

## NOTES AND DOCUMENTS

### *'Of the Grand Assembly or Parliament'* *Thomas Rudyard's Critique of an Early Draft of* *The Frame of Government of Pennsylvania*

Among the range of materials now under inspection by the editors of *The Papers of William Penn*, no set of documents is as intriguing or elusive as the many and varied manuscript drafts of *The Frame of Government of the Province of Pennsylvania in America*, Penn's plan of government for his colony. Included among these materials, in no particular order, are texts or fragments of twelve drafts of the *Frame*, three outlines, two drafts of a variant plan of government called the "Fundamentall Constitutions of Pennsilvania," and three written commentaries upon those plans. A shroud of uncertainty surrounds the documents; only a handful are signed or dated, several are barely legible texts or fragments broken up by frequent notes, corrections and interlineations, and almost all bear the distinctive marks of two or more hands. Somehow out of that collection Penn was able to produce the final text that was to become *The Frame of Government*.<sup>1</sup>

The obscurity of the composition of the first *Frame of Government* has led to a variety of historical interpretations of its character and purpose. Most writers have examined the texts with the goal of understanding Penn's political ideals. Much of this work has focused on the relationship between the *Frame* and political theory and has stressed the

<sup>1</sup> The drafts of *The Frame of Government* are collected in a volume called "Charters and Frame of Government" in the Penn Papers at the Historical Society of Pennsylvania. Complete texts of many of the drafts will be published in *The Papers of William Penn*, ed. Mary Maples Dunn and Richard Dunn, et al., 4 Vols. (Philadelphia, 1981—), Vol. 2 (forthcoming). The author wishes to thank Mary and Richard Dunn and Richard Ryerson for their assistance in preparing the manuscript.

contributions of such thinkers as James Harrington and Algernon Sidney to Pennsylvania's constitution. More recently, a few writers have downplayed the significance of political writers and have asked what other factors—religious or economic—may have influenced the development of the *Frame*.<sup>2</sup>

A most compelling interpretation has been provided by Gary Nash, in "The Framing of Government in Pennsylvania: Ideas in Contact with Reality." As the title suggests, Nash disagrees with those who have read the *Frame* as the simple application of Penn's political principles to an undeveloped colony. From the beginning, Nash contends, Penn was far from free to impose his political ideals in Pennsylvania. His finances were severely strained at the time Pennsylvania was founded, and he needed to attract the support of men of wealth for the colony. Unless the plan reserved the major portion of power in Pennsylvania for such men, they could not have been persuaded to purchase shares of the colony, and it would have ended in failure. Nash supports his argument with a letter written in 1696 by Penn's cousin, William Markham, who wrote somewhat cryptically of the *Frame*: "I know very well it was forced from him [Penn] by friends who unless they received all that they demanded would not have settled the country."<sup>3</sup>

Nash further defends his argument by demonstrating that *The Frame of Government* underwent considerable alteration during the period of more than a year in which it was drafted. In many respects the final version was far more conservative than the earlier texts, especially with regard to the proposed colonial legislature, the centerpiece of the *Frame*. In the first draft of the *Frame*, Penn had outlined a plan for a bicameral legislature, composed of a house of proprietors and an elected house of freeholders. In later drafts, the upper house was merged with the governor's council into a provincial council, which was given the

<sup>2</sup> See, for examples, Mary Maples Dunn, *William Penn: Politics and Conscience* (Princeton, 1967), 81-100; Joseph Illick, *Colonial Pennsylvania: A History* (New York, 1976), 14-19; and Gary B. Nash, "The Framing of Government in Pennsylvania: Ideas in Contact with Reality," *William and Mary Quarterly*, 3rd Ser. 23 (1966): 183-209. Other discussions include Catherine Peare, *William Penn, A Biography* (Philadelphia, 1957), 216-231; and Edward Corby Beatty, *William Penn as Social Philosopher* (New York, 1931), chap. 1.

