The Organization and Procedure of the Pennsylvania Assembly
1682-1776

I
Organization

In view of the fact that Pennsylvania is said to have contributed "much the largest part of our national law-making devices," it seems strange that the legislative procedure of Pennsylvania's colonial Assembly has not been systematically investigated long before this. For it is certainly worthy of note that the Congress of the United States sat in Philadelphia during its formative years; was presided over by a former Speaker of the Pennsylvania Assembly; and had at hand, in printed form for easy reference, the journals which record the procedure customarily employed by the Pennsylvania Assembly in carrying on its legislative business.¹


² On the other hand, anyone who has investigated the subject of lawmaking in colonial Pennsylvania knows very well that (as was pointed out in the April, 1948, issue of this Magazine, page 113) the printed journals by no means disclose the whole of the legislative process. Pennsylvania's journals are indeed fuller than those of some other colonies, but they do not...
Perhaps one reason why the subject has not received a more extended study is a rather popular misconception concerning the whole matter of legislative procedure, namely, a tendency to regard it as sterile and academic—a topic fit only to be embalmed between the covers of a dry-as-dust treatise on political economy. But, of recent years, the average citizen has been forced to a realization that procedural techniques are decidedly important parts in the machinery of government. He has seen the United Nations spend weeks of valuable time on purely procedural questions, and has witnessed Congress’ attempt to streamline its activity and democratize its committees in the interest of greater efficiency. He has learned, on the other hand, that, when skillfully manipulated for selfish purposes, procedural techniques are equally effective in obstructing business. Legislators, themselves, have, of course, long been conscious of both aspects of procedure. Those of colonial Pennsylvania, as will be seen, were no less astute than modern politicians in this matter.

It is probably true to say that for the first Pennsylvanians, many of them at least, lawmaking was literally a nine-day wonder. The representatives met during eight days to discuss bills which had been promulgated before by the Governor and Council, wondering meanwhile how long it would take them to win for themselves the right of initiating bills. Then, on the ninth day, they met in joint session with the Governor and Council formally to accept or reject the bills which they had considered. This seems to be an extraordinarily short annual session for any legislative body, but it must be remembered that the Council was, in Penn’s estimation,

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lay bare the hidden springs of political behavior. Therefore, they must be supplemented by a thoroughgoing study of contemporary correspondence, as well as autobiographical and periodical material, in which the Library of The Historical Society of Pennsylvania is rich. Even then, although the illumination provided by such research is rewarding, there is still much to be desired, for practically nothing of what took place in committees comes to light.

3 *I.e.*, posted in prominent places throughout the Province for preliminary study.

4 The first constitution, that of 1682, specified that bills had to be promulgated thirty days before the meeting of General Assembly. The constitution of 1683, however, decreased it to twenty.

5 At the discretion of the Governor and Council the usual session of the General Assembly might be prolonged, or the representatives might be summoned at any time during the year, should occasion warrant. It is interesting to note, however, that during the first ten years, with the exception of 1683, no session of the General Assembly lasted more than nine days, and there was only one special session in addition to the regular annual meeting.
just as representative of the people as those who came to Philadelphia to ratify the promulgated bills. From one point of view, the Council was a legislative committee, elected by the people for the preparation of bills. The electing of additional representatives for the purpose of assenting to the bills so prepared was intended by Penn as a further popular check upon the legislative activity of a popularly elected body.\(^6\)

Moreover, the representatives were by no means desirous of long or frequent sittings. They were not professional politicians. Rather, they were householding inhabitants of a new community, who realized the necessity of regulating it by laws of their own making if the good order of the Province and their own individual prosperity were to be secured. Attendance on this service was a matter of duty for which they endured the hardships of traveling to Philadelphia along roads which were, in the very early days, hardly more than foot or oxen paths through rich meadows or sparsely settled wilderness, and which in rainy weather became muddy trenches, while they completely disappeared under heavy snows.\(^7\) On the other hand, of course, the difficulties were somewhat compensated by the pleasure of greeting one’s fellows in the most populous center of this newly planted colony.

The nine-day session was eliminated by Markham’s Frame in 1696, and, after the granting of the Charter of Privileges in 1701, the length of the Assembly’s sitting legally depended upon its own will. What is more, the assenting part of the earlier General Assembly had, by 1701, finally attained the legislative maturity it had so long desired. It relegated the Council to a purely advisory capacity as far as legislation was concerned. Under the Charter of Privileges, which remained Pennsylvania’s fundamental constitution from 1701 to 1776, the Assembly in conjunction with the Governor or his Deputy acted as the only lawmaking body, vested with certain carefully

\(^6\) Needless to say, there was a group of the early settlers who were not satisfied with this arrangement. They endeavored to secure greater rights for the “Assembly,” as they called the ratifying part of the General Assembly. During the first two decades of the colony the number of malcontents continued to grow until they were able to write a new constitution in 1701.

\(^7\) The Lower County members found the journey particularly difficult. When, therefore, the annual session was held in Philadelphia every year from 1683 to 1700, they complained that they were being “abused by the Province.” Only when the Lower Counties were given an independent legislature did their complaints cease.
enumerated rights and a blanket claim to "all other Powers and Privileges of an Assembly, according to the Rights of the Freeborn Subjects of England, and as is usual in any of the King's Plantations in America." Thenceforward, the constitutional history of the Province is the story of an ever recurring attempt on the part of the Assembly to defend and enlarge its powers at the expense of the Proprietor and his Deputy. Such efforts began almost immediately after the granting of the Charter under pretense of clarifying its provisions. But it was a movement which, according to Penn, distorted government, tending "to break the due Proportion of the Parts of it, to establish Confusion in the Place of necessary order, & to make the Legislative the Executive Part of Government." 8 Almost immediately, in its new-found freedom, the Assembly emphatically resolved that not even the Governor could regulate the length of its session, 9 affirming that it was not "subject at any Time to be by him adjourn'd, prorogu'd, or dissolv'd." 10 It was, however, one thing to hold and another to make good this contention, and during the

8 William Penn to Assembly, June 29, 1710. Robert Proud Memorandum, Parrish Collection, Proud Papers, II, 15. All manuscripts herein cited are in The Historical Society of Pennsylvania.

