

THE EVOLUTION OF THE PENNSYLVANIA ASSEMBLY, 1682-1748

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WILLIAM PENN, the Quaker son of an English admiral by the same name, dreamed of an American colony which would be a refuge for members of his own religious sect and for other oppressed people. From Charles II he received on March 4, 1681¹ a grant of land located between the Duke of York's territory on the north and Lord Baltimore's Maryland on the south, and called Pennsylvania in honor of Penn's father. The King's charter established this land as a province, of which Penn and his heirs were made "the true and absolute Proprietaries." On January 1 of each year the Proprietor was required to deliver to Windsor Castle two beaver skins as an act of fealty to the King.²

In devising a plan of government for his new colony, Penn considered the three fundamental rights of Englishmen to be the possession of both liberty and property, participation in the enactment of the laws governing them, and the ability to influence the execution of such laws.³ The freemen of the province should have a share in the lawmaking process. As first granted by Penn to the settlers, this privilege was hedged about with some limitations, but little by little it was expanded until by the middle of the following century Pennsylvania was possessed of one of the most liberal legislative assemblies to be found in English America. The purpose of this article is to explore the growth of the Assembly in Penn's province from its founding until the end of King George's War.

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¹Dates used in this paper are those of the Julian calendar, with the exception that the year for dates from January 1 through March 24 has been changed to conform to the Gregorian calendar.

²Charles II, Charter of Pennsylvania, in William MacDonald, ed., *Select Charters and Other Documents Illustrative of American History, 1606-1775* (New York: Macmillan, 1899), p. 185.

³Herbert L. Osgood, *The American Colonies in the Seventeenth Century* (3 vols., New York: Macmillan, 1904-1907), II, 253.

The power of the Pennsylvania Assembly was developed by two principal means, the first of which involved the evolution of the provincial constitution. The constitution consisted of the royal charter of 1681 and a succession of governmental frames issued by the Proprietor. During the first twenty years of the Colony the greater part of the expanding power of the Assembly arose from these basic charters, the parliamentary provisions of which became increasingly generous. Thus by these frames of government the people and their representatives gathered unto themselves a greater share of the power of lawmaking—a power which at the institution of the Colony was purposely placed in proprietary and aristocratic hands.

Charles II by his royal patent granted Penn the power to make laws, provided he secured “the advice, assent and approbacon of the freemen of the said Countrey, or the greater part of them, or of their Delegates or Deputies, . . . when, and as often as need shall require.” Taxation, “the publick state, peace, or safety” of the Colony, and “the private utility or perticular persons” were considered fit subjects of legislation.⁴ All laws of the Colony were to be reasonable and not contrary to those of England. In times of distress laws could be enacted by Penn without the approval of the freemen, provided such enactments were consistent with English law. Within five years of passage all laws were to be submitted to the Privy Council, through which the King reserved the right to declare Pennsylvania laws void. The Navigation Acts were specifically mentioned as binding upon the Colony.⁵

By the Pennsylvania charter Penn’s Colony was rendered more dependent on England than was Maryland by the Baltimore grant, issued forty-nine years earlier. The Maryland patent did not provide for the royal disallowance of legislation, and it prohibited the Crown from levying any tax within that province. Even though Penn’s charter was modeled after the Maryland grant, these differences are indicative of the growth of the power of Parliament, the decline of royal prerogative, the development of imperial sentiment in England, and the influence of the twenty-year conflict of Charles II with Massachusetts.⁶

⁴ Charter of Pennsylvania in MacDonald, *Select Charters*, p. 186.

⁵ *Ibid.*, pp. 186, 187, 188, 189.

⁶ Edward Channing, *A History of the United States* (6 vols., New York: Macmillan, 1905-1925), II, 117; John Fiske, *The Dutch and Quaker Colonies*

Penn devised for his province three successive governmental plans. The first two were called Frames of Government; the third, the Charter of Privileges. The first Frame was formulated and signed by the Proprietor in England on April 25, 1682. In its preface Penn wrote that a government, regardless of its form, is free if the rule of law obtains and if the people have a share in making the laws. He compared government to a clock in that it runs from the motion men give to it. "Wherefore governments rather depend upon men, than men upon governments. Let men be good, and the government cannot be bad; if it be ill, they will cure it. But if men be bad, let the government be never so good, they will endeavour to warp and spoil to their turn."⁷ The Frame provided for a legislature, composed of an upper house or Council to propose legislation, and a lower house or General Assembly to give or withhold its consent. The latter could not initiate bills but could amend those presented by the Council.⁸ The Frame was promulgated by Penn after he arrived in Pennsylvania during the fall of 1682. As far as is known it was not voted on by the Assembly.⁹

The second Frame was an amendment of the first made by the Assembly and Council and approved by Penn on April 2, 1683. The principal change was a reduction of the size of the two legislative houses.¹⁰

While the Proprietor was in England attending to some business of the Colony, William III removed Pennsylvania from Penn's control because of his close loyalty to the Stuarts. After existing as a royal Colony for a short while, the province was returned to Penn. A controversy developed over the question whether the Frame of 1683 was legally in effect following this restoration. To resolve the difficulty William Markham, a relative and trusted friend of Penn then serving as Deputy Governor, issued in 1696 a new plan of government, known as Markham's Frame. A more liberal document than its predecessor, it again decreased the size

in *America* (2 vols., Boston: Houghton, Mifflin, 1899), II, 151; Osgood, *Seventeenth Century*, II, 11.

⁷ Frame of Government, April 25, 1682, in *Colonial Records of Pennsylvania* (16 vols., Philadelphia, 1838-1853), I, 31.

⁸ *Colonial Records*, I, 33, 35.

⁹ There is no mention of a vote of approval in the minutes of the first session of the Assembly on December 4, 1682. *Pennsylvania Archives, Eighth Series* (8 vols., Harrisburg, 1931-1935), I, 1-13.