<sup>3</sup> Nash, "Framing of Government;" and William Markham to Governor Benjamin Fletcher, May 26, 1696, *Calendar of State Papers, Colonial Series, America and the West Indies*, 1696-1697, (London, 1904), 17.

dominant voice in legislative matters, while the powers of the lower house were sharply curtailed.<sup>4</sup>

The key to this alteration in the *Frame of Government* was a detailed critique submitted to William Penn in January, 1682 by the Quaker solicitor Thomas Rudyard, which never before has been published. Rudyard had long been involved in Quaker affairs and had a long association with Penn. The attorney had assisted in Penn's defense at the Penn-Meade trial in 1670; in succeeding years most of Penn's legal affairs were handled by Rudyard and his partner Herbert Springett, the uncle of Penn's wife Gulielma.<sup>5</sup>

Rudyard's critique offers two major arguments. The first was a practical matter. According to early drafts of the *Frame*, the upper house would comprise all of the largest landowners in the colony, while the lower house would contain elected representatives of the small freeholders and renters. In the early years of Pennsylvania, Rudyard reasoned, there were likely to be too few large proprietors residing in the province to compose a separate upper house, and too few freeholders to elect an assembly. In later years, the lower house could grow to thousands of representatives. Far better, Rudyard thought, to distinguish between the plans for the early years and the later period. For the first seven years, Rudyard recommended, the wealthy proprietors ought to sit together as the whole assembly, a prospect he found "not in the least offensive." Later, they would be replaced by a legislature with elected representatives.

The second and more important argument of Rudyard's critique was that the proposed bicameral legislature was ill-advised. The plan was based upon the English Parliament, but the analogy, the lawyer believed, was imprecise. The upper house in England was a House of Lords to which men were admitted only by the achievement of noble status "whether they have Estates in Land or not." Pennsylvania's upper house by contrast, would sit "not. . .for honour, but Territory or Land" only and would be composed of wealthy commoners. This, Rudyard feared, would brand Pennsylvanians as a people who "assert

<sup>4</sup> "Charters and Frame," 49-53, 75-105.

<sup>5</sup> Rudyard's critique is in "Charters and Frame," pp. 63-67. Rudyard's life is discussed in John E. Pomfret, *The Province of East New Jersey 1609-1702: The Rebellious Proprietary* (Princeton, 1962), 231-232 *passim*.

grandure beyond our pretensions." Rudyard believed that such a creation would be especially disadvantageous, since every small freeholder, denied the choice of a member for the upper house, would be certain to choose a "50 Acres man," or freeholder, for the lower body. Men of such "Education, abilities etc as theyl probably be" would produce "clamour, Insolence, [and] Ambition if not worse," such individuals being "unmete for counsell and Government. Rudyard recommended instead the creation of a unicameral legislature to be chosen by election. Under such circumstances, the freeholders would be content with their rights, and, Rudyard believed, as in elections to the English House of Commons, they would choose only prominent men to serve.

Rudyard's critique was decisive in inducing William Penn to change his view of the proper structure of the legislature. Shortly thereafter, the Quaker lawyer drafted a new text of *The Frame of Government* that incorporated aspects—though not the whole—of both of his suggestions. Rudyard's draft retained a bicameral legislature for the province, but altered it by allowing freemen to elect members of both houses. The first house was to be composed of persons "most Eminent for vertue Wisdom & Substance," while the second was to contain men "Eminent" and "fitt for government." Most of the power in the legislature was concentrated in the upper house, which was given the authority to initiate all legislation. For the first seven years, the freemen were to meet in person as a general assembly, and only later were to elect representatives, a provision designed to meet his other principal concern. Rudyard added a few very conservative features in his draft that were omitted from later texts—a governor's council separate from the upper house, and a body of twelve "conservators" of the charter, to be chosen from the "principal purchasors, proprietors and freemen" that would serve as a check upon the elected legislators. But the bulk of Rudyard's ideas were incorporated into all subsequent drafts of the *Frame*, including the final, published text.<sup>6</sup>

Nash does not think that Rudyard was speaking only for himself in offering his suggestions. Rudyard was a man known by many well-to-do Quakers and was so highly respected he was soon to be appointed

<sup>6</sup> Rudyard in fact drafted the next three texts of *The Frame of Government*, which can be found in "Charters and Frame," 69-73.

deputy governor of the Quaker colony of East New Jersey. "It is difficult to believe," Nash wrote, "that his appraisal of the drafts of government, as they had evolved by late 1681, were [sic] not related to the objections of other important Pennsylvania investors."<sup>7</sup>

