

JOHN P. PENNEY, HARRY WHITE, AND THE 1864 PENNSYLVANIA SENATE DEADLOCK

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UNDER the provisions of the 1838 Pennsylvania Constitution whenever the position of governor of the Commonwealth was vacant, the speaker of the state senate was to succeed to that office. For that reason the senate always elected a speaker to serve between sessions of the legislature; at all times there was to be someone to assume the duties of the chief executive of Pennsylvania in the event of disability, death, or impeachment. Traditionally, the interim speaker resigned as soon as the next senate convened, and elections were held for a speaker to preside over the new senate. For decades the system had worked reasonably well, but in 1864 the senate found itself unable to organize for two months. Because Gov. Andrew Gregg Curtin was in poor health, it was believed that the senator who was elected speaker might become the next governor of the Commonwealth; and both Democrats and Unionists¹ wanted the prize for themselves.

Normally there should have been no problem in selecting a speaker. Unionists held seventeen of the thirty-three senate seats; however, one of their number, Major Harry White of Indiana County, was a prisoner of war at Libby Prison in Richmond. Thus, until White resigned or was able to take his seat at Harrisburg, the senate would be composed of an equal number of members from both parties. Unionists did not believe that Jefferson Davis would be willing to exchange White for a captured Confederate officer, but they were confident that they would be able to elect a speaker of their own choosing. Moreover, they argued, the senate, unlike the house, was always an organized body, and until a successor was selected, the current speaker, John P. Penney of Pittsburgh, would continue to hold office.²

Democrats were not willing to agree that the senate was always

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1 From 1861-65 the Republicans campaigned under the banner of the Unionist party, and they will be referred to as Unionists in this paper.

2 Penney, whose name has also been spelled Penny at various times, had been elected speaker on April 15, 1863.

organized, but they expected the Unionists to retain control of the senate. The *York Gazette* noted that Sen. Morrow Lowry had gone to Washington to persuade the federal government to use all of its bargaining powers to secure the exchange of White. If White could not be brought back to Pennsylvania before the meeting of the legislature in January, the *Gazette* stated, he would resign and a special election would be held to elect a successor. Since his district, Indiana and Armstrong counties, was strongly Unionist, there was little hope that his replacement would be a Democrat. The *Gazette* noted that if the arrangements to release or replace White were not completed before January 5, the organization of the senate would "become a matter of doubt and perhaps delay."³ The imprisonment of White, declared the Democratic *Pittsburgh Post*, demonstrated the "bad effects" of allowing individuals to hold a commission in the army while simultaneously serving in an elective public office. Unsure whether White would be freed in time to take office, the *Post* concluded, "The Senate is [in] a dead lock without White's presence and jubilant Republicans are likely to be brought to grief in consequence of the Major's involuntary absence of an [un]asked for furlough."⁴

On January 5, 1864, all eyes were on John P. Penney. The Pittsburgh legislator was one of the ablest lawyers in the state and a man of unquestioned integrity. In 1861, he had unsuccessfully — but ably — led the fight against the repeal of the tonnage tax levied on the Pennsylvania Railroad. Two years later he made a stirring speech against a proposal to call for an armistice with the Confederacy and to hold a convention of the states which would assemble to formulate a peaceful compromise to end the war.⁵ Before the renomination of Andrew Curtin in Pittsburgh on August 5, 1863, Penney was considered a possible candidate for the gubernatorial nomination. At the last session of the senate in 1863 he had been elected speaker to serve until the next senate assembled in 1864. If Penney had followed precedent, he would have vacated the speaker's chair and would have resumed his old senate seat, and the clerk would have called the senate to order.

Penney, however, chose to depart from custom. On January 5, he went to the speaker's platform and announced that because of the possi-

3 *York (Pa.) Gazette*, Nov. 3, 1863.

4 *Pittsburgh Post*, Nov. 18, 1863.

5 George Bergner, comp., *The Legislative Record Containing the Debates and Proceedings of the Pennsylvania Legislature for the Session of 1861* (Harrisburg, 1861), 460-61, 483-86.

bility that the governor might die or become disabled, he considered it to be his duty to continue to serve as speaker until his successor was selected. The election returns of October 1863 were read; and Penney asked all of the new senators to step forward to be sworn in. The four new Democrats, William Hopkins, Jonathan Latta, David Montgomery, and Hawkin Beardsley, were sworn; but they presented Penney with a written protest alleging that he had no right to tender them the oath of office since he had not been elected speaker by the new senate. The protest was entered upon the *Journal*, but Penney continued to perform the functions of the speaker.

