THE PENNSYLVANIA CONSTITUTION OF 1838.

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I. INTRODUCTION: MOVEMENT FOR CONSTITUTIONAL CONVENTION, 1790–1837:

1. The Constitutions of 1776 and 1790.
2. Three periods of agitation for a convention:
   A. First period, 1805–1812.
   B. Second period, 1820–1825.
   C. Third period, 1830–1835.
3. Act of 1835 to ascertain the popular will.
   A. Popular approval.
4. Act of 1836, calling the Convention.
   A. Election of delegates.
   B. Meeting of the Convention.

II. THE WORK OF THE CONVENTION:

   A. Election of officers.
   B. Adoption of rules.
   C. Appointment of committees.
   D. Place and duration of the meeting.
3. Important Discussions:
   A. Oath of office and impeachment.
   B. Governor's appointment power.
   C. Suffrage and franchise.
   D. Tenure of Judges' office.
   E. Education.
   F. Corporations, and banks.
4. Summary of works.

III. ANALYSIS OF THE CONSTITUTIONAL CHANGES:

1. Executive.
2. Legislative.
4. Franchise.
5. Miscellaneous provisions.
   A. Amendments.
   B. Appointment of officers.
The Pennsylvania Constitution of 1838.

IV. CONCLUSION:

1. Adoption of the new Constitution.
2. Summary of the principal features of the new Constitution.
3. Defects of the new Constitution.

BIBLIOGRAPHY.

Note: I found very little materials in the secondary works. Naturally, I went through pretty thoroughly the debates of the convention. I also went through the journals of the Senate and House of Representatives carefully. This is the reason why I have very little reference to the secondary works.

PRIMARY MATERIALS:


Journal of the Senate of the Commonwealth of Pennsylvania. For the same years as above.


Hazard's Register of Pennsylvania, 1828-1839.

Nile's weekly register, 1820-1839.

Duane, William. Experience the test of government, in eighteen essays. In Duane's collection of pamphlets, No. 3 (written during 1805-6).

Amendments to the Constitution of Pennsylvania proposed by a Convention to a vote of the people, for their ratification or rejection, on the second Tuesday of October, 1838: together with the existing constitution. Phila., 1838.


SECONDARY WORKS:


Fuller, Daniel. A familiar exposition of the constitution of Pennsylvania for the use of schools. Phila., 1840.


I. INTRODUCTION: MOVEMENT FOR CONSTITUTIONAL CONVENTION, 1790–1837.

The State of Pennsylvania had adopted its first constitution in 1776. It was hastily prepared amid great excitement of the Revolution and was far from being adequate. As soon as the War was over the agitation was made in the Council for revision but the attempt failed. The complaints continued until 1789 when a constitutional convention was called and the old constitution was revised, resulting in the new constitution of 1790. It was this constitution which was the subject of revision in 1837.

The constitution of 1790 was a step in advance when compared with that of 1776, but it had many a defect in the light of the democratic development which the nation has experienced during the ensuing forty years. Indeed, as early as 1805 popular agitation for a reform was started and continued spasmodically until such a reform convention was called in 1837. The high lights in the agitation during those years are 1805–6, 1810, 1812, 1822, 1823, 1824, 1825, 1832, 1833, and 1834. Let us briefly examine these as they were taken up to the State Legislature.

The radical departure which the new constitution made from that of 1776 in strengthening the executive and changing the mode of legislation brought forth numerous petitions to the Legislature by 1805. Such petitions for a reform convention, together with remonstrances, were referred to a committee which reported a resolution declaring that "it is the prerogative of the sovereign people alone to alter, amend or abolish their government" and that, "although the House of Representatives are impressed with the opinion that the present constitution is defective, yet the number of petitions are not sufficient to justify, at

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1 Jenkins, Penna. colonial and federal, II, 107–111.
this time, any measures being taken by the Legislature for calling a convention," thereby referring the whole consideration to the people themselves. Hence nothing came from it. One of the ardent leaders in the reform movement of this period was William Duane who wrote a series of essays "to aid the investigation of principles and operation of the existing Constitution and Laws of Pennsylvania." The 14th, 16th, and 17th essays vigorously attacked the constitution and suggested several revisions. Among these were annual election of legislators, limitation of the tenure of governor's office to three years, and control of judges through election and nomination for a limited period. All of his efforts, however, had no fruit at the time.

In 1810 petitions again came pouring into the Legislature, asking for a reform convention. One of these depicted the defects in the constitution by asking the convention "to provide for its own amendment; to deprive of the governor the power of negativing the bills passed by the Legislature and appointing to office, vesting the latter to the people; to render judges of the courts and justices of the peace elective by the people; to reduce the term for which senators are elected to one year; to enable the people to choose trustees of colleges and all other public seminaries of learning. . . ."

All attempts again failed. Two years later, in 1812, renewed attempt was made to call a convention but without fruits. The resolution which was introduced both in the House and the Senate again referred to "an unalienable and indefeasible right" of the people "to alter, reform or abolish their government" and moved

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4 Ibid., Essay XVI, "Project for a reformation of the constitution."
5 House Journal, 1809–10, pp. 353, 375, 494, 628, etc.
6 Ibid., 353. (Jan. 27, 1810.)
to amend the several articles in a similar way as that of the 1810 petition just referred to. It also resolved that the question of "A Convention" or "No Convention" be voted upon by the people at the general election. All these movements failed, partly because "the causes which induced the adoption of the constitution were not yet wholly removed" and partly because the predominating party of the time as well as the combination of official influences were unfriendly toward the reform. Thus ended the first period of agitation.

