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## Causes and Effects of the Pennsylvania Constitution of 1776

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**Causes and Effects of the Pennsylvania Constitution of 1776**

**by  
Moses Mordecai Twersky**

**Thesis  
Submitted in Partial Fulfillment of the Requirements  
for the  
Degree of Master of Arts in History  
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## THE QUAKER ASSEMBLY, ITS ASCENDANCY AND ECLIPSE

In distinguishing between law and revolution, the processes of law in Pennsylvania flowed from the Royal prerogative of Charles II who granted in 1681 a proprietary charter of the territory of Pennsylvania to William Penn. This grant instructed that William Penn frame a charter for Pennsylvania that would be the legal basis for government of the new settlement. William Penn, who had been well educated in England and on the continent, looked to the sources of English Whiggism for inspiration in formulating his frame of government for Pennsylvania.<sup>1</sup> Penn had also become a devout Quaker against the advice of his father, and therefore had religious freedom of conscience and toleration as his guiding principles in formulating the basic thrust of the frame of government for Pennsylvania. Penn, however, had a strong attachment to royal or aristocratic privilege-which caused problems with his Quaker brethren who were settling en masse in Pennsylvania.

In his first attempt at a frame of government for Pennsylvania, William Penn took the theory of James Harrington (1611-1677), a political philosopher who postulated a state based on the organization of land in the country. Harrington called this the Agrarian Law.<sup>2</sup> Constituting the government were a Senate, a repository of wisdom and an Assembly of the people, which would make a 'common interest' together with the executive magistracy which would be a series of civil departments which would run the state.<sup>3</sup> The land, the 'Agrarian,' which was the main foundation

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<sup>1</sup> J.R. Pole, *Political Representation in England and the Origins of the American Republic* (Berkeley and Los Angeles: University of California Press, 1971), 76.

<sup>2</sup> James Harrington, *The Commonwealth of Oceana* (London: George Routledge and Sons, 1887), 39.

<sup>3</sup> *Ibid.*, 44.

of the state was not equal, but there would be a sense of equality in the 'common interest' which would include all these orders.<sup>4</sup> Harrington viewed law as a matter of will not originating in nature as Locke would have it. Law was organic and derived from the State which was the Agrarian and the ballot.<sup>5</sup>

Harrington viewed his system as democratic or more accurately democratic in the old Whig context. The idea that representatives in the Assembly or the Senate would actively pursue their interests and thereby distort the perfect equilibrium of the Agrarian was foreign to him. Nevertheless, William Penn who was to learn this lesson of competing interests, tried in his first Charter for Pennsylvania to put in a Harringtonian system. The upper body, the Council, was to initiate legislation, and the Assembly could only consent or disprove the legislation.<sup>6</sup> The Assembly could not initiate legislation. The number of councilors in the Council were seventy-two. They were to be of "wisdom, virtue and ability." Ability, as Pole uses it, meant extensive land holdings or property. Unlike Harrington's perfect equilibrium-a designated place for each person of property and the amount of property he could have-Penn's first frame of government had no such controls. Harrington's Oceana is a fantasy organization; in it there was no place for the normal expressions of human behavior. Men want to express themselves and they will not resign themselves to static orders.

Penn, in fact, had a more Lockean view of property than Harrington. Penn responding to a complaint that he had given himself three votes in the Council given his vast landed estates, asks

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<sup>4</sup> Harrington, 69.

<sup>5</sup> *Ibid.*, 103-104. Ballot refers to voting by the different orders in *Oceana*.

<sup>6</sup> *Ibid.*, 187.

“what civil right has any man in government besides property?”<sup>7</sup> John Locke holds that property precedes government and originates in nature. Harrington viewed property as an outcome of legal purchase by the ‘common interest’ in his utopia of Oceana.<sup>8</sup> However, like Harrington, Penn would not allow the Assembly to initiate legislation.<sup>9</sup>

It is important to note here that what is going on is a lawful process of forming a frame of government under which the settlers of Pennsylvania would govern themselves. The dissenters to Penn’s early attempts at framing a Charter were not considered a hostile faction. Penn, in fact had to concede to his Quaker brethren their desire for expression in a powerful legislature and agreed finally to the Charter of 1701, the Charter of Privileges.<sup>10</sup> This Charter voided completely the power of the Council and gave all legislative power to an Assembly which was to last for seventy-five years.

One of the main attractions of the colony of Pennsylvania, aside from its rich and fertile land, was the tolerance and freedom that Penn bequeathed in his Charter of Privileges of 1701. “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.”<sup>11</sup> Penn stipulated that the freemen of the colony must acknowledge Almighty God the Creator and believe in Jesus Christ the Savior of the world. And furthermore, fundamentally, deference and obedience to the mother country of England and the crown was required and dutiful. Those are

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<sup>7</sup> Pole, 85.

<sup>8</sup> Harrington, 104.

<sup>9</sup> Ibid., 187.

<sup>10</sup> Pole, 89.

<sup>11</sup> Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, October 28, 1701, and First sec. (New Haven: Yale Law School, Lillian Goldman Law Library, 2008).

they that “shall be capable...to serve this Government in any Capacity both legislatively and executively...Allegiance to the King as Sovereign, and Fidelity to the Proprietary and Governor....”<sup>12</sup>

As Thayer points out the laws pertaining to suffrage are those that Penn references to the law of New Castle promulgated in 1700, which states that any male twenty-one years old who professed a belief in Jesus Christ, resided in the province two years, could vote as long as he “owned fifty acres of land (of which twelve were cleared) or owned fifty pounds in other property.”<sup>13</sup> These qualifications for voting were relatively liberal for that time. Most city dwellers were disqualified under these requirements: they had no property and did not have fifty pounds. However, most freemen in Pennsylvania were farmers and met the fifty acre requirement for voting.<sup>14</sup> Thayer adds that there were only three counties in 1701-Philadelphia, Chester, and Bucks. Each of these counties had eight representatives and the city of Philadelphia had two representatives to the Assembly. Local elections were often more bitterly contested than the provincial wide elections. Freemen in the counties locally elected sheriffs, coroners, assessors, and commissioners. Justices of the Peace and all other judicial officers were appointed by the Governor.<sup>15</sup> The patronage power of the proprietary governors would be wielded against Assembly influence at time of elections.

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<sup>12</sup> Ibid.

<sup>13</sup> Edwin B. Bronner, “Penn’s Charter of Property of 1701,” *Pennsylvania History* 24.4 (1957):286. The Charter of Property was based on the laws approved at New Castle, 1700, 270.

<sup>14</sup> Theodore Thayer, *Pennsylvania Politics and the Growth of Democracy 1740-1776* (Harrisburg: Pennsylvania Historical and Museum Commission (1953), 6.

<sup>15</sup> Charter of Privileges, 1701, sec. III.



If the above seems like a thriving democracy, to a degree it was. But the proprietary governor was not elected but was appointed by the Penn family. This created a natural conflict between the Assembly and Proprietary wishes. Overarching the legislative and executive politics of a growing Province was a strong Quaker cloak of religious expression of Quaker tenets, which tangled with proprietary concerns of a more secular nature.<sup>16</sup> To be sure, William Penn's legacy of ensuring his family's control of the executive was non-democratic. The Proprietorship was legally inherited by his three sons, John, Thomas, and Richard, through his second wife Hannah Penn (1732). By 1740 the active proprietor was Thomas Penn.<sup>17</sup> The contest between the proprietary faction and the Quaker Assembly, the unicameral Quaker dominated legislature, would resonate for nearly seventy-five years.

The critical areas of difference between the proprietorship and the Quaker Assembly revolved around military defense, paper money, and taxes. Related to military defense were security issues on the western frontier of Pennsylvania. These related for the most part to Indian threats there and actual Indian violence. In connection with the Indian threat, Britain's enemy, France, threatened incursions in Pennsylvania's western hinterland.<sup>18</sup> Military defense ignited major issues of difference with the Quaker Assembly, which took a strong pacifistic stance and included an active concern to promote friendly relations with the Indians. Quaker pacifism also made the Quaker Assembly reluctant to vote taxes for the English war effort. The proprietorship also refused to allow taxes on the vast Penn land holdings.<sup>19</sup>

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<sup>16</sup> Thayer, 19.

<sup>17</sup> Philip S. Klein and Ari Hoogenboom, *A History of Pennsylvania* (New York: McGraw-Hill, 1973), 50.

<sup>18</sup> Thayer, 68.

<sup>19</sup> *Ibid.*, 44-45.

Israel Pemberton (1715-1779), of a distinguished Quaker family, younger leader of the pacifistic Quaker faction in the Assembly, played a decisive role regarding friendly relations with the Indians.<sup>20</sup> He and an association of Quakers making peace with the Indians believed the proprietors had angered the Indians with wrongful policies. This view of relations with the Indians caused a bitter counter-reaction by settlers on the Pennsylvania frontier and even amongst the artisans and mechanics of Philadelphia. Both groups were not elite, but were the common men, with hostile feelings to the Indians.<sup>21</sup> The Paxton Boys' affair of 1764 would dramatically illustrate this. This departure from the Quakers position was a definite factor in the revolutionary events leading up to the downfall of the Quaker Assembly in the summer of 1776.

The founding of Pennsylvania had been a Quaker project. William Penn unfortunately had not been able to coordinate amicably the appointed governor with the elected Quaker Assembly. The early settlers were for the most part Quakers who had bought up 875,000 acres of the best land around Philadelphia. Within a relatively short time thousands of German immigrants poured into Pennsylvania as did thousands of Scotch-Irish. William Penn had desired immigration. He had publicized his grant from King Charles II, not only in England, but also throughout the continent, Ireland, and Scotland.<sup>22</sup>

In a way not delineated by scholars on Quaker Pennsylvania, the immigrant communities were largely deferential to the Quakers. This is indicated by repeated support at the polls of the Quakers in the annual elections to the Assembly. The question could be asked why the immigrant communities were so deferential to the Quakers. They could have perhaps voted for representatives

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<sup>20</sup> Thayer, 53.

<sup>21</sup> *Ibid.*, 87.

<sup>22</sup> Klein, 23.

from their own ethnic group. One reason is that the immigrant communities knew Pennsylvania was a Quaker project. They had been attracted by the toleration and freedom of Penn's Charter of Privileges. They also were pleased with Quaker rule.<sup>23</sup> For example, the Quakers believed in paper money and the Germans and Scotch-Irish liked that. Paper money increased natural liquidity in economic intercourse, thereby sparking transactional activity and producing wealth for the common man who did not have hard specie.<sup>24</sup>

Military defense was the main issue of contention between the proprietorship and the Quaker Assembly. The proprietor was William Penn's son Thomas Penn. He had married into the Church of England. John, his brother, had died in 1746 and left his one-half interest of land holdings to Thomas Penn. Thomas therefore had vast landholdings in Pennsylvania. He wanted to protect these holdings and he appointed George Thomas as Deputy Governor of Pennsylvania in 1740. When war broke out between England and Spain in 1740, George Thomas, on instructions from the English home ministry, informed the Quaker Assembly that his officers would recruit men from the freeholders of Pennsylvania and also from their servants to fight in the West Indies. The Quaker Assembly had authorized 3000 pounds for the King's use. This language enabled the Quakers to authorize funds generally without stating that they were for a military purpose. However, the Quakers would not consent to the recruitment of men-servants, especially to fight in a foreign land, i.e., the West Indies. They therefore held back the 3000 pounds. Almost the entire settlement community of Pennsylvania supported the Quakers.<sup>25</sup> The people were outraged at what they considered an inappropriate call to recruit the men-servants. Two hundred and fifty men-

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<sup>23</sup> Thayer, 24.

<sup>24</sup> *Ibid.*, 25.

<sup>25</sup> *Ibid.*, 13.

servants deserted their masters. Two New York attorneys were hired to prosecute the captains who had taken 'property' without due process of law. This whole matter was brought to the attention of the English ministry who solved the problem by advising the Assembly to compensate the masters of the servants out of the 3000 pounds withheld from the Governor. The Assembly gave 2600 pounds to the masters and also voted 3000 pounds in addition for the King's use.<sup>26</sup>

The Quaker Assembly, however, refused to pass a militia law, creating a military force appointed by the governor, to fight the Indians on the western frontier. Deputy Governor George Thomas appealed to England, but the home ministry was not interested in this far away local dispute. In the elections of 1741 the Quakers were resoundingly returned to the Assembly.<sup>27</sup> What should be noted in this particular controversy and in the following controversies is the attempt by both factions to appeal to England. There was no thought at this time of pursuing independent action outside of England. Pennsylvania was still pretty much a local affair.

However, the economic arena opened up a much broader swath for British involvement in the Pennsylvania economy, as it did with other colonies as well. The British were not pleased with the use of paper money, although they did not outlaw its use until 1764. They advised Governor George Thomas of Pennsylvania and the other colonial governors in 1740 that paper money legislation could not be passed "without a suspending clause whereby the money could not be released until the measure was approved by the crown."<sup>28</sup> British policy on the issuance of paper money by the Pennsylvania Assembly changed from one decade to the next. It was permitted as an assistance to funding defense during the French and Indian War. Paper money got caught up in

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<sup>26</sup> Thayer, 13-16.

<sup>27</sup> *Ibid.*, 17.

<sup>28</sup> *Ibid.*, 26.

the factional struggle between the Proprietary and the Quaker Assembly. This kind of micro-regulation, carried out on a much larger scale a few decades later, brought England the American Revolution.