Sen. Charles Lamberton, a Democrat, asked that the senate elect a speaker, but it was to be months before this could be done. Fifteen of the Democrats voted for Hiester Clymer of Berks County. Fifteen of the Unionists attempted to conduct business in the senate as usual, but the Democrats refused to allow any bills to be presented until a speaker was chosen.⁶

Unionist Morrow Lowry sarcastically offered a resolution "respectfully requesting Jeff. Davis either to capture another Senator or release the one he has, so that the Senate may be enabled to organize." Sen. William Kinsey, a Democrat, moved to amend the resolution by appointing Lowry as a committee-of-one to carry that document to Jefferson Davis. The senators evidently were amused by these antics, but Penney declared that the resolution was out of order.

On January 6, Clymer, speaking for the Democrats, offered to make a deal with the Unionists. His party would vote for Penney for speaker if the Unionists would elect the Democratic candidate for clerk and would agree to divide the other senate offices with them. The other positions were an assistant clerk, three transcribing clerks, a sergeant-at-arms, and a doorkeeper. Unless this offer were accepted, stated Clymer, the senate would remain unorganized "until the dog days." The Unionists refused and began to question the patriotism of the Democrats. It was alleged that Jefferson Davis held White as a prisoner to strengthen the position of the Democrats, an insinuation which the January 8 issue of the *Pittsburgh Post* called "so dastardly ridiculous as to require no notice by anyone claiming common decency."

Lowry, Sen. Benjamin Champneys, and others began to spread stories that during the 1863 campaign Clymer had told a political rally

⁶ The senators, however, did agree to go to the House of Representatives to open and to count the returns of the 1863 elections; and several days later Penney administered the oath of office to Governor Curtin, an honor reserved for the speaker. *Philadelphia Evening Bulletin*, Jan. 14, 1864.

at Canonsburg that if George W. Woodward, the Democratic candidate, were elected governor of the Commonwealth, he would unite with other Democratic governors in calling home their states' troops from the field "for the purposes of compelling the [Lincoln] Administration to [summon] . . . a convention of States to settle our difficulties." Clymer insisted that he had made no such statement, and he charged his detractors with distortion and slander.⁷

Other Democratic senators were outraged when the *Harrisburg Telegraph* alleged that they were members of the Knights of the Golden Circle and that they were involved in a plot to prevent Curtin from being inaugurated. One Democrat in the senate declared that Unionists were engaging in fraud to intimidate him into voting for Penney. Some of his Democratic constituents, he reported, had written him a letter in which they urged him to support Penney on the grounds that the Unionists had had a majority in the October elections or to risk being called a traitor. When the senator wrote to these men, they informed him that they had sent him no letter about the deadlock; the letter he had received was fraudulent. Democrats concluded that the forgery was the work of unscrupulous Unionists.⁸

Meanwhile the meetings of the senate — when they were held at all — degenerated into name-calling sessions. Each party was careful to ascertain that it always had as many senators present as its rivals lest the opposition party elect its candidate for speaker. Democrats, arguing that the senate was not yet organized, voted against every bill that the Unionists proposed. Unionists, therefore, introduced resolutions of thanks to Generals George Meade and Ulysses Grant, bills to increase the pay of soldiers and the size of pensions for retired school-teachers, to print speeches of Andrew Jackson, and to invite local clergymen to Curtin's inaugural; the Democrats voted against all of these. The Democrats were also forced to vote against bills approving of the Bible, the institution of marriage, and the divinity of God; they did so, believing that voting for such measures would imply that Penney was speaker and that the senate was legally in session.⁹

After a few weeks the senate rarely met; and the few sessions that were held were ludicrous. The January 27 meeting of the senate was described thusly in one newspaper :

[Senator Charles Lambertson] was listened to with unflagging patience and unbounded admiration for over an hour — by himself! Two reporters were assigned

⁷ *Harrisburg Telegraph*, Jan. 18, 1864.

⁸ *Pittsburgh Post*, Jan. 16, 1864.