The War of 1812 put a quietus to the agitation for a while. But beginning with the year 1820 the cry for a reform convention was revived and continued until 1825, when it was again silenced for another period of five years. As the petitions and remonstrances came pouring into the Legislature, the House of Representatives of 1820–21 adopted a resolution to appoint a committee "to enquire into the expediency of recommending the call of a convention to amend the Constitution, and also to suggest for consideration what they suppose is principal defect," but the committee appointed reported "that a sufficient number of petitions have not been presented to induce the legislature to originate any proceedings to test the opinion of the people on the subject." A substitute resolution "to bring in a bill for enabling the people, at the ensuing general election, to express their wishes for or against the calling of a convention" was indefinitely postponed. In the Legislature of 1821–22, several attempts to appoint a committee in the House failed;

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9 Cf. Hazard's Register, XII, 167.

10 House Journal, 1820–21, 157, 219, 299, 313, 463, 480, 514, 676, 709, 722, etc.

11 Ibid., 349, 677, 805.


VOL. XLVIII.—20
the Senate succeeded in appointing a committee but no further proceeding resulted therefrom. In December, 1823, when the Legislature met, a resolution was introduced to appoint a committee in order to bring in a bill authorizing the reform convention. It was carried in the following February and a committee was appointed for the purpose. On Feb. 23, that committee reported in favor of a convention with a bill, "An act for ascertaining the opinion of the people of this commonwealth relative to the calling of a convention." The House, however, took no definite action upon it.

The next session of the Legislature, 1824–25, saw very few petitions but the reform leaders proceeded vigorously in the both houses. "An act for ascertaining the opinion of the people of this commonwealth relative to the call of the convention" was introduced in the House and successfully passed. It is extremely interesting to note that, when the bill was passed, those who voted against it filed their protest, giving the reasons of their non-approval. In this unique instrument, the minority declared that "all power is inherent in the people," that "people alone have the power to alter, reform or abolish their government," and that "the measure for a call of a Convention for this purpose [revision] should originate with the people themselves, and not with their representatives, whose powers are limited and defined." The Senate acted favorably on the bill and after a few amendments and joint committee meetings the bill was passed on March 25, receiving the approval of the Governor on the

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14 Ibid., 1823–24, Dec. 18. 161. The preamble of the resolution goes at length to point out some of the defects in the constitution, including the executive appointing power and patronage.
15 Ibid., 556–7; 693–7, 697–8.
17 Ibid., 1824–5, 611–12.
It authorized the people to vote, at the ensuing general election, for or against a convention with unlimited power. In the October election, 1825, the people, with a majority of 15,404, voted down the convention. The main cause of failure was not so much the popular cry against the reform as the improper manner of proposal. The votes were authorized merely to be given for or against a convention, without providing for its proceedings to be submitted to the consideration of the people. Thus ended the second period of agitation for a reform convention.

The third period dawned with better prospect. Already in the session of 1831–32 the petitions for a convention began to come in and the session of 1832–33 has seen a flood of such petitions. Thus a bill ascertaining the opinion of the people relative to a convention was introduced in the House, but the motion to consider was negatived and a resolution to refer it to the next legislature was also lost. A similar bill was reported with ample reasons in the Senate but it also failed to carry and the subject was recommended to the early attention of the next Legislature.

By this time the agitation was deep rooted and as soon as it was known that the Senate rejected the bill for calling a convention, a movement was started for a popular reform convention. Such a "Reform State

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18 Senate Journal, 1824–25, 653–6–6, 661, 669–70, 674, 677, 683.
19 Hazard's Register, XVI, 341.
20 Cf. Ibid., XII, 167–9.
21 See for example, Senate Journal, 1831–2, 435, 473, 563, etc.
22 Both the journals of the Senate and the House are full of petitions and remonstrances. See index.
24 Ibid., 881. The vote was 42–41.
25 Senate Journal, 1832–33, 452–455. It recommended ten propositions for amendments, among which were meeting of the Legislature in January every year, limited terms for judges and senators, amendment clause in the constitution, etc.
The Pennsylvania Constitution of 1838.

*Convention*” met at Harrisburg on August 26, 1833, with 16 delegates from different parts of the State, including 5 from Philadelphia County. After the organization, the convention adopted a series of resolutions recommending to the people that the constitution be so altered as, in principle, (1) to diminish the appointing power of the governor and to establish a negative in relation to it, (2) to abolish offices for life, (3) to extend the right of suffrage, (4) to elect a greater proportion of public officers directly by the people, (5) to shorten the term of offices and to limit the eligibility of state senators, and (6) to provide a means for amending the constitution. Among others, the absolute power of appointment reposed in the governor was declared to be “despotism” and the term of holding office for life was stiled “a relic of European aristocracy” and “a germ of an American aristocracy.” It has been also agreed to report for consideration whether any of the following proposed amendments ought to be made, to be determined under the instruction of the people, by an adjourned meeting in the winter: (1) to shorten the term of the governor’s office and restrict his continued eligibility, (2) to prohibit lottery, (3) to impose restrictions on the power of the legislature to grant perpetual and unrepealable charters of corporation, and (4) to prohibit the legislature from borrowing money on behalf of the state excepting a certain amount. It then issued an address to the people, voted to adjourn till Jan. 8, 1834, to which the people were to elect delegates at the county conventions, agreed to write to the legislature and request the holding of a constitutional convention, recommended the holding of county and town meetings to foster the reform sentiment, and elected a committee of correspondence, consisting of 14 members.

27 A full report of this convention is given in Hazard’s Register, XII, 144, 166–67–70.
The Pennsylvania Constitution of 1838.

