WALTER FORWARD IN THE PENNSYLVANIA
CONSTITUTIONAL CONVENTION OF 1837-38

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Pennsylvania's constitutional convention of 1837–38 was held in days of political controversy as bitter as that of today. The question of the constitutionality and advisability of creating numerous governmental agencies, conveniently designated by triads of letters from the alphabet, did not arise, but opinion was certainly quite as sharply divided over Jackson's attack on the second United States Bank. Although the question of holding such a convention fared better at the hands of the electorate than did a similar, quite recent attempt in Pennsylvania, the result to all intents and purposes was the same, for the convention accomplished little or nothing after several months of deliberation.

The Jacksonian Democrats chose as one of their delegates Walter Forward, a native New Englander, who had come to Pittsburgh in his youth by way of Aurora County, Ohio. Forward had studied law with Henry Baldwin, one of the city's most prominent attorneys, and in company with Baldwin and Tarleton Bates had acted as one of the directors of the editorial policy of the Tree of Liberty, Pittsburgh's second newspaper. Subsequently Forward had served in the General Assembly of Pennsylvania and in Congress although he had been defeated on two separate occasions for re-election to the national House of Representatives. Despite the thwarting of his legislative ambitions Forward remained active in Pittsburgh civic life and had a great many friends in the surrounding counties. It was not strange, then, that the Democrats should choose him as one of their delegates to the constitutional convention due to meet on May 2, 1837.

1 Read at a meeting of the Historical Society of Western Pennsylvania on April 27, 1937. The article is based on a portion of a thesis on "Walter Forward" presented by Mr. Sessa to the University of Pittsburgh in 1934 in partial fulfillment of the requirements for the degree of master of arts. Ed.
The Antimasonic Gazette, considering opposition candidates, noted that the Democratic ticket was made up of Ephraim Pentland, Walter Forward, and Hugh Davis, all Whigs! That such should be the case was not unusual, for the political opinions of many of the more prominent men had not yet become crystallized, and the latter frequently changed party allegiance. In the same issue of this paper a contributor wrote facetiously of what he called the "Tadpole Ticket":

The Masonic, Democratic, Jackson, Van Buren, Muhlenberg, and WHIG Convention have placed in nomination for delegates to the Convention to amend the Constitution—Walter Forward, WHIG Mason; Ephraim Pentland, WHIG Mason, and recusant witness; Hugh Davis, WHIG; James Patterson, of Mifflin, and Hezekiah G. Rogers, a very tall young man, from New York. . . . I have given this ticket the denomination of "the Tadpole ticket," because it is all head and no body. Mr. Forward is the head—and the rest, put together, form a poor tail.2

Forward's official connection with the group that had nominated him was soon to be severed, however. The Democratic leaders met at the Washington Coffee House in Pittsburgh on Saturday evening, October 15, 1836, and, with the bank question uppermost in their thoughts, developed during the course of discussion three questions to be asked of their candidates:

First. Will you vote the electoral ticket pledged to support Martin Van Buren and Richard M. Johnson?

Second. Will the convention about to assemble to amend the constitution of the state, possess the power to annul the charter of the bank of the United States?

Third. If the convention have the power to annul the charter of the bank of the United States, will it be, in your opinion, expedient to annul it, and will you vote in favor of doing so?3

Walter Forward's answer, which at the moment seemed to the editor of the Gazette to be "a strain of lucid and masterly argumentation, and indignant eloquence, characteristic alike of his thorough professional skill and high moral character,"4 was published in its entirety in Niles' Weekly

