



*Pennsylvania's Contributions  
 to the Writing and the Ratification  
 of the Constitution*

**O**N JULY 14, 1776, PENNSYLVANIA DELEGATE John Dickinson presented the first draft of the Articles of Confederation to the Continental Congress. Eleven years later, in Philadelphia, Pennsylvania delegate Gouverneur Morris wrote the final draft of the United States Constitution. The Constitution was presented to the Convention and the nation by Benjamin Franklin, in a speech read by fellow delegate James Wilson.

The prominent role of Pennsylvanians in forging the federal Union was appropriate to Pennsylvania's numerous contributions, both direct and indirect, to the creation of the federal Constitution. Pennsylvania's rich constitutional history—particularly the ten years of debates over the Pennsylvania Constitution of 1776—had undoubted influence upon constitutional thought at the time the federal Constitution was written. Pennsylvania authors produced the earliest Federalist and Antifederalist writings, which circulated widely in the other states during the ratification process. Finally, its size and strategic geographic location made Pennsylvania crucial to any possible union of the states.

Published with permission of the Conference of Chief Justices and the National Center for State Courts. This paper was one of thirteen prepared for the Conference of Chief Justices celebration of the Bicentennial of the U.S. Constitution.

Pennsylvania's quick ratification by a clear majority greatly aided Federalists in Massachusetts, Virginia, and New York, and served to solidify its position as the keystone of the new nation.

Pennsylvania's experience with the writing of constitutions began one hundred years earlier in England. When William Penn received Pennsylvania in 1681 as compensation for an old debt owed to his father by the king, he was excited by the opportunity to create a perfect government in the wilderness for his fellow members in the Society of Friends. Penn already had some experience with constitution-making, having participated in the efforts to write a constitution for West New Jersey. Whatever Penn's exact role in drafting the document, the West New Jersey Concessions and Agreements of 1677 embodied many of Penn's ideas on government, including his willingness to entrust considerable power to an assembly. Benefiting from a half-century of English political thought, Penn devised a constitution for Pennsylvania that, as historian J.R. Pole has noted, bore a great resemblance to James Harrington's *Oceana*.<sup>1</sup>

In one of his first charters, Penn wrote that the purpose of government was "To support power in reverence with the people, and to secure the people from the abuse of power; that they may be free by their just obedience, and the magistrates honourable, for their just administration." Penn struggled with the form of representation. An early attempt at participatory democracy proved totally impractical. The populace would have to elect representatives; every effort was made, however, to ensure those chosen for government would truly represent their constituents. Penn required rotation in office and, in direct contrast to British practice, Pennsylvanians were prohibited from buying or selling votes. "All elections . . . shall be free and voluntary: . . . the elector that shall receive any reward or gift, in meat, drink, monies, or otherwise, shall forfeit his right to elect; and such person as shall directly or indirectly give, promise, or bestow any such reward as aforesaid, to be elected, shall forfeit his election and be thereby incapable to serve."<sup>2</sup>

<sup>1</sup> J.R. Pole, *Political Representation in England and the Origins of the American Republic* (New York, 1966), 79; and Gary Nash, *Quakers and Politics: Pennsylvania, 1681-1726* (Princeton, 1968), 31-33.

<sup>2</sup> Pole, *Political Representation*, 82; "Frame of Government" and "Charter of Liberty" in William F. Swindler, ed., *Sources and Documents of United States Constitutions* (10 vols., Dobbs Ferry, NY, 1972-1979), 8:253-54 (Penn quote, 254), 255-62.

Penn also was careful to enumerate specific rights that belonged to the colonists and could not be abridged by action of the government. Penn's own experiences as a religious dissident who had occupied more than one jail in England led to provisions in the charters protecting the rights of judicial process and freedom of religion. The right to a jury of one's peers was proclaimed in the Frame of Government of 1682. Articles 5 and 6 of the Charter of Privileges of 1701 bear a great resemblance to provisions in the federal Bill of Rights regarding the right to a fair trial and due process.<sup>3</sup> Penn's greatest contribution, however, came in his stand on the freedom of religious practice in Pennsylvania:

Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship: And Almighty God being the only Lord of Conscience . . . 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.<sup>4</sup>

Penn's final constitution, the Charter of Privileges of 1701, which lasted until 1776, granted the Pennsylvania Assembly powers that other colonies would not achieve until much later in the century. As Pole has commented, under the 1701 frame of government

the Assembly acquired the parliamentary privileges that were dear to all colonial assemblies: it was to choose its own Speaker, clerk, and other officers; appoint its own committees, prepare Bills, impeach criminals, be the judge of the qualifications of its own members and determine disputed elections; redress the grievances of its constituents; and to decide on its own adjournment. As the Council was maintained merely to advise the Governor, the Assembly became the sole effective branch of the legislature; viewing the Council—now appointive—as a residual Privy Council rather than an upper chamber, the Assembly

<sup>3</sup> "Charter of Privileges of 1701" in Swindler, ed., *Sources*, 8:273-76.