The address issued by the convention to the people is interesting as it summarizes the reasons for reform and the principles involved. In justifying the revision of the constitution, it reviews at length the conditions existing in 1790 and since, pointing out the necessity of adjustment to meet the need of the time. After a reference to the reform movements in 1805 and 1825, it attributed the cause of delay to "the interposition of official power" and to certain pretexts, that "respect and veneration for wise and patriotic fathers should sanctify their work and stamp it with immortality."

It then summarized the "three grand principles" involved in the current reform movement: "First, the curtailing of the immense power and patronage of the Governor; second, confiding to the people the election of a number of officers and the exercise of rights which are vitally connected with their safety and happiness, from which the present constitution debars them; and third, the abolition of the term of holding offices for life."\(^{28}\)

The adjourned convention met on Jan. 8, 1834, at Harrisburg, with 42 delegates from 19 counties.\(^{29}\) Its main business was to appoint a committee to draft a memorial to the Legislature, praying for the passage of a law authorizing the election of delegates and holding of a convention for the alteration of the constitution, to be submitted to the people for adoption or rejection. Such a memorial was drawn and approved, appointing also a Representative and a Senator to present the same to the Legislature. Then it agreed to meet again in case the Legislature failed to adopt a law or the measure is defeated by the people. It also appointed a State Committee of Correspondence just before adjourning.

\(^{28}\) Hazard's Register, XII, 167-9.

\(^{29}\) A full report of this convention is in Hazard's Register, XIII, 56-60. The text of the memorial drafted, 58-59.
The Pennsylvania Constitution of 1838.

The Legislature in 1833-34 did very little to advance the cause. But the popular agitation began to increase day by day and the Legislature of 1834-35 was destined to deal with the problem. Unusual number of petitions and remonstrances were presented to the both Houses that, finally, a bill was introduced in the House to submit the question to the people. After amendments by the Senate and agreement reached by the Joint Committee the bill passed the both houses and the governor approved of the same on April 14.

"An act to provide for calling a convention with limited powers" authorized, "for the purpose of ascertaining the sense of the citizens," the people to vote "on the expediency of calling a Convention of delegates, to be elected by the people, with authority to submit amendments of the State Constitution to a vote of the people, for their ratification or rejection, and with no other or greater powers whatsoever." Accordingly the question was submitted to the people in the October election of 1835 and was approved of by a majority of 13, 404.

When the Legislature met in December, the governor, in his annual message, called the attention of the legislators to the above action and urged the passage of an act providing for the election of delegates and the meeting of the convention. The Legislature then passed "An act for the call of a convention, to propose amendments to the Constitution of the State, to be sub-

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81 There were, for instance, 182 petitions for a convention and 21 against amendment in the House. Journal, passim.
83 Debates of the Convention, I, iii.
84 Ibid., iv.
85 Journals of both houses, 1835-6, Index.
mitted to the people thereof, for their ratification or rejection.” The law fixed the election of delegates to the convention on the first Friday in November, 1836, and decreed that the number of delegates will be equal to the number composing the State Legislature, to be apportioned “in the same manner that member of the Senate and House of Representatives shall then be by law apportioned.” It also provided for the meeting of the Convention at Harrisburg “on the first Tuesday of May, 1837”; after the organization, however, it had the power to “adjourn to any other place.” When the amendments shall have been agreed upon by the Convention, the amended Constitution was to be published in the newspapers in every county at least once a week and then to be voted upon by the people in the next general election. The Convention, moreover, had the power of issuing a writ of election for the purpose if necessary. “A majority of the whole number of votes thus given for or against the amendments,” it was declared, “shall decide whether said amendments are or are not thereafter to be taken as a part of the Constitution of this Commonwealth.” The delegates to the Convention were to be paid in the same manner as the members of the General Assembly of the State.

The delegates were duly chosen by the people on the designated date and proclaimed by the governor. There were 33 Senatorial and 100 Representative delegates. The Convention met on May 2, 1837.

II. THE WORK OF THE CONVENTION.

1. PERSONNEL.

The Convention which had assembled at Harrisburg did not contain many stars who had or were shining on the national stage. But, nevertheless, enough great
legal brains of the State of the period were there to insure the successful completion of the great task. The most illustrious of the 133 delegates was John Sergeant of Philadelphia. He was, for many years, "one of the most brilliant and honored men in the legal profession, a member of Congress, effective in securing Missouri Compromise, an envoy in 1826 to the Panama Congress and a candidate for the Vice-Presidency of the U. S. with Henry Clay in 1832," "of stainless character, impartial, the friend of all." Not yet risen to the rôle of great leaders, but no less important a person was Thaddeus Stevens representing Adams County, a saviour of the common school system of Pennsylvania of the period and later a national figure in the rôle of the spokesman of the radicals in the Civil War and Reconstruction. James Pollock, the Governor of the State in the fifty's, represented Erie County. Charles Chauncy, Charles J. Ingersoll, James C. Biddle, William M. Meredith, and Thomas Earle were some of the more distinguished members of the Philadelphia bar. James M. Porter of Northampton, John Dickey of Beaver, James Merril of Union, John B. Sterigere of Montgomery, and George Chambers of Franklin were some of the others who were destined to take a leading part in the Convention.

2. Procedure.

The Convention was met during a time of intense political excitement, both locally and nationally. In Pennsylvania Joseph Ritner was the Governor and the Democrats were smarting under their defeat. Nationally, the Jacksonian democracy was undergoing a transition and the Van Buren régime was just installed, while the questions bearing upon the bank and the crisis were up in the air. However, as soon as the Convention met on May 2, it plunged right into the work.
The organization of the Convention took practically the first two weeks. On the very first day, all delegates but one were present and they elected John Sergeant of Philadelphia president of the Convention, who accepted the position with an appealing speech. Then the secretary, the assistant secretaries, sergeant-at-arms, doorkeeper, printer, and other minor officers were duly elected, the first office of which being filled by Samuel Shoch, and the Convention began to function lively.