During James Hamilton's tenure (1748-1754) as proprietary Governor, he refused a long stream of paper money bills from the Assembly because they did not have a suspending clause. His instructions from Thomas Penn had reinforced this point.<sup>29</sup> The settlers in Pennsylvania were outraged as they viewed paper money as stimulating business and creating a more vibrant economy. Also specie, silver and gold, were in short supply and the liquidity of paper money relieved this shortage. Nevertheless, the proprietary governors refused to accept paper money legislation from the Quaker Assembly. Also during this time all the hot button issues of military defense were raised, in particular, the question of Indian relations. During the French and Indian War, this concern was especially brought home to the Pennsylvania colonists by the surrender of George Washington to the French at Fort Necessity, July 4, 1754.<sup>30</sup>

The proprietary faction led by Chief Justice William Allen, a very wealthy and aristocratic Presbyterian, along with newly arrived William Smith, a Reverend in the Anglican Church, attacked the Quaker Assembly for subverting the British war effort against the French and Indians. These critics of the Quaker Assembly tried specifically to get Parliament to deprive the Quakers and the Germans, who supported them, of their political liberties. Quaker agents in London sprang to the defense of their compatriots. Thayer notes that British anger against the Assembly subsided

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<sup>29</sup> As proprietor, Thomas Penn was in favor of a limited paper money issue in Pennsylvania. The British in 1751 prohibited paper money in the New England colonies, but not in Pennsylvania. The origins of paper money go back to the Loan Office of Pennsylvania (1723-1764) which issued small loans of paper money secured by land at 5 percent interest. See Rappaport, 167-168.

<sup>30</sup> Thayer, 33.

as the home ministry focused on the perceived failings of the Governor Robert Hunter Morris to furnish supplies for the British military force.<sup>31</sup>

Benjamin Franklin was the leader of the Quaker Assembly. However, he was a deist not a Quaker. Speaker of the Assembly, Isaac Norris, a worldly realist Quaker, who wanted to see business done, was not aligned with the very strict religious Quakers such as Israel Pemberton. Although Thayer's point that the religious Quakers were a minority in the Assembly is correct.<sup>32</sup>

The Quaker Assembly, trying to vote funds for defense after Braddock's defeat (July, 1755) in western Pennsylvania and later Indian attacks in Cumberland County-also on the western frontier-were unable to move these funding bills forward because they were vetoed by Governor Robert Hunter Morris, who objected to their taxing proprietary estates. It is at this time that the bitter feud between the Assembly and the Proprietorship over taxing Penn's vast landed estates came to the fore. Benjamin Franklin in particular was outraged at this, as he viewed it, extreme proprietary greed.<sup>33</sup>

After bitter futile attempts to pass funding bills that taxed proprietary estates, but were vetoed by the Governor, the Assembly, faced with outrage by citizens of the western frontier who were being attacked by marauding Indians, voted 60,000 pounds for defense, November, 1755, and temporarily agreed in this specific case not to tax proprietary estates.<sup>34</sup>

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<sup>31</sup> Thayer, 41.

<sup>32</sup> *Ibid.*, 40.

<sup>33</sup> Walter Isaacson, *Benjamin Franklin an American Life* (New York: Simon & Schuster Paperbacks, 2004), 169.

<sup>34</sup> Thayer, 45-46.

Franklin, as he did in 1748 during the closing stages of King George's War, proposed a volunteer militia law which was accepted by Governor Morris.<sup>35</sup> The proprietorship, hoped, however, to replace Franklin's temporary volunteer militia with a compulsory militia law. A regular army appointed by the governor would be better able to address security lapses on the western frontier of Pennsylvania.

Benjamin Franklin was now the unquestioned leader of the Assembly and would attempt, without success, over the next ten years to put the proprietary faction out of business chiefly by replacing the Charter of Privileges with a Royal Charter. The same points of conflict between the Assembly and the proprietorship continued to spin in the mud, never arriving at a solution. These were: taxing proprietary estates, a compulsory militia bill, proposed by the Governor, military defense on the frontier, quartering British troops in Philadelphia homes, and peaceful relations with the Indians. The Quakers and Franklin blamed the proprietorship for "failing to meet the needs of the Indians."<sup>36</sup>

### **The Frontier and Its Effects**

However, one could look on these interminable conflicts between the Assembly and the proprietorship as two parts of a triangle. The third part, the western frontier, would now kick in changing the configuration of politics in Pennsylvania with a strong dynamic: the unleashing of a frontier ethos of individualism and equalitarianism, with a readiness to commit violence in

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<sup>35</sup> Thayer, 45-46.

<sup>36</sup> Ibid., 61.

disregard of authority that would infuse a Scotch-Irish Presbyterian ideology in the service of the popular will against Quaker conservatism and stodginess as well as proprietary royalism.<sup>37</sup>

This violence erupted on December 14, 1763 “fifty-seven men ...under Matthew Smith came to Conestoga in Lancaster County and killed and scalped the six Indians found there, who were mostly women and children, under the ostensible reason that they had murdered whites on the frontier.”<sup>38</sup> About two weeks later a second group of men rode to a Lancaster work house and murdered the fourteen Indians placed there after the first massacre.<sup>39</sup> These white men were called the Paxton Boys after Paxton Township, in then frontier Lancaster County. The violence these frontier men felt toward the Indians had been sparked by the Indian chief, Pontiac, and his declared war against the frontier settlements, which began on May 7, 1763.

After the massacres of the Indians in Lancaster County, the Paxton Boys decided to ride to Philadelphia and kill Indians being sheltered there. But they had significant political complaints as well. With Philadelphia in an uproar over the Paxton threat, even Quakers were arming themselves with muskets. A distinguished delegation of Philadelphians, with Franklin as their leader, met the Paxton Boys’ leadership, Matthew Smith and James Gibson, in a tavern in Germantown.<sup>40</sup> Two significant documents came out of this meeting, a Declaration and a Remonstrance, February 13, 1764. The Declaration asked why the citizens of the frontier were not supported as the Indians

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<sup>37</sup> Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1947), 103-104.

<sup>38</sup> Nathan Kozuskanich, “Falling under the Domination Totally of Presbyterians”: The Paxton Riots and the Coming of the Revolution in Pennsylvania in *Pennsylvania’s Revolution*, ed. William Pencak (University Park, Pennsylvania: Pennsylvania State University Press, 2010), 11.

<sup>39</sup> *Ibid.*

<sup>40</sup> Kozuskanich, 12.



waged violence against them and instead the Quaker Assembly supported the Indians.<sup>41</sup> A wild threat by the Paxton Boys was made to kill Israel Pemberton as he had been the lead Quaker in support of peaceful relations with the Indians.<sup>42</sup> Moreover, in the Remonstrance, the leadership of the Paxton Boys, Matthew Smith and James Gibson, complained that the representation from the western counties in the Assembly was unequal to the eastern counties. The three eastern counties had twenty-six representatives and the five western counties had only ten.<sup>43</sup>

They argued that this lack of representation reinforced the abysmal policies of the Quakers in supporting savage Indians against civilized white Europeans. They stressed that the frontier had been neglected, particularly, as to military defense in the French and Indian War. This also raised the issue of an official militia as proposed by the proprietorship but opposed by the Quakers. Therefore at this time in spite of the ‘eastern outcry’ at the Paxton Boys, their violence touched a chord with their brethren—the Scotch-Irish on the frontier who saw the Paxton Boys as their own.<sup>44</sup>

Franklin in a written Remonstrance of his own, *Narrative of the Late Massacres in Lancaster County*, called these western frontiersmen barbarians and just as savage as the Indians.<sup>45</sup> Later on Franklin, on March 29, 1764, published his *Explanatory Remarks on the Assembly’s Resolves*. In it he blamed the lack of military defense in the west on the refusal of the proprietorship’s estates to be taxed and thereby finance a militia capable of operating on the

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<sup>41</sup> *Pennsylvania Journal*, March 15, 1764.

<sup>42</sup> Thayer, 86.

<sup>43</sup> “Pennsylvania Assembly Committee: Report, 21 February 1764,” Founders Online, National Archives <http://founders.archives.gov./documents/Franklin/> (accessed December 16, 2015).

<sup>44</sup> Kozuskanich, 13.

<sup>45</sup> “A *Narrative of the Late Massacres* [30 January? 1764],” Founders Online, National Archives <http://founders.archives.gov./documents/Franklin/> (accessed December 16, 2015).

frontier.<sup>46</sup> The problem Franklin emphasized lay not in Quaker pacifism but in the nature of proprietary government.

However, it is important to have clarity about the feelings of the freemen in Pennsylvania's western hinterland. The frontier west did not like the Quakers, not only regarding their pacifism but also their determined effort to establish peaceful relations with the Indians. Settlers on the frontier hated the Indians as the Conestoga Massacre indicated.<sup>47</sup> Their view of Quaker pacifism was not altogether off the mark either. True the venerable Speaker of the Assembly, Isaac Norris, now in 1764 an elderly and tired man, had for years authorized military defense funding in the guise of the King's or Queen's general use, but the Quakers of the General Meeting had asked their colleagues to leave the Assembly rather than support military action. The revolutionary events in the next decade would show that Quaker pacifism along with other religious tenets, were major factors in the overthrow of the Assembly.

However, in 1764, Franklin and a majority of the Quakers wanted to get rid of the proprietary government and replace the Charter of 1701 with a Royal Charter—a direct takeover of the colony by the crown. However, in making his case to the freemen of Pennsylvania and to the crown in London, Franklin could no longer attack the proprietorship over taxing proprietary estates. Thomas Penn conceded this point and as of May, 1764, allowed his vast landholdings to be taxed.<sup>48</sup>

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<sup>46</sup> *“Explanatory Remarks on the Assembly's Resolves [29 March 1764],”* Founders Online, National Archives <http://Founders.archives.gov/documents/Franklin/> (accessed December 16, 2015).

<sup>47</sup> Thayer, 86.

<sup>48</sup> *Ibid.*, 85.

The opposition to Franklin which included some notable Quakers, such as Israel Pemberton, did not like the idea of a change to Royal government. Joined with him was John Dickinson, a rising star in Pennsylvania's politics. They were afraid that the religious freedom, tolerance, and well-constructed government of the 1701 Charter of Privileges would be lost.<sup>49</sup>

The proprietary faction led by William Allen, the Chief Justice of the Pennsylvania Supreme Court, and the director of patronage for the Governor, made a particularly successful attempt to form a proprietary-Scotch-Irish alliance. The convergence of issues in 1764, the Conestoga Massacre, the ride of the Paxton Boys, the issue of military defense, and a Royal charter, turned the October election of 1764 into a charged resonating climate for the freemen of Pennsylvania. Charges and counter-charges whether true or not raged back and forth between the opposing factions.<sup>50</sup>

But going beyond the political propaganda there were real issues of intellectual merit behind the change to a Royal government or not. Over sixty years of a partially democratic experience, which for the most part had been very successful, tens of thousands of settlers had arrived in Pennsylvania as William Penn had desired. They had carved out a home there and acquired land as property, an economic niche, particularly satisfying for these land hungry settlers. The mechanics and artisans of Philadelphia, although not farmers, prospered in their trades and skilled specialties. Ships rode the tides in and out of the port of Philadelphia on the deep Delaware River. Philadelphia was the economic and cultural capital of the colonies.<sup>51</sup>

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<sup>49</sup> Thayer, 94.

<sup>50</sup> *Ibid.*, 95.

<sup>51</sup> *Ibid.*, 2.

One of the issues in the campaign for a Royal government was the maintenance of law and order. The Paxton Boys' disturbing violence had unsettled the colony. The assertion was made by Franklin and a new figure in Pennsylvania politics, Joseph Galloway (1731-1803), that a Royal government would assure law and order in the province.<sup>52</sup> As Thayer remarks, referencing Governor John Penn, a grandson of William Penn, ten thousand British regular soldiers couldn't take one Paxton man without creating a civil war.<sup>53</sup> Kozuskanich also emphasizes Franklin's failure to see strong Scotch-Irish Presbyterian unity against the Royal government idea. The frontier Scotch-Irish and the more urban Scotch-Irish Presbyterians all viewed the idea of Royal government as a "scheme" to absolve the guilty Quakers of their neglect of the frontier inhabitants. The frontier and urban Presbyterian alliance did not view the proprietary government as responsible for abysmal security in the frontier hinterland.<sup>54</sup>

An issue which should be emphasized here is that the 'common man,' the more plebian citizens of Pennsylvania who heretofore had supported Franklin and the Quaker Assembly, now cast their votes in October, 1764, for the New Light Presbyterian faction which opposed a royal takeover of the provincial government. Franklin and Joseph Galloway lost their seats. Overall the Quakers kept their majority in the Assembly, but the Scotch-Irish counties of Cumberland and York went to the New Light faction.<sup>55</sup>

The alliance between the Scotch-Irish Presbyterians and the proprietary faction was temporary and transient. In the October, 1765 election, the Franklin Quaker party resurged and as

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<sup>52</sup> Joseph Galloway was a brilliant lawyer, who argued in favor of British sovereignty and deserted to the British during the Revolution--serving under General Howe in civilian capacity, and then fled to Britain.

<sup>53</sup> Thayer, 88.

<sup>54</sup> Kozuskanich, 15.

<sup>55</sup> *ibid.*, 17.