<sup>4</sup> "Charter of Privileges of 1701" in *ibid.*, 8:273.

thenceforth regarded itself as the legislative body of a unicameral system.<sup>5</sup>

The Assembly's powers over the governor's salary enabled the legislature to exercise virtual control over political issues within the colony. Until the Seven Years' War brought the colony's prosperity to the attention of Parliament, London largely ignored Pennsylvania. During this period of virtual independence, Pennsylvania grew in size and wealth to one of the most prominent of the provinces, with Philadelphia mushrooming in two generations to become the largest city in the British North American colonies. Despite immense diversity of national origin, language, and religion, Pennsylvania was able to avoid both the vicious factional politics of New York and the elitist slave-based aristocracy of Virginia.<sup>6</sup> In 1739, fresh from his defense of Peter Zenger in the "freedom of the press" libel trials in New York City, Pennsylvania Speaker of the House Andrew Hamilton proclaimed:

It is not to the Fertility of our Soil, and the Commodiousness of our Rivers, that we ought chiefly to attribute the great Progress this Province has made, within so small a Compass of Years, in Improvements, Wealth, Trade and Navigation, and the extraordinary Increases of People, who have been drawn hither from almost every country in Europe; a Progress which much more ancient Settlements on the Main of America cannot at present boast of; No, it is principally and almost wholly owing to the Excellency of our Constitution, under which we enjoy a greater Share both of Civil and of religious Liberty than any of our Neighbours.<sup>7</sup>

<sup>5</sup> Pole, *Political Representation*, 89. It should be noted that Pole does not regard the colonial Pennsylvania legislature as having been truly unicameral.

<sup>6</sup> Gary B. Nash, *Quakers and Politics*; Alan Tully, *William Penn's Legacy: Politics and Social Structure in Provincial Pennsylvania, 1726-1755* (Baltimore, 1977); Mary M. Schweitzer, *Custom and Contract: Household, Government, and the Economy of Colonial Pennsylvania* (New York, 1987); Patricia Bonomi, *A Factious People: Politics and Society in Colonial New York* (New York, 1971); and Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill, 1982).

<sup>7</sup> *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania, Pennsylvania Archives*, ser. 8 (Harrisburg, 1931), 3:2505-8. The Zenger trial had a profound impact on the issue of freedom of the press in America. Fifty years later Pennsylvania Antifederalists would refer to the trial when making a case for the inclusion of a Bill of Rights in the new federal Constitution. See John Bach McMaster and Frederick D. Stone, eds., *Pennsylvania and the Federal Constitution, 1787-1788* (Philadelphia, 1888), 151.

By the Seven Years' War the Quaker domination of Pennsylvania politics, with the tacit cooperation of the German sect population, had been eroded by population growth, increasing economic diversity, and the general reluctance among Quakers to support the war. A few Quaker leaders left the Society to continue in politics. However, the unique beliefs of the Quakers and the German sects regarding the issues of pacifism, oath-taking, and the individual's role in relationship to government continued to color Pennsylvania politics from the 1760s through the 1780s. The refusal of the Quaker legislature to defend the frontier, coupled with the domination of the Assembly by the eastern townships, had pushed the large Scotch-Irish Presbyterian population in the west to ally with the proprietary family against the Quakers in a rather unique combination of resources.<sup>8</sup>

As a result, the Pennsylvania Assembly was inclined to see the quarrel with England as one with the proprietors and Parliament, rather than against the Crown. All of the colonies shared this perception in one form or another until the winter of 1775-1776. But publication of Thomas Paine's *Common Sense* (1776), which ridiculed the notion of monarchy, and the colonial receipt of the king's proclamation declaring the colonies in a state of rebellion redirected colonial animus toward the Crown. Still, even after the Declaration of Independence, Pennsylvania's leaders remained reluctant to make the final break with England. The most notable case was John Dickinson, author of the famous *Letters from a Farmer* (1768) as well as the first draft of the Articles of Confederation (1776). Dickinson refused to sign the Declaration and resigned from his position as representative from Pennsylvania to the Second Continental Congress shortly thereafter. He would return to Pennsylvania politics as President of the Pennsylvania Executive Council in 1782. For now, however, the damage was done. As historian Gordon Wood notes, "the proprietary-Presbyterian group connected to the governor, rather than the supposed representatives of the people in the Assembly,

<sup>8</sup> Tully, *William Penn's Legacy*; Schweitzer, *Custom and Contract*; James H. Hutson, *Pennsylvania Politics, 1746-1770* (Princeton, 1972); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969), 84-85; Eric Foner, *Tom Paine and Revolutionary America* (New York, 1976), 56-61.

became for a time the popular spokesman for American interests against England.”<sup>9</sup>

The group that met in Pennsylvania to write the first state constitution in 1776 was composed mostly of newcomers to politics. It consisted of a marriage of Scotch-Irish, western, and Presbyterian interests with the fast-growing population of mechanics and journeymen in Philadelphia led by Thomas Paine and Benjamin Rush. The product of this coalition was the most radical “democratic” constitution of the colonial-Revolutionary period. The revolutionary character of the 1776 constitution has been attributed to a class division between western farmers and urban workers, on the one hand, and eastern merchants, on the other, but that would be to read into the document what is not there. The revolution in political participation that was occurring in Pennsylvania in 1776 had more to do with the local revolutionary committees than with the state constitution itself. While the group that wrote the constitution perceived itself as leading a revolution in politics, in reality they represented only a small segment of society.<sup>10</sup>

Despite the political upheaval that surrounded the writing of the Pennsylvania Constitution of 1776, the fundamental basis for its radical nature came not from class warfare, but from the radical nature of the document it was supplanting. Surely a revolutionary state constitution would have to be more radical than the constitution which had governed the colony, and yet Pennsylvania’s Charter of Privileges was already far more radical than many of the state constitutions written after independence.<sup>11</sup> Pennsylvania already pos-

<sup>9</sup> Hutson, *Pennsylvania Politics*; Wood, *Creation of the American Republic*, 84; Foner, *Tom Paine*, 108; Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania, 1776-1790* (Harrisburg, 1942), 11-13, 121.

