William Penn, Classical Republican

IN 1682 William Penn had an opportunity which is given to few men: he was able to devise a governmental system according to the tenets of his own political philosophy. Penn's great interest in politics was not unusual for the English gentleman of the seventeenth century. He lived during a time when the Commons increasingly insisted on its right to govern. Private and national interests, combined with concern over the shifting balance of power, created a potent motivating force which made political action the business and pleasure of the landed and moneyed classes.

The First Frame of Government and the "Laws agreed upon in England" for the province of Pennsylvania were the result of many influences which helped to shape Penn's individual approach to political situations. Among these influences were his classical education, his training at law, his political career prior to 1682, and his uncommon religious beliefs, which, with the persecutions they created, gave him a basic principle of toleration that became the impelling factor directing his activity, and from which he developed a political philosophy of fundamental rights.

Penn was born in 1644, at a time of puritan triumph over royal authority. His father, Admiral Sir William Penn, set an example of active service in the national interest, supporting Parliament in its struggle with Charles I and then serving under Cromwell. In 1660 the admiral reasserted his belief in monarchy and was one of those who helped to restore Charles II to the throne.

The Penn family had been of the landholding class, the country gentry, and young William was thus heir to an association with the aristocratic tradition of England. It was certainly through family connections that he became a familiar of the royal circle, and came to know Charles II and James, Duke of York. Following an education at grammar school and Oxford, he made the Grand Tour during which he observed government in Europe. Then came a year of legal study at Lincoln's Inn.
Penn's classical erudition is perhaps most clearly seen in the tract *No Cross, No Crown*, in which numerous references to classical authors show the breadth of his reading, which was that of a latitudinarian of his time. The tract also reveals his knowledge of the works of Polybius, the Greek historian from whom the idea of mixed polity proceeds, and who was probably the most obvious classical influence on Penn's political thought. In the preface to the First Frame of Government Penn wrote: "I know what is said by the several admirers of monarchy, aristocracy, and democracy, which are the rule of one, a few, and many, and are the three common ideas of government when men discourse on that subject. But I choose to solve the controversy with this small distinction, and it belongs to all three, any government is free to the people under it, whatever be the frame, where the laws rule and the people are a party to those laws, and more than this is tyranny, oligarchy, or confusion." This emphasis was derived from Polybius, who attributed success or failure to the nature of a state's constitution, and formulated the idea of a cycle of political revolution in which each form of government changed according to the vice engendered in it, with kingship becoming despotism, aristocracy becoming oligarchy, and democracy degenerating into the "savage rule of violence." Thus, reasoned Polybius, the only government which could check these excesses was one which comprised all three of the traditional forms. Penn's belief in the wisdom of a mixed polity was apparent in his political philosophy, and was embodied in the form of Pennsylvania's first constitution, with governor, council or upper house, and assembly or commons.

It is possible that Penn was also influenced by James Harrington (1611–1677), the English political philosopher whom historian Zera S. Fink has called a classical republican. Harrington was the author of *Oceana*, a constitution for a Utopian commonwealth, and although

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1 For further comment on Penn's classical knowledge, see Richard Mott Gummere, "Apollo on Locust Street," *The Pennsylvania Magazine of History and Biography*, LVI (1932), 221.
4 For a study of the influence of classical writers on political theorists of the seventeenth century, including Harrington and Algernon Sydney, see Zera S. Fink, *The Classical Republicans* [Northwestern University Studies, No. 9] (Evanston, Ill., 1945).
it is difficult to prove that Penn had read *Oceana* before writing his own constitution, the striking similarities between the two indicate that he had knowledge of Harrington’s ideas. Of course, it may be that Penn and Harrington arrived at the same conclusions independently. Penn was certainly familiar with the material which Harrington used, as, for example, the histories and governments of Israel, Athens, Sparta, Rome, Venice, the theories of Machiavelli and Polybius. But it seems more probable that Harrington’s conclusions were a factor in Penn’s thinking, and that he had read *Oceana* before 1682. Harrington’s basic principle or definition of good government was one with which Penn agreed: “Government . . . is an Art whereby a Civil Society of Men is instituted and preserv’d upon the Foundation of common Right or Interest. . . . It is the Empire of Laws, and not of Men,” an argument which Penn had advanced again and again in his earlier writing.

In the relation of man and laws, however, Harrington and Penn disagreed. Harrington said that “. . . the perfection of Government lys upon such a libration in the frame of it, that no Man or Men in or under it can have the interest; or having the interest can have the power to disturb it with Sedition.” Penn did not agree with the theory that good laws alone can make good government.