Thayer points out John Dickinson, the leading voice against Royal government, was defeated. As is evident with the looming Stamp Act crisis, the quest for Royal government in Pennsylvania was not very well timed. Imperial policy toward the colonies was now turning very harsh.<sup>56</sup>

Why, however, did the Quaker Assembly retain its support of the Pennsylvania populace going into the years after 1764, up to the revolutionary period of the 1770s? There was as yet no common core of alienation that would permit the Presbyterian Scotch-Irish of the frontier to attract allies to their negative view of the Quaker Assembly and their antipathy to the aristocratic proprietary faction. New Light Presbyterians of 1764, the Scotch Irish, and Old Light Presbyterians, as exemplified by Francis Alison, a proprietary conservative, represented a temporary unity of religious ideology.<sup>57</sup>

Fundamentally though, Presbyterianism was not the key dynamic that united the revolutionary elements of Pennsylvania against the Quaker Assembly during the revolutionary period. That required the alliance of the huge German population with the Scotch-Irish. The Germans were not happy with Franklin's idea of a Royal takeover of the province.<sup>58</sup> They appreciated the freedoms under the Charter of 1701. Therefore many Germans allied with the Presbyterian Scotch-Irish during the peak tension elections of 1764. However, after 1764 German support for the Quaker Assembly remained solid, until the revolutionary period. This was due to an innate German conservatism.

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<sup>56</sup> Thayer, 111.

<sup>57</sup> Kozuskanich, 15.

<sup>58</sup> Richard R. Beeman, *The Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2004), 246.

### Movement to Revolution

All of the factions in Pennsylvania were opposed to Britain's passage of the Stamp Act in 1765. When a ship arrived from England with the hated stamps, the people in Philadelphia rose up in fury.<sup>59</sup> Only Joseph Galloway, who would prove treacherous with his pro-British leanings, defended the Stamp Act. The point that all factions were against the Stamp Act is important because it revealed the Stamp Act crisis as a family quarrel with Great Britain, a bitter quarrel, but nonetheless a family quarrel. There was no thought of revolution, only perhaps an inkling in the air. Kozuskanich's point that the Stamp Act went into effect relatively peacefully is not correct, as Thayer in his earlier work makes clear. The colonists were violently against the Stamp Act. It is true, however, that with repeal of the Stamp Act, the proprietary faction and the Quakers tried to keep excessive displays of exuberance down. They did not want to incite England.<sup>60</sup>

Benjamin Franklin's role in the Stamp Act crisis is interesting. He had arrived in England in 1764 as colonial agent for Pennsylvania, with the objective of dismantling the proprietary charter and replacing it with Royal government. As was his wont, Franklin adopted a pragmatic role concerning the Stamp Act. He did not outright oppose it, even acquiescing to it to the extent of nominating John Hughes as Stamp Act collector. Mobs in Philadelphia were whipped up into a frenzy against Hughes and also began a march on Franklin's house to tear it down. The White Oak Boys, a Franklin defense group, protected his wife Deborah and the home from the mob, but in

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<sup>59</sup> Thayer, 121.

<sup>60</sup> *Ibid.*, 125.

England Franklin realized that he had to oppose the Stamp Act, which he brilliantly did in testimony before Parliament on February 13, 1766.<sup>61</sup>

The critical issue to the colonists was that the Stamp Act was a tax which was an internal tax on commerce within Pennsylvania and the other colonies. The colonists had no representation in Parliament, therefore they viewed the Stamp Act as an unconstitutional infringement of their English liberties.<sup>62</sup> The Stamp Act was repealed in the winter of 1766. However, Parliament made a note that they could tax the colonies in any manner they liked. As Britain moved to adopt even more oppressive policies, in precise if erratic tandem, the colonists moved to more and more open rebellion against England.

Franklin's quest for a Royal takeover of Pennsylvania's proprietorship was now in tatters. The Privy Council in England had deferred hearings on it, which led Thomas Penn to remark that the quest for a Royal takeover of his proprietorship was now removed.<sup>63</sup>

At this time the majority of Pennsylvania's citizens were loyal to the mother country. Only the Scotch-Irish Presbyterians of the western frontier were hostile to England and the Quaker Assembly. As Selsam puts it, they contained within themselves the hardy backwoods military outlook which they had experienced fighting against Indians.<sup>64</sup> As Kozuskanich points out the legacy of the Paxton Boys was the frontiersmen call for military defense against "all belligerents."<sup>65</sup> Therefore when a call for voluntary militia went out in 1774-1776, in the grouping

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<sup>61</sup> Isaacson, 229.

<sup>62</sup> Ibid., 222.

<sup>63</sup> Ibid., 226.

<sup>64</sup> J. Paul Selsam, *The Pennsylvania Constitution of 1776 a Study in Revolutionary Democracy* (New York: Da Capo Press, 1971), 75.

<sup>65</sup> Kozuskanich, 8.

of county militias, the associators first to form were in western frontier counties. Selsam called this “A military spirit....”<sup>66</sup>

As Britain’s economic regulation of colonial trade became tighter and tighter under the Navigation Laws (1764-1767), colonial merchants became very distressed as whole economic sectors for colonial investment were now gone. William Allen, a wealthy merchant and Chief Justice of the Pennsylvania’s Supreme Court, stated that he had lost his entire iron business.<sup>67</sup> In 1767 the Townshend Acts were passed by Parliament levying “duties on paper, tea, glass, paint, and lead.”<sup>68</sup> As a response to these oppressive and onerous taxes Pennsylvania merchants joined Massachusetts and New York in adopting a non-importation agreement.<sup>69</sup> The Townshend duties were repealed except for the duty on tea, which was levied on tea in American ports but not British ports. Of course the effect of this was the Boston Tea Party with the result that the British ordered the port of Boston closed until the tea was paid for. The tea ship Polly which arrived in Philadelphia in December of 1773 was met by an enraged mass of eight thousand Philadelphia citizens who ordered Captain Ayres of the Polly to return to England.<sup>70</sup> As Selsam points out, the fiery anger at Britain for the closing of the port of Boston, saw united colonial opposition to England begin.<sup>71</sup> The processes of revolution are now turning.

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<sup>66</sup> Selsam, 75.

<sup>67</sup> Thayer, 140.

<sup>68</sup> *Ibid.*, 141.

<sup>69</sup> *Ibid.*, 142.

<sup>70</sup> *Ibid.*, 154.

<sup>71</sup> Selsam, 49.



It is important to note that the majority of citizens in Philadelphia supported the 'radical' leaders, Charles Thompson, Thomas Mifflin and Joseph Reed, all of whom desired strongly Pennsylvania's participation in the First Continental Congress. In May, 1774, a combined radical-conservative committee had not yet affirmatively answered Massachusetts's cry for a Continental Congress. This changed in June, 1774. In one month the tide was definitively turning to the radicals. With a request by Virginia for a Continental Congress, Pennsylvania's citizens responded by adopting resolutions to oppose Britain and support the Continental Congress. What is important to note here, particularly with the Philadelphia radicals, was their proposal to send delegates to the Continental Congress. Governor John Penn had refused to call a special session of the Assembly. Subsequent to his decision a town meeting for June 18 was called for and attended as Thayer put it by eight thousand men "almost all the adult males of the city."<sup>72</sup> Support for the radicals was overwhelming and plans for a Provincial Convention to choose delegates to the Continental Congress were laid. However, utilizing a promise by the Philadelphia Committee that the Assembly could choose the delegates to the Continental Congress, the conservative faction in the Assembly prevailed upon arch-conservative Speaker of the Assembly Joseph Galloway, to call for an Assembly session. This was done. However, the radical faction decided to call a Provincial Convention to meet three days before the Assembly session to present their enthusiastic affirmation for a meeting of the deputies of the several colonies and recommend delegates to the First Continental Congress. With strong popular support, particularly, from the west and Philadelphia, the Convention named radical Charles Thompson, secretary and moderate Thomas Willing, Chairman. John Dickinson, Chairman of the Philadelphia Committee, analyzed the issues at stake with Britain, emphasizing the legal and constitutional realm. The Convention then issued

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<sup>72</sup> Thayer, 158.

a resolve for the Congress of Deputies to be “immediately assembled for the Purpose of procuring relief for our suffering brethren...preventing future Dissentions...and restoring Harmony between Great Britain and her colonies on a constitutional Foundation.”<sup>73</sup> At this point independence from Britain was not called for. However, the Convention recommended that Great Britain “remove all power over American internal affairs, repeal the duties for taxation as well as the Quartering Act...”<sup>74</sup> Other requests were reducing the powers of the Admiralty courts and repeal of the “late acts” against Massachusetts.

The Continental Congress September 5, 1774, did not go that far, but through the Continental Association, a body which it created, it “put non-importation on a national basis.”<sup>75</sup> All the colonies and their citizens were bound by it. Additionally, at the request of Congress new committees were appointed to regulate economic items such as wool. The whole trade sector had to be monitored in Pennsylvania. This was because of the non-importation ban against Great Britain. The Philadelphia Committee and the first Convention it called for represented a threat to the Assembly in that it assumed authority over political action in Pennsylvania and intimated unless it the Assembly cooperated with the tides of revolution, there could be action against the Assembly similar to actions that were taking place against Great Britain. Cutting ties with Great Britain was not yet an articulated position of the First Continental Congress. In the October election of 1774 to the Assembly, moderates, those who still thought reconciliation with Britain was possible, and radicals predominated. A radical, Edward Biddle, a leader of the opposition to Great Britain in Berks County, was elected to the Assembly. Galloway and his extreme conservative

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<sup>73</sup> *Pennsylvania Journal*, July 23, 1774, Resolve IX.

<sup>74</sup> Thayer, 160.

<sup>75</sup> *Ibid.*, 162.

views were thrust aside. But Galloway was still respected and was made a delegate to the Second Continental Congress, by the Assembly. The Second Continental Congress was to meet in the spring of 1775. The radicals worked together with the moderates and conservatives, such as Galloway, to achieve their aims. With this election of the Assembly in October of 1774, Thayer asserts “that the Assembly could be counted upon to cooperate fully with the patriotic forces in the province.”<sup>76</sup> It might seem so but this was not correct. As the processes of revolution turned the Assembly soon became an anachronism.

It is important to emphasize that the radical party or as Selsam calls it the Popular Party worked with the moderates and conservatives to achieve their objectives.<sup>77</sup> This is why the American Revolution was a conservative revolution and did not result in wholesale bloodshed. In other words the processes of law worked within the processes of revolution; they were intertwined together, a characteristic wholly rooted in English rights and history. Of course one might argue that the “internal revolution” against the Quaker Assembly was conservative but what of the bloody revolution against Britain and her redcoat soldiers? That is where the real processes of revolution turned against the outside enemy, the British oppressor. The colonists integrating disparate colonies working through an intertwined process of law and revolution ushered in the new American dawn. Even the bloody revolution against Great Britain was rooted in a legal case of English liberties, the English Constitution, and historical political developments in England, such as the Whig reformation, which William Penn sourced in his development of a frame of government for Pennsylvania.

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<sup>76</sup> Thayer, 163.

<sup>77</sup> Ibid.

The processes of law and revolution did not operate separately, but as noted were intertwined. The fall of the Quaker Assembly and the abrogation of the Charter of 1701, could not have happened without the movement of revolution against Great Britain. As John Adams knew and expressed himself in the Second Continental Congress when he called John Dickinson “a piddling genius”<sup>78</sup> for not taking that fateful step and declaring independence from England. Dickinson had led the opposition to Britain for a number of years. He was the author of *Letters from a Pennsylvania Farmer*, where he had argued eloquently for assertion of English liberties. However, at the final step he could not declare independence from Great Britain.

More specifically as the revolutionary tide swept forward it became necessary in Pennsylvania to abrogate the Charter of Privileges of 1701. This Charter called for at the time of its formation complete obedience to the King “Solemnly promising, when lawfully required, Allegiance to the King as Sovereign...”<sup>79</sup> As long as this Charter stood, the processes of law flowed from England, and it would be unlawful for the freemen of Pennsylvania to take action against England or the Quaker Assembly. True an indigenous body of legal decisions and democratic experience had taken place in Pennsylvania, but for that to be expressed, a new American charter had to be written and that is what the radicals did in framing the Constitution of 1776.

But the processes that led Pennsylvania to the Constitution of 1776 and the abrogation of the Charter of 1701 were detailed and multi-faceted. Specifically, the relationship of Pennsylvania and its sister colonies to Great Britain was the issue. With the Second Continental Congress

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<sup>78</sup> John Adams to James Warren, Philadelphia, July 24, 1775, *Papers of John Adams*, Vol.3, ed. Robert J. Taylor (Cambridge: The Belknap Press of Harvard University, 1979), 89.

<sup>79</sup> Charter of Privileges, 1701, first sec.

meeting May 10, 1775, the delegates had to contend with actual wartime situations: the Battle of Lexington-Concord was fought on April 19, 1775, the Battle of Bunker Hill in June of 1775. Britain had also announced that the ports in the colonies would be closed. Massachusetts, therefore, was in the vanguard of colonies advocating for independence and rallying its sister colonies to military combat against Great Britain. John Adams was Massachusetts' foremost leader and a strong radical in his anti-British views. The Continental Congress was meeting in Philadelphia and the views of its delegates, particularly, John Adams, were having an effect on the political situation in Pennsylvania. Selsam makes this point effectively.<sup>80</sup> He also notes that John Adams observed that Thomas Mifflin, Charles Thompson, and Joseph Reed, all fiery radicals, were heartily supported by the populace of Pennsylvania. These men were members of the key revolutionary Philadelphia Committee. Mifflin and Thompson were also elected to the Assembly in October 1, 1775.<sup>81</sup>

A critical factor in the organization of the Revolution in Pennsylvania was the formation of committees. Selsam dates the formation of the committees to their use against the Townshend Acts of 1767, which were imposed on the colonies by Great Britain.<sup>82</sup>

It is important to make clear that the First and Second Continental Congresses had critical effects upon the revolutionary organization amongst the freemen of Pennsylvania. Selsam ties the popular adoption of non-governmental committees to the restricted suffrage to the Assembly. "But perhaps the most potent reason for their rapid spread and importance in Pennsylvania was the fact that, due to the restricted suffrage and the inadequate representation, thousands of the inhabitants

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<sup>80</sup> Selsam, 65.