<sup>10</sup> Foner, *Tom Paine*, 63-65, 119; Brunhouse, *Counter-Revolution*, 11-15; Wood, *Creation of the American Republic*, 89; and Richard A. Ryerson, *The Revolution Is Now Begun: The Radical Committees of Philadelphia, 1765-1776* (Philadelphia, 1978), *passim*. Both Ryerson and Foner argue persuasively for the critical role of various revolutionary committees in dramatically increasing political participation during the Revolutionary period.

<sup>11</sup> Wood puts more emphasis on the Scottish precedent than on Penn’s constitutions. See Wood, *Creation of the American Republic*, 226-27, 230; “Charter of Privileges of 1701,” and “Constitution of 1776” in Swindler, ed., *Sources*, 8:273-76, 277-85. Pole sees the relationship between Penn’s constitutions and the Pennsylvania Constitution of 1776 as an example of the role of seventeenth-century British political thought in the formation of American political traditions. See Pole, *Political Representation*, 271, 276.

sessed a popularly elected unicameral legislature. Why would a new revolutionary government *add* a council of elites, more than merely advisory, when one had never existed before? The single-chamber legislature, the most famous part of the Constitution of 1776, was, then, not the result of the "radical" composition of the Pennsylvania constitutional convention, but rather Pennsylvania's unique constitutional history.

The new constitution did change Penn's government in other ways. The Pennsylvania Constitution of 1776 vested the executive in a committee, an executive council headed by a president. The council was to be elected by county, the president elected by the legislature. The Assembly controlled the president's salary, and neither he nor the executive council were permitted a veto over legislation. Judges and other officers of the government were to be appointed by the executive council, but the Assembly controlled their salaries.<sup>12</sup>

The new constitution continued the colonial practice in Pennsylvania of forbidding bribery of electors and encouraging rotation in office. Furthermore, no one would be permitted to hold two political positions in the Pennsylvania government simultaneously (a prescription Pennsylvania's chief justice Thomas McKean was able to avoid by representing Delaware in Congress instead). A creative provision in the constitution required all legislation to be published and distributed for popular discussion before being voted upon in the next session; in practice, the Assembly seldom turned to public meetings for instructions as to how to vote.<sup>13</sup>

The most unique feature of the Constitution of 1776 was its provision for a "Council of Censors," a body modeled after classical governments. The Council, which was to be elected once every seven years for a one-year term, two representatives from each county, had as its purposes the responsibility to pass on the constitutionality of enacted laws, to commence impeachment proceedings against persons in the government found in violation of the constitution, and, if

<sup>12</sup> "Pennsylvania Constitution of 1776" in Swindler, ed., *Sources*, 8:277-85; Wood, *Creation of the American Republic*, 137.

<sup>13</sup> "Pennsylvania Constitution of 1776" in Swindler, ed., *Sources*, 8:277-85; Brunhouse, *Counter-Revolution*, 11-15; and Wood, *Creation of the American Republic*, 87, 170, 232-33, 249-50.

necessary, to call a constitutional convention to revise the constitution. While the form of the Council was not imitated, except briefly in Vermont, the Council represented the first effort among the states to confront explicitly the problems of judicial review and amendment of the state constitution by a popular convention.<sup>14</sup>

The Constitution of 1776 began with a "Declaration of the Rights of the Inhabitants of the State of Pennsylvania," fifteen points that would later serve as the model for the amendments proposed to the federal Constitution by Pennsylvania Antifederalists in 1787. Historians generally credit the Declaration of Rights for the Virginia constitution as the model for the inclusion of the fifteen points. As noted above, however, there was also precedent in Penn's charters, particularly in the provisions protecting rights to due process and a fair trial and providing for religious freedom.<sup>15</sup>

The most radical clause of the constitution was never included in the final draft: the proposition that too much wealth should be taxed away, because "an enormous Proportion of Property vested in a few Individuals is dangerous to the Rights, and destructive of the Common Happiness, of Mankind." But the constitution did include the unique provision that "whenever [a public] office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature."<sup>16</sup>

Both the "radical" nature of the Constitution of 1776 and the fight that ensued over it were complicated by the nature of Revolutionary politics in Pennsylvania. The initial reluctance of Pennsylvania's leaders to separate from Britain had been overcome by the realities of the fight, but attempts by such former leaders as Robert Morris and James Wilson to return to politics were shut out by the Scotch-Irish

<sup>14</sup> "Pennsylvania Constitution of 1776" in Swindler, ed., *Sources*, 8:285; Brunhouse, *Counter-Revolution*, 15; and Wood, *Creation of the American Republic*, 232, 430-45.

<sup>15</sup> "Pennsylvania Charter of 1701" and "Pennsylvania Constitution of 1776" in Swindler, ed., *Sources*, 8:273-76, 277-85; Wood, *Creation of the American Republic*, 271; and Foner, *Tom Paine*, 133. Articles 2 and 14 of the Pennsylvania Constitution of 1776 are virtually identical to similar paragraphs in Penn's constitutions. For freedom of religion, see Article 1, "Charter of Privileges"; for the right to trials and due process, see Articles 5 and 6, "Charter of Privileges."

<sup>16</sup> Wood, *Creation of the American Republic*, 88-89; Foner, *Tom Paine*, 133; "Pennsylvania Constitution of 1776," Article 36, in Swindler, ed., *Sources*, 8:284.