I know some say, let us have good laws, and no matter for the men that execute them; but let them consider, that though good laws do well, good men do better; for good laws may want good men, and be abolished or evaded by ill men; but good men will never want good laws nor suffer ill ones. It is true, good laws have some awe upon ill ministers, but that is where they have not power to escape or abolish them, and the people are generally wise and good, but a loose and degraded people (which is to the question) love laws and administration like themselves. That, therefore, which makes a good constitution, must keep it, viz. men of wisdom and virtue, qualities that, because they descend not with worldly inheritance, must be carefully propagated by a virtuous education of youth, for which after-ages will owe more to the care and prudence of founders and the successive magistracy, than to their parents for their private patrimonies.

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6 For another comment on Harrington’s influence on Penn, see H. F. Russell-Smith, *Harrington and His Oceana* (Cambridge, 1914), 161-184.
8 *Annals*, 560–561.
Although Penn and Harrington differed about the effect of corruption on good laws, they started from the same basic premise, the existence of fundamental laws and rights which require the government to be an empire of laws rather than of the will and power of men. They both agreed that a mixed polity was the method which would maintain the supremacy of the law and equalize the influence of the three areas of power, and they used some of the same devices for maintaining the necessary balance.

According to Harrington, there were four important balancing devices in government: agrarian law, rotation of office, separation of the functions of debate and resolution, and the use of the secret ballot. The first essential for stable government, the equal agrarian law, “is a perpetual Law establishing and preserving the balance of Dominion by such a distribution, that no one Man or number of Men, within the compass of the Few or Aristocracy, can come to overpower the whole People by Their possessions in Lands.” Harrington planned a commonwealth in which disproportionate wealth could lead to disproportionate power capable of destroying the balance. Accordingly, he made laws which would set property divisions and regulate ownership and inheritance. William Penn’s problem was different. He was not concerned with a commonwealth but a proprietary, which in itself implied disproportionate possession by one man. Moreover, he did not seem to consider balance in property necessary to maintain balance in government. The only land qualification he seems to have made, aside from franchise qualifications, was that purchasers were not to have more than one thousand acres together unless within three years they planted a family on every thousand acres. He regulated inheritance to the extent that land could not be entailed and would therefore be subject to greater divisions, but there were no qualifications as to the amount of land an individual could hold. Harrington’s second element vital to good government was equal rotation, the “equal vicissitude in Government, or succession to Magistracy confer’d for such convenient terms, enjoying equal vacations, as take in the whole body by parts,”

9 Oceana, 54.
10 Ten out of every one hundred thousand acres were to be reserved for the proprietor.
11 See “Certain Conditions and Concessions Agreed upon by William Penn,” Annals, 516. Penn also granted twenty thousand acres to the Free Society of Traders, and erected the land into a manor with the according privileges. Ibid., 541 ff.
Rotation prevented a single group of men from coming into continued power, and ensured that the representative body would never be without experienced members. The principle of rotation and limited terms would, of course, appeal to a Whig as a solution for the kind of “Long Parliament” which was the cause of so much dissatisfaction in 1679, and Penn adopted the idea in the constitution for Pennsylvania for both council and assembly.

The separation of debate and resolution, another element of the government of Oceana, was also adopted by Penn. Harrington believed that every society has outstanding members who are recognized for their wisdom and qualities of leadership. Such men are most capable of devising laws and indicating the merits of the laws proposed. The interests of these few may not be the interests of the many, however, and to prevent the assumption of too much power by the senate or council, the decision on the passage of laws was left to the representative group, which was large enough to be unwieldy for purposes of debate. Harrington’s conclusion was that “Dividing and chusing in the language of a Commonwealth is debating and resolving; and whatsoever upon debate of the Senat is propos’d to the People, and resolv’d by them, is enacted by the authority of the Fathers, and by the power of the People, which concurring, make a Law.”

Penn advised the division on the grounds that it was sound in principle, and would eliminate confusion in government. “If they turn debaters or judges or complainers, you overthrow the charter quite in the very root of the constitution of it, for that is to usurp the provincial council’s part in the charter, and so forfeit the charter itself; here would be two assemblies and two representatives, whereas they are but one to two works, one prepares and proposes, the other assents or denies. The negative voice is by that in them, and that is not a debating, mending, altering, but an accepting power.”