<sup>81</sup> Thayer, 172.

<sup>82</sup> Selsam, 66.

played no part in the government. This fact coupled with the love of liberty and authority-traits nurtured by the frontier-led these people to create agencies of government under their control and direction.”<sup>83</sup> The question may be asked of Selsam: what does he mean by love of authority? What this means is that the revolutionaries, in this case the Scots-Irish of Pennsylvania’s western frontier, wanted to fight Great Britain, but they wanted to be led by law or rather a legal structure. They were not going to line up Quakers and shoot them. So therefore the First and Second Continental Congresses for the freemen of Pennsylvania and for the other colonies had a legal force. Their recommendations were taken seriously and had great impact on the radicals in Pennsylvania. Most important was the Congressional Resolution introduced by John Adams on May 10, 1776 and adopted May 15, 1776. Its Preamble written by a Committee of Three—John Adams and Edward Biddle, radical of Pennsylvania, and Richard Henry Lee—called for no oath to the crown and stated that all the colonies should adopt governments supporting independence. This Resolution was the spark that led the radicals of Pennsylvania to begin immediately the process of overthrowing the Assembly.<sup>84</sup>

The committees of correspondence formed in the various counties of Pennsylvania were essential to the spread of revolutionary sentiment. But parallel to the committees were the volunteer militia groups, Associators formed in all the counties of Pennsylvania. The first militia was formed by the tough frontier bred men of Pennsylvania’s western hinterland. As John Adams wrote in a letter to a certain James Warren “The martial spirit throughout this Province is astonishing, it arose all of a Sudden, since the news of the Battle of Lexington....”<sup>85</sup>

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<sup>83</sup> Ibid., 67-68.

<sup>84</sup> Selsam, 119.

<sup>85</sup>“From John Adams to James Warren, 21 May 1775,” Founders Online, National Archives <http://founders.Archives.gov/documents/Adams/> (accessed December 16, 2015).

The Assembly, under majority Quaker control, ordered 35,000 pounds to be struck in bills of credit and pledged the faith of the province for the redemption of it to underwrite the militias. The Governor, John Penn, would have nothing to do with it. Selsam argues that the Assembly in its approval of the militias was simply “recognition of a fait accompli.” There was no militia law in existence in the Pennsylvania government, therefore these Associators were extra-legal or more accurately popular military groups, with approval of the Second Continental Congress. But there was a fabric of legality that came with the Congresses’ approval. Congressional recommendations had legal force as previously noted. Selsam argues that the Assembly action legalized these Associators.<sup>86</sup> But one could not say on what specific legal ground were the Associators authorized; no militia law was enacted. The 35,000 pounds was a shadow of an endorsement. It satisfied an angry populace, but the critical issue of independence from Great Britain was still not struck on the anvil.

The proprietary government in the person of the Governor and the patrons around it, like William Allen, who was to return to England as a Tory, had in the last few years continually pleaded for reconciliation with the mother country and in real terms opposed the gathering revolutionary sentiment as much as possible. The Governor, John Penn, had done likewise, asking the colonists to send separate petitions to the authorities in England and not petition the crown through a general Congress. To put it simply he was a Tory.<sup>87</sup> The Assembly coldly rejected the Governor’s admonitions. The question therefore arises if the Assembly was in accordance with the popular spirit in Pennsylvania, why was it necessary to overthrow it? The proprietorship was

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<sup>86</sup> Selsam, 79.

<sup>87</sup> *Ibid.*, 72.

discredited, but what exactly was the role of the Quakers? Having come this far, why were the Quakers unable to part with Great Britain?

The Quakers' religious tenets in their critical mass expressed an individual connection with the Christian Savior Jesus Christ. Each man and woman of the Quakers had holy testimony of their individual soul through their direct ties with Jesus Christ. The fact that some nominal Quakers in the Assembly supported revolutionary activities was not indicative of actual Quaker support for the revolution. As Richard Bauman notes the Quaker Meeting for Sufferings issued an epistle, September 24, 1774, telling the Friends to "guard against joining in any for the asserting & maintaining our Rights and Liberties which on mature deliberation appear not to be dictated by that Wisdom which is from above which is pure peaceable gentle & full of mercy and good fruits."<sup>88</sup> This epistle, was accompanied by a covering letter in which the activities of the Continental Congress and the non-importation Association were condemned as being "...manifestly repugnant to the peaceable Principles of our Christian Profession, subversive of the Laws & order of the Government under which we live."<sup>89</sup> This doctrine was carried forth into the beginning of armed hostilities against the British. The Quaker General Meeting issued a number of epistles warning the Friends not to participate in any manner whatsoever in the unlawful activities of the American Revolution. The Quakers who dissented from this were disowned.<sup>90</sup>

What we have here is the Quaker ruling body asserting a processes of law, English law as expressed in the Charter of 1701 against actions of revolution-armed citizens of Pennsylvania and other colonies, taking up military violence against the lawful sovereign of Pennsylvania, the British

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<sup>88</sup> Richard Bauman, *For the Reputation of Truth Politics, Religion, and Conflict among the Pennsylvania Quakers 1750-1800* (Baltimore: The John Hopkins Press, 1971), 147.

<sup>89</sup> Bauman, 147.

<sup>90</sup> *Ibid.*, 156-157.



Monarchy. These Quakers took a conservative stance derived from their religious view of earthly affairs. They were expressing their authoritative view as to conserve the ruling British authority against the wrongful violent rebellion of most of Pennsylvania's citizens. This British authority was expressed in the lawfully written form of the government, the Charter of Privileges of 1701. It should be noted as well that although it was now seventy-five years later, the ruling body of the Quaker General Meeting viewed the British Monarch favorably, remembering the sympathetic actions of King Charles II and King James II in supporting Quaker settlement in Pennsylvania.

The Quaker point was to retreat into an architecture of their holy quietude wherein they would not involve themselves with the turbulence around them. Thus on January 20, 1776, the Society of Friends through a committee of the Meeting for Sufferings published a Testimony which "was to become the charter of the Society's position for the duration of the revolutionary period." The Testimony asserted that "the setting up & putting down Kings and governments is God's peculiar Prerogative...it is not our business to have any hand or contrivance therein...but to pray for the King and safety of our Nation, and good of all men."<sup>91</sup>

In this regard the Quakers were very much in line with their founder William Penn. William Penn as we have seen was very close to the Catholic monarch of England, King James II, serving as King James II's advisor bringing anti-Catholic hatred down upon his head.<sup>92</sup> But in this affection for royalty, William Penn combined a learned regard for the Whig reformation, which he expressed in the Charter of Privileges. The Quakers of 1776 also expressed this paradox: practicing democratic thought, opposed to proprietary privilege, but expressing a religious affection for the English monarch as the dutiful Ruler of the colony of Pennsylvania. They would not commit their

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<sup>91</sup> Bauman, 156-157.

<sup>92</sup> Klein, 27.

Assembly to independence from England, therefore it fell and a new dawn opened up in America and Pennsylvania.

## PENNSYLVANIA AND THE AMERICAN REVOLUTION

The new dawn that opened up in Pennsylvania was a consequence of the decision by the more radical members of the Whig Party, the revolutionary faction, to implement as quickly as possible the congressional resolution of May 15, 1776, advocating separation from Great Britain.<sup>93</sup> At this time the atmosphere in Pennsylvania was one of tumult and uncertainty. This was caused by the fading out of the Quaker Assembly and the still tenuous authority of the two revolutionary bodies that asserted revolutionary authority over Pennsylvania. These two bodies were the Provincial Conference and the Constitutional Convention or Provincial Convention.

### Its Revolutionary Institutions and the Writing of the Constitution of 1776

The Provincial Conference was composed of representatives of the County Committees which met in Philadelphia on June 18, 1776.<sup>94</sup> The Conference tackled a number of key issues. Their fundamental concern was the election of a Constitutional Convention to write a new Constitution to replace the Assembly government and the Charter of Privileges of 1701. The last demand made to the Quaker Assembly was to appoint a new committee to draft new instructions to the Pennsylvania delegates in Congress, to support independence from Great Britain. This was done on June 5, 1776. Having accomplished that, the Whigs, according to a prearranged plan, withdrew from the Assembly, never to return.<sup>95</sup> The Assembly met on September 23, 1776, and without a quorum, ordered the payment of “public officers,” criticized the Constitutional

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<sup>93</sup> Selsam, 136.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid., 134.

Convention, then meeting, for putting taxes on non-Associators and disposing of their property.<sup>96</sup> The Assembly also criticized the Constitutional Convention for violating the liberties of the citizens of Pennsylvania. This referred to the right of Justices of the Peace to imprison citizens of Pennsylvania for an indefinite time period.<sup>97</sup> This was the last riposte by the Assembly to the Constitutional Convention and it demonstrated their clear antipathy to the course taken by the more radical leaders of the Revolution, who had the support of the populace in Philadelphia and in the Counties, to organize a revolutionary government, and to bear arms against Great Britain. The Quaker Assembly ceased to function, September 28, 1776.

As indicated above the Provincial Conference issued a number of directives relating to the actualities of the wartime situation and the security situation in Pennsylvania. First of all, in deciding who should vote for the representatives in the Constitutional Convention, the Conference members reacting to an appeal from German Associators abolished the fifty pound requirement for voting. All male citizens twenty-one or older, who were taxable freeholders, could vote. Cognizant of the large number of Pennsylvania citizens who were Tories or citizens who were not sympathetic to the Revolution, the Conference mandated a number of required oaths or tests that the voter had to take. The first one had the voter declare he had no allegiance to Great Britain and that he would not oppose the establishment of a free, revolutionary, government, either directly or indirectly. Secondly, the voters had to positively state that they would support the revolutionary government on the basis of popular sovereignty. The third oath was a controversial requirement

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<sup>96</sup> The Associators or military men wanted non-combatants to pay their fair share to the Revolution.

<sup>97</sup> Selsam, 167.

that the voter believed in the Savior Jesus Christ, and that the Old and New Testaments were divinely authored.<sup>98</sup>

The Provincial Conference then laid out its instructions for electing the representatives to the Constitutional Convention. Eight representatives from each county and eight from the city of Philadelphia would be elected to carry out the tasks of forming a legal government. The election would be held on July 8, 1776.<sup>99</sup> The Conference's clear support for independence and the war against Great Britain is indicated by its response to a congressional call for 6,000 soldiers. The Provincial Conference, addressing the various county committees and Associators of Pennsylvania, requested 4,500 militia men to join 1,500 men already enlisted in the revolutionary American Army.<sup>100</sup> The County Committees and the Associators were a vital force in the ability of the radical Whigs to successfully engender the Revolution. The committees were the modules that disseminated political instructions, energized the populace, and coordinated revolutionary action. They were organized like spokes on a wheel, with the hub in the center, Philadelphia, firing up the outlying districts. The Associators, the most militant of the revolutionary groups, were militia men ready to provide armed support for the revolutionary bodies of the Provincial Conference and Provincial Convention. But it must be emphasized that these groups were popular with the vast majority of the common people. The Provincial Conference and the Provincial or Constitutional Convention never issued any orders to kill their domestic opponents. Nor did they do so against Tories.

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<sup>98</sup> Selsam, 139-140.

<sup>99</sup> *Ibid.*, 141.

<sup>100</sup> *Ibid.*, 142-143.

What we have here again is the processes of revolution intertwining with the processes of law. The first act of the Provincial Conference is not to set up an ad-hoc revolutionary government but to enable a Constitutional Convention to write a new lawful, democratic, constitution to govern in Pennsylvania.

In respect to wartime exigencies, the Provincial Conference instructed the county and district committees to be on the lookout for strangers in their districts and to demand passes from them (to be issued by the local committees) as to ascertain where they have come from. Furthermore, the Conference requested the Constitutional Convention to create a Council of Safety to exercise executive functions regarding the assurance of military security in the Province.<sup>101</sup> With a final exhortation to the Associators of Pennsylvania, the Conference denounced the tyranny of the British king; they fervently expressed their support for a free democratic government of popular sovereignty. The Conference also addressed possible criticism of their authority, by pointing to the collapse of the Assembly and the urgency of the congressional resolution of May 15, 1776, demanding separation from Great Britain and the erection of pro-independence governments.<sup>102</sup>

As the Provincial Conference had instructed, elections were held July 8, 1776, for the Provincial or Constitutional Convention. Many citizens of Pennsylvania did not participate in this election. Selsam extrapolates this from the refusal of the Moravians of Northampton County (directly north of Philadelphia) to vote at all. Selsam argues that the test oaths required by the Provincial Conference eliminated many moderate minded Pennsylvania citizens who refused to take these odious oaths. Also, of course the actual Tories did not vote. The result, Selsam asserts,

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<sup>101</sup> Selsam, 144.