¹⁰ Frame of Government in *Colonial Records*, I, 42-48.

of the Assembly. The powers of the Assembly were greatly strengthened by authorizing it "to prepare and propose to the Governor and Council, all such bills as they or the major part of them shall at any time see needful to be passed into laws."¹¹

Upon Penn's return to North America in 1699, he refused to recognize Markham's Frame and held that the 1683 document was still in effect. Even though Penn had come back to Pennsylvania with the hope of spending the rest of his days there, he received word that a bill was pending in Parliament to abolish all proprietary governments including his own. He was anxious to return to England to protect his interests. Upon sensing this desire, the Assembly prolonged a constitutional debate which was then in progress with the notion of securing additional concessions from the Proprietor. This debate resulted in the Charter of Privileges, approved by the two legislative houses and signed by Penn on October 28, 1701.¹²

Destined to become the most famous of all colonial constitutions,¹³ the Charter of Privileges would remain in effect until 1776. Its most sweeping provision was the removal of the Council from the legislative field and the centering of lawmaking in the Assembly, which became a unicameral legislature. The position of the Assembly in the legislative process was tremendously strengthened by an enumeration of parliamentary powers.¹⁴ This vital constitutional change came in part as a result of the freedom of conscience that had characterized Pennsylvania society for its nearly twenty years. It was a further step in the continuous process of the people's achieving a greater measure of self-government.¹⁵

The second method of advancing the power of the Pennsylvania Assembly was by means of laws passed by the body itself. After Penn's grant of the 1701 constitution, parliamentary prerogative was increased considerably by the activity of the Assembly as it moved more extensively into various areas of governmental con-

¹¹ The Frame, November 7, 1696, in *Colonial Records*, I, 53-54; also Penn to Markham, November 24, 1694, in *Pennsylvania Archives, Fourth Series* (12 vols., Harrisburg, 1900-1912), I, 69, 73.

¹² Channing, *Century of Colonial History*, pp. 321, 322; Osgood, *Seventeenth Century*, II, 275, 276; Charter of Privileges in *Colonial Records*, II, 56-60.

¹³ Channing, *Century of Colonial History*, p. 322.

¹⁴ Charter of Privileges, in *Colonial Records*, II, 57-58.

¹⁵ Catherine Owens Peare, *William Penn: A Biography* (Philadelphia: Lippincott, 1957), pp. 381-382.

cern. Illustrative of how the lawmaking process became a means of extending the power of the Assembly are its experiences in the fields of legislative procedures, financial control, and legislative appointments. In this way the essentially nondemocratic character of the proprietary Colony was changed as the Assembly gradually encroached on the powers of the Proprietor.

By limiting the powers of the executive or securing them for itself, the legislature in time exercised the greater part of administrative power. It was this kind of development through which English institutions since the Norman period had passed. The process at work in Pennsylvania was analogous to the British experience, except that in America the time element was relatively much shorter.¹⁶

On November 27, 1700, the legislature passed an act designed to ensure free and voluntary elections at which members of the Assembly were chosen. Qualifications for electors and for representatives, election procedures, safeguards for the assemblymen, and specifications for the internal workings of the legislature were all spelled out. Even though this act was disallowed by the Queen-in-Council on February 7, 1706, the Assembly had already replaced it with a new act on the 12th of the preceding month, apparently in expectation of its royal repeal. The 1706 act made similar provisions and would remain in force, though amended, until its repeal in 1785.¹⁷

As was true in other British colonies, the Assembly in Pennsylvania used the financial control which it accumulated to encroach upon the executive powers of the Governor and Council.¹⁸ It was by control over appropriations for defense that the Assembly, as a Quaker-dominated body, was able generally to maintain a policy of nonviolence. During King William's War David Lloyd and other leaders in the Assembly resisted the appeals of the royal Governor, Colonel Benjamin Fletcher, for a war budget. This objection resulted not only because Quakers were pacifists but

¹⁶ Osgood, *Seventeenth Century*, II, 13.

¹⁷ James T. Mitchell and Henry Flanders, comps., *The Statutes at Large of Pennsylvania from 1682 to 180[9]* (18 vols., Harrisburg, 1896-1915), II, 24-26, 212-221 (hereafter cited as *Statutes at Large*).

¹⁸ Oliver M. Dickerson, *American Colonial Government, 1696-1765: A Study of the British Board of Trade in Its Relation to the American Colonies, Political, Industrial, Administrative* (Cleveland: Arthur H. Clark, 1912), p. 160.

also because all colonists of whatever religion opposed property and poll taxes even to support the government in its normal functions.¹⁹

One of the "Laws Agreed upon in England" by Penn and his financial supporters in 1682 specified that no tax or custom could be levied except as provided for by the law of the Colony.²⁰ In spite of widespread opposition to taxation, legislative controls were established over property taxes in the 1690's and were destined to be continued until the Revolution.²¹

Aside from taxation the authority of the Assembly was asserted in fiscal affairs principally by establishing the General Loan Office. This agency, for which the Assembly appointed trustees and a clerk, was charged with issuing, loaning, and redeeming bills of credit. The initial issue amounted to £15,000, followed closely by another totaling twice that amount. In an effort to stimulate the economy of the province by making available a ready supply of paper money, the Assembly authorized the bills to be lent to property owners with security given by mortgage. Some of the bills of credit were used to meet the current expenses of the Assembly and to provide for internal improvements throughout the Colony. Beginning in 1723, this system of credit worked well for the remainder of the period under study, and the Pennsylvania bills were readily passed in other colonies at par.²²

The Assembly maintained a strict oversight of the credit-bill program. Its committees audited the records of the General Loan Office and the accounts of county treasurers pertaining to the sinking of bills of credit loaned the counties for internal improvements. They superintended the signing and refunding of bills of

¹⁹ Roy N. Lokken, *David Lloyd, Colonial Lawyer* (Seattle: University of Washington Press, 1959), p. 56. Quakers were not the only objectors to military activities. When Queen Anne's War broke out in 1702, Deputy Governor Andrew Hamilton tried to raise a militia without an appropriation from the Assembly, only to find the Anglicans as his greatest opponents. Apparently they hoped to discredit the colonial government with a view toward the resumption of royal rule. Joseph E. Illick, *William Penn, the Politician: His Relations with the English Government* (Ithaca, N. Y.: Cornell University Press, 1965), p. 224. For a different view of Anglican support of martial affairs, see Robert L. D. Davidson, *War Comes to Quaker Pennsylvania, 1682-1756* (New York: For Temple University by Columbia University Press, 1957), p. 7.