Presbyterians who controlled the Assembly after 1776. Pro-independence "moderates" such as Morris and Wilson formed an opposition party, calling themselves the Republican Society. The Scotch-Irish Presbyterian party took the name Constitutional Society (a choice of nomenclature regretted by future historians, for in 1787, the Constitutionalist would become the Antifederalists while the Republicans would become the Federalists).<sup>17</sup>

From the beginning, the Constitution of 1776 met with stiff opposition. The unicameral legislature would eventually prove too powerful, but only the political theorists in Philadelphia expressed much concern over the problem of balanced government. Western counties were overrepresented for the first few years, until a census was taken, and the required two-thirds attendance for a quorum allowed a minority to dominate the Assembly by absenting themselves when an important vote was taken. None of these issues, however, aroused much popular interest. The provision of the constitution that engendered the most opposition was the requirement of a test oath by both voters and officeholders. Most of the new Revolutionary era governments required some sort of oath of allegiance from citizens. The test oath took on greater meaning in Pennsylvania, however, because of the religious beliefs of Quakers and the German sects. While it is true that some wealthy Quakers supported the British, particularly during the occupation of Philadelphia, many Friends and Germans in the city and countryside were sympathetic to the cause of independence. For religious reasons, however, they felt strongly that they could not take the stand required of a juror. The requirement permitted an affirmation of loyalty as a substitute for an oath, but several of the sects disapproved of affirmations as well. Requiring an oath or an affirmation in a document written by Presbyterians severely offended many religious persons who otherwise supported the new government. Even more seriously, the requirement of the test oath effectively prevented many religious people in the eastern counties from being able to vote or otherwise participate in the new government.<sup>18</sup>

<sup>17</sup> Brunhouse, *Counter-Revolution*, 11-88.

<sup>18</sup> Brunhouse, *Counter-Revolution*, 15-47; Ryerson, *Revolution*, 241-43; and Robert Mid-

During the early years of the war—particularly when Philadelphia was either being occupied or directly threatened with occupation by the British—the Constitutional party, also called the Radicals, dominated politics. The key was whether they could maintain their control over the eastern counties. The reluctance of the Republican leaders to call for independence hurt them severely politically, and for several years cost them leadership. At the same time, the issue of the test oath kept many potential voters in eastern counties away from the polls. The Radicals used their political power to move against the Penn family's extensive landholdings and abolish the quitrent. Somewhat less nobly, the party also revoked the charter of the College of Philadelphia and substituted instead the Presbyterian-dominated University of the State of Pennsylvania. In 1780 Pennsylvania passed America's first emancipation law (although embarrassingly weak, freeing only those slaves born after the passage of the law, and then only at the age of twenty-eight). Ironically, it was the old Republican leadership that mostly favored emancipation against the Presbyterian support of slavery.<sup>19</sup>

The Constitutionals' most radical measure turned out to be their greatest failure. Faced with an economic crisis of unprecedented proportions, the Radicals tried to enforce an embargo against exporting much-needed grain at the same time they legislated severe price controls in Philadelphia. Prohibitions against exporting grain or importing manufactured goods in Pennsylvania proved useless while Delaware maintained free ports at Wilmington and New Castle. Price controls only served to substitute supply shortages for rampant inflation as Philadelphia's most serious problem. Congress, meeting in

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dlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (New York, 1982), 620. Pole sees the test oath as serving the same purpose as property qualifications: an effort to confine voters to those who have a valid interest in government and the community. It was perceived, however, as a bald political ploy denying the vote to opponents of the Constitutional party, and as such was the major reason for the downfall of the Constitution of 1776. See Pole, *Political Representation*, 271-74. The issue of oaths and affirmations caused many of the major political rifts between London and Pennsylvania during the 1700s. See Nash, *Quakers and Politics*, 264, 313, 331; and Schweitzer, *Custom and Contract*, 6. Owen Ireland argues that part of the problem with the test oath was the implication that the oath-taker, or affirmer, approved of war. Owen S. Ireland, "The Ethnic-Religious Dimension of Pennsylvania Politics, 1778-1779," *William and Mary Quarterly* 30 (1973), 423-48.

<sup>19</sup> Brunhouse, *Counter-Revolution*, 50-81.

Philadelphia, complained of the Radicals' inability to solve the problems. Even more humiliating was the success of Pennsylvania Republican Robert Morris's bank and financial plans in rescuing both Congress and, it was believed, Philadelphia. Morris certainly succeeded in slowing inflation, but the improved economic situation in Philadelphia and its environs probably owed more to the movement of the war southward than to economic policies. Stung by criticism, the Radicals attacked Morris and revoked the charter of the Bank of North America, labeling it a monopoly and an offense to a free populace. When the Republicans returned to power in another voting shift, the Bank was rechartered.<sup>20</sup>

The significance of the period of the Constitution of 1776 cannot be seen in terms of a social revolution followed by counter-revolution in the ratification of the federal Constitution of 1787. Historian Richard Ryerson has argued persuasively that the Revolution widened political participation greatly, helping to break the stranglehold with which the old political elite had controlled the Pennsylvania Assembly. But this was due more to the emergence of various extralegal committees during the breakdown of the colonial regime than it was to the writing of a "radical" constitution. There was a social revolution occurring in Philadelphia, where the mechanics sought to gain control of the city from the moribund city corporation. Although the mechanics actively participated in the writing of the Constitution of 1776, they later became wholehearted supporters of the federal Constitution of 1787. Philadelphia mechanics had little in common politically with the western farmers of the Constitutional party. The mechanics, for example, proved much more interested in the opportunities of national protectionist legislation presented by a strong central national government, an issue of little interest to western farmers in the 1780s. When the passions excited by the immediate threat of the British had ended, and the nonjurors returned to voting in the eastern counties, the Constitutionals lost political support

<sup>20</sup> Brunhouse, *Counter-Revolution*, 82-88; Philadelphia's experiment with price controls proved such a failure that Tom Paine was convinced never to endorse them again and argued unsuccessfully against their use in Paris during the French Revolution. Foner, *Tom Paine*, 145-81, 243.

everywhere except in the Scotch-Irish strongholds of central Pennsylvania.<sup>21</sup>

Republicans set aside their antipathy to the Constitution of 1776 while Pennsylvania was the center of military activity and fighting during the Revolutionary war. As soon as the war shifted to the South, however, agitation for change resurfaced. The development of political thought caused by the movement to amend Pennsylvania's constitution would have far-ranging implications. Indeed, out of the Republicans' struggles to verbalize the changes they saw necessary in Pennsylvania's government would come many of the arguments that later echoed in both the federal Constitutional Convention and the ratification of the federal Constitution by the states.