While Nash's theory reveals much about the composition of *The Frame of Government*, a close look at the text of Rudyard's critique does not wholly support his contentions. For one thing, the tone of the critique is not quite what one would expect from a man conveying the demands of Quaker merchants and gentlemen. Rudyard certainly does not present his criticisms as reflections of the requirements of prominent Quakers, but rather as personal suggestions intended for Penn's eyes only. The whole is a mere outline of ideas, not well-developed arguments. Rudyard begins the critique with the comment, "As for the parliament or grand Assembly these things rest on my mind." He closes with an equally off-hand remark: "All which I freely submit to Consideration not putting so much Estimate upon what came upon my mind to differ with any about itt." If Rudyard had been raising the objections of potential Pennsylvania investors, it seems unlikely that his criticisms would have been offered in quite so casual a manner.

The substance of Rudyard's critique too raises questions about some of Nash's assertions. If the purpose of Rudyard's plan was to insure Pennsylvania investors that their places in the new government would be secure, it establishes that security in a very odd manner: by eliminating the formal protections that that group would have received under Penn's original plan. Rudyard advocated instead that members of the assembly be elected by freemen rather than sitting by right of proprietorship. Nash explains this paradox by arguing that men of the era would certainly have understood that freemen were most likely to elect persons "of considerable estate, demonstrably successful in their private affairs and proven leaders at the local level,"<sup>8</sup> as they did in England, precisely the point Rudyard makes in his critique. Yet the fact that Rudyard felt compelled to explain the matter at length, and that Penn and the other contributors to the five earlier drafts of the *Frame* (including Rudyard) had not recognized the point, casts doubt upon Nash's contention that potential investors would so easily have under-

<sup>7</sup> Nash, "Framing of Government," 196.

<sup>8</sup> *Ibid.*, 201.

stood and accepted this type of alteration in the plan of government.

Some of Rudyard's criticisms in fact were answered indirectly in a variant plan of government that was considered for the colony, the "Fundamentall Constitutions of Pennsilvania," which Nash recognizes as clearly the most liberal plan of government. The "Fundamentall Constitutions" called for an elected one-house assembly, as Rudyard had proposed, as well as a governor's council. It also addressed Rudyard's other expressed concern, by distinguishing between the manner of electing representatives to the assembly in the early years of settlement and later on, after the province was more fully settled. That Rudyard's objectives could be satisfied by such a "liberal" plan of government calls further into question the likelihood that Pennsylvania investors would naturally have understood the "conservative" bent of Rudyard's suggestions.<sup>9</sup>

A final reason for doubting that Rudyard's criticisms were intended to convey the objections of wealthy investors is that however close Rudyard's relations were with other prominent Pennsylvania investors, they were even closer with Penn himself. Rudyard had been associated with Penn at least since 1670, and for many years the Rudyard-Springett firm drafted Penn's legal documents, including charters, deeds, leases and constitutions for the Pennsylvania colony; included in a list of charges submitted to Penn by Rudyard and Springett in 1682 were bills for drawing up deeds, leases and "chart[s] Lawes [and] Constitutions severall times," both in London and at Penn's country home.<sup>10</sup>

This picture of Penn and Rudyard working closely together is further confirmed by an examination of the texts of the various drafts of *The Frame of Government*. In the course of preparing *The Papers of William Penn* for publication, the editors have had the opportunity to inspect the original drafts of the *Frame*. A close look at the originals clearly reveals the extent of Rudyard's influence in the drafting process. Rudyard's handwriting is evident in the draft or the revisions of at least eight texts, second only to the hand of Penn, which appeared on ten of the texts. Even this may understate the extent of Rudyard's contribution, since

<sup>9</sup> "Charters and Frame," 147 ff.