<sup>102</sup> *Ibid.*, 145.

left the course of the election to 'patriots' who were actually a minority of the eligible voting population of Pennsylvania.<sup>103</sup> Patriots indeed were elected to the Constitutional Convention, however, their support by the Pennsylvania populace was much broader than Selsam indicates. The Scotch-Irish of the western frontier counties were strongly revolutionary. They had been the first to form their Associator militia groups. In concurrence with them the Philadelphia artisans and mechanics, as indicated in the very influential Philadelphia militia, were enthusiastic in support of the Revolution. These common people of Philadelphia, who had shown up eight thousand strong to support the first Continental Congress, were militant for the Revolution. Also, in spite of the Moravians, the bulk of the German ethnic population also supported the Revolution. For example, they had petitioned the Provincial Conference for the right to vote. It is important to make these points. Because if you accept Selsam's thesis, the Revolution in Pennsylvania was on very shaky ground. If so, the Provincial or Constitutional Convention would not have been able to exercise authority over the Pennsylvania Province and even worse the Constitution of 1776 would not have been able to be implemented.

The newly elected delegates of the Convention formally held their first session July 15, 1776. Benjamin Franklin, although busy with congressional duties, was named President. George Ross of Lancaster County was named Vice-President. Franklin was one of the very few distinguished men to participate in the Constitutional Convention. Ross was a Colonel with a classical education and had studied law. James Cannon, a tutor in Mathematics at the College of Philadelphia, and a leader of the Philadelphia Associators, also played an important role in the Convention. George Bryan, leader of the militant Whigs in Philadelphia, although not in the

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<sup>103</sup> Selsam, 146-147.

Convention, was very influential due to his Presbyterian ties with the Scotch-Irish delegates from the western frontier.<sup>104</sup>

The real point in discussing the few distinguished men, was to illuminate the democratic 'common' character of the majority of the delegates to the Convention. Humble farmers and trades people, these men were going to take on the task of writing a Constitution representing the sovereignty of the People. Based on the Constitution they produced, they had constructed a vibrant populist instrument, which although controversial, was able to retain majority support among the Pennsylvania citizenry.

The Second Continental Congress directed all of its requests to the Convention. They considered the Convention the real government of Pennsylvania. The Assembly was considered as non-existing. The congressional legal basis for this was their resolution of May 15, 1776, directing that new governments be formed to support independence from Great Britain.<sup>105</sup> The Provincial Conference, the prior revolutionary body to the Constitutional Convention, had already assumed governmental power in Pennsylvania, and their designated successor, the Convention which was tasked with writing a constitution, was on an even higher legitimate legal plateau. There had been sweeping change in Pennsylvania in support of the tides of revolution and that was not going to be rolled back. The subsequent opposition to the Constitution of 1776, which were more conservative revolutionaries, was still based on democratic principles, for example, a two house legislature. The Assembly went out of existence because it was a relic of British colonialism, and was not able to adjust to the new spirit in Pennsylvania and America of revolutionary democratic change. As explained above the Assembly had not supported in any real way the processes of

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<sup>104</sup> Selsam, 150.

<sup>105</sup> *Ibid.*, 152.



revolutionary change in Pennsylvania. It had represented the old order and now a new order existed in Pennsylvania. The question was, how was the new governing authority, the Constitutional Convention and their design of a new frame of government, the Constitution of 1776, going to work, particularly in a wartime situation?

One of the first significant acts of the Convention was in relation to the Declaration of Independence of Congress which was reported out of the Committee of the Whole on July 1, 1776 and voted on in Congress on July 2, 1776. The delegation from Pennsylvania, which had been appointed by the Assembly, voted for independence, but not unanimously. Four delegates were not present and out of the remaining five, three voted for independence. The members of the Constitutional Convention were very unhappy at this result. They hastened to resolve what they considered a disgrace. On July 20, of the Pennsylvania delegates in Congress, four were reappointed-Benjamin Franklin, James Wilson, John Morton, and Robert Morris. The five new members were George Clymer, James Smith, George Ross, (these three were members of the Convention) and Benjamin Rush and George Taylor. A committee of the Convention drafted new instructions for the delegates, essentially instructing them to strongly support independence from Britain. Just to make clear what the Assembly had not done, it included the remarks of Thomas Willing, who said he did not vote for the Declaration of Independence because he and the other delegates from the old delegation had not been authorized by the Assembly's instructions to do so.<sup>106</sup>

The task of crafting the new Constitution of 1776, by the Convention, was not as difficult as might seem. The members of the Convention were not working from a blank slate. In Pennsylvania there had been years of working with a one house legislature which in fact had been

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<sup>106</sup> Selsam, 156-157.

quite powerful. The proprietary executive had had a veto over the legislature and, in their dislike of this executive power, the Convention minimized executive power. They designed the executive council to be subservient to the unicameral legislature. The executive council had no veto power over the legislature, but could only carry out their legislative commands.<sup>107</sup>

The Pennsylvania Constitution of 1776 had a number of key features. They included the Declaration of Rights, the unicameral legislature, the executive council which appointed the judiciary, and a council of censors meeting every seven years. There were sixteen rights mentioned in the Declaration. Several of these rights were significant. The first, “That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.”

Second, “That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding...Nor can any man, who acknowledges the being of God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship....” Fifth, “That government, is or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community: And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.”<sup>108</sup>

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<sup>107</sup> Selsam, 194.

<sup>108</sup> Pennsylvania Constitution of 1776, fifth dec.

As for the provision for a unicameral legislature, the Second Section declared that “The supreme legislative power shall be vested in a house of representatives of the freemen of the Commonwealth, or state of Pennsylvania.” As a unicameral legislature, clearly, there was no upper body, such as a Senate, to check its power. But the Constitution as written granted wide spread power to the legislature. Section Nine provided that the legislature “... may administer oaths or affirmations on examination of witnesses; redress grievances; impeach state criminals; grant charters of incorporations; constitute towns, boroughs, cities and counties; and shall have all other powers necessary for the legislature of a free state or commonwealth: But they shall have no power to add to, alter, abolish, or infringe any part of this constitution.”<sup>109</sup>

John Adams’ comment on the unicameral legislature of Pennsylvania is interesting. He was horrified at it. “A single assembly is liable to all the vices, follies, and frailties of an individual, subject to fits of humor, starts of passion, flights of enthusiasm, partialities or prejudice, and consequently productive of hasty results and absurd judgements...a single assembly is apt to grow ambitious and after a time will not hesitate to vote itself perpetual.”<sup>110</sup> Madison in Federalist No. 10, warned about the convergence of majority opinion and faction in one legislature. In this case “the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.”<sup>111</sup>

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<sup>109</sup> Pennsylvania Constitution of 1776, ninth sec.

<sup>110</sup> John Adams Works IV, /oll.libertyfund.org/ 195. /Heritage Foundation.org/ April, 1776/ (accessed December 16, 2015).

<sup>111</sup> James Madison, No. 10: in *Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1961), 80. Rossiter writes that the *Federalist Papers* were written beginning October, 1787, to influence the ratification debate of the U.S. Constitution. Madison’s focus on one legislature applies to the unicameral legislature at issue in Pennsylvania.

Section Three of the Constitution of 1776 states that “the supreme executive power shall be vested in a president and council,” and, together with Section 19, that “the supreme executive council shall consist of twelve persons.” At the annual general elections one councilman from each county will be elected and one councilman from the city of Philadelphia, all for variable terms but not more than three years. “No member of the general assembly or delegate in congress, shall be chosen a member of council. The president and vice-president shall be chosen annually by the joint ballot of the general assembly and council, of the members of the council.” Section 20 stated that “The president, and in his absence the vice president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, judge of the admiralty, attorney general and all other officers civil and military, except such as are chosen by the general assembly or the people, agreeable to this frame of government.”<sup>112</sup> There was no separation of powers in the Constitution of 1776. The judiciary was merged with the executive council and the executive council was subservient to the legislature. There were further interesting features of the executive council as expressed in Section 20. The executive council sat as judges in cases of impeachments and “The president shall be commander in chief of the forces of the state, but shall not command in person.”<sup>113</sup>

The Constitution of 1776, in an unusual feature, in Section 47, the last article of the constitution, set up a Council of Censors to meet in 1783 and every seven years afterward, specifying that “two persons in each city and county of this state, to be called the Council of Censors...the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree: And whose duty it shall be to enquire

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<sup>112</sup> Pennsylvania Constitution of 1776, sec.3, 19, 20.

<sup>113</sup> *Ibid.*, sec. 20.

whether the constitution has been preserved inviolate in every part...For these purposes they shall have power to send for persons, papers, and records.”<sup>114</sup> The Council of Censors could propose amendments or alter the Constitution. For example, they could propose one chief executive or disallow a legislative enactment.

There was opposition to the features of the Constitution of 1776 by moderate Pennsylvania citizens. The opposition consisted mainly of the merchant community and some sectors of the population, particularly, in the City of Philadelphia, and outlying eastern counties. These communities were more conservative and especially did not like the powerful one house legislature. Allied to them were many disaffected Pennsylvania citizens who refused to swear the required oath of allegiance to the State of Pennsylvania, which was required by section 40 of the Constitution of 1776. The radical supporters of the Constitution of 1776 were called Constitutionalists. And their conservative opponents were called Republicans.

The Constitutionalists faced bitter opposition from the Republicans. Although printed in the press, the Constitution of 1776 was not put to a vote of the Pennsylvania citizenry. The radicals or Constitutionalists, under heavy pressure from their republican opponents, proposed to hold another convention. This occurred in the election of November 5, 1776, the first election after the writing of the Constitution of 1776. According to the Republicans, only two thousand out of fifty thousand voters had cast their ballots. The Constitutionalists had the majority in the Assembly, but the Republican opposition prevented a quorum. In exchange for providing a quorum to elect the Speaker and pass urgent legislation for the defense of the State, the Constitutionalists, in a somewhat vague plan, were supposed to have promised to call a Convention, to meet in January

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<sup>114</sup> Pennsylvania Constitution of 1776, sec. 47.

of 1777, so as to revise the Constitution. After the Assembly met in November, the Constitutionals did not implement this supposed compromise.<sup>115</sup>

Republican conservatives, Robert Morris, John Dickinson, and others who had been elected from the Philadelphia area, withdrew from the Assembly, in what Brunhouse calls “passive resistance.” However, the majority radical legislature called for new elections to fill the vacant seats. In the ensuing elections all radicals were elected to the vacant seats. Two noteworthy strong Constitutionals who were elected were George Bryan, Vice President of the executive council, and Timothy Matlack, Secretary of the council. The Constitutionals or radicals were now in control of both the legislature and executive council as of March, 1777.<sup>116</sup>

One has to be very clear that these political events are taking place in a difficult wartime situation. As recommended by the Provincial Conference, the Council of Safety had been implemented by the Constitutional Convention, and it had been executing all the necessary defense measures for the State and for the Second Continental Congress as well. On March 4, 1777, the supreme executive council as expressed in the Constitution of 1776 took over the defense area and executive functions from the Council of Safety, which was meant to be a temporary body.

The Republican opposition to the Constitution of 1776 and its radical supporters was vehement. In a whole array of areas Republicans refused to cooperate with the Constitutionalist administration. In addition the Continental Congress had threatened to intervene in the State, to address the need for soldiers in the American Army commanded by George Washington. Faced with these difficulties, the Constitutionals agreed to take a census of voters in Pennsylvania, in

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<sup>115</sup> Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania 1776-1790* (New York: Octagon Books, 1971), 21.

<sup>116</sup> *Ibid.*, 22.

the October, 1777, election, as to whether they should call a new Convention.<sup>117</sup> However, the British army under Howe was now approaching Philadelphia. Given this military threat, the Constitutionalists appointed a committee to draft a resolution postponing the vote as to calling for a Convention. The resolution was offered to the House and accepted. At this time the Assembly created an emergency Council of Safety and then moved its operations to Lancaster, and Congress similarly moved to York, Pennsylvania.<sup>118</sup>

The British occupation of Philadelphia lasted from September, 1777 to June, 1778.<sup>119</sup> Heightened by the resentment of supporters of the Revolution, because of the occupation, Constitutionalists emphasized the internal dangers of not only Tories, but also of those whom they called the disaffected of Pennsylvania's citizenry, that is citizens who did not take the oath of allegiance to Pennsylvania and the Constitution of 1776. All loyal citizens of Pennsylvania were supposed to take the oath of allegiance by June 1, 1778. An Act of April 1, 1778 by the radical Assembly had ordered that requirement. Furthermore, a request by an angry patriot, one among many, in the Pennsylvania newspapers, suggested seizing the property of the disaffected. Volunteer associations were formed to hunt down Tories.<sup>120</sup>

The radical attack against Tory elements was stretched by Constitutionalists to color similarly the Republican conservative opposition as well.<sup>121</sup> In the October, 1778, elections, Joseph Reed was elected to the Assembly from Philadelphia and was also elected to the Executive

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<sup>117</sup> Brunhouse, 32.

<sup>118</sup> *Ibid.*, 45.

<sup>119</sup> The Assembly held elections in October, 1777, in the unoccupied sections of Pennsylvania.

<sup>120</sup> Brunhouse, 50.

<sup>121</sup> *Ibid.*, 51.