After the election of the officers of the Convention, the members began to contemplate over the rules of procedure and appointed a committee on proceedings of the Convention. This committee, on May 5, reported rules, 37 in all. The report was debated at length, one rule after another, and adopted with minor amendments on the 8th. The rules as adopted consisted of the duties of the president, the order of business, business and debate, motions, privileged question, committees, committee of the whole, and the miscellaneous matters. The Convention was to be run off on the ordinary legislative procedure, and all the amendments were to go through three readings before adoption. The daily routine, by the 7th rule, was ordered to be: letters, petitions, memorials, remonstrances; original resolutions, leave of absence, leave to withdraw petitions, motions to appoint additional members of committees; report of committees, both standing and select; motion to reconsider; consideration of reports and resolutions; articles of amendments. After another extended discussion, the President appointed nine standing committees on the several articles of the Constitution, each consisting of nine members. To these committees were referred nu-

88 Ibid., I, 37-77.
89 Debates, I, 96.
The Pennsylvania Constitution of 1838, numerous resolutions on the amendments which were offered by the members since the opening of the Convention.

The actual consideration of the several amendments and the debate thereupon began on May 16 and the first reading was completed by December 29, of course after the summer recess. The discussions on the second readings were heated but short and were completed by February 7. The third reading was completed by the 14th, the whole amendments were agreed to on the 15th and the 16th, the schedule was discussed and adopted by the 22nd, the new constitution was signed on the same day, the auspicious Washington's birthday, ready to be voted upon by the people at large, and the Convention closed its work on the same day.

On July 14, 1837, the Convention adjourned for the summer to meet again at Harrisburg on October 17. Then the Convention sat at Harrisburg until November 23, when it was adjourned to the 28th to meet at Philadelphia. Accordingly the Convention met at the Musical Fund Hall in Philadelphia on the 28th and there concluded the work on February 22, 1838. This change was necessitated on account of the meeting of the State Legislature, for the Convention was also meeting in the Hall of Representatives.

3. IMPORTANT DISCUSSIONS.

I have given in the introduction a rather detailed narrative of the proposals for the revision in several cases, for the points brought out in those several proposals showed the general direction of the revision to come. True, the numerous resolutions on the proposed

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* Ibid., VIII, 90–XII, 131.
* Ibid., XII, 131–323.
* Ibid., V, 3, 4–8, 331–332.
amendments which were introduced since the opening of the Convention pointed toward the similar direction. Thus, the general trend has shown that the articles IV, VIII, and IX called forth no, if at all, revision. On the other hand, the question covering the executive patronage, the tenure of offices, the judicial appointments, the franchise, the education, and the corporation called forth careful revision. The debates in the Convention followed this natural course of demands and the greatest and hottest debates were waged over these subjects.

One of the very first subjects to call the attention of the Convention was the question of the oath of office, being the article VIII. But no important discussion nor revision followed. The question of impeachment, though the article itself was not amended, called forth some heated discussion. The standing committee to which the article IV was referred reported the section 2 by substituting "a majority" vote in place of the original "two-thirds" vote for the impeachment. The debate branched off into the questions of the independence of the judiciary and the power of the Convention. On the proposed amendment, such men as Sergeant, Biddle, Earle, and Dickey vigorously maintained that the original clause should be retained, whereas such men as Clarke and Sterigere supported the proposed amendment. The question was decided adverse to the report of the committee on motion of John Dickey, by which the original "two-thirds" clause was retained.

More important discussions ensued upon the question of the governor's appointment power. The standing committee to which the article II was referred reported to amend the original so as to diminish the governor's appointment power. It proposed to vest in the

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48 Ibid., I, 132, 251.
49 Ibid., I, 470.
governor, by and with the advice and consent of the Senate, the appointment of all officers. Thaddeus Stevens, the chairman, dissented from the majority report as did Bell, each one of whom filing a minority report. Stevens proposed the election by the people of the prothonotaries, recorders of deeds, registers of wills, and clerks of the several courts, except the clerks of the Supreme Court who shall be appointed by the said court. Thomas Bell, after some debate over the proposition, proposed to amend so as to give the governor absolute power of appointing a Secretary of the Commonwealth and an Attorney General. At once debate ensued. Joshua F. Cox of Somerset objected against the alteration on the grounds: that "if the Senate are of the same political party with the Governor, they will constitute no check upon his action;" that, "if they were not of the same party with the Governor, they might . . . reject the nominations without reference to the character and qualifications of the nominees;" that it will fall into a similar pit when the Senate of the U. S. was of one party and the President was of the other; and that "He could discover no possible good that arises from such an amendment to the Constitution." George W. Woodward of Luzerne then gave three reasons for the amendments: that it would "conform our Constitution to that of the United States;" that "it would enable us to receive better officers" through the senators' acquaintance of the districts; and that "it would have the effect to diminish the inordinate desire . . . to become favorites of the Executive." "This giving to the Senate the power of concurring with the Executive," he maintained, "is

50 Debates, I, 534-36. Stevens' proposition was not included in this article, but later incorporated into the 6th article.

51 Ibid., II, 283.

52 Ibid., II, 286-7, 289-291.

The Pennsylvania Constitution of 1838.

317

bringing him in some measure more within the control of the people.” Stevens complained of the “mournful conclusion” of the “restless spirit of change” to mutilate, mangle, and deform” the Constitution, and insisted upon the old order, giving the people the power of electing some officers as he proposed. Speaking about the duty of the Legislature, he said, “Their legitimate duty is to enact laws, and not to appoint who are to execute them.” Cunningham of Mercer even proposed to replace the Senate by the House of Representatives in aiding the governor in the appointment. So the debate continued and numerous amendments were offered. But the majority agreed upon the curbing of the executive patronage and the amendment in the final form was introduced by Almon H. Read of Susquehanna, which after further amendments was adopted in the committee of the whole.