²⁰ *Colonial Records*, I, 38.

²¹ *Osgood, Seventeenth Century*, II, 353, 354.

²² *Statutes at Large*, III, 324, 333, 389, 393; IV, 50, 101, 413.

credit and the destruction of both redeemed and counterfeit bills. They advertised for proposals to redeem bills.²³

Deputy Governor George Thomas, who was in office for nine years beginning in 1738, suspected that the Assembly had divided considerable sums of money among its members in order to perpetuate themselves in office. The truth of this is doubtful, but the Assembly had developed the practice of appropriating money by resolutions rather than by legislative bills. By making unnecessary the Governor's signature, the Assembly was able to control absolutely the income of the General Loan Office.²⁴

The making of appointments to provincial offices was another way by which the colonial Assembly increased its power. As early as 1715 the legislature began to elect the Treasurer of the province, and in that year chose Samuel Preston, a Philadelphia merchant, for the office. Three years later it began to appoint the collector of import duties. Appointments of county collectors of alcohol taxes were made as early as 1734. Selection of officials of the General Loan Office has already been mentioned. Periodically appointments were renewed or successors chosen throughout the period under study.²⁵ When Andrew Hamilton, the famed defense lawyer in the Zenger case in New York, retired from the speakership of the Assembly in 1739, he commended the practice in Pennsylvania by which nearly all provincial officials received their authority directly from the people or their representatives.²⁶

By custom and law the parliamentary procedures and powers of the Assembly were established as part of the system of public administration which evolved in the Quaker Colony. Attention has already been paid to the means by which parliamentary power was accumulated. It is now time to examine the substance of that power, to see the legislative process as it was demonstrated in the Assembly's membership, organization, external relations, and annual sessions.

The number and apportionment of seats in the Assembly was

²³ *Statutes at Large*, III, 334, 393, 403, 404; IV, 49, 111, 112, 113, 114, 115, 308, 348, 356, 411, 414; V, 47.

²⁴ Thomas to Lords [of Trade], October 20, 1740, in *Statutes at Large*, V, 475.

²⁵ *Statutes at Large*, III, 115, 154-155, 272-273; IV, 128, 140, 242, 248, 304, 312, 314, 349, 399, 405, 409.

²⁶ Herbert L. Osgood *The American Colonies in the Eighteenth Century* (4 vols., New York: Macmillan, 1924-1925), IV, 53-54.

a continuing problem. Penn in his 1682 Frame envisioned the body at first as composed of all the freemen of the province; for the second session its number should not exceed two hundred. The apportionment of seats was to be done equitably, with regard for the number of counties in the Colony. With the growth of the province the number of assemblymen might be increased to as high as five hundred.²⁷ Penn's ideas of the size of the Assembly "had outgrown the bounds of reason. The freemen would not come together. They were too busy. Nor could the sparse population support two hundred assemblymen."²⁸ Penn failed to follow the Frame, and for the 1682 session seven persons were chosen from each of the six counties in the Colony.²⁹

At the March session in 1683 every county was represented by nine men. The revised Frame of that year reduced the county representation to six persons.³⁰ Markham's Frame also lowered the county quota of seats to four, which number was retained by the 1701 Charter of Privileges. However, the Charter stipulated that in the event of secession by the three counties on the lower Delaware, each of the three remaining counties of the province would be entitled to eight representatives and the town of Philadelphia when incorporated would have two.³¹ The anticipated event occurred, and shortly after 1701 each of the Quaker counties of Philadelphia, Chester, and Bucks was given eight Assembly seats. When Lancaster County was created in 1729 its number of assemblymen was set at four, which was justified on the basis of property representation then in vogue. However, this amounted to an inequitable apportionment of assemblymen.³²

During almost all the period covered by this paper the Quakers were in control of the Assembly.³³ After 1702 Quakers were a minority in Pennsylvania, and continuing waves of immigration annually decreased the proportion of this sect in the population.

²⁷ Frame of Government, 1682, in *Colonial Records*, II, 34, 35.

²⁸ Isaac Sharpless, *A History of Quaker Government in Pennsylvania* (2 vols., Philadelphia: T. S. Leach, 1900), I, 62.

²⁹ Osgood, *Seventeenth Century*, II, 259.

³⁰ Staughton George, et al., eds., *Charter to William Penn, and Laws of the Province of Pennsylvania, Passed between the Years 1682 and 1700* . . . (Harrisburg: L. S. Hart, 1879), pp. 124, 125; *Colonial Records*, I, 42.

³¹ *Colonial Records*, I, 49; II, 58, 60.

³² Sharpless, *History of Quaker Government*, II, 73; *Statutes at Large*, II, 213; IV, 132.

³³ Sharpless, *History of Quaker Government*, I, 72.