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2 Daily Pittsburgh Gazette, June 9, 1836.
3 Niles' Weekly Register, 51:141, 142 (October 29, 1836).
4 Daily Pittsburgh Gazette, October 22, 1836.
Register.\(^5\) To the first inquiry he replied that he could not see what bearing his opinion of those gentlemen could have upon the question of amending the state constitution, but he had no desire to conceal it. He would support Martin Van Buren if such support could be consistently rendered: he found Van Buren’s name, however, connected with principles that appeared to him “to militate against the public good, and to weaken the security of private property.” Therefore, he said, “I shall vote against him.” To the second and third queries Forward’s reply was much longer and stated his position clearly. He reasoned that the convention could not crush or eliminate the Bank of the United States, since in the first place the purpose of the convention was to submit its proceedings to the people, and by the people such procedure would undoubtedly be repudiated. In the second place, the charter of the bank was a contract and had the protection accorded by the United States Constitution to every contract. Furthermore, the act of assembly creating the bank had reserved for the legislature and state supreme court the power to examine the bank’s books and papers, to put its officers under oath, and “if it shall be found upon a trial by jury, that the charter has been violated, to declare it void.” Thus there was no necessity for calling upon the “extraordinary powers of a convention” for this purpose. To justify his position and remove all suggestion of influence, Forward stated definitely that he had never possessed a particle of interest in the institution, “other than that which belongs to every citizen.” Nor had he ever owned any of its stock or received or solicited its accommodation. “If its charter was obtained by foul means,” said he, “I shall be as willing as any one of you to see it annulled.”

Forward also embraced this opportunity to voice his opinions on other questions of constitutional reform. He advocated removing from the governor all power of appointment; in other words, the people should elect for a term of years justices of the peace, prothonotaries, recorders, and other county officials; and state officers and judges of the supreme and inferior courts might well be chosen by a joint vote of both houses of the legislature. He likewise favored limitation of the executive’s term to

\(^5\) Niles’ Weekly Register, 51:141-43 (October 29, 1836).
three years, "so that no governor could be tempted from the strict line of his duty by the hope of reélection."

As might be expected, Van Buren’s followers were none too pleased with this answer to their questions and read Forward out of the party. That Forward had anticipated such a result was manifest in the following remarks in the early part of his lengthy statement:

I am therefore constrained most respectfully to say to you that the reasons for changing the grounds of my nomination, and attaching new conditions to my continuance upon the ticket, are to my mind very unsatisfactory. I think it highly probable that the importance and the equity of these new conditions are not yet discovered by the delegates from the country, by whom I was nominated, and that they may yet be inclined to hesitate and ponder the matter very seriously, before they exclude a candidate from their favor, because he denies the power of the convention to annul charters, and destroy private property. I am confident that at the time I was nominated, the reform of the constitution was not considered a party matter. I have never regarded it in that light, and no consideration shall ever induce me to enter the convention as a party man.

Naturally, the Antimasons, favored by the *Gazette*, were highly delighted at this outburst. Their vote, combined with that of Democrats who still favored Forward, elected him a delegate.6

When the convention met in the capitol building at Harrisburg, on May 2, 1837, there were 133 members. Of these the Whigs had a majority of one, but on the basis of general attitudes toward constitutional revision three groups are distinguishable: one-third of the members were opposed to all amendment; one-third were conservative but for reasonable amendments desired by the people; and a final group, all Democrats, were of an extremely radical temper. The delegates from Allegheny County chosen on the basis of representative districts were Walter Forward, Matthew Henderson, Andrew Bayne, and H. Gold Rogers; Harmar Denny and William Ayres were those sent by the senatorial district of Allegheny and Butler counties.7

6 *Daily Pittsburgh Gazette*, May 8, 1837.

Forward's personal friend and fellow member of the convention, Daniel Agnew, of Beaver, writing forty years later said of Forward, "in that body he was not conspicuous at first, owing to his natural repugnance to hasty conclusions. His early speeches partook in a measure of the hesitation which led him to be called 'Walter the Doubter.'" The satisfaction felt when Forward published his views on the bank and Van Buren quickly vanished as he voted with Van Buren men on the choice of convention officials. In the election of an additional secretary, Forward favored Francis R. Shunk when all other anti-Van Buren men voted for George L. Fauss. And in the selection of printers for the journals and debates, he offered a resolution to appoint Packer, Barrett, and Parke to print the English debates, Thompson and Clark the English journal, E. Guyer the debates in the German language, and Joseph Ehrenfleld the German journal. Adoption of this resolution led to denunciation of Forward by the Gazette, which favored Theodore Fenn, an Antimason, for the important and lucrative task of printing the English debates. The paper denied ever having possessed any faith in Forward. It forgot its remarks about his "lucid and masterly argumentation," and contended that prior to the election, it had endeavored to prevent Antimasons from favoring him, because it "knew that, although possessing talents of the first order, and perhaps a disposition to do right, yet he is so utterly destitute of firmness, that not the slightest dependence can be placed upon him in any emergency." From this point on, however, the Gazette made few observations, for the convention spent most of its time in futile argument that offered little news. It ran longer than expected, adjourned frequently, and moved in November to the Musical Fund Hall, in Philadelphia, where its deliberations ended.8