The question of suffrage and franchise was the next important subject to which the attention of the Convention was called. The debate was heated and lasted from June 19 to 28 on the first reading and Jan. 16–17 on the second reading. H. G. Rogers of Allegheny opened up the debate with his very liberal views. He said, "If in my power, I would found this Government upon two broad and enduring pillars—universal suffrage and general education. While I would concede the one as an estimable right, I advocate the other as a measure of incalculable good.” Then followed the debate involving the property qualifications, the residential requirement, the distinction

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54 Debates, II, 289.
55 Ibid., II, 307–311. This conservative attitude of Stevens is interesting in view of his later political career as radical.
56 Ibid., II, 309.
57 Which was lost. Ibid., II, 325–6, 328.
58 Ibid., II, 383ff.
60 Ibid., II, 475–6.
between the whites and the blacks, and the question of taxation.

Thomas Earle of Philadelphia maintained\(^{61}\) that "he would lay the foundation of the Temple of Liberty broad and deep; he would found it on a rock, so that when the winds come . . . it shall not fall." He then argued for the universal suffrage: first, "man should vote because he was a man;" second, "a man had a right to vote because he was a subject to the law." He further said, that

"all exclusions which are not absolutely indispensable, are pernicious. First, because they are oppressive, as opposed to the natural equality of man, which is declared in our Declaration of Independence . . . because degrading. . . . Treat a man as an outcast, and he becomes an outcast in fact, and he is ready to aid any set of men who desire to destroy your Government. There could be no doubt, then, that the strongest Government was that which exists by the voice of the whole people. . . ."

Joshua Cox of Somerset maintained that "this theory of tax qualification, of compelling men to contribute to the Government before they exercise the right of choosing their rulers, cannot be sustained on any principle of justice or equity"\(^{62}\) and the others followed on the similar line. But the universal suffrage failed to hail into the new Constitution.

The inclusion of the word "white" in the suffrage clause produced another extended debate. Benjamin Martin of Philadelphia introduced an amendment to that effect during the second reading and addressed the committee of the whole in the following language:\(^{63}\)

"Sir, the divisionary line between the races is so strongly marked by the Creator, that it is unwise and cruelly unjust, in any way, to amalgamate them, for it must be apparent to every well judged person, that the elevation of the black, is the degradation of the white man; and by endeavoring to alter the order of nature, we would, in all probability,


\(^{62}\) Ibid., II, 527.

\(^{63}\) Ibid., IX, 320-22.
bring about the war between the races—a state of things that every lover of his country must regret."

Sturdevant of Luzerne supported in even stronger terms the exclusion of negroes to vote, because the word *freeman* never included negroes, because the act to abolish slavery gradually did not change "the political rights of the negro," and because "the negroes have never complained." So did William Meredith of Philadelphia. Thomas Earle of Philadelphia, however, spoke for the negroes and quoting authorities from Washington and Franklin to Buffon and Rousseau he maintained that the spirit of abolition should be woven into the code of suffrage. He stated that the doctrine of the supporters of the *white* clause "acknowledges no right but might, savage warfare, and brutal force. It was monstrous and untenable. It would lead everywhere to the destruction of liberty and the establishment of despotism." Walter Forward of Allegheny struck the brighter key note:

"Give the black man his rights, and you may make him a contented, and perhaps a useful citizen; but take away from him those rights which belong to him, and his bosom will rankle with hate, and discontent will prevail amongst them."

Charles Chauncy's plea was,

"I believe it our duty, to do everything that lies in our power, to elevate and to improve the condition of the colored race, and to make them fit to enjoy the benefits of our laws, instead of cutting them off."

However, all efforts to eliminate the clause failed and the word "white" was included in the first section by a vote of 77 to 45.

Another mooted question of the Convention was the subject of the *tenure of office of judges*, being the con-
sideration of the Vth article. The standing committee reported to amend "during the good behavior" clause of the original to ten years, seven years, and three years, respectively, for the judges of the supreme court, the president judges, and the judges of the courts of common pleas. George W. Woodward of Luzerne moved to amend the same respectively for ten, seven and five years. After giving a detailed account of the history of judicial tenure in England and Pennsylvania, he went into an able argument to justify the limitation of the tenure. Among other things he argued for the abolition of the life tenure in order "to make judges in some degree accountable to the people," and he quoted at large the constitutions of the States in proof thereof. He concluded:

"I do not believe it is necessary that an officer should feel himself a tenant for life, in order to be independent and upright. If he be an honest man, he will be independent of all improper influences; if he be not an honest man, no parchment limitations can make him independent, and it is worse than mockery, to install him in office during good behavior. In what does the independence of a judge consist? It consists in rendering judgment according to law, without any hope of gain or fear of loss. . . . The people will not sacrifice an independent and upright judge, for it will not be to their interest to do so; and the judge will be independent and upright, when every other higher motive fails, in order to make it their interest to retain him. . . ."