Council. In December, 1778, Reed was elected President of the Executive Council and George Bryan, a fervent Constitutionalist was elected Vice-President of the Executive Council. The issue of calling a Convention came up again, and for some reason the radical majority in the Assembly voted in favor of this proposal. Brunhouse, while noting that the State was in economic disarray, found no specific reason for this vote. The overall Constitutionalist Party was very upset at this resolution. In addition to newspaper articles the radicals organized petition drives across the State which poured into the Assembly. On February 27, 1779, the Assembly reversed itself and voted against calling a Convention. Out of fifty-four members only seven members voted in favor, three of them noted conservatives from Philadelphia; Robert Morris, Thomas Mifflin, and George Clymer.<sup>122</sup>

The Silas Deanne affair (1778-1779) which heated up in Congress, intruded on the Pennsylvania Assembly, particularly, because both Congress and the Assembly resided in Philadelphia. This affair raised the temperature in the City of Philadelphia and in Pennsylvania generally, because of the picture it drew of the so-called rich merchants of Philadelphia as well as the urban poor of the economically distressed City. It also took in the radical base in the western hinterland of Pennsylvania against the wealthy eastern area of Pennsylvania. An old feud in the stress of wartime was heating up fast. The Constitutionlists supported Arthur Lee of Congress, while the Republican conservatives, such as Robert Morris and James Wilson, supported Silas Deanne.

Briefly, the Silas Deanne affair involved Silas Deanne and Benjamin Franklin, in support of each other, and Arthur Lee, a member of Congress, who contended that Deanne was not telling the truth. Deanne was a merchant, and was appointed Commissioner (commercial agent) by

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<sup>122</sup> Brunhouse, 59.



Congress. The controversy was over the issue of armaments delivered to the American cause through the brokerage of a French diplomat, Beaumarchais. Deanne contended that the armaments were supposed to be paid for through remittances to Beaumarchais. A false front created by Beaumarchais, the Hortalez & Co., was the vehicle the remittances were to go through. Lee asserted that the armaments were supposed to be a gift from France, and that the remittances were lining the pocket of Deanne and Beaumarchais. The actual evidence through letters written by Lee, acknowledging that remittances were to be paid, were in the possession of Beaumarchais. These letters by Lee reflected the conversations he had had with Beaumarchais in 1776, who in fact had requested the remittances. On a motion by Richard Henry Lee of Virginia, Arthur Lee's brother, Deanne was recalled, ostensibly out of pique at the French, but the affair left a bad taste.<sup>123</sup>

Rosswurm points out that thirty-three cases of treason put forth by the Constitutionalist Assembly went to grand juries in Philadelphia from September to November of 1778. Eighteen cases resulted in acquittals and thirteen did not go to trial. Given the economic distress in Philadelphia, there was a fear of mob violence, but the trials showed a heartening commitment by the Constitutionlists to the rule of law.<sup>124</sup>

However, the economic sphere was a different story. The radical or Constitutionalist Assembly took draconian actions that were very likely a violation of their own Constitution of 1776. With radical Daniel Roberdeau acting as Chairman, the Constitutionlists, on May 25, 1779, formed two committees to deal with the economic effects of rampant inflation. Prices of basic

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<sup>123</sup> Charles Rappleye, *Robert Morris* (New York: Simon & Schuster, 2010), 135-136.

<sup>124</sup> Steven Rosswurm, *Arms, Country, and Class* (New Brunswick: Rutgers University Press, 1987), 155.

foodstuffs and materials were escalating. Depreciation of Continental and State currency was like oxygen to the fire of inflation. Mob violence was imminent.<sup>125</sup>

The main committee, the committee of inspection, was to regulate and fix prices. The second committee was to investigate the financier and merchant, Robert Morris, on the suspicion he engrossed flour. This committee seized the flour from Morris, which they thought was his private venture, only to find out that the flour was for the French fleet.<sup>126</sup>

Clearly, the deprivations of war had brought populist tensions to dangerous levels. By dangerous it is meant the breakdown of law and the commission of anarchic violence. A mob of a hundred men with clubs had invaded a meeting called on July 27, 1779, by the committee of inspection, to gather support for their price regulating actions. In support of that effort the committee passed a resolution to enlarge the price fixing committee to a hundred and twenty men to be elected at a general election. The conservatives at the meeting, led by Robert Morris, were furious at the mob intimidation. They withdrew from the meeting to hold a meeting of their own, where they agreed to support the attempt to hold down prices.<sup>127</sup>

Rosswurm maintains that the conservatives who alleged that the mob of one hundred men who invaded the meeting on July 27, 1779, were Philadelphia militia men, had the more credible account.<sup>128</sup> Pennsylvania militia returning home from battle against the British were upset at their reception at home, and particularly angry at their economic circumstances. What we have here are the processes of revolution threatening the processes of law, which if continued would bring

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<sup>125</sup> Brunhouse, 70.

<sup>126</sup> *Ibid.*, 71.

<sup>127</sup> *Ibid.*, 72.

<sup>128</sup> Rosswurm, 191.

anarchy. The focus on community in the Pennsylvania Constitution of 1776 has been underemphasized. This sense of community was now in tatters. (See the Fifth Declaration of Right above).

To the Constitutionalist, the Republicans, the party of aristocracy and wealth, threatened community. Community was a homogenous whole as set by the 1776 Constitution's unicameral legislature, which embodied the State's existence.<sup>129</sup> The attempt to control the State's economy was based on the idea of a communitarian economy, which overrode the idea of property as sacrosanct for the individual citizen. As the Pennsylvania Constitution of 1776 states in its very first declared Right, and specifically in the eighth declared Right "But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representative."<sup>130</sup> We see then in the committee's attempt to fix prices, a violation of the Constitution of 1776. Additionally, Pardoe points out that the idea of a homogeneous community was fabricated by the radicals due to their application of the test oaths "which banned large segments of the population (including Quakers) from political participation."<sup>131</sup>

However, one has to point out that the grim wartime situation was responsible for much of the Constitutionalist fury. The test oaths were partially conceived to keep out Tories from the revolutionary commonweal, and insure that their government and their Constitution would take root in Pennsylvania. The wartime situation fostered the viability of radical populism. The economic distress in Philadelphia, in particular, and the violence it engendered, led to a rethinking

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<sup>129</sup> Elisabeth Lewis Pardoe, "Constructing Community and the Diversity Dilemma: Ratification in Pennsylvania," in *Pennsylvania's Revolution*, ed. William Pencak (University Park: Pennsylvania State University Press, 2010), 260.

<sup>130</sup> Pennsylvania Constitution of 1776, eighth dec.

<sup>131</sup> Pardoe, 260.

of the Constitutionalist ideas of controlling the economy, which were dictatorial and thoroughly fallacious.

### The Wilson Riot

With economic deprivation and tension running high in Philadelphia, things came to a head on October 4, 1779. Philadelphia militia gathered on the commons. Numbering about two hundred, they were going to apprehend Tories and drive out Quakers and the disaffected, Pennsylvanians who had refused to take a loyalty oath to the Constitutionalist government. They considered wealthy Republicans like James Wilson as good as Tories; James Wilson, an attorney, had defended accused Tories a year before, and the Philadelphia militia had not forgotten. The whole city knew that the militia were marching, marauding would be a better word. The militia corralled Jonathan Drinker, a Quaker, and then scooped up three supposed Tories. The militia then purposely made their way to James Wilson's house on Walnut Street. There is disagreement whether the Philadelphia militia meant bodily harm to Wilson. But an elite group of Republicans, including military officers, led by Robert Morris, and including Wilson, definitely felt a grave threat. Arming themselves they barricaded themselves in Wilson's house.<sup>132</sup> As the militia marched by Wilson's house, Lieutenant Campbell, a one armed veteran of the Revolution, opened a shutter on the third floor. It is not clear who fired the first shot, but Campbell was struck dead. At that a heavy volley of fire poured out from the house on the militia wounding and killing a number of them. The militia then attacked the house from front and back. The Philadelphia militia's own officers had warned their soldiers not to proceed with the march as it would be hazardous. Charles Willson Peale, one of their officers, had argued with them for an hour and then left them. At that moment President

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<sup>132</sup> Rappleye, 191-193. The account of the Fort Wilson Riot relies mainly on Rappleye.

Reed, some Continental cavalry, and silk stocking troops, a republican City Troop, rode furiously into the militia. Reed slashed back and forth with his sword and the militia scattered. The Fort Wilson Riot was over. Twenty-seven militia men were arrested.

Post the bloody violence, anger by most of the city's populace coursed against Wilson and the elite group of Republicans. A mob forced Timothy Matlack to release the militia prisoners. Reed successfully attempted to keep the peace. The four dead Philadelphia militia men were given an honors funeral. In a show of evenhandedness, Reed requested that Morris and his group of Republicans post bail. But no charges were brought against Morris and the Republicans, and no charges were brought against the Philadelphia militia. The Constitutionalist Assembly issued a vote of support to Reed. Reed characterized the violence "as the casual overflowing's of liberty."<sup>133</sup>

Was the violence of the 'hard scrabble' Philadelphia militia of a revolutionary nature? Rosswurm contends that the militia were really the vanguard of a budding revolution. The poor militia were backing up the price-fixing committee of May 25, 1779. They were going to overthrow the capitalist class, the bourgeoisie, of Robert Morris and his Republican allies. Only they were deserted by the 'middling sort'-their officers, and they were betrayed by the failure of the 'middling' radical political leadership, such as Reed and the Assembly. According to Rosswurm when the oppression of the poor was about to be alleviated, the capitalists and their fellow political 'middling' allies smashed down bloody liberation. These 'middling' supposed radicals betrayed their true soulmates, the 'lower sort,' and in real terms allied themselves with elitist oppression.<sup>134</sup> Of course, Rosswurm's argument, misses the point. If the 'lower sort,' the Philadelphia militia, had been allowed free rein on their violence, the rule of law would have been

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<sup>133</sup> Brunhouse, 76.

<sup>134</sup> Rosswurm, 226.

shattered, and the result would not have been revolution but civil war and possibly anarchy. The legal frame of the Constitution of 1776 was in fact law. And Rosswurm should have paid heed to the Fifth declaration of Right, “That government, is or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community:”<sup>135</sup> Gordon S. Wood, the noted historian of the American Revolution, refers only in a broad sense to what he calls spontaneous rioting over economic deprivation issues in the late 1770s. He does not specifically speak of the Fort Wilson riot. Nor does he connect the Fort Wilson riot to Constitutionalist excesses of the unicameral Assembly in the fall of 1779, which is a main point of this paper.<sup>136</sup>

But as should be noted, as bitter as feelings were in October of 1779, these were citizenry of Philadelphia and Pennsylvania, who essentially knew each other, like a quarreling family. In a not surprising emotive reaction, the election in late October, 1779, saw a Constitutionalist sweep. Robert Morris and his allies from Philadelphia lost their seats in the Assembly.

But the voters of Pennsylvania and their capital city of Philadelphia, were more hardheaded than emotive mobs running through the streets. The violence and extremism of 1779 had bothered them. In the October election of 1780, Republicans swept to surprising victories. Robert Morris, Samuel C. Morris, Sharp Delaney, and Frederick Muhlenburg, replaced radicals Charles Peale and Dr. James Hutchinson from Philadelphia. In Pennsylvania proper, sixty percent of the men in the Assembly were new and a majority of them were Republicans. There was bargaining going on between the Constitutionlists and the Republicans in the Assembly. The members of the opposing

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<sup>135</sup> Pennsylvania Constitution of 1776, fifth dec.

<sup>136</sup> Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: The University of North Carolina Press, 1969), 324.

groups were almost balanced. The Constitutionlists allowed Muhlenburg to become Speaker of the Assembly and the Republicans supported the reelection of Reed to President of the Executive Council and William Moore, a moderate radical to Vice-President.<sup>137</sup> This bargaining between the Constitutionlists and the Republicans represented a give and take that was crucial to the democratic process. It represents an adherence to the legal forms of the Constitution of 1776.

Issues which divided Republicans and Constitutionlists were the military State line of Pennsylvania, a sort of regular army which the Republicans favored and the Pennsylvania militia which the Constitutionlists favored. The Constitutionlists saw the State line as a standing army which they feared and the Republicans preferred the centralization of the State line against the localism of the militia. More importantly, the Republicans maneuvered to defeat the test oath laws. Over half the male citizens of Pennsylvania could not vote because of the test oath laws.<sup>138</sup>

Finally, there were major differences between Republicans and Constitutionlists over financial issues. The Constitutionlists had favored paper money, but economic circumstances did not support that view. The continental currency depreciated so radically that it went out of existence. Pennsylvania state currency also depreciated and was not able to maintain its value. Robert Morris, the astute financier, argued in favor of specie and the abolition of legal tender laws, which could not enforce the value of the currency in the free marketplace.<sup>139</sup>

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<sup>137</sup> Brunhouse, 89-90.

<sup>138</sup> *Ibid.*, 155.

<sup>139</sup> *Ibid.*, 96-97.

### The Argument over the Bank of North America

A look at the role of Robert Morris and the establishment of the Bank of North America, provides an incisive picture of the Republican and Constitutionalist views on political and economic relations in Pennsylvania. Morris meant the Bank of North America to have a nationalizing effect on the Confederation. He saw the bank as a unifying instrument. This view would play out in the framing of the Federal Constitution, as well, as the reform of the current Pennsylvania Constitution of 1776.

After tense discussions, Congress was ready to appoint Robert Morris, Superintendent of Finance (1781-1784). The Continental currency had collapsed and the Congressional leaders including George Washington, expected and wanted the brilliant financier to straighten out Continental financing, debt, and credit operations.<sup>140</sup> Morris delayed accepting the appointment so as to keep his seat in the Pennsylvania Assembly, and thereby to resolve a financial crisis of the Pennsylvania government, as similar to the one plaguing the Continental Congress.<sup>141</sup>

The radical Assembly in April, 1780, responding to a crisis economy in Pennsylvania, voted for an emission of 500,000 pounds of Pennsylvania paper money currency to be made legal tender. The previous emission of Pennsylvania paper money had collapsed, sparking a mutiny of Pennsylvania troops who wanted to get paid.<sup>142</sup> Morris and his Republican allies made clear their opposition to the new emission, particularly, the act of making them legal tender which Morris made clear was not enforceable in a free market. Nonetheless, the Assembly approved the new emission.