⁹ *Legislative Record*, 1864, 12, 23.

the cruel task of hearing him out attentively and endeavoring to make an intelligent report of an utterly unintelligible speech. It is not yet known on what subject he supposed himself to be speaking.¹⁰

Unionist journals called the Democratic senators "Copperheads" and began to suggest that the senate deadlock would work to the interest of the Rebels. On January 6, the *Philadelphia Evening Bulletin* commented, "Party is stronger than Country with the opposition members of the State Senate." The *New York Evening News* informed its readers, "Richmond is not the only capital at which Jeff. Davis is absolute. At Harrisburg, in the loyal State of Pennsylvania, his authority is supreme and his merest wish is recognized as law." The offer of the Democrats to compromise was denounced in nearly all Unionist papers. To the *Harrisburg Telegraph* to make such a deal would be like "selling [one's] virtue," and the *Chambersburg Franklin Repository* marveled that, if the Democrats were right, they were unusually willing "to dissipate their constitutional objections" for a few clerkships.

Interest on the Commonwealth bonds was due shortly, and unless legislation authorizing its payment in paper money was passed before February 1, the money would have to be paid in specie. Because of inflation, it would cost the state \$500,000 less if it could pay back its obligations in paper. Governor Curtin requested that a bill be passed to allow for repayment in greenbacks, but the Democrats refused to support him. The Unionist press insisted that the refusal of the Democrats to favor such "emergency" legislation was ample proof of their disloyalty. No bill was passed before the deadline.¹¹

Naturally, the Democratic newspapers vigorously defended the conduct of their senators. They printed addresses from the sixteen men which argued that Penney's conduct was unconstitutional and unprecedented,¹² and they claimed that it was the senators' duty not to vote for a Unionist speaker. They should "select a good man from their number for the Speaker," stated the *Tunkhannock North Branch Democrat*, ". . . and vote for him. If the 'Woolies' want a quick end to the matter, they can vote for him too." Added the *Bellefonte Demo-*

¹⁰ *Chambersburg (Pa.) Franklin Repository*, Feb. 3, 1864.

¹¹ On January 20, Senator William Kinsey, a Democrat, proposed that a speaker *pro tempore* be elected until a bill to allow payment of the debt in greenbacks was passed, but this was not done. (See *Philadelphia Evening Bulletin*, Jan. 21, 1864.) Many Democrats believed that the state should pay its bills in specie rather than in paper worth only two-thirds of its face value since the bonds had been paid for in specie and uninflated paper money. (See *Pittsburgh Post*, Jan. 12, 1864.)

¹² *Crawford (Meadville, Pa.) Democrat*, Feb. 2, 1864.

cratic Watchman, "Better by far that the Senate remain a 'Dead Lock' until the term of each member expires — better no legislation at all than such as Abolitionists will inflict upon our State." Since the "black-snake tories" refused to accept the "magnanimous" offer of the Democrats to divide the senate offices, charged the *Greensburg Argus and Westmoreland Democrat*, the blame for the unorganized senate was wholly with the Unionists. In a widely-reprinted letter ex-Governor William Packer urged the Democrats to continue to oppose John Penney's usurpation of power, for "to do otherwise," he declared, "would be to surrender [their] manhood."

Democratic newspapers also claimed that Unionists already had White's resignation but refused to use it if his release could be secured. Thus, any time Unionists wanted to organize the senate all they had to do was to call for a new election for the Twenty-first Senate District.¹³

Many blamed Curtin for the delay, but the governor publicly stated that if the major's resignation did exist, he had not seen it and that "the Speaker of the Senate is the official to receive the resignation and issue a warrant for a new election. I have nothing to do with it officially." A few Democrats, reported the Harrisburg correspondent of the independent *Philadelphia Inquirer*, insisted that Judge Thomas White, father of the senator, would not forward his son's resignation "until he has extracted a promise from the [Republican] party to nominate him in the place of his son." Unionists denied the allegation.

Harry White's imprisonment, insisted several Democratic journals, was deliberately being prolonged because the Unionists were using him as a pawn. The Harrisburg correspondent of the *Pittsburgh Post* wrote that,

if these freedom-shriekers are sincere in their croakings over the hardships now being endured by Senator White, why do they not put into practice what they preach — that is, that an immediate organization [of the Senate] will secure the release of that gentleman.¹⁴

If the senate were organized, Democrats concluded, there would be no reason to refuse to exchange Major White, and the Indiana County politician would soon be able to rejoin his family and his friends. The *Post* also circulated a story that Col. Alexander White, the brother of the prisoner and a prominent government contractor, went to Harrisburg to see what could be done to hasten the release of Harry White and concluded that Secretary of War Edwin Stanton was "solely at

¹³ *Montrose (Pa.) Democrat*, Mar. 3, 1864.