The fourth great principle was that of the secret ballot. Harrington wrote: “The election or suffrage of the People is most free, where it is made or given in such a manner, that it can neither oblige nor disoblige another; nor thro fear of an Enemy, or bashfulness towards a

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12 Oceana, 54.
13 Ibid., 48.
14 Russell-Smith, 177.
Friend, impair a Man’s liberty.” The advantages of the secret ballot now seem obvious, but to the seventeenth-century Englishman the secret ballot implied that a voter harbored shameful doubts about the way he voted. Insisting on its use was a departure from traditional English method. Harrington was not necessarily Penn’s instructor in the merits of the secret ballot, for Penn was familiar with that device as it was used in Venice, and its advantages must have suggested themselves strongly when he saw the corruption of the English elections in 1679.

In addition to historical knowledge and theory, Penn brought some practical political experience, both in America and in the British Isles, to the task of providing government for Pennsylvania. This experience will be described here in the order which the development of his political philosophy requires.

The earliest tangible indication we have of this development is in the petition Penn addressed to the Earl of Orrery in 1667 when Penn was imprisoned in Cork on the charge of being present at a “Tumultous and Riotous Assembly.” On this occasion, while suffering his first taste of religious persecution, he declared his belief in religious toleration, and denied the idea that diversity in religion is dangerous to civil government. He said “that Diversities of Faith and Worship, contribute not to the Disturbance of any Place, where Moral Uniformity is barely requisite to preserve the Peace.” The following year, when his nonconformity found him lodgings in the Tower of London, he felt the oppression even more strongly, and cried, “What if I differ from some religious Apprehensions? Am I therefore incompatible with the being of Humane Societies?” During his long imprisonment, he began to see clearly the problems connected with intolerance, and to perceive the dangers and disadvantages of persecution and force in religious matters. In the letter to Lord Arlington he observed that force cannot bring success, for it merely confirms in their opinions those people who are right, and makes obdurate those who are wrong. Force “may make Hypocrites, no Converts.” Man, according to Penn, must be true to his religious persuasions, for to do otherwise

15 Oceana, 54.
17 Ibid., 152.
18 Ibid., 153.
is to sin. By 1670, Penn also began to reason that, in addition to
being obligatory in the eyes of God, it was the duty of government,
and to its advantage, to allow its subjects freedom of conscience.

In *The Great Case of Liberty of Conscience Debated*, which was
addressed "to the Supream Authority of England," Penn set forth
his opposition to the laws against Protestant dissenters. He found
that intolerance and persecution were a sin against God, because
man, in forcing conformity on other men, was assuming the divine
attributes of infallibility and judgment in religious matters. Further-
more, it was against the nature of good government to try to judge
and punish intellectual error. The most important point of his case,
however, was that concerning the Fundamental Law, or the great
constitutional rights of Englishmen. Penn believed that liberty of
conscience and property was a civil right which not even Parliament
was empowered to revoke.

And we are persuaded, that no Temporary Subsequental Law whatever
to our Fundamental Rights, (as this of Force on Conscience is) can invalid
so essential a Part of the Government, as English Liberty and Property:
Nor that it's in the power of any on Earth, to deprive us of them, till we
have first done it our selves, by such Enormous Facts, as those very Laws
prohibit, and make our Forfeiture of that Benefit we should otherwise
receive by them. . . .

After this statement of the nature of civil right, he went on to
explain the place of the law in the governmental structure.

For these being such *Cardinal and Fundamental Points of English Law-
Doctrine*, individually, and by the collective Body of the People agreed to;
and on which as the most solid Basis, our *Secondary Legislative Power*, as
well as Executive is built; it seems most rational that the Superstructure
cannot quarrel or invalidate its own Foundation, without manifestly en-
dangering its own Security, the Effect is ever less noble than the Cause, the
Gift than the Giver, and the Superstructure than the Foundation.

This basic tenet was extended in 1670, with other fundamental rights
more clearly recognized as part of man's inheritance. The first of
these was the people's participation, through the jury system, in the
judicial and executive powers of interpreting and enforcing the law,
an idea which Penn held and defended in the dramatic Penn-Mead
trial.