The debate which ensued followed the lines of four propositions, namely, the abolition of the independence of the judiciary, the tenure for the shortest possible term of years, the tenure for a long period or during good behavior removal from the office on redress or impeachment, and the tenure for a moderate term of years. The question of reappointment and re-eligibil-

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71 Debates, IV, 271-2.
72 Ibid., IV, 277.
73 Ibid., IV, 315-45.
74 Ibid., IV, 329.
75 Ibid., IV, 340-42.
76 Ibid., IV, 342.
ity was also brought out in connection with the short term tenure, but did not produce any important discussion. The fight for the reform was carried on ably by such men as Charles Brown, John Sergeant, and Charles Chauncy of Philadelphia, George Woodward just referred to and John Dickey of Beaver. Brown read at length numerous petitions which were filed at the Legislature since 1805 asking for the call of a reform convention and pointed out therefrom that the reform of the tenure of the judges was one of the most important items the people wanted. Chauncy summed up all the arguments pro and con and made an eloquent appeal for the limitation of the tenure for the judges. John Sergeant, though the supporter of the tenure for good behavior, supported the limited term and made an able, possibly the longest, exposition of the question. Opposed to them, James M. Porter of Northampton and George Chambers of Franklin were two of the many who held the conservative view that the old constitution should remain unamended and both pointed out the uselessness of change in the light of the constitutions of the other States in the Union. Finally John Dickey motioned to amend the section to read fifteen, ten, and five years, respectively, for the above named judges, and after a short discussion carried the Convention by a vote of 63 to 51. On the second reading the question of the tenure during good behavior was brought up again by William Meredith of Philadelphia, but the amendment as agreed to previously was adopted by a large majority.

77 Debates, IV, 395-412.
78 Ibid., V, 71-114.
79 Ibid., V, 21-38.
80 Ibid., IV, 346-59; 475-86.
82 Ibid., IV, 381.
83 Ibid., X, 149-58; 254.
Vol. XLVIII.—21
The tenure of judges during good behavior vanished from the new Constitution of 1837–8, to come back again, however, in 1873.

The consideration of the VIIth article brought up two important questions of the Convention, namely, that of education and that of corporations. First as to the education.

The standing committee reported an amendment to the original article in the following words, "That all children may be taught at public expense," whereas the original ran "that the poor may be taught gratis." The principal amendments offered were that of Ingersoll that "all persons may receive instructions at public expense, at least three months in every year, in the English or German language as may be by law directed," and that of Read changing it to "all children and youth." The debate which ensued centered upon the distinction between the rich and the poor who shall be provided by the State. Thaddeus Stevens supported the committee report, true to the reputation he had established in 1833–4 as the saviour of the common school system of the State. He particularly objected to the poor clause and persisted that in the Constitution there "should be no legal paupers, and no invidious distinction of this kind ought to be incorporated in an organic law." "Every system of education in a free country," he said, "should be open to all without inquiring into their wealth or their poverty; and to tell us that it is no disgrace in the law giver, to mark out in your constitution, the lines of wealth and poverty, was not in accordance with that

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84 Debates, V, 183.
85 Ibid., V, 187–8.
86 Ibid., V, 184. This was lost, 84 to 24, Ibid., V, 269.
87 Vide, V, 216–7, 275, 288, 299–301, 307–09, etc.
88 Debates, V, 288.
spirit of liberty..." Joseph Chandler of Philadelphia was another supporter who said:

"I care not whether they are rich or poor... I shall be perfectly content if any popularity which may be in my power to acquire, comes from the lighting up in the countenances of the poor man a smile of intelligence:—from giving to him and every man the power to read the constitution of the state in which he lives... and enabling him to read the words of God... I court this more than any other empty honor which I might obtain by trying to separate the rich and the poor... I ask that all, all may be educated—and that all may be able to claim the benefits which are now extended to a few."

John Sergeant was another ardent supporter of universal education. The spokesmen of the conservative group were John Dickey who declared "Sir, the common school system of Pennsylvania is working well" and went into a lengthy argument, whenever occasion was given him, to disapprove of the proposed amendment. Dunlap and Cox were also notable opponents of the change. The above amendment proposed by the committee carried through the first reading, but went down into defeat on the second reading and the fight for the universal education was lost in the Convention.

The debate with reference to the corporate bodies, particularly the banks, being the consideration of the third section, occupied the longest time of the Convention. It lasted from November 19th to December 29th in the first reading alone, covering three full volumes of the Debates. The standing committee reported that the third section needed no amendment. Almon H. Read of Susquehanna moved to amend the same so as to make the stockholders liable for the debts of the corporate body, which amendment after a discussion was lost. He again moved to amend the same so as

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Debates, V, 300.
Ibid., XI, 142. See also, V, 194–197, 285ff.
Ibid., XI, 145. Also throughout the debate, passim.
63 to 52. Ibid., XI, 160.
Ibid., V, 433–468.
to prohibit the banks from issuing the notes of a less denomination than twenty dollars.\textsuperscript{94} This set the debate on full sway until Stevens moved to amend the same to read, "The legislature shall provide wholesome restrictions on all banking institutions within the commonwealth, so as to promote the best interest of the people."\textsuperscript{95} The debate which followed went into an elaborate analysis of the questions concerning (1) currency, (2) banking, and (3) corporation. A few examples. James Clarke of Indiana spoke against the "artificial aristocracy of wealth" and, in a speech extending over two days, he made a plea for a free competition. In speaking against the "corporations for money making purposes," he said:

"In a free country such corporations are radically wrong. They are against the genius and spirit of our free institutions. They are unequal, unjust, and fraudulent: unequal because they make distinctions among the citizens who ought all to possess the same opportunity of advancing their interests; unjust, because they give advantages to a favored few that are denied to all others; fraudulent, because they take the power from the many and give it to the few..."