9 The question of the length of a legislative session threatened to become a vital problem in Pennsylvania toward the middle of the eighteenth century because of the friction between Governor Thomas and the Assembly arising out of the defense issue and the Governor's permitting the enlistment of servants in companies being raised for a West Indian campaign. To show its indignation, the Assembly refused to pay the Governor his annual support. He, in turn, would not pass their bills. This stalemate lasted for a couple of years. Meanwhile, the Governor's faction feared that the Assembly would circumvent the difficulty by claiming that several absolutely essential laws which had recently expired, or were about to do so, were still active. The only possible basis for such a contention was a clause in the laws specifying that they were "to continue for the space of three years, and from thence to the end of the next session of assembly and no longer." If, therefore, legally there could be no session unless one law was passed (as was commonly held in England), then the Pennsylvania laws which included the above clause would remain in force until the Assembly passed at least one act. The Assembly would in this fashion be able to withhold the Governor's salary indefinitely. Contrary to the expectation of the Governor's faction, however, the Assembly did not attempt to use this line of argumentation, perhaps because they realized that English law and custom was in this instance not applicable. The dispute was settled by compromise on both sides. In February, 1743, the Governor passed several of the bills sent him in return for £1,500. Again, in 1744, the Governor and Assembly bargained—the former receiving £2,000 and assenting to two bills sent him by the Assembly.

following year the House had a severe collision with Governor Evans on this very point. The Governor would not look upon the representatives as a "standing Assembly," that is, continuing from the election of one year to that of the following year, while the Assembly insisted that it was such by charter. Needless to say, the Assembly won the argument.

The number of sittings per year was another matter. That continued to depend, in large measure, on the will of the Governor, even after the Charter of 1701, for he still retained the power to convene the Assembly in special session. Much, therefore, depended upon the relationship which existed between the Governor and the House. If they were at swords' points over controversial issues, or even on purely personal grounds, the Assembly was likely to become balky and refuse to enact the legislative program suggested by the Governor. The latter was just as apt to attempt to force the House's action by the frequent summoning of members with renewed application for the desired legislation.

During the administrations of Governor Evans and Gookin, both of whom were particularly disliked by the Assembly, there were frequent calls for the House to sit. The same was true in the time of Governor Thomas who strove to make a pacifist Assembly support England's war against Spain. Its failure to do so was certainly not owing to any lack of effort on his part. At the opening of the annual session he told the House that he thought their October session ought to be longer than usual because of the gravity of the international situation. The House ignored his recommendation and adjourned itself to December 31. Before that date, at the end of November, the Governor summoned the House to a special sitting. When met, however, the House, without giving satisfaction to the Governor, shortly adjourned itself to the original date at the end of December. At that time it conducted a lengthy dispute with the Governor over the question of defense and then disbanded toward the end of January with the resolution to meet again on April 14. Just as before, the Governor anticipated the date of their adjournment and called a special meeting for March 28. The results were the same—the House refused to proceed to business and dispersed until May 5. Toward the close of its May sitting the House decided to reconvene on August

11 Ibid., 448.
II, but the Governor summoned it again early in July, only to have the annoyed Assembly tell him that it could not stay because of the harvest. And thus it went throughout the year—the time of the Assembly's various sittings being made a political football in the controversy between the Governor and the House over defense measures, the Governor seeking to obtain his demands by wearing down the resistance of the House, the latter stalling for time in the hope that England's improving circumstances would render unnecessary any defensive action on the part of Pennsylvania. Nor was this a unique situation. Governor Thomas had much the same experience again in 1744. His predecessor, Governor Evans, had met with the same treatment in 1706, and his successor, Governor Morris, in 1755.

If there is any general pattern to be discerned with respect to the time of the various annual sittings of the House, exclusive of special ones such as those discussed above, it might be said that a newly elected Assembly convened each year, as a matter of charter right, on October 14. After a day or two, sometimes longer, it adjourned to late December or early January. Having sat for a month or two, it again adjourned—this time until early May. About the end of that month, or sometime in early June, it disbanded until late August or early September. At the close of the latter sitting it ordinarily adjourned itself to September 30, the last day of its legal existence as the provincial elections took place on October 1. But, if this is true on the average over a period of seventy-five years, the exceptions to this pattern are almost as constant as the rule. Frequently the Assembly had more sittings per year than this; often it had fewer. Always the major concern of the representatives was to get back to their farms as soon as possible.

It was natural, too, that farmers should insist on the greater part of their political business being done during the winter months in

12 Ibid., III, 2662.
13 Ibid., IV, 3015-3058.
14 Ibid., I, 585-783.
15 Ibid., V, 4087-4375. Governors of provincial Pennsylvania mentioned in this article are: William Markham, 1681-1682, 1693-1699; William Penn, 1682-1684, 1699-1701; John Blackwell, 1688-1690; Benjamin Fletcher, 1693-1694; John Evans, 1704-1709; Charles Gookin, 1709-1717; William Keith, 1717-1726; Patrick Gordon, 1726-1736; George Thomas, 1738-1747; James Hamilton, 1748-1754, 1759-1763; Robert Hunter Morris, 1754-1756; John Penn, 1763-1771, 1773-1776.
which they were free from agricultural pursuits. Hence, January, February, and sometimes part of March, were the most active times legislatively. Although the members, thinking of their land which had to be broken and prepared for seeding, became restive toward the end of March, they occasionally sat longer if necessary, as, for example, in 1757, when they sat for four months, finally adjourning on May 3. Ordinarily, however, they insisted that the “Season of sowing the Summer Grain” began at the end of March, and their cattle were then “at the weakest.” Harvest time, commencing around the end of June, was likewise obviously unsuited for legislative tasks. The members of Assembly preferred to sit for a short session between seeding and harvest.

Until the building of the State House the Assembly met wherever it could—in the Bank Meeting House or in private houses hired for the occasion. The Widow Whitpain’s house on Front Street between Walnut and Spruce, was for many years a favorite rendezvous because of its “great front Room.” Samuel Carpenter’s, William Fishbourne’s, and Bentley Cook’s houses were also among those used at various times. Occasionally, the Assembly would adjourn to a member’s bedroom, as it did, for example, during the Speakership of Isaac Norris. Because Norris was confined to bed with gout, the Assembly agreed to meet at the home of his brother Charles, with whom he stayed during the meetings of Assembly. Another time, the Assembly, lacking a quorum, sent for one member, and then, upon his arrival, went to “Thomas Master’s House (who being indisposed, could not venture Abroad) and made up a Quorum.”