William Penn and William Mead were brought to trial in September, 1670, charged with “preaching to the People, and drawing a Tumultuous Company after them.” The jury found Penn “to be Guilty of Speaking or Preaching to an Assembly, met together in Gracious-Street,” a verdict unacceptable to the court, which wanted to find them guilty of the charge of unlawful assembly and disturbance of the peace. The attempts of the court to force a reversal of the jury’s decision were unsuccessful. In English legal history, this trial represents a great stride in the evolution of the jury as a free, judicial body. William Penn’s account of it is also valuable for its insight into his own beliefs. In what must have been a stirring court scene, Penn had several opportunities to argue for his fundamental rights. First, he argued against the indictment—“Shall I plead to an Indictment that hath no Foundation in Law?”—challenging its legality on the basis of the “great Charter Privileges.” And when the court, having no specific answer for his charges, wanted him taken away, he responded:

These are but so many vain Exclamations: Is this Justice, or True Judgment? Must I therefore be taken away because I plead for the Fundamental Laws of England? However, this I leave upon your Consciences, who are of the Jury, (and my sole Judges) that if these Ancient Fundamental Laws, which relate to Liberty and Property, (and are not limited to particular Perswasions in Matters of Religion) must not be indispensably maintained and observed, Who can say he hath Right to the Coat upon his back? Certainly our Liberties are openly to be invaded; our Wives to be Ravished; our Children Slaved; our Families Ruined; and our Estates led away in Triumph, by every Sturdy Beggar, and Malicious Informer, as their Trophies, but our (pretended) Forfeits for Conscience-Sake: The Lord of Heaven and Earth will be Judge between us in this Matter.

In An Appendix, by Way of Defence for the Prisoners he summed up his theory concerning the fundamental laws:
which all right is preserved; All Laws are either Fundamental, and so Immutable; or Superficial, and so Alterable. By the first we understand such Laws . . . which are not subject to any Revolution, because no Emergency, Time, or Occasion, can ever Justify a Suspension of their Execution, much less their utter Abrogation.

In 1675 this thesis again found expression in Penn's *England's Present Interest Considered*; the opening paragraphs of the first chapter of that tract are almost a word for word repetition of the above statement. He follows with a reassertion of the fundamental rights, which he reduced to three: the right to liberty and estate, the right to participation in the legislative function through the power of the vote, and the share of the people in the judicatory and executive power through the jury system. He subscribed to the idea that the origin of these rights was in Saxon England, and quoted that origin as ancient authority for the obligation of the government to preserve rights guaranteed in the Saxon contract between monarch and subject, which neither kings nor parliaments had the power to abrogate.

These beliefs helped to ally Penn to the Whig group which in 1678 was gaining strength. The aims of the Whigs at first seemed compatible with those of Penn. They sought government by law in asserting parliamentary superiority over royal prerogative, and championed the cause of Protestant dissenters in order to strengthen their own ranks. In sentiment they were strongly antipapist, and their immediate goal was to secure a Protestant succession to the throne of England. But the intensity with which Penn believed in his own principles seemed to necessitate action, and the Whig party was the only agency through which his hopes could be realized.

In 1678 the rigorous enforcement of the antipapist acts increased the persecution of the Quakers because of their refusal, on principle, to take the oaths prescribed by the acts. Penn hoped to persuade

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28 At this time the two major political factions were generally called the Country and Court parties; the more familiar terms, Whig and Tory, did not come into popular use until several years later. However, for purposes of clarity, the latter terms have been used throughout this study.
29 The execution of Charles I, and the civil strife which preceded it, gave rise to great fear of religious dissenters during the Restoration. The result was the Clarendon Code, which greatly restricted those who dissented from the established church, and attempted to bind the Dissenters to the government and church through a series of oaths. For a complete discussion of the Quaker attitude, see "A Treatise of Oaths," *Ibid.*, 613 ff.
Parliament to permit the Quakers to make affirmation rather than take an oath, and presented petitions on their behalf to both houses. He was then summoned before a committee to whom he protested against the persecution, pleading for tolerance and liberty for Catholic and Protestant dissenters alike. But his attempts were of no avail; Parliament was prorogued before a bill could be passed. The disclosures of Titus Oates and the panic caused by the Popish Plot only caused a further intensification of persecution.

In the following year Penn increased his activities. In two tracts, *To Children of Light in this Generation and An Address to Protestants of all Perswasions Upon the Present Conjuncture*, he criticized Restoration society and called upon civil magistrates to prevent the evils which he thought were destroying the morals of the government and the nation. Throughout these two tracts are overtones of dissatisfaction with the times and the "ill men" who were in position to command and persecute. Perhaps not a little of his feeling is reflected in the complaint that "He that can persuade his Conscience to comply with the Times, be he Vicious, Knavish, Cowardly, any Thing, he is protected, perhaps preferred. A Man of Wisdom, Sobriety and Ability to serve his King and Country, if a Dissenter, must be blown upon for a Phanatick, a man of Faction, of disloyal Principles, and what not?" In 1679, he took the opportunity to fight more actively against the men whose government he found so objectionable. The king finally dissolved the Restoration Long Parliament on January 24, 1678/79, and new elections were called. Before the campaigns got into full sway, Penn wrote a tract called *England's Great Interest in the Choice of this New Parliament*. This pamphlet has been called one of the first clear statements of party doctrine presented to the English electorate, and as such, and as a statement of Penn's political ideas which were later reflected in his plans for the government of Pennsylvania, it deserves close attention.