<sup>10</sup> Rudyard and Springett, "Bill of Charges, 1677-1682," Penn Papers, Historical Society of Pennsylvania.

three full drafts were composed almost entirely in Rudyard's handwriting, as was one of the final copies of the finished text.<sup>11</sup>

What stands out from an analysis of the drafts of *The Frame of Government* is that the drafting process was very much an in-house operation involving William Penn and his lawyers. Almost all of the texts that were not in Rudyard's handwriting were drafted by one of Penn's or Rudyard and Springett's regular clerks. In later drafts, Penn and Rudyard worked as virtual equal partners in composition. First Rudyard would edit a text, Penn would then revise the corrections, and Rudyard would amend the revisions.<sup>12</sup>

Occasionally Penn turned to outsiders for help in composing *The Frame of Government*, but only in the early states of the drafting process. The prominent attorney, John Darnall, composed three early charts or outlines of the plan, and a "Councillor Bamfield" may have contributed one of the earliest and most liberal drafts, which included the interesting provision that wealthy Pennsylvania gentlemen who lead "debauched and lewd or notorious wicked" lives could have their estates reduced by the legislature. Both Benjamin Furly, the Quaker from Rotterdam, and Henry or Algernon Sidney read early plans and expressed strong reservations about the way the *Frame* developed. Furly asked Penn "Who has turned you aside from these good beginnings to establish things unsavory and unjust?" while Sidney was reported to have called the laws contained in an early draft the "basest. . . in the World, and not to be endured." Yet all of these men apparently had been consulted only very early in the planning, and the harshness of the criticisms by Furly and Sidney makes clear the limited nature of their contributions to the finished document. Rudyard and Penn, appear to have been virtually the only contributors to the last six drafts of *The Frame of Government*.<sup>13</sup>

<sup>11</sup> "Charters and Frame," 69-73 ff; and the draft of *The Frame of Government* in the Rawle Papers, HSP.

<sup>12</sup> A more detailed discussion of the contributions of various writers to the drafts of *The Frame of Government* will appear in *The Papers of William Penn*, Vol. 2.

<sup>13</sup> The docketing attached to a long early draft reads "Pensilvania Goverm<sup>t</sup> Councell<sup>r</sup> Bamfield," although it is not certain that this referred to the particular text to which it was appended ("Charters and Frame," 107-117). See also Benjamin Furly, "For the Security of Foreigners Who May Incline to Purchase Land in Pennsylvania, But May Dy Before They Themselves Come Their to Inhabit," *Pennsylvania Magazine of History and Biography* 19 (1895): 297-306; Furly, "The Old or First 24 Constitutions," Ms. in "Charters and Frame," p. 119; and

If Rudyard's criticisms made the *Frame* into a more conservative document, his suggestions were probably followed not because he carried to Penn the objections of wealthy Quakers, but because, as Nash recognizes, they all shared a common goal: the creation of an orderly, prosperous Quaker colony. The attraction of wealthy investors was an important element of that plan, but no more important than the creation of a harmonious governmental structure. Penn certainly would have agreed with Rudyard's notion that power in the colony ought not to be distributed to men of low "parts Education [and] abilities. . . such person[s] being unmete for councill and Government." Rudyard's warning that "clamour Insolence [and] Ambition" would result was echoed later by Penn, who, when conflict developed in Pennsylvania, charged the assembly with "noisy and open. . . dissatisfactions" and being too "governmentish."<sup>14</sup>

Rudyard's life went into a downhill slide not long after he completed work on the *Frame*. In 1682, he became a proprietor and deputy governor of the East Jersey colony, where he settled in November of that year, but soon he had a falling-out with the colony's other proprietors. The man who Nash sees as working so hard to secure the positions of wealthy Quakers in the New World now was charged with being too generous to settlers in his offers of land grants and not sufficiently aggressive in maintaining the rights and portions of the proprietary group. The following year he was removed from his post. Rudyard's situation in East Jersey grew still more troubled, and in 1685 he and his successor, Gawen Lawrie, were charged with taking preferential land grants for themselves, and both were fined portions of their proprietary shares. It seems Rudyard had had enough of East Jersey's conflicts, and he left the colony in 1685 for the island of Barbados, where he died in 1692.<sup>15</sup>

The text of Rudyard's critique, "Of the Grand Assembly or Parliament," is in a small, neat hand covering four large sheets of paper. It is located among the drafts of *The Frame of Government* in the volume,

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William Penn to Colonel Sidney, 13 October, 1681, Penn Papers. Nash believes that Sidney was responding to a late draft of *The Frame of Government*, but since Penn's letter to Sidney was dated before Rudyard's critique, this cannot have been the case.