One year at least, the Assembly sat in Thomas Makin’s schoolhouse. Most likely he held class out of doors in the meanwhile, for he complained to the House that he had lost “several of his Scholars, by Reason of the Assembly’s using the Schoolhouse so long, the Weather being cold.” Thereupon, the House resolved that the county of Philadelphia should pay Makin three pounds over and above the

16 Ibid., I, 732.
19 Votes, II, 971.
20 Ibid., I, 552.
twenty shillings rent formerly allowed him by the House. Naturally, Philadelphia County did not like the prospect of always being the one to pay the overtime fees, so a motion was promptly introduced, requesting that “... the next Assembly may sit at Chester, and the next in Bucks County, and so in them counties successively, until the County of Philadelphia shall have a State-house, or other convenient Place for the Assembly to sit in.” Nothing was done about it, however.

In 1729, the House appropriated £2,000 for the building of a state house. Ground was purchased between Fifth and Sixth Streets on the south side of Chestnut, and the work of building, according to plans drawn by Andrew Hamilton, was begun in 1732. Four years later, before the structure was finished, the Assembly moved in. Hence-forward, its annual meetings were held here.

The State House was centrally located. Hence, it was easy for the members to go to their lodgings at the noonday recess, returning for an afternoon sitting at two or three o'clock. Such a break in the day’s labor, which commenced ordinarily at eight o'clock, occasionally at nine, and rarely at seven, must have been very welcome, especially in view of the fact that the afternoon sittings sometimes lasted well into the evening. In 1757, the Assembly made a trial of doing without this break at noon in order to “go through more Business.” The House resolved that for one week it would meet at ten in the morning and sit straight through until three or four o'clock. It shortly went back to the former schedule, however.

From 1740 to the Revolution, the hour for assembling was ten o'clock. It became customary, too, for the House to adjourn for the week end in order that the country members might get home to their families and farms. In fact, on at least one occasion, the Assembly asked the Governor to speed his action on a measure sent to him by the House, because the assemblymen had ordered horses for a week end at home. Usually they adjourned around midday on Friday and reconvened either at three or five o'clock on the following Monday.

Of course, there were many informal gatherings of the members outside the regular hours of Assembly, when plans were made and

21 Ibid.
22 Ibid., III, 2213-2214.
23 Ibid., VI, 4504.
measures concerted for introduction into the House. These were held at the homes of various members, in the Coffee House, or at the several clubs of the city. In addition, members spent considerable time serving on the select and standing committees of the House. All in all, the life of an assemblyman was a busy one while the House was in session, especially if the Assembly happened to be engaged in a dispute with the Governor.

The opening session of the Assembly was extremely brief. This custom of limiting the first session to a few days was inaugurated because the Governor had to go to the Lower Counties (Delaware) in November in order to attend their Assembly.24 The work of this October sitting was that of putting the House in preparedness for the tasks of subsequent meetings. The names of the representatives were called over; the Speaker was elected and presented to the Governor; the members of the House were qualified; its officers were chosen and standing committees were appointed; reports were ordered prepared against the next meeting; and the Governor in his message outlined the subjects which he recommended to the Assembly's consideration for the coming year.

The last sitting of the House, in late August or early September, was devoted to finishing up the business of the year and to settling the provincial accounts. Up to about 1757, this sitting usually took place in August, but from that date September was favored. Ordinarily no new business was considered at this sitting;25 it was simply a time for tidying up and clearing accounts. Sometimes legislation which had been sent back and forth between the House and Governor all year without agreement kept the House sitting right up to the eve of a new election, and then the matter was finally referred to the consideration of the next Assembly.26

Before a legislative session of the Pennsylvania Assembly could really get under way there had to be a two-thirds quorum of the members present. Until this had been ascertained by a roll call of the election returns, the House could not proceed to elect its officers.

24 Ibid., IV, 2830.
25 Governor Hamilton to Thomas Penn, September 24, 1750. Penn Papers, Official Correspondence, V, 53; hereafter referred to as PPOC; also, Votes, II, 1703.
26 Ibid., V, 4025-4051; also, J. Shippen to Major Burd, October 3, 1757. Shippen Papers, III, 59.
Moreover, if at any time during the session the House should lack this number, business came to a standstill until it was secured.\(^{27}\) Hence, in levying fines on late and absent members of the Assembly, there was usually imposed a heavier penalty on such delinquency when it deprived the House of a quorum.\(^{28}\) What happened ordinarily in such a situation was that the members present, after informing the Governor of their inability to proceed to business, adjourned the House to some definite date and then ordered a notification sent to the absentees that the House expected their presence on that date.

Like every other aspect of procedure the legal quorum lent itself to political purposes. Several times a discontented minority sought to destroy the House, or at least to hamper its business by their wilful absence.\(^{29}\) Once, at least, a Governor capitalized on the lack of a quorum to frustrate the Assembly’s design of impeaching the Provincial Secretary.\(^{30}\) Governor Gookin, in 1714, refused to recognize the members as a House when they managed to command a quorum after a previous failure to do so. He rejected the remonstrance which they offered him, telling them to “be gone about their Business, otherwise he would order the Sheriff and Constables to send them going.”\(^{31}\) Again, in 1750, Governor Hamilton aroused the Assembly’s

\(^{27}\) In 1705, to cite just one instance, the Assembly discovered, on meeting after an adjournment, that it had a majority, but not a quorum, of members. Thereupon, a member from the city together with several of the county members went to the home of Charles Read, who had been elected as the other representative for the city, to try to secure his attendance. But he refused to come, saying that he was too weak. Nothing could be done, therefore, except request the Governor to issue writs for the election of new members in the place of the two deceased from Bucks and the one incapacitated from Philadelphia. \textit{Votes}, I, 468.

\(^{28}\) \textit{Votes}, I, 504 (1705); \textit{Ibid.}, VI, 5477–5478 (1763).