¹⁴ *Pittsburgh Post*, Jan. 8, 1864.

fault in the detention of his brother.”¹⁵

Meanwhile, poor Harry White languished in prison. He had entered the army in 1861 as a major in the Sixty-seventh Pennsylvania Infantry and continued to serve in the army after being elected to the Pennsylvania Senate in 1862. At the battle of Winchester he was captured and was sent to Libby Prison. After he attempted an escape but was turned back, he was placed in solitary confinement and nearly went insane.¹⁶ White wrote a letter of resignation on November 16, 1863, and gave it to a Pennsylvania prisoner who was to be exchanged, and in December this note was delivered to his father, Judge White.¹⁷ The judge, however, did not make the letter public until he was convinced that his son would not be exchanged; and that was during the last week of January 1864.

Unionists did all they could to secure the release of the senator. The War Department was directed to offer Confederate Gen. Isaac Trimble for White, and this gave Unionist papers an opportunity to attack the Democrats for making it necessary to exchange so valuable a man as Trimble to organize the senate. The *Philadelphia Evening Bulletin* sneered, “Evidently the Democratic politicians see no merit in a man’s fighting for his country.”

Not even for Trimble would the Rebels exchange White. The prospects for organizing the senate were bleak until Judge White finally sent his son’s resignation to Speaker Penney. In his letter, which was described as being but a small, “weather-stained” scrap of paper, the senator explained that he was resigning so as not to “embarrass organization and delay necessary legislation” and to make sure that his district would be represented at Harrisburg. He concluded by saying of his imprisonment, “though cast down, I am not dismayed; though in bonds, I am full of hope.”¹⁸ Many Democrats doubted that the letter was genuine, but Penney immediately issued a writ of election.

Even some non-Democrats thought that the sudden appearance of White’s letter was irregular. The *Philadelphia Inquirer* conceded that

¹⁵ *Ibid.*, Jan. 14, 1864.

¹⁶ *History of Indiana County, Pennsylvania* (Newark, Ohio, 1880), 277, 297, 327, 330.

¹⁷ There are several conflicting accounts about the delivery of White’s resignation. Some claim that it was written on tissue paper; others state that it was composed on commercial note paper. A number of accounts insist that it was concealed in a Bible; others declare that it was hidden in a compass, and some even maintain that it was concealed in the shoulder strap of a knapsack.

¹⁸ *Legislative Record, 1864*, 146-47.

the resignation was genuine, but on February 2 it asked for the reason that the letter was "so long withheld from the Speaker of the Senate." The paper had a few stinging words for the Unionist leaders:

Were the interests of the [Unionist] party of more importance than justice and plain dealing? Or did not the interests of the State demand that the resignation should have been presented at once?

Nonetheless, the *Inquirer* urged that an election be held to fill White's vacant seat.

The days of the deadlock were numbered.¹⁹ Some Democratic leaders began to claim that since Penney was not the legal speaker of the senate, he had no competence to issue a writ for a special election to elect White's successor. If the writ were illegal, their argument continued, the election would also be unlawful and the senate would still be unable to organize. Unionists reported that the Democrats were publicly urging voters to boycott the election, and they were hoping that, confident of victory, few members of the administration's party would bother to vote. Late on election day, Unionists alleged, Democrats planned to swarm to the polls and expected to emerge victorious from the contest.²⁰

On February 10, Unionists held a special convention at Elderton, Indiana County, to nominate a successor for White. Not until twenty-two ballotings had been taken, did the delegates choose their candidate, Dr. Thomas St. Clair, a popular Indiana County physician and businessman. With greater ease the Unionists adopted a resolution stating, "That the course pursued by the Republican members of the Senate in refusing to organize on principles which we believe unfair, unjust, and ungenerous, meets with the approval of the people of this Senatorial district."²¹ St. Clair won the election by a large majority. In fact, he polled more votes than Harry White had two years before.²²

On February 29, the new senator arrived in Harrisburg. A band and hundreds of local residents escorted him to the capitol. Flags, patriotic banners, and transparencies with such inscriptions as "St. Clair Unlocks the Senate" and "The People Support the Loyal Senators" were omnipresent. The event looked far more like a parade

19 After the writs of election were issued to the sheriffs of Indiana and Armstrong counties, no less than twenty days had to elapse before an election could be held and a new member could be sworn in at Harrisburg. Despite the fact that the sheriff of Armstrong County was a Democrat, he recognized the writ of election.

20 *Chambersburg (Pa.) Franklin Repository*, Feb. 24, 1864.