<sup>14</sup> Penn to Council, August 19, 1685, Gratz Collection, HSP.

<sup>15</sup> See Pomfret, "The Apologia of Governor Lawrie of East Jersey, 1686," *William and Mary Quarterly*, 3rd Series, 14 (1957): 344-57.



"Charters and Frame" in the Penn Papers in the Historical Society of Pennsylvania and is signed and dated, "T.R. 13.11.mo 81." (January 13, 1682 new style). The text has not been modernized and is printed as it appears, with the following exceptions:<sup>16</sup>

1. Words or phrases that have been inserted into the text are placed within braces.
2. Illegible words are noted within square brackets.
3. The thorn, sometimes confused with the letter "y," is expanded to "th."
4. The tailed "p" has been expanded to "pro," "par" or "per" as required.

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<sup>16</sup> The method of transcription is described more fully in *The Papers of William Penn*, 1:15-18.

As for the parliam<sup>t</sup> or grand Assembly  
these things rest on my mind.

- 1 In the infancy of the province
- 2 In time of its further Growth.

- 1 In the infancy—for 7 yeares or till Anno 1690.

It's proposed that every proprietor or purchayser of 5000 Acr resideing in the province be a Member of the grand Assembly or Parliam<sup>t</sup>.

For these reasons

- 1 The proprietors resident in the province, in respect of the purchasers of future proprieties. may in probability (in the time prefixed) be but few of them, there & not too numerous for a grand Assembly.

- 2 Such who have a part or a small parcell of a propriety, (if not all resident) cannot Elect, because not all there.

- 3 The freeholders representatives—as servants &c cannot be Elected in the Infancy—because ther's no freeholders, Nor very requisite they should have any, before such tyme they have such Improvem<sup>ts</sup> as are in some measure meritting a representative.

- 4 Butt to Allow in gen<sup>r</sup>all hereafter 5000 Acres to send a representative—if the province be peopled—in some tyme they must after that Rate send thousands of representatives.

- 5 And if otherwise itt must be distinguished what 5000 must have a representative & ~~which~~ {whatt} 5000 no representatives. for every 5000 to have one wilbe too numerous.

And untill Countyes, Townes Corporate & Cityes ~~if any~~, are settled & they are to send {their respective numbers of} representatives (as it may be provided for) Its Questioned how itt shall be practicable to have any other grand Assembly, then the first proprietors—w<sup>ch</sup> seemes most practicable & {not in the} Least offensive in the Infancy of Governm<sup>t</sup>.

Yet allowing if all the purchasers of any 5000 Acres be all resident in the province. & do send any of them selves as their representative, such to be a Member of the Grand Assembly.

This onely for the first 7 yeares or  
till Anno Domini 1690.

As for the Parliam<sup>t</sup> or Grand Assembly  
After the yeare 1690.

|                        |           |
|------------------------|-----------|
| As to their Election—& | } after & |
| as to their Session.   |           |

- 1 Its proposed That in the Constitucons, provision be made. & that therein be determined & affixed. What number or quantity of Acres—fitt for Cultivation, taken up, sett out, besides barrows Left for commons &c shalbe a ~~sh~~ County or shire
- 2 That untill the yeare [left blank]. how many representatives Each County or shire shall send to parliam<sup>t</sup>, & from & after that yeare—how many forever.
- 3 That a Towne Corporate {or Citty}—what or how many Inhabitants paying scott & Lott shall make one? what representatives from & after the yeare 1690—untill the yeare [left blank] And after that how many ~~forever~~ Representatives or Burgesses shall they send forever. This seems reasonable to be settled by the Concessions. or fundamentall Constitutions.

To have any other Election then by Countyes Cittyes Towns Corporate &c after 1690. seemes not only troublesom but uncertaine if not Impracticable.

- 1 Each County—Citty, Town Corporate know best their owne freeholders, ~~freemen~~ Citizens Burgesses freemen.
- 2 These are alwayes together & can Choose without difficulty.
- 3 Butt the quantity of 5000 or 1000 Acres, divided amongst men haveing onely 50 100 or 200. how shall these be Laid or appropriated together, or how shall the possessors thereof come together. Each 50 or 100 Acres & the possessor thereof beinge separate & dispersed through the Country—as the servants 50 Acres will {& must} probably be.