\(^{29}\) \textit{Ibid.}, I, 108 (1689), 306 (1701); III, 1879–1880 (1728). The last mentioned case is the most interesting. It seems that Sir William Keith, onetime Governor of Pennsylvania and subsequently member of the Assembly, in the early part of 1728, left suddenly for Europe, leaving a letter requesting the Assembly to elect another member in his stead. According to Governor Gordon, the man whom Keith wished as his substitute was “one James Graham a hair brained hot headed ignorant young fellow, Sr. Williams relation (whom he had fully instructed for his behavior and conduct).” Governor Gordon to John Penn, May 1, 1728. \textit{PPOC}, II, 7. Keith was practically appointing his successor, and the House resented his action. In protest, the members from Bucks and Chester Counties made and passed a motion to the effect that the House should excuse Keith’s absence rather than hold an election for the vacancy. Eight of the members representing the city and county of Philadelphia, Keith’s faction, so much resented this frustration of their plans that they refused to attend the House, thereby destroying the quorum and rendering business impossible.

\(^{30}\) \textit{Votes}, II, 932 (1709).

\(^{31}\) \textit{Ibid.}, 1089.
ire by arguing that the lack of a quorum on the day of adjournment destroyed the legal character of the session. It could only be restored, he maintained, by a writ from the Governor reconstituting the House. The Assembly countered with the assertion that the charter provision of a two-thirds quorum meant that a lesser number could not act legislatively, but that a majority could certainly adjourn the House from day to day until a quorum had been secured. To prove their point the members diligently paged through the journals of previous assemblies. After three or four days of debate, the Governor ended the impasse by sending them a message saying that he thereby constituted them a House, that they might therefore proceed to business. This procedure was, as Richard Peters wrote to the Proprietor, "... wrong on both sides, yet there being a precedent, the Governor thought it was better to follow it than to break with them."

But the presence of a quorum at the opening of the session meant no more than that the members might proceed to organize themselves into a legally constituted House; it did not mean that they were already such. It remained for them to take the necessary measures, of which the primary step was to elect a presiding officer. Penn's idea of the importance of the Assembly's presiding officer—its Speaker—was very different from the opinion that body entertained regarding him. Although while he lived in the Province, Penn, as Governor, yearly gave his approbation to the Speaker chosen by the Assembly, he refused to consider him as occupying an office analogous to that of the Speaker of Commons. The Assembly, he wrote in 1688, has no right to a Speaker or Clerk for the simple reason that the Assembly lacks existence as a separate entity; it has existence only in conjunction with the Governor and Council. All three

32 Ibid., IV, 3368.
33 See the very interesting report of the Assembly committee appointed for this task, in Votes, IV, 3369-3396. After the reading of the report, the House: "Resolved, N.C.D. That this House, by their Charters and the Laws of this Province, had an undoubted Right to sit upon their own Adjournments, besides all the Privileges of Assemblies in the King's Dominions in general."

"Resolved, N.C.D. That the Majority of this House having met upon the Day of their Adjournment, and from thence continued their Adjournments till a Quorum appeared, has an undoubted Right to do so, and at this Time have all the Powers of an Assembly of this Province, and are ready to proceed to Business."
34 Richard Peters to the Proprietaries, January 30, 1750. PPOC, V, 121.
together form the General Assembly wherein the Council proposes legislation and the Assembly assents to it. If you must compare the government of Pennsylvania with that of England, he said in 1691, it is the Council rather than the Assembly which resembles Commons. The Assembly is "but an additional to ye Prov. Councill," with the limited function of assenting to or dissenting from the proposals of the Council. How ridiculous, then, for the Assembly to look upon its Speaker as a counterpart of the exalted Speaker of Commons! In reality, said Penn, he is no more than "a foreman to speak for them to a Comitty of P. Councill." The Assembly, however, would not be content with such a concept, and it finally won the argument. The Charter of Privileges of 1701 embodied a constitutional guarantee of the Assembly's right to choose a Speaker who was recognized as embodying the authority of the House in all its external dealings. The Speaker not only personified the dignity of the House and acted as its spokesman to the outer world; he was also its supreme arbiter within doors. Hence, the choice of a Speaker was usually the first action of the House after the election returns had been read and checked.35

The Assembly journal does not make clear who conducted the election of the Speaker. In all probability it was the Clerk of the preceding session of the Assembly, but there is nothing to prove that he did. The practice in electing a Speaker for Commons was for some

35 Who was Pennsylvania's first Speaker? The answer to this question still remains a mystery in spite of the fact that many secondary works state without hesitation that Nicholas More, President of the Society of Traders, was the Speaker of the Assembly which met in Chester in December, 1682, in order to adopt the fundamental constitution of the new settlement. To be sure, a hasty reading of the Assembly journal might lead to such a conclusion, but the sources do not confirm it. In the first place, More was not a Quaker. But, Penn in a letter to Jasper Yeates clearly indicated that the Speaker of the Chester Assembly was. Friends, he said, won the Speakership by a very narrow margin. Indeed, they were almost outvoted, carrying the office "but by one Voice & that through the Absence of two of ye other Side yt were not Friends." William Penn to Jasper Yeates, February 5, 1682/3. Penn Papers. Secondly, when the Assembly on two occasions during this session resolved itself into a committee of the whole House, More was named Chairman, and the Assembly journal reads: "The Speaker leaving the Chair, the President assumes it." Votes, I, 9. Unless this means a purely fictional change, which is improbable in view of the traditional procedure of Commons so closely followed by the Pennsylvania Assembly, it seems certain that President More of the Society of Traders was not the first Speaker of the Pennsylvania Assembly. Possibly, Thomas Wynne, an esteemed Quaker, was the Speaker of this as well as the succeeding Assembly at Philadelphia, but it may just as likely have been Christopher Taylor, who played a rather prominent role in that session if one may judge from the journal.
member to rise and nominate another for office.\textsuperscript{36} If the House unanimously favored him, then two members led the Speaker from his place to the Chair. If more than one was nominated, then, according to Henry Scobell, onetime Clerk of Parliament, "some Member standing in his place, doth by direction or leave of the House, put a Question for determining the same."\textsuperscript{37} There is some evidence to prove that this procedure was adopted by the Pennsylvania Assembly. Governor Gordon, in writing to John Penn about the Assembly of 1726, told how, on October 14, the opening day of the session, "one of the members mentioned Mr. Lloyd to be Speaker at which they all stood up and agreed to it, except two or three.\textsuperscript{38}