The Whigs undeniably used the Popish Plot for political advantages, and popery was to be one of the major issues in the coming election. The securing of a Protestant succession and the Protestant religion, toleration for Dissenters in order to maintain a solid defense against Catholicism and autocracy, liberty of the subject and su-

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premacy of the Parliament—these were the objectives which had wide popular appeal in a fear-ridden country. It was this set of political opinions that Penn, perhaps more strongly motivated by his own principles and objectives than by fear of Catholics, defended in his pamphlet of advice to the electors. "All is at Stake," he said, and enumerated what should properly be the work of the new Parliament, the electors' interest in it, and the criteria for selection of new members.

There were to be six major issues for the consideration of Parliament, according to Penn. First, "to Pursue the Discovery and Punishment of the Plot," a course which reflected not only the attitude of the Whigs, who were bent on using the Popish Plot to gain support for their own cause and to increase feeling against a Catholic heir, but also the attitude of the countryside in general. For whatever the truth about the origin of the Popish Plot might be, the frenzy it aroused in the English nation was a fact. Secondly, "To remove and bring to Justice, those Evil Counsellors, and Corrupt and Arbitrary Ministers of State, that have been so Industrious to give the King wrong Measures, to turn Things out of their Ancient and Legal Channel of Administration, and Alienate his Affections from his People." This second point was Whig policy. The preceding Parliament had been deadlocked over the question of the impeachment of the Lord Treasurer, Danby, and the Whigs were determined to oust him. Danby had defended the royal prerogative, and by bribery, blackmail, and similar methods had influenced enough votes to obstruct Whig measures in Parliament. The third point was to "Detect and Punish the Pensioners of the former Parliament, in the Face of the Kingdom." This was the grievance of any honest man, and the political grievance of any Whig. The Tories had used their influence to obtain offices for members of Parliament in return for their votes. It was a system which Danby had reduced to a fine science and to which the Whigs understandably objected. Fourth, "To secure to us the Execution of our Ancient Laws by New Ones, and, among the rest, such as relate to Frequent Parliaments, the only True Check upon Arbitrary Ministers, and therefore feared, hated, and opposed by them." The dissolution of the Long Parliament was long desired by the Whigs, who felt that new elections would return a greater number of their supporters to the legislature. Shaftesbury, as a mat-
ter of fact, maintained in 1677 that the Parliament was dissolved, and having refused to go on his knees and beg the pardon of the House of Commons was imprisoned for his misdemeanor. Although less than half the original members of the Long Parliament were still sitting in 1678 and despite the fact that many of their replacements were adherents of the Whiggish group, Shaftesbury and his coterie disliked the principle of long-sitting parliaments. They feared the establishment of monarchical control over such parliaments, and in demanding laws for regulation of its meetings they were endorsing Harrington's "Rota" and asserting their belief in the supremacy of the legislature.

The fifth task of the new Parliament was to ensure "That we be secur'd from Popery and Slavery, and that Protestant-Dissenters be eased." This is as close as Penn came to supporting the Whig demand for a Protestant succession. He was, after all, a friend of James's. Although Penn would have feared the effects of a Catholic monarchy, he would not have gone so far as to exclude James from his birthright, but would probably have approved some measure restricting James's authority in religious matters. The cry for easing the Dissenters was a part of the Whig plan, but it was, of course, much more than a political maneuver for Penn. The sixth, and last, point was "That in Case this be done, the King be released from his Burdensome Debts to the Nation and eas'd in the Business of his Revenue." This statement contained the threat that English Parliaments held over their kings; by 1679 the House of Commons not only maintained the right to introduce financial legislation, thus controlling the amounts of public funds available for royal expenditure, but had also begun to assert its right to allocate funds. Unless the king had other resources, Parliament, in times of financial press, could force the monarch to accede to its desires, and in 1679 the king, as always, needed money.