The German element generally sided with the Friends and helped to send Quakers to the Assembly year after year. This tendency is partly accounted for by the tolerant and pacific spirit of the Quakers, whose opinion tended to agree with the dominant trend toward greater individual liberty. Quakerism was such that in areas where its adherents were influential religious freedom prevailed, the influence of clergymen diminished, and the power of the legislative branch of government developed. This sect acted as a solvent on the monarchical element of Pennsylvania. It stood in antithesis to the proprietary party, which after the death of Penn was no longer aligned religiously with Quakerism.³⁴ After King George's War the Quaker faction still predominated in spite of the fact that most people in Pennsylvania were neither pacifists nor Quakers. To Pennsylvanians Quaker rule stood for freedom, low taxation, and good government.³⁵ Even though the Quakers in the Assembly often clashed with the governors on questions of defense,³⁶ during the first half of the eighteenth century they presided over a Colony second to none in peace, prosperity, and liberty.³⁷

Penn intended that assemblymen would be elected by the freemen of the province. The term "freeman" was defined to include persons who bought at least one hundred acres of land from the Proprietor, those who paid their passage to America and took up the same amount of land at a penny an acre and had cultivated ten acres of it, indentured servants whose terms of service had expired and who took up fifty acres of land and had cultivated twenty acres, and residents who paid "scot and lot" to the province.³⁸ The "Great Law," adopted December 7, 1682 at the first session of the Assembly, required voters for assemblymen to profess faith in Jesus Christ as "the son of God," the Saviour of the world," to be at least twenty-one years of age, and not to

³⁴ *Ibid.*, pp. 68, 74; Theodore Thayer, "The Quaker Party of Pennsylvania, 1755-1765," *Pennsylvania Magazine of History and Biography*, LXXI (January 1947), 19; Osgood, *Seventeenth Century*, II, 254.

³⁵ Theodore Thayer, *Pennsylvania Politics and the Growth of Democracy, 1740-1776* (Harrisburg: Pennsylvania Historical and Museum Commission, 1953), pp. 23-24.

³⁶ Thomas to Lords [of Trade], October 20, 1740, in *Statutes at Large*, IV, 469-472.

³⁷ Sharpless, *History of Quaker Government*, I, 45-46.

³⁸ Penn, Laws Agreed upon in England, May 5, 1682, in *Colonial Records*, II, 37.

have been convicted of "illfame, or unsober and dishonest Conversation [way of life]." ³⁹

Voting requirements were somewhat liberalized by an act of November 27, 1700, incorporated into the Charter of Privileges the following year. ⁴⁰ A voter was required to be a native-born English subject or a person naturalized in England or Pennsylvania and resident in the Colony for at least two years before the election. The amount of property a freeman was required to hold was reduced to fifty acres. If a man's estate were worth at least "fifty pounds lawful money of this government," he was eligible to vote. ⁴¹

The term of service of the assemblyman being one year, elections for all legislative seats were held annually. A 1683 law set March 10 as election day, but the date was changed in 1706 to October 1. ⁴² Before 1725 the election was conducted by the sheriff on the authority of an election writ issued by the Governor. Beginning that year the Assembly eliminated the necessity for such a writ and the elections were set on a fixed basis. ⁴³

On election day the freemen in each county would gather at a designated polling place to cast their ballots for assemblymen. The voter handed the election clerk a paper or ticket on which he had written the names of the eight candidates for whom he was voting. If an illiterate person appeared with his paper, the names on it were read aloud by the sheriff to make certain he wanted to vote for those individuals. In case an elector brought no ballot with him, he was allowed to give his vote orally. If challenged by an election inspector, a voter was required to affirm that he possessed the qualifications required by the 1706 law and that he had not already voted that day. The polls were open from ten a.m. to two p.m., and the election continued for as many days as were necessary to allow each freeholder to vote.

When the voting was completed, the sheriff opened the ballot box in the presence of the inspectors. The ballots were taken out and read aloud one by one and a tally made. Then the names of

³⁹ George, *Charter and Laws*, p. 108.

⁴⁰ Even though this act was disallowed by the Queen-in-Council in 1706, it was reenacted in essence the same year and allowed to stand.

⁴¹ *Statutes at Large*, II, 25; *Colonial Records*, II, 58.

⁴² George, *Charter and Laws*, p. 125; *Statutes at Large*, II, 212.

⁴³ *Statutes at Large*, II, 26, 212; IV, 11.

the eight men who received the highest vote would be announced as the assemblymen for that county. If a ballot listed more than eight names, or had a second paper folded in with it, it was rejected.⁴⁴

The basic qualification for the office of assemblyman was that the candidate be a voter. Even though Penn in establishing his Colony did not restrict officeholding to members of his own religious sect, as did the leaders of Plymouth and Massachusetts Bay, he did impose a trinitarian religious test for officeholding. During the time when Pennsylvania was a royal Colony Governor Fletcher insisted on using religious test oaths to qualify assemblymen for their seats, in order to follow the procedure used in England.⁴⁵ The legislator was required by an act of 1706 to subscribe to the anti-Catholic oath of the English Toleration Act. This was a declaration against the claims of any foreign religious leader seeking ecclesiastical authority over England or her dominions. Certain Roman Catholic doctrinal positions were denied, including transubstantiation, the adoration of Mary and the saints, and the sacrifice of the mass. The legislator asserted that he had made no mental reservation in regard to this statement and that he had not received from the pope a dispensation removing the binding quality of the declaration. This oath was to be taken in public between nine a.m. and four p.m. at a full session of the Assembly with the Speaker in his chair. No other business could be conducted by the house while these declarations were being individually made at a table in the middle of the floor. First the Speaker made the declaration after reading it aloud. Then the members one by one were called to the table. There either the legislator read and subscribed to it or if he were illiterate the clerk read it for him.⁴⁶

With the enactment of the "Great Law" in 1682 the Assembly became the sole judge of the "Regularity or Irregularity of the elections of the Members thereof."⁴⁷ In 1706 the Assembly by

⁴⁴ *Statutes at Large*, II, 213, 215-217.

⁴⁵ Joan de Lourdes Leonard, "The Organization and Procedure of the Pennsylvania Assembly, 1682-1776," *Pennsylvania Magazine of History and Biography*, LXXII (1948), 233.

⁴⁶ *Colonial Records*, II, 57, 58; George, *Charter and Laws*, p. 108; *Statutes at Large*, II, 25, 213-214, 219-220.