Most likely this standing vote procedure was an important factor in helping to make the Speaker's election the unanimous affair it very often was. Prudential reasons must sometimes have made it necessary for the supporters of a less favored candidate to conceal their true choice. Take, for instance, the keen disappointment which Sir William Keith, former Governor of the Province who made himself candidate for the Speakership, experienced in 1728. With great bluster and show, with a cavalcade of eighty horses and a salvo of guns, he rode into town to attend the Assembly on the day of the Speaker's election. He had no question about the outcome of the election; his friends had even prepared a great bonfire celebration to crown his success. After all, could he not count on the loyal support of nine out of ten assemblymen who represented the city and county of Philadelphia? He certainly thought he could, but when the time came, he was not so much as named for the office. Perhaps the reason was that his partisans, realizing the concerted efforts of the other counties in favor of David Lloyd and knowing that they would surely be outvoted, had refused to put themselves on the wrong side of the political fence. All but three voted for Lloyd.\textsuperscript{39}

Keith was in many ways a rarity in Pennsylvania's political life, and his open ambitioning of the office of Speaker was one thing that made him so. There were, undoubtedly, many others who wanted the

\textsuperscript{36} Henry Elsynge, \textit{The Ancient and Present Manner of Holding Parliaments in England, with their Privilegges} \ldots (London, 1663), 126.


\textsuperscript{38} Governor Gordon to John Penn, October 18, 1726. PPOC, I, 243.

\textsuperscript{39} James Logan to John Penn, October 17, 1726. \textit{Ibid.}, 237.
Speakership as badly as he did, but their attempts to secure it were not so patent. Ostensibly, the position came to them as an unsolicited gift from a body which recognized the worth of the man on whom it conferred this singular honor. In England it was the custom for the Speaker-elect to protest his unworthiness and inability for the office to those who had elected him, requesting them to choose another in his stead. Of course, this was a pure formality, and the Pennsylvania Assembly never adopted it. The two cases in which the Speaker-elect of Pennsylvania refused the honor seem to have been instances of a genuine disinclination for the position, and the House proceeded to a new election.\(^40\)

After the Speaker had been conducted to the Chair, a committee was appointed to notify the Governor that the House was ready to present the Speaker for his approval. At the hour set by the Governor the Speaker with the whole House proceeded to the Council Chamber. Having acquainted the Governor with his election, the Speaker proclaimed his unworthiness for the office and asked the Governor to command the House to hold a new election. This was a custom borrowed from Commons and known as "disabling." It had largely become a farce in England before the Pennsylvania Assembly adopted it, and was finally discontinued in the mother country by Speaker Onslow (1728–1731). What the Pennsylvania Assembly would have done if the Governor had ever taken the Speaker's protestation seriously is a matter of speculation, but it is easy to imagine how the testy, privilege-conscious House would have reacted.

Sometimes the Speaker's depreciatory words concerning himself led to a gracious compliment on the part of the Governor. In 1693, for example, Governor Markham told Joseph Growdon that if he had done the choosing himself the result would have been no different.\(^41\) The following year, he told David Lloyd that he regarded him as singularly fitted for the trust.\(^42\) At other times, the Speaker seems to have been approved in a spirit of resignation, as for instance, when Governor Markham said to John Blunston, "It's all our duties to bear with one another's weaknesses, the best of us being inexpert in mainie things relating to those affairs."\(^43\)

\(^{40}\) *Votes*, I, 47 (1684); IV, 3059-3060 (1745).
\(^{41}\) *Minutes*, I, 399.
\(^{42}\) *Ibid.*, 454.
Eventually, this disabling procedure died out in Pennsylvania just as it had in England. It was, after all, foreign to the growing dignity of the provincial legislature and derived from the days when Parliament was in the leading strings of the Crown. When, therefore, Andrew Hamilton was, in 1738, elected Speaker for the ninth time, he informed the Governor that he could not honestly protest that he lacked ability for the office when he had already filled the post to the House's satisfaction for eight years. A few years later, in 1741, John Kinsey told the Governor that having received the honor of the Speakership he intended to accept it. The Governor replied that he had no doubt of Kinsey's determination, but that he himself would most certainly not give Kinsey the usual compliments, and he took occasion to blame Kinsey for the factional strife then rampant in the Province.

Besides seeking the Governor's approbation, the Speaker customarily demanded the privileges of Assembly—access to the Governor, freedom of speech, and freedom from arrest. This was no mere formality. In April, 1686, for example, the President and Council had summoned John White, a member of Assembly, to appear before them in order to defend himself against a charge of illegal action during his incumbency of the clerkship of the court of Newcastle. His presence was required on May 10, the very day on which, as a member of the Assembly, he was supposed to attend the opening of the House. White ignored the summons, attended the opening of the Assembly, and was elected its Speaker. He was then in a position to challenge the Council for violating the privileges of Assembly. He therefore asked the House to decide by vote whether or not he should heed the Council's summons, and further, "whether the Assembly should desire the Provincial Council to give them satisfaction concerning the Legality or Illegality of a Warrant, commanding a Member of this Assembly to give his Attendance this Day at the said Provincial Council."

The first question was, as one would expect, answered negatively, while the second was carried in the affirmative. In fact, the Assembly was so emphatic in presenting

44 Votes, III, 2443-2444.
45 William Allen to Thomas Penn, October 24, 1741. PPOC, III, 201.
46 Minutes, I, 174.
47 Votes, I, 72-73.
this second query to the Council that the latter took alarm. Two days later, when White presented himself before it, the Council evaded the issue by saying that “they took it kindly of him, but they would heare it some conveniencer time, and not hinder the business they were now about.”

As the eighteenth century progressed, the formula used in requesting the House’s privileges became both more elaborate and more stereotyped. A greater number were specifically requested and in a more detailed manner than formerly. Speaker Hamilton seems to have been at least partly responsible for this change. He was a man of wealth and influence, and he kept in as close touch as possible, by means of newspapers, correspondence, and occasional visits, with what transpired in the mother country. It therefore seems highly probable that as Speaker of the Pennsylvania Assembly he kept himself informed concerning contemporary changes in the procedure of the House of Commons, which was at this time under the guidance of Arthur Onslow, who won a lasting place for himself in the annals of English parliamentary government by developing the concept of the Speaker as the impartial guardian of the dignity and orderly action of the House. At any rate, it cannot be doubted that Hamilton had a high ideal of the Speaker’s obligation to protect the House from external encroachments. He was very careful, for example, to inform the Governor that when he, as Speaker, asked privileges for the House, he requested them “not as Matters of Favour, but as the undoubted Rights and Privileges” of the representatives acting in behalf of Pennsylvania’s freemen. Moreover, he presented the Governor with an elaborate list of privileges, demanding:

That they may enjoy Freedom of Speech in all their Deliberations and Debates; and that his own unwilling Mistakes and Omissions may be excused; that if, in delivering anything to his Honour in the Name of the House, that shall be given him in Charge, he happens to be mistaken, such Mistake or Inadvertance may not be imputed to the House; but that he may resort again to the House for Declaration of their true Intend and Meaning, and the Error may be pardoned; and that his Honour would be pleased not to hearken to anything that may be reported to him touching any Matter moved or debated in the House, until the same shall have passed into a Resolve, nor give any Credit to such Report; and that upon all necessary and urgent Occasions the House may have free access to his Honour’s Person.