To impress on the electors their share of responsibility in seeing that these vital issues were considered, Penn reiterated his ideas about the fundamental rights of Englishmen. He again enumerated them as threefold. The first was the right to life, liberty, and prop-

34 A club founded by Harrington in 1660 to expound his ideas with the hope that a free commonwealth might be adopted in England.
erty, a right which was lost only for transgressions of the law. The legal control of rights, he reasoned, in turn legalized England’s government and power, and “That which is not Legal, is a Tyranny, and not properly a Government. Now the Law is Umpire between King, Lords and Commons, and the Right and Property is one in Kind through all Degrees and Qualities in the Kingdom.” The second fundamental right was legislation by the elected representatives of the people; the third was executive or judicatory, guaranteeing the electors’ share in the execution of laws through their right to sit on juries. The Whig principle of asserting the power and superiority of Parliament and the liberty of the citizen is implicit in this formulation of the rights of the subject and the place of law in government. These rights were stressed in order to impress upon the elector the importance of his vote; bad men may, by nefarious means, win the election, assume control of the Parliament, and through the acts of that body enslave the people. To preserve his rights, the conscientious man must vote, and vote carefully, and Penn gave to the voter cautions and advice to ensure the election of good representatives.

Penn’s advice was realistic, and indicated an awareness of the political evils of the day. Bribery and entertainment were widely used to gain support at the polls, and Penn warned that men who resorted to such methods were lawbreakers and inciters of corruption whose interest was that of self, not of nation. Such men were not to be trusted. Pensioners, officers of the court, and poor men he also thought untrustworthy, since they too were apt to be interested in their position for the purpose of self-aggrandizement. His caution against the election of nonresidents was particularly perceptive, for one of the political evils of the time was the election of men who lived in London to represent a country constituency in which they had little or no interest. Equally perceptive was his suggestion that the voters look to past records of votes and opinions in order to discover the men who had the nation’s best interests at heart. To be expected was the reminder that good Protestants be selected, Protestants who would not sacrifice the good of England in order to secure advantages for their religious groups.35

To accomplish these ends, Penn went out on the hustings in both elections of 1679. He could not run for office himself, since he was excluded by the Test Act and the Quaker principle against oath-

35 For reference to the above discussion of Penn’s tract, see Works, II, 678–681.
taking, but he could support his friend Algernon Sydney as a candidate. Algernon Sydney (1622–1683) was a republican who had supported the Parliamentarians in the reign of Charles I, and was named one of the commissioners of the trial of Charles I. Although he took no part in the final trial, he was exiled from England during the first years of the Restoration, and was finally executed in 1683 on a groundless charge of high treason and conspiracy in the Rye House Plot. He and Penn were in agreement on many political principles. They both approved a limited monarchy for England, in which the rights of Englishmen, an inheritance descended from their Saxon forebears, were practiced.36 They agreed that the free choice of monarch made the English free men, governed by their own laws, and they recognized the liberty of the subject as fundamental in judicatory power through juries. Sydney believed, with Penn, that corrupt men can corrupt government, and that lack of moral virtues would be a detriment to government and contribute to its failure.37 They both believed in the necessity of frequent parliaments38 and in the civil equality of men before the law.39 Through these basic beliefs, they arrived at somewhat different conclusions. While Sydney advanced the republic as the ideal form of government (but even this republic had a leader somewhat resembling the king in a constitutional monarchy), Penn advocated a limited monarchy. The similarity of structure and principle meant that both saw the answers for England’s immediate difficulties in Whig policy, and so they worked together in 1679, hoping to effect a solution. Despite their efforts, however, Sydney lost, first at Guilford, and, when the Parliament was dissolved after a short session and new writs were issued, again at Bramber. Both defeats were due to technicalities and corruption of the election laws, an experience which had its reflection in the corrective devices in Penn’s Pennsylvania law.

From October, 1679, to October, 1680, there was no Parliament sitting. Hysteria, not lessened by the election argument over the Popish Plot, continued. In an effort to strengthen his stand, Charles

37 “Discourses,” 80, 420 ff.
38 Ibid., 378 ff. See also Works, I, 717 ff.
40 Ibid., 69.
dickered with Louis of France for a subsidy which would enable him to dispense with Parliament, and later dickered with Holland for an alliance. The Whig extremists chafed under the restriction imposed by the recess, and being unable to accomplish their desires in Parliament, seemed to verge toward revolution. The Quaker persecution increased, and Penn began to think of removal to America to escape a Whig revolution, which he could not approve or support, and to remove the Friends from persecution by establishing a government free from the evils he had so unsuccessfully combatted in England. If the Whiggish principles to which he adhered were to throw the country into rebellion in the struggle against autocracy, thus alienating Penn from the only active vehicle for his political philosophy, in Pennsylvania he would find another opportunity to put those ideas into practice. After his successful application for a charter, Penn was free to devise a system of government which would exemplify the ideals which he held, a system which would be the culmination of his political career to 1682.

