of or connection with the affairs of this State, and perhaps hardly an acquaintance in it except with G. Read. . . .”

Despite the validity of Rodney’s observation, the choice of Wharton and Dickinson was consistent with President Dickinson’s intercolonial emphasis. Given this changing stress, it is interesting to speculate on the motives behind the Dickinson-Read coalition’s retaining McKean in the Philadelphia post. Was his choice—and that of Rodney—merely a sop to the opposition, an effort to reduce factionalism within the state? Were McKean’s views by this time more consistent with those of the new leaders? Or was he merely included because he lived in Philadelphia and would continue to shoulder the burden of attending Congress? It was true that McKean had recently expressed some criticism of Rodney’s administration for the continuing judicial paralysis,

82 Dickinson to Caesar Rodney, May 10, 1779, in Ryden, Letters, p. 301. Cf. also, Powell’s observation that “Dickinson was more an American than a Delawarean or a Pennsylvanian,” in “John Dickinson, President of the Delaware State,” 25.
83 Thomas Rodney to Caesar Rodney, February 9, 1782, in Ryden, Letters, 433.
84 Cf. Munroe’s excellent discussion in “Nonresident Representation in Congress,” 166-190.
but Thomas Rodney remained blissfully uncritical of McKean and it is hardly likely that McKean's drift from an allegiance with Caesar Rodney was so noticeable as to make him a strong ally of Dickinson's policies. After all, Rodney, himself, was named to the Congress.

The fact is McKean was still an ideal representative from Delaware's point of view. Not only had he remained friendly to Dickinson despite their frequent disagreement on issues, but many of the problems separating the men between 1777 and 1780 were no longer important. Even during his alignment with the Lee-Adams faction McKean had remained conservative in matters of personal and property rights. Two factors had been propelling McKean toward a closer alliance with the Morris group in Congress and the Dickinson faction in Delaware. The first was an increasingly federal or centralist perspective brought on by his long tenure in the national government. The second was his growing appreciation of the emergency, particularly the financial emergency, facing the United States after 1779. But McKean's growing conservatism was not the deciding factor in his being retained as one of Delaware's delegates to the national government. It should be remembered that McKean's integrity and fidelity to Delaware had never been questioned by Read or Dickinson even when they opposed many of his policies and methods. It was not surprising, then, that when they dominated the state in 1781 they sought to continue his services.

McKean's work in the Congress of 1782 reflected no incompatibility with the philosophy of the Read-Dickinson coalition. Dickinson's insistence on detailed instructions and aggressiveness in binding the delegates to his will precluded any seriously aberrant behavior in Congress but there is no hint either in McKean's actions or his correspondence to suggest he saw himself caught in the crucible of political acrimony. Only occasionally did he vote against his colleagues. His level of agreement with Wharton, thought by most radicals in Pennsylvania and Delaware to be the most unworthy and conservative of the new delegates from Delaware, was quite high. His seeming concord with conservatives like Philemon Dickinson and Wharton, as

85 McKean to Dickinson, December 25, 1780; McKean to Thomas Collins, February 3, 1781, McKean Papers.
well as with Pennsylvania Republicans in Congress, does not
presage a complete change in political orientation, however. His
differences with John Dickinson were still prominent enough to
convince Pennsylvania Constitutionalists in October of 1782
to run him for the presidency of the state against Dickinson,
the choice of Pennsylvania Republicans. The difference lay
in Congress and the issues before it. Conditions in 1782 differed
appreciably from previous years. Men instrumental in the
momentum of the earlier radical bloc—James Lovell, William
Whipple, Nathaniel Scudder, Richard Henry Lee and Samuel
Adams—were no longer in attendance and their places had not
been taken by men of similar persuasion. Moreover, new issues
drove wedges into previous blocs. The animosities of past al-
liances had been largely dissipated and new divisions had not
yet formed. McKean recognized this new sense of harmony and
commented on it to his old friend, Samuel Adams, pointing out
that only on the issues of the fisheries and western lands were
there flashes of former bitterness.