48 Minutes, I, 180.
49 Votes, III, 2444.
50 Ibid., 2038.
To these demands most of the Governors replied in a perfunctory manner. Occasionally one would answer with asperity that he never had and never would violate them.

Whenever the Province was without a Governor, the whole procedure just described was omitted by the Assembly. Upon convening, it immediately elected its Speaker and qualified its members. Then it simply informed the Council that the House was sitting, ready for business. When on several occasions the Council endeavored to exact the procedure which was customary in the Assembly’s dealings with a Governor, the Assembly stoutly refused to comply. In 1736, for instance, the Assembly maintained that since the law which vested government in the Council on the Governor’s decease specifically excepted legislation, there was no need for the House to present its Speaker to the Council, “as the Design of presenting the Speaker was, that he should claim some Things, as necessary in the Course of their Proceedings with a Governor, for which there was no Room where there was no Power of Legislation.”

On the other hand, the Assembly always showed itself willing to present a substitute Speaker to the Governor. Such a substitute became a necessity in cases of the prolonged indisposition or resignation of the Speaker, even though the Charter made no provision for a Deputy Speaker. Hence, whenever the Speaker was unavoidably absent from the House, the members adjourned until his return. Should that be long delayed on account of the Speaker’s illness, the

51 Ibid., 2377.

52 Just once in Pennsylvania’s colonial period was there any question about the necessity of presenting a substitute Speaker to the Governor, and that stemmed from reasons which were purely political. When Isaac Norris resigned the Speakership in 1764, allegedly because of illness but more probably because he did not want to sign the Assembly’s petition to the King for a change of government in Pennsylvania, Joseph Fox was elected Speaker in his stead. Because the Governor was then in Newcastle, Fox could not be formally presented as Speaker until January 10. Meanwhile, he conducted the Assembly. One of the items of business transacted during this time was the sending of Benjamin Franklin to England as agent to secure a favorable hearing for the above-mentioned petition asking for a change of government from proprietary to royal. Naturally, the Penn family looked upon this attempt to oust them from power with great displeasure and sought for means of frustrating it. John Penn, who was Governor of the Province at the time, thought that the Proprietors might possibly invalidate the Assembly’s petition in English eyes by pointing out that Fox was neither qualified nor presented as Speaker at the time the House resolved to send Franklin to England. John Penn to Thomas Penn, October 19, 1764. PPOC, IX, 274–276. But Thomas Penn wrote back that it was doubtful whether a substitute Speaker had to be presented in order legally to be recognized. Penn Letter Book, VIII, 181.
House might hold its meeting in the Speaker’s bedroom. If the nature of his illness prevented such an arrangement, the members sometimes went to the sick room just to be able to resolve themselves into a committee of the whole House, returning to their ordinary meeting place to carry on business in committee. There were times, however, when these expedients did not suffice. In such cases there was nothing to do but elect a new Speaker, having first secured the permission of the incumbent. The newly elected Speaker was then presented to the Governor, at which time he asked no privileges for the House since these had already been requested and guaranteed, but he did ask that his own “unwilling Mistakes might be excused, and not imputed to the House.”

The Speaker having been duly elected and presented, the House’s next step in organizing itself for business was the qualification of members. An Assembly resolution of 1703 thus laid down the procedure to be followed: “The Speaker in his Chair, a full House being present at a Table in the Middle of their House, every member as he is called over in Order shall subscribe the foregoing Declaration, being first read to him by the Clerk of the House with an audible Voice.” This declaration which the members were required to make varied in content from time to time, but was in the nature of a religious test such as was demanded from members of Commons. Beginning with the Act of Supremacy in 1563, members of Commons had to acknowledge by oath their belief in the spiritual as well as the temporal supremacy of the English monarch. During the reign of James I, an oath of allegiance was added to that of supremacy, and from 1678, a declaration denying the Catholic teaching regarding the doctrine of Transubstantiation, the veneration of the Blessed Virgin Mary and the saints, and the Holy Sacrifice of the Mass was imposed.

The purpose of these tests as a necessary prerequisite for office was, of course, to prevent Catholics from occupying public offices.

53 The qualification of members occasionally preceded the presentation of the Speaker to the Governor.
54 Votes, I, 404.
55 5 Eliz. 1, Sec. XIV, The Statutes at Large from the First Year of King Edward the Fourth to the End of the Reign of Queen Elizabeth (London, 1770), II (New Edition), 533-534.
56 3 Jac. 1 c.4, Ibid., III, 39-46.
57 30 Car. 2 stat. 2, Ibid., III, 395-397.
By the same token, they also prevented Protestant dissenters. After the Revolution of 1688, however, William and Mary passed the famous Toleration Act specifying that the earlier penal statutes should no longer be construed as extending to Protestant dissenters provided they would take the oaths set forth by I W. & M. I, and would make and subscribe the declaration concerning Transubstantiation, the Blessed Virgin, and the Mass. This same act, recognizing the inability of the Quakers to take oaths, made special provision for them by allowing them to affirm solemnly, instead of swear, to the truth of their protestations. In addition they were required to make a profession of faith in the Blessed Trinity, and an acknowledgment of the divine inspiration of the Old and New Testaments.