The most obvious problem with the Constitution of 1776, as the Republicans saw it, was that there were no checks on the single chamber of the legislature. As a result, the legislature had been acquiring more and more powers to itself. The Presbyterian-dominated Council of Censors, meeting for the first time in 1784, attributed legislative excesses to the colony's history. During colonial times, "every increase of power, obtained of their representatives from the executive, and every instance in which the force of law could be obtained to a resolve of the house, seemed at least to be favorable to the public interest." When the other branches of government were perceived to represent the interests of the Crown and the proprietor, the legislature increased the power of the colonists with every encroachment on the executive and the judiciary. Now that the British and the Penns had been removed, however, the legislature was still behaving as an antagonist to the other members of its own government.<sup>22</sup>

<sup>21</sup> Brunhouse, *Counter-Revolution*, 169-71; Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago, 1958), 165; Brunhouse, *Counter-Revolution*, 164, 207; Foner, *Tom Paine*, 185-87; Ryerson, *Revolution*, 5 and *passim*; Pole, *Political Representation*, 272; and Owen S. Ireland, "The Crux of Politics: Religion and Party in Pennsylvania, 1778-1789," *William and Mary Quarterly* 42 (1985), 453-75. Voting rights were expanded in Pennsylvania by the Constitution of 1776 only insofar as newcomers were now allowed to vote after only one year's residency, as opposed to the three years required before. Taxpayers had always voted in Pennsylvania: if a householder possessed sufficient property, real or otherwise, to be taxed, he was able to vote. Tenancy in the countryside or the city was never a barrier to voting in Pennsylvania.

<sup>22</sup> *A Candid Examination of the Address of the Minority of the Council of Censors* (Philadelphia,

Critics of the Constitution of 1776 charged that the legislature's power to appoint, remove, and determine the salary of the councillors and other officers of the government gave it excessive control over the executive. But the excesses of the legislature went beyond control over personnel. During the colonial period, as the Council of Censors admitted, colonists became used "to consider an application to the legislature as a shorter and more certain mode of obtaining relief." The result in Pennsylvania, as indeed in all of the states, was a plethora of private bills. Petitions requesting that court decisions be overturned, or avoiding the court process altogether, deluged the legislatures and clogged up the business of enacting laws. Republicans feared growing inconsistency in the enforcement of laws, and—far worse—the danger that government was being conducted through payoffs rather than by resort to law.<sup>23</sup>

If the legislature had overstepped its bounds in Pennsylvania, how was it to be controlled? The solution was twofold: strengthen the executive and add a second chamber to the legislature. Most writers appeared to believe that the judiciary would remain independent if the executive was strong enough to act as a buffer between the courts and the Assembly. The revised Massachusetts Constitution of 1780 provided the example for the executive: a popularly elected governor, with powers to appoint officers and veto legislation. But the second chamber of the legislature proved much harder to justify in a state that prided itself on having destroyed the powers of the upper chamber in the Charter of Privileges of 1701.<sup>24</sup>

Still smarting from accusations of Toryism stemming from their slow response to independence, the Republicans learned quickly not to risk the label of oligarchy by calling publicly for a second chamber to represent the "better sorts," although several writers did so privately. Instead, the anti-Constitutionalists in Pennsylvania argued for

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1784); Brunhouse, *Counter-Revolution*, 141-42; Wood, *Creation of the American Republic*, 408, 598.

<sup>23</sup> *A Candid Examination*; Wood, *Creation of the American Republic*, 408. For an example of the involvement of the Assembly in court cases, see Isaac Austin's petitions and the Assembly's responses, published as a pamphlet in 1784. Isaac Austin, *Copies of Sundry Petitions, &c. Presented by Isaac Austin, Setting Forth His Claim to the New Ferry in the City of Philadelphia . . .* (Philadelphia, 1784).

<sup>24</sup> *A Candid Examination*; Brunhouse, *Counter-Revolution*, 157-58.

two chambers *solely* as a check against each other: "double representation," as Benjamin Rush termed it. A second chamber, also popularly elected, would guarantee against passage of hurried and ill-thought-out laws, and would guard against corruption by requiring two separate bodies to approve all legislation. The implications of this line of reasoning were far-reaching in America. "The Republicans [in Pennsylvania]," writes Gordon Wood, "had been compelled by the exigencies of Pennsylvania politics to disavow completely the traditional social foundations of mixed government." The British explanation for mixed government rested on innate differences in social groups: the successful harnessing of monarchy, aristocracy, and democracy in a single government to avoid the potential abuse of each. In those states with a restrictive upper chamber, usually based upon property ownership, the argument for a split legislature based upon social class still held. Political theorists in Pennsylvania, however, were forced to explain why a state which admitted to no natural social divisions required a bicameral legislature to prevent abuse of power by the people's own representatives. Pennsylvania's solution, the "double representation," would become absolutely necessary to the defense of the legislative system created by the federal Constitutional Convention.<sup>25</sup>

The Republicans were unable to change Pennsylvania's constitution until 1790. The arguments they developed in their bid for a state constitutional convention, however, would in time serve a much larger purpose: the movement for a national constitution.