The controversy over whether or not the requirement of taking the oath of allegiance to the Constitution of the United States should be included in the new constitution of Pennsylvania represented the usual type of discussion. The national document made the oath mandatory for all state officials, and the consensus among the delegates seemed to be that

such duplication was "wholly unnecessary." One member, probably thinking of the late nullification proceedings of South Carolina and their implications, went so far as to say that a time might come when there would be no Constitution of the United States. "Then why introduce an amendment of this kind," asked he, "which would, in that event, require that a Convention should be called to get rid of it?" Forward, however, favored the inclusion of the oath, so as to remind every man reading it "of the relation in which he stands to the general government, and every officer, of the liability and wickedness of all attempts to render our duty to the Union incompatible with fidelity to the State Government." Further along in the debate he observed that there were other points of similarity between the two documents. One might as well omit the bill of rights from the state constitution. The ultimate result of the long discussion, which frequently went into personalities, was negative, and the federal oath was omitted from the final draft.9

A question of greater importance was that of the impeachment of judges. The committee report on the subject suggested the requirement of a mere majority to remove judges from office. To a large number of the members this was anathema, for most of them favored at least a two-thirds vote. Forward ably called attention to the fact that the senate, in which impeachment proceedings were carried on, was a political body and the members belonged to one party or another. If unanimity were required, he said, party prejudice would interfere with justice. If a bare majority were sufficient, "innocent and upright officers would be in continual jeopardy." The committee's recommendation on this point was eventually turned down and the two-thirds vote prevailed.10

Race sentiment or at least race consciousness developed in the convention, and many members were not willing to put the free Negro on a par, politically, with themselves. Forward, however, championed the rights of the black man, perhaps because of the influence of his earlier connection with the African colonization movement. He indicated that many Negroes owned property and were industrious yet were forced to be obedient

9 Proceedings and Debates, 1:197, 211, 212.
to the same laws, though they had no part in their enactment. In conclusion he stated that no vote of his would exclude a man from exercising the privilege of the franchise because he belonged to a so-called inferior race. His views on the matter, he said, "were all regulated and controlled with reference to the virtue, to the intelligence, and to the patriotism, of this unfortunate people." For a man professing to know little or nothing of abolition these statements were certainly unusual.

Toward the end of the year 1837, many members felt that the convention had run long enough; it was an expense to the government, or rather, to the people. With this in mind, William Darlington of Chester County offered a resolution that members of the convention no longer receive pay for their services but continue to serve until business be completed. A storm of protest arose. Mr. Martin of Philadelphia moved to amend by striking out the words "members of the convention" and substituting "member from Chester." Further personalities were indulged in, and several members suggested that Mr. Darlington felt conscience-stricken because of frequent absence. Forward, always temperate, offered objection on a different plane. He would sanction no such a measure with its implication "that our labors are useless." Enlarging upon this theme, he observed:

Gentlemen rise up here in their places, and talk gravely of working without compensation, without pay, for the citizens of this great commonwealth of Pennsylvania; desirous, I suppose, to get up something in humble imitation of Washington in the revolutionary war—paying their own expenses and refusing all returning compensation. Sir, I am not in favor of any such proceeding. It will be regarded as a kind of puerile device—as a sort of mock patriotism. I, for one, will be caught in no such trap.

When the motion finally came up for vote it was defeated, eighty-six to thirty-two. Ample justification may be found for Forward's attitude and that of the others voting down the proposition. The compensation was little enough at best, and most of the delegates were men of moderate means; expenses at the meeting place were heavy and others at home had to be met. In addition, professional men, of whom there were

11 Proceedings and Debates, 10: 14.
many in this assemblage, had to neglect their practice much of the year, and it is always hard to regain clients once they have established other connections.