21 *Pittsburgh Gazette*, Feb. 15, 1864.

22 *Harrisburg Telegraph*, Feb. 20, 1864.

than the normal welcome given to a freshman senator.²³

With a majority present in the senate, the Unionists wasted no time in getting down to business. By a partisan vote of 17 to 16 they defeated a motion to elect a new speaker, insisting that Penney was the legitimate speaker. Within minutes they elected their candidates for the other senate offices. Democrats retaliated by refusing to vote for any bill until a speaker was selected,²⁴ but their opponents ignored them. Finally on March 9, when the Democrats refused to vote for resolutions that involved amending the Pennsylvania Constitution to grant the suffrage to soldiers, Penney addressed the senate. He noted that his serving as speaker made the Democrats "think" that they had "to vote against propositions to which they would otherwise lend their sanction . . . [and] legislation is retarded." Therefore, he concluded, "It seems to me that if I am the impediment to the legislation of the State, it is my duty to resign." Penney offered his resignation but was promptly re-elected to office. The Democrats were placated, and Sen. Clymer administered the oath of office to Penney.²⁵ The deadlock was finally broken.²⁶

Democrats insisted that the election vindicated their actions. The *Easton Sentinel* maintained:

The very fact of the Abolitionists going into an election for Speaker at this time is the broadest acknowledgment of their error and the strongest endorsement of the correctness of the position assumed by the Democrats. The people will understand by this whose fault it is that two months of valuable time has been squandered

Should the legislature vote itself extra pay for an extra session, the *Sentinel* concluded, the Unionists would deserve the blame for wasting the taxpayers' money.²⁷

Once the senate was organized to the Democrats' satisfaction, members of both parties were willing to offer condolences to the White family. On March 11, all thirty-three senators supported the following resolution:

Resolved, That we sincerely sympathize with the family and relatives of Major Harry White in their bereavement, that we will gladly welcome the hour in which his prison doors shall be broken open, and he be permitted to return to them and to this, the scene of his forensic labors and triumphs; and that in his imprisonment the country has lost a brave soldier and gallant officer, the com-

23 *Pottsville (Pa.) Miners' Journal*, Mar. 5, 1864.

24 *Legislative Record, 1864*, 258-60, 317, 335, 339.

25 *Ibid.*, 340, 369-70.

26 Penney's term came to an end on August 25, 1864; William Turrell was elected Penney's replacement. (See *Pittsburgh Gazette*, Mar. 22, 1864.)

27 *Easton (Pa.) Sentinel*, Mar. 17, 1864.

munity an estimable citizen and the Senate a member eminently fitted to adorn and edify it.²⁸

Partisan politics and a quarrel over the senate spoils prevented the upper body of the Pennsylvania Legislature from functioning for over eight weeks. The episode reflected no credit upon either political party. The Democrats may have been correct to protest that Penney's actions were "revolutionary" and unprecedented; but it was clear that had White been able to attend the sessions of the senate, the Unionists would have easily elected their candidate for speaker. Unionists, on the other hand, were quite willing to see the senate remain unorganized rather than to share a few minor offices with their political rivals. Thus, both parties were responsible for the failure of the legislature to pass a bill authorizing the use of greenbacks to pay the state debt. It was lucky for Pennsylvanians that no other important issues required the immediate attention of the legislators.

For Harry White the affair was a bittersweet blessing. It insured that he would not be exchanged until after he resigned from his senate seat, but it did give him much publicity throughout the Commonwealth. Though he was not able to rejoin the Union army until the end of 1864,²⁹ he had become a hero to the Lincoln government and was promoted to the rank of brevet brigadier general on March 2, 1865. After the end of the war, he was re-elected to the Pennsylvania Senate from his old district, and he later served as a congressman, a delegate to the 1873 Pennsylvania Constitutional Convention, and a common pleas court judge for the Indiana district. After he retired from the judiciary, he became a businessman and died on June 23, 1920.

The deadlock did have one positive effect. It clearly pointed out the need for a lieutenant governor. The 1873 Constitution supplied this position; so perhaps, in an unexpected way, there was some value to the unorganized senate of 1864.

²⁸ *Legislative Record, 1864*, 366.

²⁹ Despite several attempts to escape White remained a prisoner until the fall of 1864. For more information about his subsequent career in Pennsylvania politics see Frank Pollicino, "The Exploration of a Legend," *Western Pennsylvania Historical Magazine*, 3 (1920): 243-48.