Penn had already had some experience in the drafting of constitutions, if it is true that his ideas predominated in the drafting of the Concessions and Agreements of West New Jersey. The extremely liberal nature of the Concessions makes them particularly interesting as an early reflection of Penn's ideas. The secret ballot, regulation of elections and of the representative's obligations to his constituents, liberty of speech, religion, and assured trial by free jury, and protection of property were all included. If the religious provisions were Penn's, it is also indicative of a certain modification in his thought by 1682, for the Concessions granted complete freedom of religion while the Frame of Government required that colonists believe in God and

41 In a letter to Robert Turner in 1681, Penn said: "This I can say, that I had an opening of joy as to these parts in the year 1661 at Oxford, twenty years since: and as my understanding and inclinations have been much directed to observe and reprove mischiefs in Government, so it is now put into my power to settle one. For the matters of liberty and privilege, I purpose that which is extraordinary, and leave myself and successors no power of doing mischief, that the will of one man may not hinder the good of a whole country." See Thomas Clarkson, Memoirs of the Private and Public Life of William Penn (Philadelphia, 1813), I, 225-226.

42 In the past historians have generally agreed that Penn was the author, but John E. Pomfret has recently advanced the theory that Edward Byllynge, one of the founders of the province, deserves the major credit. Although the evidence is strong, it does not exclude the possibility of collaboration. See John E. Pomfret, The Province of West New Jersey, 1609-1702 (Princeton, N. J., 1956), 92-94.
that freemen and elected officials be Christian. Also, in 1682, Penn sought and received the advice of many friends, and it is difficult now to decide to what extent the Frame of Government and the “Laws agreed upon in England” were a united effort. There is, however, ample evidence of the thoughtful care Penn lavished on the task, and regardless of the numerous indications of external influences on Penn, he accepted or rejected suggestions on the basis of his own ideas of government. The result is an expression in concrete and practical form of the principles which he had previously hoped to establish in England.

The balance in government was achieved by creating three branches: governor, provincial council, and assembly. The provincial council was an elected body of seventy-two members, “persons of most note for their wisdom, virtue, and ability.” Their term of office was three years under a system of rotation which required yearly elections of one third of the members, with the restriction that no member could serve two terms in succession but had to wait a year before he was eligible for re-election. The duties of governor and council were the introduction and debate of bills, erection of courts of justice, judgment on criminals impeached, and choice of officers. They were to see to the execution of laws, had “the care of the peace and safety of the province,” management of the treasury, and were commanded to “erect and order all public schools, and encourage and reward the authors of useful sciences and laudable inventions in the said province.”

For greater efficiency, the council was divided into four committees: one was for plantations, created to settle cities, ports, and market towns, to establish highways, and to hear and decide all suits and controversies relating to the plantations; another was for justice and safety, “to secure the peace of the province, and punish maladministration of those who subvert justice, to the prejudice of the public or private interest”; a third handled matters of trade and treasury, regulating trade and commerce, defraying public charges, and encouraging “manufacture and country growth”; the fourth was

43 The Penn Manuscripts, VIII, 49-149, at The Historical Society of Pennsylvania, contain drafts and criticisms of the plans, in different handwritings, but almost all annotated by Penn. They are the major source for the history of the constitution and the considerations Penn made before coming to a final decision.
a committee of "manners, education, and arts, that all wicked and scandalous living may be prevented, and that youth may be successively trained up in virtue and useful knowledge and arts." This fourth committee was of particular importance to Penn; his belief that corruption could destroy government required some provision for education. He had long considered good education the means of assuring a country of good citizens and government, and considered it the responsibility of the magistracy.  

The third branch of the government was the popular assembly. Membership was to be two hundred (to increase with population if considered necessary), elected yearly by the freemen. The assembly was to meet once a year to pass bills into law and to impeach criminals. If emergencies should arise, the council was empowered to call a meeting of the assembly. Assembly elections were also by rotation, and members could not serve successive terms. Courts were to be created by the governor and council. Judges, treasurers, and masters of the roll were to be appointed yearly by the governor from a double list presented by the council; sheriffs, justices of the peace, and coroners were to be chosen from a double list presented by the assembly. All elections were to be by secret ballot, and no business was to be determined on the day it was moved.