It did not take much to persuade most Pennsylvania Republicans that a stronger national government was necessary. Historian Merrill Jensen notes that "between 1781 and 1783 the Republicans, led by Robert Morris . . . were so actively engaged in trying to increase the power of the central government that Pennsylvania became the center of a movement to create what came to be called a 'national government.'" Though proud of their provincial government and economic prosperity, most Pennsylvanians held a fairly cosmopolitan outlook. Many of Pennsylvania's leaders owed mixed allegiances. At the same time that he held the office of chief justice of the state of

<sup>25</sup> *A Candid Examination*; Wood, *Creation of the American Republic*, 244-51.

Pennsylvania, Thomas McKean was also representing Delaware in Congress. John Dickinson was a representative from Pennsylvania in Congress in 1776, and president of Pennsylvania in the mid-1780s. But in 1787 he was a delegate to the Constitutional Convention from Delaware. Gouverneur Morris, a rising politician in Philadelphia who represented Pennsylvania in the Continental Congress, was raised on the estate Morrisania in New York, owned considerable property in New Jersey, and had helped write the state constitution of New York. Morris was also the chief promoter of the idea of a canal between the Hudson River and Lake Erie, eventually to be built as the Erie Canal in the 1820s. Even Benjamin Franklin, the quintessential Pennsylvanian, was raised in Boston. These were men inclined to look beyond the narrow limits of state boundaries and envision the possibilities of a strong nation.<sup>26</sup>

Many of the Pennsylvania state interests would be well served by a strong national government. The port of Philadelphia and the manufactures in the Philadelphia area served five states: Pennsylvania, Maryland, Delaware, New Jersey, and the Shenandoah Valley in Virginia. Efforts to raise funds or protect manufacturing through imposts or tariffs met with frustration because of the refusal of neighboring states to enact similar laws, leaving open the threat of smuggling. A rumor circulated in the mid-1780s that the western counties of Pennsylvania were planning to secede and join either of the proposed new states of Transylvania or Vandalia. Pennsylvania's efforts to negotiate state boundaries through the national government had proved successful, but only a strong national government could continue to defend those boundaries against threats from Connecticut and Virginia.<sup>27</sup>

<sup>26</sup> The Dickinson draft of the Articles of Confederation was more strongly nationalist than the ratified version. Merrill Jensen, *The Articles of Confederation* (Madison, 1940), 53-55; Merrill Jensen, "Introduction," in Jensen, et al., eds., *The Documentary History of the Ratification of the Constitution* (4 vols. to date, Madison, 1976-), 1:32. William Penn had proposed a congress of representatives from each colony in 1697. See "A Briefe and Plaine Scheam how the English Colonies in the North parts of America . . . may be made more usefull to the Crowne," in E.B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York* (13 vols., Albany, 1854-1887), 4:296-97.

<sup>27</sup> Schweitzer, *Custom and Contract*; James T. Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore, 1972); David Dauer, "The

The city of Philadelphia was at the time not only the largest in the states, but in many ways also the cultural, financial, intellectual, and social center of the nation. It had been the obvious choice for the seat of government until Congress left in a huff over the soldiers' revolt of June 1783, and Philadelphians had good reason to hope the government would return. Philadelphia mechanics favored nationalism in the hopes that protective tariffs and encouragement to manufactures would result. Pennsylvanians believed that they had shouldered too great a share of the federal debt, and consequently there was hope that a new national government might relieve that burden. With Chestnut Street the nation's financial center, Pennsylvania had good reason to encourage a strong national government with a sound financial backing.<sup>28</sup>

Pennsylvania sent a delegation of eight to the Constitutional Convention, including Benjamin Franklin, Robert Morris, James Wilson, and Gouverneur Morris. Franklin's diplomatic skills and prestige proved essential to many of the compromises necessary in the Convention. Despite his prominence and obvious interest in national government, Robert Morris by all accounts did not say much either within or outside the Convention. Perhaps Morris was aware that in some quarters he was extremely unpopular. The most important contributions to the Constitutional Convention from Pennsylvania came from James Wilson and Gouverneur Morris, each of whom made more speeches than any other delegate to the Convention.<sup>29</sup>

Gouverneur Morris was the first to argue that the Convention would have to write a new constitution rather than merely amend the Articles. Wilson, notes J.R. Pole, "emerged as one of the most fearless nationalists of the Convention, and significantly as one who

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Expansion of Philadelphia's Business System into the Chesapeake" (paper presented at the annual meeting of the American Historical Association, December 1981); Brunhouse, *Counter-Revolution*, 172-73, 181-86, 189, 198-99; Thomas Perkins Abernethy, *Western Lands and the American Revolution* (New York, 1959), 310; Peter Onuf, *The Origins of the Federal Republic* (Philadelphia, 1983), 72; and James Wilson on Pennsylvania's burden regarding the federal debt, in McMaster and Stone, eds., *Pennsylvania and the Federal Constitution*, 146.

<sup>28</sup> Brunhouse, *Counter-Revolution*, 135, 185, 198; Foner, *Tom Paine*, 185-87.