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<sup>140</sup> Rappleye, 231.

<sup>141</sup> *Ibid.*, 234.

<sup>142</sup> *Ibid.*, 242.



Morris felt that if he could not stop his state's paper money policy, it would be pointless to accept his Congressional appointment. However, as it turned out, the radicals witnessed the truth of Morris' arguments. The new emission of paper money depreciated rapidly. Before it could disappear entirely, President Reed called an emergency session of the Assembly.<sup>143</sup> The whole financial structure of the State had to be changed systematically. Three weeks later Assembly opposition to Morris collapsed. The Assembly then approved "the three central planks of his program for the state: the repeal and repudiation of all tender laws respecting either state or continental paper, the repeal of all embargoes or other restrictions on trade, and the levy of two hundred thousand pounds in taxes, to be collected in hard money."<sup>144</sup>

The Assembly then appointed Morris their sole agent for all financial dealings with Congress. They also gave over to him the unused funds from the 500,000 paper emission, which was 400,000 pounds. These funds were due to Congress to purchase supplies for the army, but for the present Morris would manage them. With this new strategic change of affairs, Morris now had complete financial authority in Congress and in his State.<sup>145</sup> At this point Morris resigned his seat in the Pennsylvania Assembly and accepted his appointment by Congress as Superintendent of Finance.

Morris then proceeded to get congressional approval to establish the Bank of North America. He envisioned that the bank would firm up credit in all the states and through free market, laissez-faire principles and put the American economy on a solid basis. Only specie would be accepted by the bank in payment, thereby its notes would be looked at as hard money. On May 27,

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<sup>143</sup>Rappleye, 243.

<sup>144</sup> Ibid., 244.

<sup>145</sup> Ibid.

1781, the Committee of Public Finance of Congress recommended positively to Congress to approve the organization of the Bank of North America. Congress approved it on the same day.<sup>146</sup>

The initial capital of the bank would be \$400,000, raised by selling 1000 shares at \$400 apiece. The official heading of the bank would be President, Directors, and Company of the Bank of North America. When fully subscribed Congress would accept a petition for chartering the bank.

Even though Morris had not received the full subscription of \$400,000 (he had only \$24,000 domestically and \$254,000 from a French loan) he petitioned Congress for the Charter. At this point things got more difficult. James Madison and a few others pointed out that granting a charter of incorporation was not provided for under the Articles of Confederation. This point made an impression. As a result, Congress granted the Charter but with the proviso that the states grant legal status to the Charter.<sup>147</sup>

The bank's powers under its charter of incorporation were very broad. There were no time limits on the bank's existence. It could receive, purchase, and retain real estate, rents, land, Hereditaments, and chattel. Its capital standing could be raised to \$10,000,000. There was no government regulation of the bank. The bank did not have to do business with the government. There would be twelve directors, one of whom would be president. Thomas Willing, the senior partner in Morris' mercantile firm, and his closest friend, was named president.<sup>148</sup>

Rappleye points out that the bank's chief financial function was to extend commercial loans for thirty or sixty days. They would be strictly due at that time. The loans would be issued in notes

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<sup>146</sup> George David Rappaport, *Stability and Change in Revolutionary Pennsylvania Banking, Politics, and Social Structure* (University Park: Pennsylvania State University Press, 1996), 139.

<sup>147</sup> *Ibid.*, 141.

<sup>148</sup> *Ibid.*, 142.

which were backed by specie and therefore would hold its value with the public. Although a private bank, it could lend to and receive deposits from the government. Dividends of interest would be paid to shareholders.<sup>149</sup>

In February of 1782, Thomas Willing, the President, petitioned the executive council of Pennsylvania for an act of incorporation. The bank itself was located on Chestnut Street in Philadelphia. The Constitutionals offered several amendments limiting the bank term, but they were defeated. The radical opposition in the Assembly assailed the bank on the basis that its potentially huge capitalization would result in a moneyed aristocracy that would threaten the egalitarian nature of Pennsylvania's yeomanry society. Furthermore, they questioned whether a financial monopoly controlling the circulation of money in the state, was proper, as this function more properly belonged with the government of the state.<sup>150</sup> Within the wartime environment, the public paid little attention to the early debate about the efficacy of the bank. The opposition to the Bank of North America in the Assembly was small. The failure of the Constitutionals to successfully manage the Pennsylvania economy had made an impression. The bank had widespread support from all over the state.<sup>151</sup>

The bank's first two years were a resounding success. The bank's notes were accepted at par, in other words as good as cash. They circulated in Pennsylvania as well as outside the State's borders, and were accepted the same as specie. Robert Morris had asked the States to accept the

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<sup>149</sup> Rappleye, 237.

<sup>150</sup> Rappaport, 143.

<sup>151</sup> *Ibid.*, 145.

notes in payment for taxes. The Bank of North America paid dividends of 8 ¾ percent in 1782 and 14 ½ percent in 1783.<sup>152</sup>

At the beginning the bank had an extensive relationship with the government, that is, the Continental Congress. The government had bought numerous shares in the bank. But the bank had loaned the Continental Congress slightly more money than the government had purchased in shares. The bank had loaned some \$400,000 to the Continental Congress. By the end of 1782 the government had not been able to repay the loans. The bank's directors were not satisfied with this. The bank's capital reserve was jeopardized. In order to pay the government's debt, Morris turned over all of the government's shares in the bank and also used some of his own credit. By April, 1783, the bank had no further ties to the government. As Rappaport points out the bank at this point was in real terms a private corporation and not a quasi-public entity. As legally drafted, however, the bank had no mandatory obligations to the government.<sup>153</sup>

The Articles of Peace with Britain were signed on November 30, 1782. Economically there was a post-war boom. More merchants stepped forward to buy stock (shares) in the Bank of North America. But the bank's very success created jealousy. A rival syndicate in Pennsylvania stepped forward to request a charter from the Assembly, to establish a bank similar to the Bank of North America. Their bank was going to be called the Bank of Pennsylvania. The investors in this new bank were from across the political spectrum-Quakers, Tories, and Constitutionals.<sup>154</sup> Robert Morris was very upset. He saw this new rival syndicate as a threat to destroy his bank. He may have been right in that view. The new kind of commerce the bank entailed, such as on demand

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<sup>152</sup> Rappaport, 147.

<sup>153</sup> *Ibid.*, 149-150.

<sup>154</sup> Rappleye, 393.

payments of loans made for 30 or 60 days, was more impersonal than traditional economic activity in Pennsylvania, which was slow paced. Also, most financial transactions in Pennsylvania were small.<sup>155</sup> A second merchant bank like the Bank of North America would probably soak up all the available business. There was not enough mercantile business in Pennsylvania to support two financial entities like the Bank of North America and the Bank of Pennsylvania.

Nevertheless, the Bank of Pennsylvania, which had been able to be fully subscribed in a matter of weeks, requested a charter from the Assembly. In order to challenge this, the Bank of North America requested a hearing from the majority Constitutionalist Assembly in February of 1784. The Assembly agreed and the date of March 2, 1784, was set for the arguments. Arguing for the Bank of North America, James Wilson and Gouverneur Morris pointed out that as one bank a larger capital reserve could be maintained. And therefore they could lend out notes at lower interest rates. However, speakers for the new bank had a powerful argument. They accused the Bank of North America of being a monopoly protected by the State, similar to royal monopolies in Britain. This kind of elitist aristocratic group violated principles of democratic equality for which the Revolution had just been fought.<sup>156</sup>

The radical or Constitutionalist Assembly was very sympathetic to these arguments of the spokesmen for the Bank of Pennsylvania, and was ready to grant them the charter. There was no question that the Bank of North America was a monopoly, and this argument against them would come up again. However, for the present, the Bank of North America decided on a different strategy. Thomas Willing, the president, offered an alternative to the stockholders of the Bank of Pennsylvania. The new stock offering of the Bank of North America would be reduced in price

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<sup>155</sup> Rappaport, 157.

<sup>156</sup> Rappleye, 393.

and the opposition members of the Bank of Pennsylvania could buy in. This offer was accepted and the threat to the Bank of North America was removed.<sup>157</sup>

Even though the Bank of North America was a private bank, at its inception its purpose was to resolve the fiscal crisis in Congress and in the State of Pennsylvania. This it did for a while. The aura of the bank as a patriotic institution made it untouchable. But by 1784 this was no longer the case. An economic recession was hitting Pennsylvania. Times were hard. Imports had increased right after the war but now foreign markets contracted severely. Hard money was in scarce supply and market transactions were severely impacted.<sup>158</sup>

Abrogating their earlier commitment to Robert Morris not to issue paper money, the Assembly wanted to set up a loan office, to make small loans at 6 percent interest with land as collateral. The Assembly asked the Bank of North America to make the loans. The loan office or land bank was an attractive, historical, state institution in Pennsylvania which dated back to 1723. Loans with land as collateral were issued at 5 percent interest for long terms. Immigrants seeking land to farm were very pleased with these loans. It was an economically, financially, democratic way to assist the development of agriculture in Pennsylvania. It was also a socially cohesive mechanism. The contrast with what was an essentially merchant-oriented Bank of North America that was designed for profit—its on-demand loans not affordable for most farmers—created, as Rappaport explains, a reservoir of resentment from Pennsylvania's agricultural sector.<sup>159</sup>

President Thomas Willing, of the Bank of North America, responded to the Assembly's request of money to lend against land by explaining that the bank did not offer loans against real

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<sup>157</sup> Rapple, 394.

<sup>158</sup> Rappaport, 165.

<sup>159</sup> *Ibid.*, 171.

estate. Willing was further asked if the bank would accept a paper money emission by a state land bank; again Willing said no. The Assembly in frustration voted an emission of fifty thousand pounds to be lent against landed security. The picture of the bank as a selfish institution because it would not float the paper emission at the request of the Assembly made an indelible impression. At the October, 1784, elections the Republicans were unceremoniously voted out of office.<sup>160</sup> The Constitutionals now had strong control of the Assembly. Moving quickly they passed a new paper emission bill of \$400,000. Two thirds of that would pay interest on the federal debt held by Pennsylvania citizens, and the rest would fund the loan office. It would be supported by taxes. The paper money would not be legal tender for private transactions, but would be accepted for governmental obligations at par.<sup>161</sup>

However, at this point, the Constitutionals considered the viability of the Bank of North America, as questionable. The more militant of the Constitutionals wanted to revoke the charter. Their arguments were two-fold. One, they accused the bank of causing a shortage of money in circulation in Pennsylvania. Rappleye refutes this, saying that the bank by accepting deposits and then issuing loans multiplied the money in circulation. This is true, but the bank, also affected by hard times, had limited discounting their loans and were not making as many of them.<sup>162</sup> As to the second more powerful argument, the militant Constitutionals accused the bank of being a moneyed power totally out of control of the government or any other institution in the state. It was such an overwhelming power that it sundered the egalitarian social fabric of Pennsylvania. Furthermore, it was a monopoly that had been incorporated in perpetuity. And perhaps more

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<sup>160</sup> Rappleye, 395.

<sup>161</sup> Rappaport, 180.

<sup>162</sup> *Ibid.*, 172.

important the bank had arrogantly interfered with the State government as to the emission of paper money.<sup>163</sup>

The argument could be made that the Pennsylvania Constitutionalists, particularly the rural wing, represented a pre-commerce state. Actual commercial developments were moving too fast for them. As T.H. Breen writes concerning a broader contextual environment, the Anglo-American world, the British by the middle of the eighteenth century had developed a strong consumerism, with provincial towns of the middle class developing into numerous small centers of production that enhanced exports of manufactured goods. Also British success in European wars had been furthered by the astute use of credit and banking.<sup>164</sup>

James Wilson, the brilliant Republican and conservative lawyer, defended the bank. He pointed out the advantages to Pennsylvania of the bank's credit and financial operations. Speaking specifically, as to the charge that the bank had created the shortage of money, he said that was not the case. The causes of the money shortage were "the depreciation of the continental dollar and the enormous expense of the Revolutionary War," and the post-war buying spree of imports had led to an export of specie.<sup>165</sup> Rappaport does make a very good point that Wilson and other defenders of the bank were too contemptuous of the radicals or Constitutionalists. Wilson said that revoking the charter would be "an action without forfeiture, crime, or trial...and that even English despots like Charles and James had not dared to revoke charters without trials."<sup>166</sup> For the radical Assembly that would convey heightened arrogance.

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<sup>163</sup> Rappaport, 183.

<sup>164</sup> T.H. Breen, "Ideology and Nationalism on the Eve of the American Revolution: Revisions Once More in Need of Revising," *The Journal of American History*, Vol.84. No. 1 (June, 1997): 16-17. /[www.jstor.org/](http://www.jstor.org/) (accessed April 12, 2015).

<sup>165</sup> Rappaport, 187.

<sup>166</sup> *Ibid.*



With the debate over, in September, 1785, the Assembly in a two to one vote revoked the Charter of the Bank of North America. Confidence in the bank now ebbed. Deposits in the bank were now reduced. Bank share prices slipped below par value. The bank stopped lending and called in their notes. But the bank had friends. The back country farmers in the frontier areas of Pennsylvania may have had enmity for the bank, but urban workers, artisans, and merchants in the Philadelphia region had shared in the bank's success.<sup>167</sup> In a more broad sense the bank had been on the cusp of modernization. The vote in October of 1784 was a clear reaction to the economic depression and the simplistic, almost romantic oratory of the Constitutionals, appealed to a frightened electorate. They were buying themes that echoed back to 1779.