And among other things he objected to the banking "because it encourages the violation of the moral law."\textsuperscript{96} Stevens, on the other hand, spoke for the existing system, showing the attempt of the few to overturn former Supreme Court decisions "so far as they protected vested rights and privileges chartered," pointing out the danger of dividing the society into the rich and the poor by such expressions as "the aristocracy of wealth," proving the utility of the charter of the bank, disproving the charge of fraud and corruption against the bank, and assigning the whole trouble of crisis and prevailing unrest to Jackson's "specie circular" which "depreciated and produced a fluctuating

\textsuperscript{94} Debates, V, 468–9ff. Later modified to ten dollars.
\textsuperscript{95} Ibid., VI, 36.
\textsuperscript{96} Ibid., VI, 80–95; 82; 86.
currency. Chambers of Franklin and Chauncy of Philadelphia also presented very conclusive arguments in defense of the existing system. The "protracted debate" was finally brought to a close when the motion "that it is inexpedient to make any amendment to the third section of the seventh article of the constitution" was adopted by a vote of 64 to 54.

Another attempt to control the banking corporations was made in an amendment to the first article, section twenty-five. At first it was moved that no banking corporations shall be created without the approval of the two successive legislatures, but, after a few pointed debates, it was agreed to the clause "six months' previous public notice of the application for the same."

The legislative power to annul marriages and to grant divorces was denied in an amendment to the article one, section fourteen. There were a few pointed discussions, but it failed to arouse much interest.

4. A SUMMARY OF THE WORK.

The work of nearly seven months resulted in a complete revision of the old constitution. The only articles which did not receive the knife of revision were IV, VIII, and IX. An additional Xth article on the amendment of the constitution was secured.

The main line of revision followed the curbing of the executive power, the limiting of the tenure of judges, the extending of the franchise, the controlling through legislature of the corporate bodies, and the providing of the means of amending the constitution in the future.

The Constitution as adopted was printed in parallel columns with the old constitution and was given to

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98 Ibid., VII, 411-429; VIII, 24-34; etc.
99 Ibid., VIII, 88.
100 Ibid., IX, 117-218.
101 Ibid., IX, 3-117.
102 Ibid., XIII, 224.
III. Analysis of the Constitutional Changes.

1. Executive.

The main feature in the revision of 1837–8 as far as the executive power is concerned was the Governor’s appointing power. According to the old constitution he was to appoint “all officers” created by the constitution or by laws. Now, “he shall appoint a Secretary of the Commonwealth during pleasure” by himself, while “he shall nominate and by and with the advice and consent of the Senate appoint all judicial officers of the Courts of Record.” The Governor could fill vacancies in the above judicial offices during the recess of the Senate, not extending beyond their next session. The Senate acting in the above capacity was to have open session.

The Governor’s tenure of office was retained at three years, but, under the new Constitution, he could not hold it longer than six years in any term of nine years.

In case of the death or resignation of the Governor, a more detailed method of election was provided for than in the old constitution, thereby remedying the postponing of the election which could be done in the old system.

“The Secretary of the Commonwealth” was the name given to the original Secretary who was to assist the Governor.

2. Legislative.

The principal change in this department was the tenure of the Senators from four years to three

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Art. II, Sec. VIII.

Ibid., Sec. III.

Ibid., Sec. XIV.

Ibid., Sec. XV.
Accordingly they were to be divided into three classes so as to make one-third elective every year. The removal from the district from which a Senator is elected was *ipso facto* annulment of his election. The Legislature was to begin on the first Tuesday of January every year instead of in December.

On the power of the Legislature, two new amendments were made. By the one the Legislature was prohibited "to enact laws annuling the contract of marriage in any case where, by law, the courts of this Commonwealth are, or hereafter may be, empowered to decree a *divorce*." By the other, the Legislature could not create, renew, or extend any "corporate body" "with banking to discounting privileges, without six months' previous public notice of the application for the same;" it could not grant charter for a longer period than twenty years; it reserved the right to alter, revoke or annul the charters thus granted. The same section also provided that "no law hereafter enacted shall create, renew, or extend the charter of more than one corporation."

The regulation as to the formation of the districts was made more strict so as to limit the number of Senators to two in ordinary district, and not more than four in city.

Another restriction on the power of the Legislature was in the following addition to the VIIth article, that "the Legislature shall not invest any corporate body or individual with the privilege of taking private property for public uses, without requiring such corpora-

307 Art. I, Sec. V.
308 Ibid., Sec. IX.
309 Ibid., Sec. VIII.
310 Ibid., Sec. X.
311 Ibid., Sec. XIV.
312 Ibid., Sec. XXV.
313 Ibid., Sec. VII.
tion or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken." It is obvious from this amendment and the others above that the Convention looked upon the extension of the corporate powers as dangerous in the future.

3. JUDICIARY.

The chief objection to the judiciary system established by the Constitution of 1790 was the tenure of judges "during good behavior." Under the new Constitution, the judges of the supreme court were to hold offices for fifteen years, the president judges of the several courts of common pleas for ten years, and the associate judges of the courts of common pleas for five years. These judges, moreover, were to be nominated by the Governor, and by and with the consent of the Senate appointed and commissioned by him. Furthermore, the Governor could remove any one of them "on the address of two-thirds of each branch of the Legislature." Thus, not only the tenure of office of judges was limited, but the Governor's appointment power was curbed, giving the Senate a share therein.

The justices of the peace, who were originally appointed by the Governor to serve during good behavior, were to be elected by the people and commissioned by the Governor for a term of five years. The sheriffs and coroners, one person to each office, were to be chosen by the people and commissioned by the Governor, whereas there were originally two each, one of which was appointed by the Governor. Prothonotaries of the supreme court were to be appointed

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114 Art. VII, Sec. IV.
115 Art. V, Sec. II.
116 Old Art. V, Sec. X.
117 Art. VI, Sec. VII.
118 Ibid., Sec. I.
The Pennsylvania Constitution of 1838.

by that court for three years if they so long behave, while prothonotaries and clerks of the several other courts, recorders of deeds, and registers of wills were to be elected by the people for three years and commissioned by the governor.\textsuperscript{119} Vacancies in those offices could be filled by the Governor until the next ensuing election.\textsuperscript{119}

Thus, the judiciary was brought nearer to the control of the people, directly or indirectly, and the Governor’s appointment power was greatly diminished as in other departments.