It was an uneventful year in Congress for McKean. Wharton's
and Philemon Dickinson's conscientiousness permitted him to
spend more and more time away from that body. No major
committee assignments came his way and he participated in
fewer and fewer ad hoc committees. Nonetheless several issues
excited his imagination. His hatred for England unabated, he
pressed for an act allowing Washington to retaliate when acts
of cruelty were perpetrated by the British against American
citizens. He supported petitions for statehood from Vermont
and Kentucky although his enthusiasm for the Vermonters' cause
was restrained. Motivated primarily by a desire to create a firm
foundation for the future financial solvency of the new nation,

8 Wharton and McKean voted in agreement 93 percent of the time,
based on 57 votes. Criticism of Wharton can be found in "A Watchman
of Delaware," Pennsylvania Journal, April 6, 1782. The full story of Mc-
Kean's role in the 1782 general election is difficult to assess, but apparently
in October of 1782 the Constitutionalists ran McKean for a seat in the
Executive Council from Chester County with the idea that if he were
elected he would become president of that body, and then seek to secure
the chief justiceship for Joseph Reed currently outside the government.
McKean who had two years to go on his seven year term as chief justice
seemingly was not enthusiastic with the plan. At least Reed later blamed
McKean for the failure of the plan. McKean was not elected. Cf. Reed to
George Bryan, December 25, 1782, in Reed, Reed, II, 390.

97 McKean to Samuel Adams, October 13, 1782, McKean Papers.
McKean joined with Dickinson and Wharton in demanding the cessation of western lands to the national government. In seeking the cession of western lands by Virginia he repudiated a position he had taken in 1778-1779. Despite this activity, by December it was clear that his enthusiasm for his congressional assignment was waning, that he seriously contemplated terminating his career in that body. Though serious issues remained, the urgency that originally compelled him to shoulder the congressional burden—and retain it—was gone. The state of Delaware saved him the trouble of resigning when, responding in anger to John Dickinson's surprise decision to accept the presidency of Pennsylvania, it turned away from non-resident officials. In February, 1793, it named local men to head the state and to represent it in the national government. Thus, save for some squabbling over how much that state owed him for past services McKean's political connections with Delaware ended.

III

Delawareans between 1774 and 1782, like most Americans, paid lip-service to the doctrine of the sovereignty of the people. That their representatives either in the Assembly or Congress did more than pay perfunctory homage to the aspirations of their constituents is less clear. The push to make representatives more responsive to the will of the people did not increase noticeably between those dates. When in 1782 the congressional delegates were finally wedded more closely to the people, or rather to their government by more restrictive instructions, it was at the prompting of the conservative rather than the radical or democratic forces within the state. The Assembly could of course remove an unresponsive or irresponsible man, but the paucity

89 Munroe discusses factors other than just Dickinson's resignation which contributed to Delaware's rejection of nonresident representatives. Apparently no criticism was directed at McKean. Munroe, "Nonresident Representation in Congress," 180-190; Minutes of the Delaware Council, 788. McKean maintained that Delaware owed him 804 pounds for his services up to 1783. Although the state apparently paid small sums toward the balance between 1788 and 1793, by January 24, 1793, the amount owed him was still 806 pounds owing to interest. Cf. McKean's account in the McKean Collection, Historical Society of Delaware.
of willing and able replacements seriously limited that check. After 1777 the question appeared to be simply, who would consent to serve. The most effective check in the final analysis appeared to be the conscience and judgment of the individual delegate.

Until his death McKean held firmly to the view that the people's representatives should create opinion, then direct it. It was a view of representation that became increasingly outdated. In practice, however, he was less cavalier. The rudimentary tasks of his congressional post he performed with exemplary skill. The many roles demanded of him as his state's primary liaison with the national government he carried out willingly. He conscientiously sought out the temper of his government. Still, he did lead. On numerous issues—receptivity to the May 10-15 Resolution, the question of independence, and the acceptance of the Articles of Confederation—he took positions far in advance of his state government, then worked assiduously to align the state behind his stand. To the degree that he ignored the will of the majority in the process and accepted questionable methods to gain support for his views, he did so in the context of Delaware's political environment.80

If some of the more radical voices in Pennsylvania cried out against McKean's pluralism and questioned his ability to loyally serve two separate states, articulate Delawareans had no such misgivings. The evidence is overwhelming that after 1777, when the more obvious Tory elements had been eliminated from the state government, Delaware officials of both radical and conservative persuasion looked upon McKean as a loyal and diligent servant of their state. His dual roles and dual citizenship were accepted, even encouraged. His high level of agreement with the Pennsylvania Constitutionalists in Congress before 1780 and with the Pennsylvania Republicans in Congress after that date provoked no fears on the part of Delaware leaders that he was subordinating the interests of Delaware to those of Pennsy-
vania. Nor did his growing conservatism, his willingness to align with the Morris faction on critical issues after 1780 provoke charges of political vacillation or opportunism from old allies. Indeed, the partisan tenor of his Pennsylvania career and the personal animosities associated with his activities in that state were never matched in Delaware. Faced with a paucity of eager and competent leaders, most Delawareans saw McKean as supplying some much needed vigor and vision to the state. Certainly they considered him “a valuable acquisition in Congress.”