The Quakers of Pennsylvania, having established their colony before the passage of the Toleration Act and having fled to the New World to escape the penalties of religious nonconformity, naturally made at first no provision for the taking of religious tests as a prerequisite for officeholding. Probably before the coming of Fletcher as Royal Governor of Pennsylvania in 1693, the members of Council and Assembly just made simple promises of allegiance to the King and fidelity to the Proprietor. But, when Fletcher arrived, he insisted that the members be qualified by taking the tests prescribed in England. After some consideration, however, he said he was willing to allow the Quakers to make a solemn affirmation in lieu of oaths, but he asserted that his permitting this substitution was "an Act of Grace, and not of Right, so as to be drawn into Precedent for the future." Thenceforward, despite great opposition, the Quakers adhered to this practice, legalizing it both in Markham's Frame of 1696, and in the later election law of 1706.

There was yet another step in the getting-under-way process, which, though not essential for the legal constitution of the House, was certainly necessary for the facilitation of business. That was the appointment of officers other than the Speaker and the setting up of standing committees. Ordinarily, as one would expect, these offi-

88 There is no indication that Pennsylvania adopted the English practice of paying for a nomination to a House office, largely because the posts were not lucrative. In fact, the pay of House officers was extremely irregular. Especially in the early days, House officers had to petition again and again before they received satisfaction. Governor Blackwell wrote complainingly to Penn of the miserliness of a province which could not even afford a messenger for
Clerk, Serjeant-at-arms, and Doorkeeper—were chosen quite early in the session. In some instances, however, they were not chosen until the second sitting of the House. Meanwhile, the officers of the preceding Assembly, especially the Clerk, may have carried on. 59 From the time of Andrew Hamilton's Speakership there seems to be greater regularity in the whole procedure of the Assembly, and henceforth, the appointment of House officers almost invariably followed directly upon the qualification of members.

Although in some cases the Clerk of the House seems to have been

Council. "We have no messengers," he said, "to send on any errand for sumoning the Councill or other persons appearance where there is occasion; or, so much as to keep the Councill door shutt whilst we are in matters. . . . The answer of all is, by a question, who shall pay them? for there is not a penny of any public money for any purposes; and everybody pleading their poverty and inability to rayse any." Who shall pay them? That was, indeed, the problem. Until the tax act of 1696 (which was of brief duration), there was no provincial stock from which salaries could be drawn. In 1704, Nicholas Rosagans complained that Caleb Pusey, Treasurer of Chester County, had refused to pay an order of the preceding Assembly giving Rosagans three pounds for his service to the Assembly. Whereupon the House ordered William Biles, Treasurer of Bucks County, to pay Rosagans the required sum. Biles accepted the charge on condition that the House would reimburse him should the Governor and Council refuse to allow the payment as a government debt. Again, in 1706, the House upon reading over Thomas Makin's account for seventeen pounds, seven shillings, six pence, allowed him thirteen pounds "out of the first Monies that shall be raised of the Tax and Impost," with the added liberty "to get what he can from the Lower Counties." As time went on, the salaries became more certain. In addition to a regular salary of six shillings per day, the Clerk was also given certain fees. The Serjeant received five pounds per year until 1725, when it was increased to eight. The Doorkeeper was given two shillings, six pence per day in addition to expenses such as firewood and candles for the House.

59 The incumbents of the various offices of the House usually remained in their positions for many years, having priority over all other petitioners. Samuel Kirk, for instance, held the position of Serjeant for twenty years. Occasionally the officer of a preceding Assembly was defeated by a new candidate for the position, but rarely. The Assembly ordinarily waited until the position had been vacated by the death, incapacity, or resignation of the former incumbent before it elected another. Franklin relates how a young man who wished to succeed him as Clerk of the House came to him with word that the House planned to oust Franklin at the next election. He therefore counseled Franklin to resign rather than suffer the humiliation. Franklin absolutely refused, saying: "If they will have my office of clerk to dispose of to another, they shall take it from me. I will not by giving it up, lose my right of some time or other making reprisals on my adversaries." Next year, he found himself re-elected—"unanimously, as usual." This, of course, was due to Franklin's personal popularity, which was great enough to win him a seat in the Assembly during the special election of 1751. The whole episode demonstrates very clearly that House offices were regarded somewhat in the light of vested interests. This conclusion is re-enforced by the fact that when Franklin had to give up the clerkship, in 1751, to take a seat in the Assembly, he secured the position of Clerk for his son, William. 

Votes, IV, 3432.
appointed rather than elected, as, for example, in 1697, when the Speaker and another member were asked to get a Clerk and Messenger for the current session, the ordinary manner of choice was by majority vote of the House upon candidates who had petitioned for the position. Political influence played a large part in the ultimate choice. Benjamin Franklin tells in his *Autobiography* how Andrew Hamilton, one of the Province's most influential political figures, "interested himself . . . strongly" in his behalf on many occasions, such as obtaining for Franklin the government printing not only in Pennsylvania but also in the Lower Counties. What is more natural, then, than to suppose that Hamilton, who was Speaker at the time Franklin first received his appointment as Clerk, secured for him this plum which meant so much, as Franklin himself acknowledged when he said: "The place gave me a better opportunity of keeping up an interest among the members, which secured to me the business of printing the votes, laws, paper money, and other occasional jobs for the public, that, on the whole, were very profitable."

Essentially the Clerk's function was to keep a record of the votes and proceedings of the House. His duties, however, were manifold. At the opening of the session he had to call over the election returns, read the forms by which the members were qualified for their seats, and enter the qualifications in books prepared for that purpose. Occasionally he was required to draft bills. By order of the House he had frequently to amend bills, transcribe copies of particular acts, make a copy of the sessional laws for the printer, search the journals for precedents, prepare an account of unfinished business, and, in the Speaker's absence, adjourn the House. These are just some of the many tasks the Clerk was called upon to perform. It is certainly surprising that Franklin found time to "doodle" by making magic squares and circles. By 1772, the volume of business had become so great that the Assembly decided to appoint an Assistant Clerk.

Like its great prototype, the House of Commons, the "little Parliament" of Pennsylvania realized the necessity of having a Doorkeeper, or Messenger, to "keep the door in safety" and to carry its messages. Often, he was sent to inform absent members that the

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60 Ibid., I, 195.
61 Ibid., VIII, 6796.
House requested their presence. It was he, too, who rang the Assembly bell for adjournment.