<sup>29</sup> Wilbourne E. Benton, ed., *1787: Drafting the U.S. Constitution* (2 vols., College Station, 1986), 1:31-32; Middlekauff, *Glorious Cause*, 624-26; Jensen, et al., eds., *Documentary History*, 1:34.



had least fear of the dangers of popular elections." Obviously influenced by the ten years of debates over the Pennsylvania constitution, both Morris and Wilson argued extensively for two of the major provisions of the federal Constitution: the bicameral legislature and the single executive, popularly elected. Wilson was part of the Committee of Detail, which worked out most of the compromises, and Morris wrote the final draft of the Constitution.<sup>30</sup>

Wilson argued for bicameralism as a check on the legislature. His rhetoric on bicameralism, the outgrowth of the fight over the Pennsylvania constitution, was more useful in the ratification process than at the Convention, for at the Convention little division existed on the subject. Wilson argued for direct election of Senators, rather than election by the state legislators, a provision eventually achieved by amendment a century later. Wilson also proposed that the judiciary be appointed by the national executive, again the direct result of Pennsylvania's political difficulties. "Intrigue, partiality, and concealment were the necessary consequences" if appointed by the national legislature. Both Wilson and Morris later argued in favor of the proposal by Massachusetts that the executive appoint judges, but with the advice and consent of the Senate.<sup>31</sup>

Wilson and Morris were instrumental in persuading the Convention to adopt election of a single executive by the people, through electors. Although several members favored embodying the executive in a committee, Wilson's motion for a single executive did not meet with much opposition. Wilson and Gouverneur Morris did have a difficult fight for popular election of the president. They brought the issue up five times in July and again in August. Each time, however, the Convention returned to election of the executive by the national legislature, some delegates fearing that only those from large states would be elected, others that the result would be demagoguery. Morris and Wilson kept returning to the issue of national election, both expressing their concerns that the president would be the puppet of the legislature, as they believed had happened in Pennsylvania. "He

<sup>30</sup> Benton, ed., *Drafting the U.S. Constitution*, 1:48-52 and *passim*; Pole, *Political Representation*, 357; Middlekauff, *Glorious Cause*, 630-48.

<sup>31</sup> Benton, ed., *Drafting the U.S. Constitution*, 2:1229 (quote) and *passim*; Wood, *Creation of the American Republic*, 550-54.

will be the mere creature of the Legislature," Morris argued. "He ought to be elected by the people at large, by the freeholders of the Country. . . . If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation.—If the Legislature elect, it will be the work of intrigue, of cabal, and of faction." The compromise, including the system of electors, turned out in practice to be closer to popular election than election by the legislature, but both Wilson and Morris would have been happier if pure popular election had been chosen.<sup>32</sup>

Wilson's final contribution was the proposal that if ratification were not unanimous, a partial union should be permitted. Wilson also argued that "the people by a convention are the only power that can ratify the proposed system of the new government." Morris apparently wrote the wording that approved the document by "unanimous consent of the States," in an effort to persuade more delegates to sign. Benjamin Franklin, in a prepared speech read by Wilson, encouraged his fellow delegates to sign whether they approved of the entire document or not. The entire Pennsylvania delegation signed.<sup>33</sup>

The final draft of the Constitution was largely written by Gouverneur Morris. Morris changed the preamble from the usual wording on treaties made by Congress: "We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South Carolina, and Georgia." In Morris's revision, the document began with the now famous words, "We the People of the United States of America." A subterfuge to avoid problems that would be created if some of the states refused to ratify, the rewording came to symbolize the change in thinking toward the document and the nation: the delegates were not merely Virginians or New Yorkers, but also Americans.<sup>34</sup>

Ratification was by no means certain in 1787. Without ratification, there would be no Constitution, and in all likelihood no national government. Having refused to send delegates, Rhode Island did not

<sup>32</sup> Benton, ed., *Drafting the U.S. Constitution*, 2:1126 (quote) and *passim*.

<sup>33</sup> *Ibid.*, 2:1493-94 (quote) and *passim*.

<sup>34</sup> Middlekauff, *Glorious Cause*, 648.

seem a likely candidate for a quick ratification. A fight appeared to be brewing in Virginia, where Patrick Henry, among others, "smelled a rat." New York was never certain, and Massachusetts had recently suffered a rebellion. It was critical that Pennsylvania ratify—because of its size, its prominence, and its central location. Without Pennsylvania, there could be no Union.<sup>35</sup>

The Pennsylvania legislature, with a strong Republican majority in the fall of 1787, voted for a ratifying convention on the next-to-last day of the session. The two-thirds quorum requirement halted the proceedings: the radical Constitutionals walked out. While the Republicans had a majority, they did not have two-thirds. The next day the notice from Congress was received, calling for state ratifying conventions. Two votes were needed to set a date, but no Constitutionals would appear. A mob came to the rescue of the Assembly and pulled in the necessary warm bodies. The date was set for November—a month after the next state elections, but still much earlier than the six months consideration time required for amendment of Pennsylvania's own constitution.<sup>36</sup>

The Assembly was criticized, even by friends, for the hasty action, and for having to rely on violence. In reality, the little ploy probably was meaningless. The Republicans retained a majority in the election in October, and the Assembly was back in session before the convention was due to meet. The sections of the state that had ready access to adequate printed material, thus allowing much time for debates over the meaning of the Constitution, voted unanimously for the Constitution. The middle, Presbyterian counties may not have had time to inspect the document carefully, but they voted against it anyway. The crucial votes came in Philadelphia, where the mechanics favored the Constitution, and in the neighboring, heavily populated townships, where the disenfranchised were once again able to vote because of the removal of the test oath. The solidly Presbyterian middle counties of the state feared the loss of power that might come

<sup>35</sup> Wood, *Creation of the American Republic*, 512, 525-26; Middlekauff, *Glorious Cause*, 662; Robert A. Rutland, *The Ordeal of the Constitution: The Antifederalists and the Ratification Struggle of 1787-1788* (Norman, 1966), 50-53.