Wch please to consider

Further As to Election. & Session.

After the yeare 1690.

As wee have Experimentally found here in England that the more Considerable & valluable (in terra firms &c) our repre-

sentatives have bin, w<sup>th</sup> the greater & honour & safety to the nation & its reputation also have they carryed on & managed Affaires. —So (its expected) itt wilbe in Pensilvania.

But on the same Grounds or for the same Reason that 2 houses to sitt a part, & to be chosen distinctly or differently are proposed. —doe I propose One house onely. & but one kind or sort of Election.

Upon these Reasons & Considerations  
followinge.

- 1 Wee see in England that altho in all Countyes from 40<sup>s</sup> to 40<sup>l</sup> per Anno freeholders are 20 if not 40 tymes the number of men exceeding 40<sup>l</sup> per Anno. yet scarce our Age can give us an instance, of any man betweene 40<sup>s</sup> or 40<sup>l</sup> per Anno was chosen by them. & rarely if ever Lesse then a {man of} 500 or 1000<sup>l</sup> per Anno. So in great probability allowing the freemen who have bin servants freedom of Election.—hee'l be content w<sup>th</sup> his Election & {representative} & yet Choose no servant.
- 2 Every servant {or 50 Acres freeholder} haveing his freedom of Choyce is represented, as if hee had one of his fellow servants there—But denying him Choyce of a proprietor, is to direct him to Choose a 50 Acres man.
- 3 To have a ho one house of parliamt & that {of} the greater number of members of men of 50 Acres. of such parts Education abilityes &c as theyl probably be—may produce Clamour Insolence Ambition if not worse, such person being unmete for councill & Govern<sup>t</sup>.
- 4 To have 2 separate houses an upper & lower, (when all the neighbouring provinces & plantations in America have but one) may in all probability breed Differences & Emulations betweene the upper & lower house. hinder Dispatch of busynes, & reflect on us as a people who assert grandure beyond our pretentions, and sett up that in {State} pollity w<sup>ch</sup> in our religious Capacity wee have Struck ag<sup>t</sup> beyond any people whatsoever.

It is said our 2 houses of parliamt here in England were originally but one—& all sate in one house till Corruption & ambition made them Two.

- 5 If itt bee alledged that 2 houses in parliamt<sup>t</sup> is like ours in England. As Lords & Commons. I Answer in some sort they are, Butt not on the same Grounds.
- 1 Its alledged (as mentioned before) in our originall fundamentalls or principall Agreement<sup>ts</sup> of the people it was not so in England, but all in one house.
  - 2 The upper house in England, is a house of honour, & those cal'd there onlely, whom the kings of England dignifies w<sup>th</sup> honour, & by virtue of that they sitt. The Sperituall Lords for Life. The Temporall & their heirs forever (till they be degraded) whether they have Estates in Land or not.
  - 3 This upper house proposed for pensilvania is not to sitt for honour, but Territory or Land. now we have no one in England have hee 5 10 or 20000<sup>l</sup> per Anno can sitt for this Teritory, w<sup>th</sup>out choyce of the freeholders who have Teritory.
  - 4 But should the king appoynt or were it so in England That every person of 500 or 10000<sup>l</sup> per Anno should be members or chosen by such—& all other members Chosen by all inferiour freeholders & those then sate in 2 houses it would be parralell to the Two houses proposed, else I conceive not.
- 6 Besides the aforesaid Consequences & probable Conveniencies before mentioned, One house & so Chosen beares a parralell w<sup>th</sup> all our Assemblies & meeteings in affaires Religious & Civill in w<sup>ch</sup> the God of heaven has blest us in our mens meeteings & weomens meeteings, our monthly & quarterly meeteings, w<sup>ch</sup> ~~must~~ as the Lord sett up in his power wee must yet have to his glory. in w<sup>ch</sup> (as wee are worthy) are wee members of one body &c
- All w<sup>ch</sup> I freely submitt to Consideration not putting so much Estimate upon what came upon my mind to differ w<sup>th</sup> any about itt.