Before long the Assembly discovered that it took more than the Doorkeeper to force recalcitrant members to attend the House. What was needed was an executive officer armed with power to arrest and hold in custody if required. Just such an officer was the Serjeant-at-Arms of the House of Commons, commissioned by the Crown and placed under the direction of the Speaker. In 1712, therefore, the Speaker and three members of the Pennsylvania Assembly were ordered to apply to the Governor for the appointment of a Serjeant "to observe and obey the Commands of this House." They succeeded in obtaining a commission for Joshua Fincher, a former Doorkeeper. From 1712 to 1721, the Serjeant’s attendance upon the House seems to have been irregular, but in the latter year the House ordered the Serjeant henceforward to attend the Assembly annually from the very first meeting, armed with full power "to execute all Precepts, Warrants and Messages whatsoever" issued by order of the House. Nor was the Serjeant’s authority confined to the membership of the House. Rather, it comprehended all the inhabitants of the Province in so far as they came within the orbit of the Assembly’s privilege. In the second half of the eighteenth century, the House committees began to employ the Serjeant to collect "Persons, Papers, and Records" which were required for a thorough investigation of a matter currently under consideration.

Closely connected with the appointment of officers was the House’s action in setting up standing committees. By the time Pennsylvania was settled, the House of Commons had already worked out its system of grand or standing committees. Both the first constitution and the first Assembly of Pennsylvania gave indications that the colony intended to imitate the mother country in this regard. The Assembly at Chester, in 1682, appointed three standing committees — Elections and Privileges, Justice and Grievances, and a Committee

62 Ibid., II, 1023.
63 Ibid., 1376.
64 Out of this power grew the famous Smith-Moore libel case which plagued the Province for so many years.
of Foresight comprising six members for the purpose of preparing provincial bills. But, with the exception of the Assembly of 1684, which chose a Committee of Privileges and Elections, and the Assembly of 1689, which set up a Committee of Aggrievances, no consistent use was made of standing committees until the appointment of an annual committee to examine public accounts. The last-mentioned committee began as a temporary one, but soon developed into a standing committee appointed annually near the opening of the session and continuing until its close. This transformation was induced by its enlarged functions which included auditing the Provincial Collector's and Loan Office accounts, as well as those of the Provincial Treasurer.

With the establishment of the London agency in 1731, another standing committee became necessary—a Committee of Correspondence, charged with the exchange of communications with the Provincial Agent who resided in London in order to supervise provincial affairs there. This evolved into a highly efficient committee. In fact, it became so efficient that Richard Peters complained to Thomas Penn in 1754, that "the Committee of Assembly for Correspondence receive extreme good Intelligence by all Conveyances, and have really the earliest accounts of all publick Measures, whilst we know nothing till all has been made publick. This is irksome to your Friends and hurtful to your Interest." The Speaker of the House was customarily a member of this committee by virtue of his office, and in a few instances he took upon himself the whole weight of its responsibility.

A Committee to Revise the Minutes of Assembly came into existence just about the same time. Later, in 1740, when John Kinsey became Speaker, he suggested that the "ancient practice" of annually appointing a Committee of Grievances should be revived, and it was accordingly done. From about 1740, then, until the Revolution, the

66 Votes, I, 1.
67 Richard Peters to Thomas Penn, December 16, 1754. PPOC, VI, 245.
68 In 1751, Speaker Norris wrote in the absence of the other two members of committee: "I must now write in my own Name or miss this oppy. tho' I doubt not they will be perfectly satisfied that I take the trouble off their hands when they cannot conveniently be consulted." Isaac Norris to Richard Partridge, November 5, 1751. Logan Papers, Wallpaper Letter Book, 68.
69 It will be recalled that the Assembly was quarreling at this time with Governor Thomas.
Assembly regularly appointed four standing committees—Accounts, Grievances, Correspondence and Minutes. Occasionally, it also set up a Committee to Inspect Provincial Laws, whose duty it was to “report which of them are expired, or near expiring, and ought to be reenacted; with ... Opinion what Amendments to them or others may be necessary.”

One final aspect of the organizing process remains, namely, the adoption of House rules. It might be expected that any Assembly immediately upon convening would decide upon rules to govern its deliberations, but, when it is considered that most Pennsylvania assemblymen, although elected for a term of one year, actually sat in the House for many years, sometimes fifteen or more, it becomes evident that the majority of members were well acquainted with the rules. They knew very well that a speaking member had to stand in order to be seen and heard (even though there were less than thirty members sitting in the limited space of the Widow Whitpain’s parlor, Commons must be followed!); that hissing, deriding, or disturbing a speaking member was a breach of decorum, answerable at the bar of the House; that while the Speaker had the floor, members were required not to “whisper, stand up or cross the room”; and that the right to speak was given by the Speaker’s recognition. At the very first meeting of the House, in 1682, detailed rules of conduct were adopted, and in the Assembly of March, 1683, the Speaker read “the orderly Method of Parliaments, and the Demeanour of the Members thereof, observed in England.” In 1703, rules were adopted by the House. 70 These, with some amendments, remained the standing orders of the Assembly throughout the colonial period. 71 They outlined the order to be followed in opening a session, the functions and conduct of the Speaker, procedure in debate and committees and other miscellaneous items. They also established the majority rule, and made provision for a standing vote on all questions put by the

70 Votes, I, 403-406.
71 Nothing was said about lateness or absence in these rules of 1703. Succeeding Assemblies, therefore, when taking them as their own, usually added specific orders regarding attendance. For example, in 1705, the Assembly voted that any member who did not appear within one half-hour of the ringing of the bell and the Speaker’s assuming the Chair, would have to pay a “Ten-penny Bit.” If, however, his absence deprived the House of a quorum, he had to pay two bits plus one bit for each additional hour of absence unless he had a reason which satisfied the House. Ibid., 504. Almost every Assembly thenceforward imposed a similar fine.
Speaker. So closely akin are these rules of 1703 with those of Commons, that it is no surprise to learn that immediately preceding their adoption the Assembly resolved to adhere to "the Rules and Prescriptions of the Parliament of England, as near as may be, respecting the Infancy of this Government and the Capacities of the People."72

Knowing the rules, then, all that remained for each succeeding Assembly was to make them binding upon itself by resolution of the House. This was usually done at the first sitting in October, but, strangely enough, there were times when the House did not adopt the rules until much later—in two cases not until April. Obviously, adoption of the rules was not essential for the legal constitution of the House.

Brooklyn, N. Y. Sister Joan de Lourdes Leonard, C.S.J.

72 Ibid., 1, 423.

Part II of this discussion, which will treat of the procedure of the Pennsylvania Assembly, will follow in the October issue.