⁴⁷ Act, December 7, 1682, in George, *Charter and Laws*, p. 122.

law was given the power of judging the qualifications of its members.⁴⁸

Immunities afforded the legislators were important safeguards for the performance of their duties. An act of 1683 provided that during a legislative session and for fourteen days both before and after an assemblyman could not be required to answer in court for a civil action against him.⁴⁹ Four years later the Assembly protested to the Provincial Court against its summoning a legislator when the house was in session. The Assembly in 1690 resolved that it was illegal for any person to prevent an assemblyman from attending the sessions, unless he were accused of treason, murder, or some other enormous crime. This action was taken to vindicate Speaker John White, who had been arrested at the previous session.⁵⁰

Another immunity afforded the legislator, as well as any public official, was a concession to the Quaker objection to taking an oath. He was permitted by a 1706 law to substitute a declaration or affirmation in place of the oath of office, if done for conscience's sake.⁵¹

An assemblyman's remuneration was related to his attendance on the sessions, being paid only for the days present. In 1683 his salary was set at three shillings per day, but if he neglected "wilfully" to attend he was fined five shillings per day. A travel allowance of two pence per mile was given for the round trip between his residence and the town where the Assembly met.⁵² The per diem "wages" were doubled in 1700, and lowered to five shillings in 1723.⁵³

Because of the small size of the Assembly, its organization was simple. From time to time there were committees dealing with various legislative subjects. During the years before 1701, when the parliamentary power was shared with the Council, frequent conference committees and joint sessions were held with that house. The Assembly was presided over by a Speaker, who by

⁴⁸ *Statutes at Large*, II, 218.

⁴⁹ Act, October 25, 1683, in George, *Charter and Laws*, p. 162.

⁵⁰ Edwin B. Bronner, *William Penn's "Holy Experiment": The Founding of Pennsylvania, 1681-1701* (New York: For Temple University by Columbia University Press, 1962), pp. 95, 139.

⁵¹ *Statutes at Large*, II, 267.

⁵² Act, March 10, 1683, in George, *Charter and Laws*, pp. 144, 147.

⁵³ *Statutes at Large*, II, 26-27; III, 380; IV, 233.

the middle of the eighteenth century held powers which were unusual for that time, as he could nominate members of committees and check dilatory tactics of the legislators.⁵⁴

During the first sixty-six years of the Assembly no other Speaker stood out with such force of character and with such determination to decrease proprietary prerogative as did David Lloyd. A real tribune of the people, he was the prominent law-maker of this period. Arriving in Pennsylvania in July, 1686, he was one of the first lawyers in the Colony. He served as the provincial Attorney General until 1700, when the Proprietor removed him from office in a wrangle over the question of vice-admiralty jurisdiction. Apparently, Lloyd never forgave Penn, and ill-feeling grew from this grudge to determined animosity. His resentment against the Proprietor had received some impetus as early as 1688, when Penn passed over his uncle, Thomas Lloyd, who was President of the Council, and appointed John Blackwell, a New England Puritan and military leader, as Deputy Governor.⁵⁵

David Lloyd's first connection with the Assembly was in 1689 when he became its Clerk, a post which Penn had refused to allow to the legislature. His acceptance of this office was something of a demonstration of his defense of legislative privilege. Five years later Thomas Lloyd died, and the younger Lloyd succeeded him as the political leader of Pennsylvania Quakers. That year he became Speaker of the Assembly, and for the next thirty-five years he held that position except for a few breaks here and there. During those years there were periods when he did not sit in the legislature, but even so he generally had a hand in writing legislation.⁵⁶ There were times when his antiproprietary political machine would be defeated at the polls and the speakership would pass to hands more friendly to the Proprietor.⁵⁷

As head of the Assembly, Lloyd exercised a strong control over its affairs. In 1703 he secured the adoption of a set of parlia-

⁵⁴ *Colonial Records*, I, 52, 54; Ernest H. Baldwin, "Joseph Galloway, the Loyalist Politician," *Pennsylvania Magazine of History and Biography*, XXVI (1902), 168.

⁵⁵ Peare, *William Penn*, pp. 371-372; Leonard, "Organization and Procedure of the Pennsylvania Assembly," pp. 381, 400; Lokken, *David Lloyd*, p. 37; Frederick B. Tolles, *James Logan and the Culture of Provincial America* (Boston: Little, Brown, 1957), p. 53.

⁵⁶ Lokken, *David Lloyd*, pp. 37, 60, 235; Leonard, "Organization and Procedure of the Pennsylvania Assembly," pp. 381, 400.

⁵⁷ Lokken, *David Lloyd*, pp. 161, 187, 195, 200, 213.

mentary rules which greatly strengthened the position of the Speaker. The following year he was empowered to refer all bills to committees which he appointed.⁵⁸ Known as the "Oracle of the Law," Lloyd stood as the champion of increased self-government against the interests of the Proprietor. He had a high concept of the role of the legislature in the Pennsylvania constitution. To him, the Assembly was a colonial version of the House of Commons in possession of all the prerogatives held by its London model. It is difficult to say whether Lloyd was motivated mainly by the desire to increase the privileges of the people or to avenge his own wounded feelings. Perhaps both of these impulses spurred him to action. Nonetheless, his service in the Assembly had the effect of a constant chipping away of the power and place of the Proprietor.⁵⁹

In 1729 Lloyd was succeeded in the speakership by another lawyer, Andrew Hamilton.⁶⁰ He was a conservative, more in sympathy with the Penn family and with Philadelphia merchants than with the poorer folk of the countryside.⁶¹ Nevertheless, he considered it the Speaker's duty to guard against the external infringement of legislative rights.⁶²

In the organizational structure of the Assembly not only was the office of Speaker of great significance but the new position of London Agent grew in importance. A few months before Penn's death in 1718, the Assembly established in London the office of Agent to represent the Colony in the King's court and particularly "to use Endeavours to obtain the royal approbation to such of our Laws as shall be transmitted thither from Time to Time."⁶³ The Governor and Council were asked to appoint the Agent, but for some reason this request was not carried through. It was not until February 1731 that the Assembly by resolution

⁵⁸ *Ibid.*, p. 133.