Forward's official position at the convention was chairman of the committee assigned to revamp Article VII, which dealt in the main with education. His co-workers were J. R. Chandler, G. W. Riter, and Messrs. Sill, Keim, Reigart, Pollack, Martin, and Sellers.13 Their work on the educational sections of the article was not of particular significance at this time, but a protracted discussion occurred over section 3, which declared that "the rights, privileges, immunities, and estates of religious societies and corporate bodies shall remain as if the constitution of this State had not been altered or amended."14 The majority report of the committee changed the wording of the first two sections very slightly, quoted the third verbatim, and offered the following addition:

Sect. 4. The Legislature shall not invest any corporate body with the privilege of appropriating private property to its own use, unless the owners or proprietors of said property shall have been previously compensated therefore.15

Here in this new section appeared a definite statement of the right of eminent domain as it is recognized today. Forward, a true exponent of the inviolability of private property, undoubtedly had much to do with its inclusion.

The anti-bank men, however, and those individuals opposed to large corporations, presented a minority report declaring that banks should be chartered thereafter only upon the following conditions:

1. No bank shall be chartered unless it has the concurrent action of two thirds of two successive Legislatures, and that public notice be given of such intention in the immediate neighborhood where such bank is to be located, at least sixty days prior to said application to the Legislature.
2. No bank shall be chartered for more than eight years.
3. No vote for directors or president of a bank shall be given by proxy.
4. No bank shall divide more than seven per cent. per annum of the profits

13 Proceedings and Debates, 1:96.
15 Proceedings and Debates, 2:403.
of said bank; the surplus of profits over seven per cent. per annum, to be paid annually into the State Treasury.

5. Each and every stock holder of all banks to be personally, and to the extent of all his property, answerable for all debts of the bank in which he holds stock.

The report concluded by observing that "with such provisions, your committee trust that banks may be hereafter safely conducted." Later this group modified its report by reducing the charter maximum from eight to five years. This program as a whole, however, would not only have assured safe conduct of banking business, but would also have completely eliminated the institutions. Who, for example, would hold stock with so great a liability attached?

Some time after these reports were submitted to the convention, general discussion was opened. It was long and bitter, centering around the bank question almost entirely. In this debate Forward did his ablest speaking. He defended convincingly the large institutions as opposed to the lesser ones. Small banks "with a small circulation and of doubtful currency" were frequently a menace and could not give stability as could the large institution, which made possible the enterprise of the country. Speaking for a manufacturing center, where extensive credit expansion was a necessity, he was right. He also refuted the assertion that the aristocracy of wealth oppressed the small men. After all, argued Forward, the wealthy were merely working men who had developed their talents and resources.

As finally adopted, Article VII was a distinct disappointment to those advocating more stringent governmental control. It quoted verbatim the three sections of the corresponding article in the constitution of 1790 and added a fourth, similar in form to that reported by the committee majority—all under the heading of "Education," as follows:

Sec. 1. The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis.

16 Proceedings and Debates, 2:403, 404.
Sec. 2. The arts and sciences shall be promoted in one or more seminaries of learning.

Sec. 3. The rights, privileges, immunities, and estates of religious societies and corporate bodies shall remain as if the constitution of this State had not been altered or amended.

Sec. 4. The legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken.\textsuperscript{18}

No less a disappointment was the constitution as a whole as approved by the convention on February 22, 1838. It contained but few changes, and when submitted to popular vote at the election held on October 9 of that year it barely received a majority, the adverse vote being 112,759 as compared with 113,971 favorable ballots.\textsuperscript{19}

The question may well be asked, why describe a convention that accomplished as little as this one did? Justification lies in the excellent index it provides to the political, economic, and social life of the various groups of delegates engaged in a supposedly nonpartisan activity. More specifically, Walter Forward's ability, philosophy, and independence of thought, regardless of political sentiment at home, were better exhibited in this convention than in any other activity of his career.

\textsuperscript{18} Pennsylvania, \textit{Constitutions}, 148, 149.