It was on this structure that Penn hoped to establish a balanced government in which rule would be by law rather than by the will and power of men. On May 15, 1682, Penn added to the Frame of Government the "Laws agreed upon in England," which were to be altered and amended by the assembly in Pennsylvania. It was in these laws that the fundamental rights were assured and that many of the Whig principles which Penn had defended in 1679 were realized.

To control the malpractice which aroused so much indignation in the elections of 1679, Penn ruled that anyone who offered bribes forfeited his election. Furthermore, all bribes and extortion were punishable, but in the case of elections council and assembly were to be the sole judges of irregularity. Penn's belief in the civil right of participation in the judicial and executive branches, together with the hardships Penn and the Quakers had undergone in English pris-

44 See Works, I, 738-741.
45 For the text of the First Frame of Government, see Annals, 362-367.
ons as a result of persecution, produced a court system and penal code which was unusually enlightened. Penn guaranteed, for everyone, open courts in which “justice shall neither be sold, denied, or delayed.” Men were to be allowed to plead their own cases, and had to be summoned at least ten days before trial and have a copy of the complaint. All trials were to be by free jury; in the case of a capital offense, there was first to be a grand inquest with a jury of twenty-four, and in all cases the jury members could be challenged. Legal fees, set by the council and assembly, were to be modest, with severe punishments for violations. To protect the convicted, fines were to be light, prisons were to be free. There was an element of the idea of criminal rehabilitation, for prisons were also to be workhouses for both felons and vagrants. All the lands and goods of debtors were liable for the payment of debts, except where there was legal issue, in which case two thirds of the land was to be reserved. Except for capital offenses, persons were bailable, and if anyone was wrongfully imprisoned or prosecuted, he could have double damages against the prosecutor or informer.

The third great fundamental right, that of liberty and property, was protected in several ways. Right of ownership by possession of land was assured. To prevent frauds and litigation, all deeds, grants, conveyances, and bills and bonds were to be registered or else to be void in law. Any falsification of a legal instrument was to be punished by dismissal from office and payment of double satisfaction for the offense. For further protection, registration was also required for marriages, births, deaths and burials, wills and servants. The great principle of religious liberty was also finally secured:

That all persons living in this province who confess and acknowledge the one Almighty and Eternal God to be the Creator, Upholder, and Ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no ways be molested or prejudiced for their religious persuasion or practice in matters of faith and worship; nor shall they be compelled at any time to frequent or maintain any religious worship, place or ministry whatever.

Although papists were not excluded, the provision was not as liberal as might have been expected; the requirement that all men believe in God excluded atheists, and a further reservation, that all electors and officials acknowledge Jesus Christ, excluded Jews from government.
Quakerism, and the firm belief that corruption could destroy government, led to additional restrictions. All "scandalous and malicious reporters, backbiters, defamers, and spreaders of false news" were to be punished as enemies of the peace. Offenses against God, as swearing, cursing, lying, profane talking, drunkenness, whoredom, fornication and other uncleanness, (not to be repeated,) all treasons, misprisons, murders, duels, felony, sedition, maims, forcible entries, and other violences to the persons and estates of the inhabitants within this province: all prizes, stage plays, cards, dice, May-games, gamesters, masks, revels, bull-baitings, cock-fightings, and irreligion, shall be severely punished, according to the appointment of the governor and freemen in colonial council and general assembly, as also all proceedings contrary to these laws, that are not here made expressly penal.  

With the completion of the Frame of Government and the "Laws," Penn must have considered the establishment of good government in Pennsylvania an accomplished fact, and indeed much that followed showed the wisdom of his services to that province. However, his determination to help win toleration for his native land kept him in England after the accession of James to the throne, and through a renewed friendship with James he attempted to give assistance to those who were persecuted for religious or political beliefs. For this service he received the censure of the Whigs whom he had so freely helped less than a decade before, and after 1688 he was further plagued with charges of Jacobinism. The stormy history of Penn's English career was not helped by his relations with the province of Pennsylvania. Fines and imprisonments were impoverishing him, and the colony gave but poor economic returns; in addition, he was disappointed with the colonial assembly which sought to amend in many respects the government he had instituted. The political radicalism and idealism of the years prior to 1682 were, as a result, modified to a considerable extent. Between 1688 and his death in 1718, Penn's growing conservatism, combined with his disappointments and his illness, seemed to destroy his ambitions for a public career and the public good, and he made only sporadic appearances on the political scene.

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40 For text of the "Laws agreed upon in England," see Ibid., 569-574.