⁵⁹ *Ibid.*, pp. 226, 238; Leonard, "Organization and Procedure of the Pennsylvania Assembly," pp. 382, 400.

⁶⁰ Hamilton's son James served for some six years as Deputy Governor after the Speaker retired from office. This Andrew Hamilton is not to be confused with the Deputy Governor of the same name who died in office in 1703 after a term of two years.

⁶¹ Lokken, *David Lloyd*, p. 235.

⁶² Leonard, "Organization and Procedure of the Pennsylvania Assembly," p. 230.

⁶³ Assembly Resolution, 1718, cited in Mabel P. Wolff, *The Colonial Agency of Pennsylvania, 1712-1757* (Philadelphia: n.p., 1933), p. 23.

appointed Ferdinando John Paris as its first Agent. After that date there was a permanent Pennsylvania Agency in London.⁶⁴

During Paris's tenure Pennsylvania laws were systematically sent to him for submission to the Privy Council. The sons of Penn were anxious that the laws be sent to both them and the Agent within six months of their passage and that the Colony not take advantage of the five-year delay permitted by the royal charter. Paris pressed the Assembly to appoint him by legislative act instead of by resolution. This the legislature refused to do because it wanted to exclude the Governor from participation in his appointment.⁶⁵

England's declaration of war against Spain in 1739 and the proprietors' subsequent attempt to put Pennsylvania in a state of defense resulted in a clash between the Governor and the Assembly. Paris probably would have sided with the legislature, but it no longer wanted to share the services of the personal solicitor of the Penn family. Consequently, in September 1740 the Assembly appointed Richard Partridge as Paris's successor. Even though the Penns held that Partridge could not appear as provincial agent but only as private agent of the Assembly, their view did not prevail. Paris continued as their agent and Partridge became the provincial agent. These two agents disputed with each other for a number of years, but by the end of King George's War they saw that England was giving little attention to their mutual complaints. Accordingly, they began a measure of cooperation in dealing with Pennsylvania affairs.⁶⁶

Aside from the Assembly's internal structure, its relation to other units of political power was of first consideration. The primary external relationship of the legislature was its connection with the Privy Council in London. The royal charter stipulated that a copy of each Pennsylvania law must be filed with the King's Council within five years of enactment.⁶⁷ After the establishment of the Board of Trade in 1696, that body generally furnished the channel through which colonial laws reached the Privy Council. Numerous laws of Penn's Colony were voided by the King-in-Council. In 1706 the Council disallowed 52 laws out

⁶⁴ Wolff, *Colonial Agency*, pp. 23, 39, 40.

⁶⁵ *Ibid.*, pp. 54, 77.

⁶⁶ *Ibid.*, pp. 78, 79, 83, 88, 144, 145.

⁶⁷ Charter of Pennsylvania in MacDonald, *Select Charters*, p. 187.

of a group of 105 submitted by the Assembly.⁶⁸ Generally the Pennsylvania Assembly was diligent in its efforts to correct parts of repealed acts to which objection had been raised.⁶⁹ At times, however, it used the five-year waiting period allowed by the charter as a method to prolong the life of an act which it suspected the Council might disallow.⁷⁰

The relations of the Assembly with the Proprietor and later with his heirs left much to be desired. Especially during Penn's first term of residence in the Colony the attitude of the legislators toward him was generally one of respect and affection. After his departure from Pennsylvania in 1684 tension between the two legislative houses broke out in active strife. Associating Penn with the Council, the lower house vented its hostility on both the Proprietor and the upper house, which then was serving as the executive arm of the government. At that time were sown the seeds of discontent toward the Proprietor which in the end produced a bountiful harvest of legislative prerogative for the ambitious Assembly.⁷¹

Upon returning to Pennsylvania in 1699 the Quaker leader was shocked to discover that his presence no longer served to allay factional strife and secure cooperation in the projects which would contribute to his personal security as a Proprietor under the King. There were at least four party groupings in the colony: the antiproprietary Quaker faction in the Assembly which stressed liberty more than property, the proprietary Quaker faction in the Council related to the merchants of the capital city, the Anglican faction in favor of royal rule and opposed to the enactment of Quaker principles into local law, and the Delaware faction which looked toward the separation of the Lower Counties from the Quaker province.⁷²

Judge Robert Quarry of the vice-admiralty court for the Pennsylvania-New Jersey area at times represented the Anglican faction which opposed Penn. In 1700 the judge rightly assessed the dilemma of the Proprietor, who was torn between upholding the King's authority in Pennsylvania and catering to the wishes

⁶⁸ Osgood, *Eighteenth Century*, II, 270.

⁶⁹ Dickerson, *American Colonial Government*, p. 273.

⁷⁰ Channing, *Century of Colonial History*, II, 326.

⁷¹ Illick, *William Penn, the Politician*, p. 96.

⁷² *Ibid.*, pp. 210, 220, 248.

of the country Quaker assemblyman who held the purse strings of his government.⁷³

Opposition to the Proprietor arose from a number of sources. Some colonists were opposed to Penn because, as they alleged, he failed to keep a number of his promises made in the early years of the Colony when he was eager to sell land.⁷⁴ At the time of Penn's departure for England in 1701, he refused to sign and seal a charter of property written by Lloyd. The desired land reform included confirmation of the people's title to their landed estates. The previous year the Assembly had appropriated £2,000 for Penn's use. This money was badly needed to settle the Proprietor's oppressive debts in England. The funds were to be raised by property and poll taxes, which were very unpopular in Pennsylvania. It was a time of economic depression. Money was scarce. The West India trade was dead. Many colonists objected to these taxes because Penn had refused to relieve them permanently of their feudal responsibilities toward him.⁷⁵ Resentment against the Proprietor also developed because of his sponsorship of military measures. When the Crown returned Pennsylvania to Penn in 1694, the Proprietor had promised to supply men or money for common defense efforts in North America. In making such a guarantee Penn was in fact sacrificing the pacific principles of his colonists to his desire to retain a part in England's empire.⁷⁶ Accordingly, Quaker opposition against Penn arose from the Friends' own ideology of pacifism and at the same time from their desire for legislative power.⁷⁷ All these factors combined to create a growing spirit of antiproprietarianism which boded ill for Penn and his family.