<sup>36</sup> Brunhouse, *Counter-Revolution*, 200-1; McMaster and Stone, eds., *Pennsylvania and the Federal Constitution*, 3-5, 25-72.

from the Constitution, but they were no match for the sheer numbers in the eastern part of the state that overwhelmingly favored ratification.<sup>37</sup>

Just as the debate over the Pennsylvania Constitution of 1776 had framed many of the issues that would be important in the writing of the federal Constitution in Philadelphia, the debate over the federal Constitution in Pennsylvania, which raged on even after the ratification vote, provided much of the early language for the Federalist-Antifederalist debate in other states. James Wilson's speeches were extensively published and circulated in the other states, as were Tench Coxe's articles favoring ratification, "from an American citizen." Similarly, the series of letters by "Centinel" were reprinted and circulated widely by Antifederalists. Other Federalist writings supplanted Wilson and Coxe, but "Centinel" may have been the strongest of the Antifederalist writers to receive wide readership.<sup>38</sup>

Pennsylvania's Antifederalists expressed alarm that provisions had not been included guaranteeing basic freedoms or protecting the powers of the state governments. Wilson responded that a Bill of Rights was "not only unnecessary, but . . . highly imprudent." To Wilson "the supreme power of government was the inalienable and inherent right of the people," who were incorporated into the new Constitution by the opening phrase, "We the People of the United States." What the people did not give to the new government, they reserved to themselves. If a Bill of Rights were added, then it might be argued that those rights not specifically listed in the amendments no longer belonged to the people. "If we attempt an enumeration, everything that is not enumerated is presumed to be given. The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government; and the rights of the people would be rendered incomplete." "It would be superfluous and absurd," Wilson argued elsewhere, "to have stipulated with a federal body of our own creation, that we should enjoy those privileges, of

<sup>37</sup> Brunhouse, *Counter-Revolution*, 207; Foner, *Tom Paine*, 206-9; Jensen, et al., eds., *Documentary History*, 1:35.

<sup>38</sup> Brunhouse, *Counter-Revolution*, 204-211; Wood, *Creation of the American Republic*, 524, 530-32, 539-40, 550, 556; Middlekauff, *Glorious Cause*, 656-62.

which we are not divested either by the intention or the act, that has brought the body into existence.”<sup>39</sup>

The Antifederalists in Pennsylvania responded that Wilson was naive, or deliberately disingenuous. John Smilie and Robert Whitehill argued in the Pennsylvania ratifying convention that government was by its nature a compact between the governed and the governors. “We know that it is the nature of power to seek its own augmentation, and thus the loss of liberty is the necessary consequence of a loose or extravagant delegation of authority.” Without protection of individual rights, Congress would not be able to resist the temptations of tyranny; without a specific delineation of states’ rights, the federal government would “annihilate” the state governments. “Centinel” made the case more forcefully. “The reason assigned for the omission of a *bill of rights* . . . is an insult on the understanding of the people. . . . Mr. Wilson tells you, that every right and power not specially granted to Congress is considered as withheld. How does this appear? Is this principle established by the proper authority? Has the Convention made such a stipulation? By no means. Quite the reverse; the *laws* of Congress are to be ‘the *supreme law* of the land.’”<sup>40</sup>

Pennsylvania’s Antifederalists became the first to suggest the compromise of adding the amendments to the Constitution after adoption. “The Dissent of the Minority of the Convention” proposed fourteen amendments, a combination of the Declaration of Rights from the Pennsylvania Constitution of 1776 and the original provision in the Articles of Confederation establishing the power of state governments. As historian Merrill Jensen notes, “The ‘Dissent’ gave formal sanction to the growing demand for amendments in Pennsylvania, and it provided an example for men in other states as their conventions met to consider the Constitution.” Acceptance of the Bill of Rights as the first ten amendments eventually became the major compromise by

<sup>39</sup> “Convention Debates,” in Jensen, et al., eds., *Documentary History*, 2:392-93 and *passim*; “Centinel No. II,” in McMaster and Stone, eds., *Pennsylvania and the Federal Constitution*, 577, 580-81.

<sup>40</sup> “Convention Debates,” in Jensen, et al., eds., *Documentary History*, 2:83-84, 87-88; “James Wilson’s Speech in the State House Yard, Philadelphia 6 October,” in *ibid.*, 2:168.

which Antifederalists and Federalists nationwide united under the new government.<sup>41</sup>

Complaining that ratification occurred in too hurried a fashion, the Antifederalists in Pennsylvania called a counter-convention in August of 1788, in Harrisburg. Residents of the middle counties, strongly Antifederalist, hoped to start a movement to call a new federal convention to write a set of amendments more in keeping with the old Articles of Confederation. But the convention amounted to little more than a rehearsal by Antifederalists for the upcoming elections to Congress.<sup>42</sup> The new government was already successfully working to absorb and contain the factions that would inevitably arise in a nation so large, so diverse, and so certain of its liberties.

*Supreme Court of the  
State of Pennsylvania*

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<sup>41</sup> Wood, *Creation of the American Republic*, 527-28; Middlekauff, *Glorious Cause*, 656-62; Brunhouse, *Counter-Revolution*, 202-14; "Dissent of the Minority of the Convention" in McMaster and Stone, eds., *Pennsylvania and the Federal Constitution*, 461-64; and Jensen, et al., eds., *Documentary History*, 1:617.

<sup>42</sup> Brunhouse, *Counter-Revolution*, 212-14; and Rutland, *Ordeal of the Constitution*, 288.