4. Franchise.

The Constitution of 1790 gave the power to vote to “every freeman” who had resided within the State “two years” and paid the tax for a period of same years. The new feature in the new Constitution was the inclusion of the adjective “white” to further distinguish “every freeman.” The residential requirement was diminished to “one year” in the State and “ten days immediately preceding” in the district. The taxation requirement remained the same, except that such a tax was to have been levied at least ten days before the stated election. A new clause was included for the benefit of the legal voters who had removed to other state but who had returned in which case the residential requirement was “six months” in the State.\textsuperscript{120}

The proviso in the old Constitution gave right to vote to “sons” of qualified voters between the ages of 21 and 22, who had resided in the State two years, even if they have not paid the tax. The new proviso extended this to “white freeman, citizens of the United States” and the residential requirement to one year and ten days in the election district.\textsuperscript{120}

\textsuperscript{119} Art. VI, Sec. III.
\textsuperscript{120} Art. III, Sec. I.
The Pennsylvania Constitution of 1838.

The new Constitution, then, specifically limited the franchise to the "white" freeman. On the other hand, it diminished the residential requirement by half, with the additional requirement of ten days' residence in the district. It specifically also enabled those who had once removed from the State to vote upon fulfillment of the above residential requirement.

5. MISCELLANEOUS PROVISIONS.

The old constitution of 1790 made no provision for amendments. Naturally the necessity for legislation upon this point was generally felt; in fact, this was one of the causes which delayed the calling of the revision convention. The result was the new article X on the amendments. The new article provided that any amendment to the constitution may be proposed in the Senate or House of Representatives. If it is agreed to "by a majority of the members elected to the each house" in two successive sessions, after being published in the newspapers in every county, it will be again published three months. Then it will be submitted to the people. If the people approve of it "by a majority of the qualified voters of their State voting thereon," the proposed amendment became a part of the constitution. But no amendments shall be made oftener than once in five years.121

The innovating feature of this new article is the approval of the proposed amendment "by a majority vote" of the Legislature and the people, instead of "two-thirds" vote in many other states.

With regard to the appointment of officers of the state whose election is not provided in the constitution, the subject was to be dealt with by the legislation. The

121 Art. X. Borgeaud, Adoption and amendment of constitutions, Chapter V.
The work of the Convention was completed. The text of the revised constitution was presented to the people in toto, along with the text of the constitution of 1790. Each new provision in the one, each part being suppressed in the other, was clearly shown by italics. Twelve thousand copies were printed in the English language, and three thousand in the German. The members of the Convention were enjoined to distribute them in their respective districts.124

The constitution was voted upon by the people of the State on October 9, 1838, as provided by the law. The votes stood: for the amendment, 113,971; against the amendments, 112,759. The majority was, thus, only 1,212.125 The result was counted by the speaker of the Senate and announced on December 11, 1838, in the presence of both houses.125 The governor's proclamation by the secretary of the commonwealth announced the adoption of the proposed amendments and the new Constitution became effective in January, 1839.

The necessary changes to be made in the machinery of the State on account of the New Constitution were called upon in an annual message to the Legislature by Gov. D. R. Porter in December, 1839,126 and the

122 Art. VI, Sec. VIII.
123 Ibid., Sec. IX.
124 Debates, XII, 238, 306; XIII, 100-02. In 1790, 3500 English and 1500 German copies were published.
125 Ibid., XIII, 260-62.
126 Papers of Governors, VI, 638-9.
Legislature proceeded to provide the necessary provisions therefor.

In concluding this paper let us summarize what has been done. The principal features of the new Constitution were: Change of the political year from December to January; limiting the governor's re-eligibility to the office to two terms of three years each in any term of nine years; reducing the Senatorial term to three years; restricting the power of the Legislature to grant banking privileges; diminishing the governor's patronage by vesting the election of nearly all officers heretofore appointed by him in the people or their representatives; investing the Senate with the power to confirm governor's nominations of the judicial officers, in open doors; abolishing the judicial tenure of "during good behavior" and applying limited terms, from five to fifteen years; extending the right of suffrage to all "white" freeman and reducing the residential requirement to one year, and also to "white" freemen citizens of the U. S. who had resided in the State one year and ten days in the district, without paying any tax; and providing the method of amending the constitution "by a majority" in the Legislature and of the people.\textsuperscript{127}

In other words, the new constitution successfully curbed the governor's appointing power and other patronages, brought the judiciary closer to the people by limiting the tenure of offices and by giving the Senate to confirm the nomination, and added the method of amending the constitution in the future—these were, it has been noticed already, the principal features agitated before the calling of the convention.

"Influence of democracy was permeating every section of the country;" wrote Jenkins, "life tenure in offices were broken down; the aristocracy of office hold-

ers was retired; and the people took actual possession of their governments." However, the new constitution was not a perfect weapon and the new reform movement was soon to start anew. More important questions to be yet dealt with in the near future were questions of franchise, of universal education, of the political year, of the tenure of offices in all departments, and of the legislative power over the corporations. Thus, before the constitution of 1873 was adopted, it had to undergo three revisions in 1850, 1857, and 1864. The return in 1873 to the constitution of 1790 in many provisions is, indeed, very interesting.

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128 Jenkins, op. cit., II, 287.
129 As for example, the return of the tenure of judges to "during good behavior," political year again began in December, etc. See "Constitution of Pennsylvania—Constitution of the United States." Harrisburg, 1916.