During the two short periods the Proprietor resided in Pennsylvania, he filled the office of Governor and thus exercised a veto over the acts of the Assembly. After leaving the Colony for the last time, Penn asserted in 1703 his right to veto acts which the Deputy Governor had already signed into law under the great seal of the province. The next year the colonial Council agreed with the Assembly that he did not possess such a veto.⁷⁸ This

⁷³ *Ibid.*, pp. 184-185.

⁷⁴ Lokken, *David Lloyd*, p. 97.

⁷⁵ *Ibid.*, pp. 95, 115-116.

⁷⁶ Illick, *William Penn, the Politician*, pp. 128, 188, 248.

⁷⁷ *Ibid.*, p. 225.

⁷⁸ *Colonial Records*, II, 146-147; Osgood, *Eighteenth Century*, II, 264.

dispute was resolved in 1705 by the Attorney General of England, who held that since the Pennsylvania Assembly was "in nature of an English parliament" laws passed by the house and Penn's deputy were "absolute unless repealed by Her majesty."⁷⁹ The power of making laws was to be exercised by either the Proprietor or his deputy, not by both. This is an example of how the Assembly slowly encroached on the powers held by the Proprietor.

The concerns of the Assembly and the Governor, or Deputy Governor as the representative of Penn was designated, came to a clear focus in the area of lawmaking. Before a legislative bill became a law it had to have the Governor's signature. The Charter of Privileges provided that the enabling clause of an act should read: "By the Governour with the Consent and approbation of the freemen in General Assembly mett."⁸⁰ Related above is the story of how executive prerogatives in matters of financial control and appointments to public office were gradually taken from the Governor. Even though the 1701 Charter did not grant the Governor the right of legislative veto, this prerogative was exercised by him under precedents set in the seventeenth century. In fact, this right was the Governor's principal power with which the Assembly had to contend.

Not one of the Deputy Governors was a Quaker. As a result, Penn's deputy was never able to enter into a serious appreciation of the Quaker spirit of pacifism which for the most part pervaded the Assembly of Pennsylvania. To the Deputy Governor the Quaker assemblymen in time of war were bound to be a stone of stumbling.⁸¹

During the first nineteen years of the Colony, when the Council and the Assembly functioned as lawmaking partners, the relationship of these bodies was often strained and contentious.⁸² Before the promulgation of the Charter of Privileges the Council had functioned as the sole initiator of legislation, but the Charter omitted all references to its lawmaking prerogative. When the Council was thus rendered only an administrative body and an

⁷⁹ Edward Northey, Opinion, October 19, 1705, in *Statutes at Large*, II, 473.

⁸⁰ Charter of Privileges in *Colonial Records*, II, 59.

⁸¹ Davidson, *War Comes to Quaker Pennsylvania*, p. 8.

⁸² Bronner, *William Penn's "Holy Experiment,"* pp. 93, 106-107.

advisor to the Deputy Governor, it did not relinquish its legislative function gracefully. In 1704 it resolved that a certain bill passed by the Assembly should not be approved without amendment. In a conference with the Council the Assembly refused to recognize that the former possessed any authority to participate in lawmaking unless it were acting in the absence of the Deputy Governor. Apparently, Penn expected the Council to continue to advise the Deputy Governor about the approval of legislative bills, because his commissions to executive officers always stipulated that they were to carry out no act without the advice of the Council. The possession of this power gave that body a measure of influence over legislation.⁸³

After Penn bade a final farewell to his colonists in 1701, James Logan, Secretary of the province, emerged as leader of the proprietary faction which centered around the Council. For some three decades politics in Pennsylvania became a duel between him and David Lloyd. Both were Welshmen with quick tempers, and at times their association as leaders of the Council and Assembly degenerated into a personal squabble over minor points of etiquette.⁸⁴ During the tenure of Deputy Governor John Evans (1703-1709) a permanent seat on the Council was given to Logan. He occupied this place until 1747, when he resigned at the age of seventy-four.⁸⁵

The parliamentary powers and procedures which the Assembly systematically gathered into its hands over a period of years were of great importance in its growth as an instrument of liberal government. The Charter of Privileges specified seven powers which were reserved to the Assembly as follows: to choose its Speaker and other officers, to judge the qualification and election of its members, to sit upon its own adjournments, to appoint committees, to prepare and introduce legislative bills, to impeach criminals, and to redress grievances. In addition it was granted "all other powers and Privileges of an Assembly, according to the Rights of the free born subjects of England, and as is usual in any of the King's Plantacons in America."⁸⁶ Five years later

⁸³ William R. Shepherd, *History of Proprietary Government in Pennsylvania* (New York: Columbia University, 1891-1926), pp. 320, 321.

⁸⁴ Illick, *William Penn, the Politician*, p. 220; Tolles, *James Logan*, pp. 65-66; Peare, *William Penn*, p. 390.

⁸⁵ Tolles, *James Logan*, pp. 41, 157.

⁸⁶ Charter of Privileges in *Colonial Records*, II, 58.

these legislative powers were reiterated in an act of the Assembly.⁸⁷

The power of assent or dissent had been the only prerogative allowed the Assembly by the 1682 Frame. The Council alone had held the power to prepare and propose legislative bills. At its first session in 1682 the Assembly adopted a rule allowing the members to propose legislation on any subject except taxation, but this attempt to circumvent the Frame was unsuccessful.⁸⁸ Nevertheless, the right to debate Council proposals soon emerged. On March 13, 1683, at the second Assembly session, a member suggested that the body ought to do just that, but another said that debate might infringe upon the Proprietor's privileges and royalties and "render him Ingratitude for his Goodness towards the People."⁸⁹ However, during that session the Council accepted certain amendments which the Assembly made to its bills.⁹⁰ The amending process was usually carried out by conference committees or in joint sessions of the two houses.⁹¹

Penn was not happy over this trend toward enlargement of the Assembly's powers. From England in 1688 he wrote with apparent disappointment:

. . . The Assembly, as they call themselves, is not so, without Gov'r & P[rovincial] Council, & that noe speaker, clark or [minute] book belong to ym[;] that the people have their representatives in ye Pro. councill to prepare & the Assembly as it is called, has only the power of I or no, yea or nay. If they turn debator, or judges, or complainers you overthrow yr Charter. . . . here would be two assemblys, & two representatives, whereas they are but one, so two works, one prepares and promotes, the other assents or Denys—the Negative voyce . . . is not a debating, amending, altering, but an accepting or rejecting pow'r[,] minde I entreat you, that all fall not to pieces.⁹²

The major legislative advancement of the 1701 Charter was to secure the right of the Assembly to propose and introduce bills.

⁸⁷ *Statutes at Large*, II, 218.

⁸⁸ Illick, *William Penn, the Politician*, pp. 48-49.

⁸⁹ Cited in Bronner, *William Penn's "Holy Experiment,"* p. 43.

⁹⁰ Time would come when in most of the colonies it would be the lower house that would refuse the upper house the right to amend bills. Dickerson, *Colonial Government*, pp. 165-174.

⁹¹ *Colonial Records*, I, 63, 67; Bronner, *William Penn's "Holy Experiment,"* pp. 63, 94.

⁹² Cited in Bronner, *William Penn's "Holy Experiment,"* p. 93.

Since at the same time the Council was removed from the legislative process, this new power for the Assembly was a necessity. Even if the upper house had been retained as a partner in the lawmaking process, the attainment of this power by the Assembly would still have been a tremendous stride in its march toward equality with the Council.

The initiation of legislation by the lower house had been practiced when the province was a royal Colony and had been sanctioned by Markham's Frame.⁹³ Since Penn never approved the latter, the 1701 Charter had particular significance from a legal viewpoint.

The right of self-adjournment was also granted the Assembly by both Markham's Frame and the Charter of Privileges. However, its meaning and practice were often confused. During the administration of Deputy Governor Evans there was considerable misunderstanding over the use of this right. The Governor reasoned that the legislature wanted to gain complete control over its adjournment and to deny him the authority to call, prorogue, and dissolve the body, given him by Penn's commission. The Assembly kept on adjourning itself, and in time the practice was well established. Also the Governor at times would call the legislators into session and at times dismiss them, often in the face of their protest.⁹⁴

In a letter to the Assembly on June 29, 1710, Penn expressed concern that the abuse of the self-adjournment prerogative would tend to break down the distinction between the executive and the legislative parts of government. He reasoned that it was straining the meaning of the term "sit on their own adjournments" by making it mean the "power to meet at all times during the year without the governor's concurrence."⁹⁵ As late as 1740 disagreement over the power of adjournment called forth a bitter letter from Deputy Governor George Thomas. Writing to the Board of Trade, he complained that the Assembly held that the Governor did not have the power to prorogue the legislature. The legislature's claim to the right of self-adjournment allowed it to evade and delay its duty to respond to the King's request. Thomas

⁹³ Osgood, *Seventeenth Century*, II, 273; Fiske, *Dutch and Quaker Colonies*, II, 308.

⁹⁴ Osgood, *Eighteenth Century*, II, 265, 266.

⁹⁵ Cited in Shepherd, *History of Proprietary Government in Pennsylvania*, p. 314.

maintained that the right of the Governor to call the Assembly into special session by writ was negated by its power to adjourn.⁹⁶ On the other hand, when Speaker Andrew Hamilton resigned the previous year from his leadership of the legislature and retired from public life because of old age, he cited the Assembly's power of self-adjournment as a laudable part of the Pennsylvania constitution.⁹⁷ By the middle of the century the Assembly possessed the power to meet and adjourn at pleasure and was not subject to prorogation and dissolution by the Governor.⁹⁸

In addition to the right of self-adjournment, the Assembly gradually established the prerogative of making legislative inquiry and of requiring the submission of reports. In 1706 it was given authority by law to inquire into the status of Indian affairs. The county collectors of excise on spirits, the collector of duty on imported Negroes, and the trustees and clerk of the General Loan Office were required to make reports to the legislature respecting their particular functions.⁹⁹

When the Pennsylvania Assembly convened for the first time in the fall of 1682, it operated as a unicameral legislature. Through an inadvertent omission in the election writ, no provision had been made for choosing Council members. This initial session was somewhat of a harbinger of the position the Assembly would occupy after 1701 when it began to carry the full load of legislative responsibility. Its accumulation of power was a slow but steady encroachment, first upon the Council and then, after the issuance of the Charter of Privileges, upon the Proprietor and his deputy. This gradual absorption of both legislative and executive prerogative by the people in their Assembly was a fitting counterpart to the liberal and benevolent spirit which Penn had breathed into his Colony. The political scientist might look askance upon this colonial union of executive and legislative functions, but as long as the proprietorship existed it was the only way the freemen could control the political system under which they were governed. In spite of a weak Governor and an absent Proprietor, the Assembly afforded the people of the Quaker province a free and liberal government by the middle of the eighteenth century.

⁹⁶ *Statutes at Large*, V, 476.

⁹⁷ Osgood, *Eighteenth Century*, IV, 53.

⁹⁸ Baldwin, "Joseph Galloway, the Loyalist Politician," p. 168.

⁹⁹ *Statutes at Large*, II, 230; IV, 127, 242, 307, 308, 313, 357, 399.