A year after the radical resurgence and with the revocation of the Charter of the Bank of North America only a month old, the October, 1785, election was looming. Robert Morris stepped in to run for a seat in the Assembly from Philadelphia. The election in October, 1785, was somewhat successful for the Republicans. They achieved an almost balanced opposition to the Constitutionals. Robert Morris was elected from Philadelphia, along with two other Republicans, Thomas Fitzsimmons and George Clymer, each of whom were very closely connected to the bank.

The bank charter debate was rekindled in this 1785-1786 session. In the spring of 1786 the debate ensued. Speaking for the Constitutionals, and representing the western frontier of the state, William Findley, an Irishman, who served as a militia captain in the Revolution, and owned a 250 acre farm, harshly attacked the bank. The bank he said was a project designed for the benefit of a few men. It was a monopoly of such concentrated wealth and power that there existed no check on its power either in government or the extant community. Its charter of perpetuity made

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<sup>167</sup> Rappleye, 398.

it further unreachable. Its focus on the wealthy violated the fundamental egalitarian nature of Pennsylvania's community and therefore was in violation of the Fifth Declaration of Right "That government, is or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community:"<sup>168</sup>

Along with a petition drive, Robert Morris designated two men to oppose the Constitutionalist attack and plea for the bank, Pelatiah Webster and Thomas Paine. Webster, an essayist on economics spoke about the function and history of banks. He attributed the "rise of banking in Genoa, Amsterdam, London and Paris to the strength and prosperity of their national governments."<sup>169</sup> Therefore, similarly in Pennsylvania, banking could only be helpful.

Thomas Paine, the original supporter of the Constitution of 1776 and its unicameral legislature, now made a complete reversal. The author of *Common Sense* attacked the opponents of the bank. He faulted his former allies for imprudence and arrogance. He had seen banking work well as a participant with the Bank of Pennsylvania, a forerunner of the Bank of North America. The result of the bank's operations had restored credit, both private and public.<sup>170</sup> Furthermore, instead of the unicameral legislature acting for the community it had been taken over by one party radicalism that violated the Fifth Declaration of Right of the Constitution of 1776. He essentially took Findley's argument and threw it right back at him.<sup>171</sup>

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<sup>168</sup> Pennsylvania Constitution of 1776, fifth dec. ; Rappaport, 209.

<sup>169</sup> Rappleye, 401.

<sup>170</sup> *Ibid.*, 265. This bank, not to be confused with the later attempt to set up a rival merchant bank, dealt with complicated finances that had loan guarantees from Congress.

<sup>171</sup> *Ibid.*, 402.

Robert Morris, however, took the lead role in defense of the bank. Speaking for hours at a time, he explained how the function of credit was financial liquidity that enabled a ship from the West Indies to unload her wares, for the merchant to obtain them, and to buy the produce from the farmers' wagons sitting in the market. In keeping with his laissez-faire principles, he emphasized that the bank could not be dependent on government. At the end of the set time of four days for debate, the resolution to recharter the bank was called and defeated, forty-one to twenty-eight.<sup>172</sup>

Nevertheless, sentiment was moving in support of the Republicans, particularly, in the eastern counties. In the Philadelphia region, which included Bucks and Chester counties, as well as Philadelphia County, the artisans and tradesmen of these areas benefited from the mercantile sector in Philadelphia. Other counties also benefited from the Philadelphia market. Farther away in the hinterland of western Pennsylvania, hostility to the bank remained strong. The election in October, 1786, reflected these factors. In the new Assembly the Republicans held a thirty-six to twenty-nine vote margin over the Constitutionalists.<sup>173</sup>

With a definite Republican majority, Morris and his allies moved to recharter the bank. William Findley raised the spectre of the bank monopolizing the sale of public lands, particularly, in the west. Factually, the bank had never lent money on landed security, but Findley's missive touched a nerve. When the bank's charter was approved thirty-three to twenty-eight, it prohibited the bank from owning real estate. The Charter of the Bank of North America was for fourteen years and its capital reserve was limited to \$2,000,000.<sup>174</sup>

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<sup>172</sup> Rappleye, 409.

<sup>173</sup> Rappaport, 217.

<sup>174</sup> *Ibid.*, 220.

The Republicans now moved to achieve their long sought goal of revising the Pennsylvania Constitution of 1776 through a Convention. This would take time and paralleling their initiative, the States were moving to reform the Articles of Confederation. The outcome of these processes was a new constitutional environment.

## **THE RISE OF THE REPUBLICAN FEDERALISTS AND THE OVERTURN OF THE PENNSYLVANIA CONSTITUTION OF 1776**

After assuming control of the Assembly in the elections of October, 1786, the Republicans moved on three issues on which they had strongly opposed the Constitutionalists. These issues were the Test Oaths, the violation of the Old College of Philadelphia, and their desire to incorporate the City of Philadelphia. The test oaths had been legislated by the Constitutionalists during the Revolutionary War, which they saw as necessary to wartime exigencies. The Republicans, however, had never seen the test oaths as necessary. Quakers, Mennonites, and other groups who were really loyal citizens had been unfairly discriminated against by this very harsh exclusionary oath process. In 1786 and in March, 1787, the Republicans successfully removed all the test oath requirements. And finally, the Oath of Allegiance was removed in March of 1789.<sup>175</sup>

Calling the elimination of the College of Philadelphia through a transfer of its assets to the new University of Pennsylvania (1779), the Republicans in February of 1789, pointing to this act as a robbery in fact and unlawful under the Pennsylvania Constitution of 1776, negotiated a compromise with the Constitutionalists. The Old College of Philadelphia was reinstated. Buildings and equipment were transferred from the University of Pennsylvania to the College. The University of Pennsylvania was allowed to retain real estate holdings. This issue which had a similar coloring to the test oaths and had therefore aroused conservative fury, occurred because the Constitutionalists in 1779 went after the College of Philadelphia due to what they considered pro-British leanings.<sup>176</sup>

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<sup>175</sup> Brunhouse, 197-198.

<sup>176</sup> *Ibid.*, 220.

Finally, the Republicans moved to incorporate the City of Philadelphia. It had been under control of the Executive Council of the legislature. Arguing that municipal conditions in Philadelphia would be better addressed with a local government, the Republicans voted for a Board of Aldermen, a common council with a Mayor. This law became effective March 11, 1789. Samuel Powell who had been Mayor before the War, was chosen again as Mayor. Similar to the previous Republican successes, the appointment of Samuel Powell underlined the conservative distaste for Constitutionalist extremism.<sup>177</sup>

The burning issue for the Republicans, however, was their desire to alter considerably the Pennsylvania Constitution of 1776. In fact they wanted to replace it. There had been three attempts made in the Assembly to call a convention. These attempts had been thwarted by the Constitutionlists. The Republicans moved in the spring of 1789 to initiate a convention. However, before we consider the movement in Pennsylvania for a new constitution at this juncture, it is necessary to go to the developments a few years earlier regarding the Articles of Confederation. The post-war situation among the thirteen states was very trying. A consciousness of greater union between all thirteen states was only beginning to emerge. For Congress under the Articles of Confederation it was not possible to effectively deal with diplomacy, continental debt issues, state boundaries, and commercial trade. To do anything required a unanimous vote of all thirteen states, which was not forthcoming. For example, international trade could not be dealt with because that power was not vested in Congress by the Articles of Confederation. Individual states could not deal with punitive British trade regulations and attacks on their shipping by Barbary pirates.<sup>178</sup>

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<sup>177</sup> Brunhouse, 221.

<sup>178</sup> Richard Buel, Jr., *In Irons: Britain's Naval Supremacy and the American Revolutionary Economy* (New Haven: Yale University Press, 1998), 250-251.

Another issue was the proposed Jay Treaty with Spain. There was serious division between the northern states and southern states over John Jay's efforts at concluding a treaty with Spain. Jay wished to grant Spain territorial rights west of the Mississippi River. The southern states were opposed to this. Feelings were harsh and "for a time it was feared that the states might split up into several confederacies on these sectional lines."<sup>179</sup> It was clear to many influential leaders that a new political structure was needed to replace the Articles of Confederation. The question was what kind of structure?

George Washington, whose prestige was immense, was interested in navigation of waterways to the west. He led negotiations between Virginia (his home state) and Maryland over the issue of duties on shipping entering the Potomac River. The meeting was held at Mount Vernon, Washington's estate, in March, 1785. The issue was settled cordially. But it led the influential Virginia delegation, concerned about interstate commerce issues that could not be dealt with by the Articles of Confederation, to propose a meeting of the thirteen states at Annapolis, Maryland. This meeting in September, 1786 was attended by only five states. Lacking New England and the southern states, nothing could be accomplished. However, two very influential men were at that meeting, James Madison of Virginia and Alexander Hamilton of New York. These two men arrived at an intellectual catharsis that it was imperative to revise the Articles of Confederation for both domestic and foreign policy reasons. At Madison's request, Hamilton penned a letter to all the states proposing a convention in Philadelphia, to remedy the serious 'defects' now apparent in the Articles of Confederation.<sup>180</sup>

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<sup>179</sup> Brunhouse, 189.

<sup>180</sup> Rappleye, 428.

Why would the contentious states want to send delegates to a convention in Philadelphia and furthermore what produced their success? Congress had endorsed the convention proposal in February, 1787. As Professor White points out:

The ineffectiveness of Congress was a stimulant for those attending the Philadelphia convention to consider not simply amending its powers but replacing it, and the Articles, with an alternative form of central government. A second factor was the declining confidence of observers of American politics in the state governments. Originally conceived as the embodiment of republican virtue in a political universe in which Americans were severing ties with both the Crown and Parliament and erecting the people as sovereign, state governments had proven themselves...just as susceptible to factionalism and the pursuit of self-interest as the British institutions they were replacing.<sup>181</sup>

An event that convinced the delegates of the various states of the importance of innovating a new more centralized political structure was Shay's rebellion, January, 1787, in Massachusetts. This was an armed rebellion against taxes imposed by the state legislature of Massachusetts. Delegates from all the states felt in one way or the other that a more unifying instrument was needed to prevent an implosion of the states' ability to manage themselves.<sup>182</sup>

George Washington's reaction to Shay's rebellion is very pertinent. Writing to David Humphreys, December 26, 1786, he stated: "I perceive by some late paragraphs extracted from the Boston Gazette that the Insurgents of Massachusetts far from being satisfied with redress offered by the General Court--are still acting in open violation of Law & Government; & have obliged the Chief Magistrate in a decided tone, to call upon the militia of the State to support the Constitution.

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<sup>181</sup> G. Edward White, *Law in American History*, Vol. 1, *From the Colonial Years through the Civil War* (New York: Oxford University Press, 2012), 177.

<sup>182</sup> Rappleye, 429.



What, gracious God, is man! That there should be such inconsistency & perfidiousness in his conduct.”<sup>183</sup>

### **The Emergence of the U.S. Constitution and the Pennsylvania Constitution of 1790**

The Federal Convention in Philadelphia opened its proceedings on May 25, 1787. The Republicans in Pennsylvania had acted before the congressional endorsement of a convention in Philadelphia. An Act of the Assembly in December, 1786, named an elite group of delegates to the Philadelphia Convention. These were Robert Morris, James Wilson, George Clymer, Thomas Mifflin, Gouverneur Morris, and Jared Ingersoll, an attorney trained in England. Benjamin Franklin who was President of the Executive Council was appointed by a special Act of the Assembly to be a delegate to the convention.<sup>184</sup> They had thought he would demur from serving but acted in accordance with his distinguished status. Therefore the fact that he was not a Republican was not an issue. No Constitutionals were named as part of the delegation. This would presage the later enmity between the Republican-Federalists and the Constitutionalist-Anti-Federalists. George Washington was unanimously voted President of the Convention. The delegates at the Convention were aware that grave issues were at stake. States' rights were of major concern, as was the need for a more centralizing power both in Congress and the Executive. The Constitutionals in Pennsylvania had articulated that the foundation of the Pennsylvania Constitution of 1776 was popular sovereignty. But how was popular sovereignty going to mesh in a national constitution?

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<sup>183</sup> George Washington to David Humphreys, December 26, 1786, *George Washington Writings* (New York: Literary Classics of the United States, 1997), 631.

<sup>184</sup> Rappleye, 429.

On May 29, 1787, Governor Edmund Randolph of Virginia read off the Virginia Plan. This plan had been formulated by James Madison.<sup>185</sup> The Virginia Plan proposed a national government with a national executive and a national judiciary. The national legislature would have two branches—the House of Representatives, to be elected by the people, and the Senate to be elected by the House of Representatives. This was only a suggested national governmental structure. It was meant to be the basis of discussion and alteration.<sup>186</sup> Opposed to this general plan was the New Jersey Plan. William Patterson laid out the New Jersey Plan on June 15. He accused Randolph of trying to destroy the states. The diadem of the New Jersey Plan would be a Congress made up of a unicameral legislature where all states voted equally “without regard to population or wealth.”<sup>187</sup> The New Jersey Plan, basically, was a reformat of the Articles of Confederation, however, with some additional powers that allowed the unicameral legislature to compel obedience by the states.<sup>188</sup>

Bowen describes Alexander Hamilton as a man devoted to nationalist principles, noting that “it was the Union that Hamilton admired....”<sup>189</sup> He rose to speak on June 18, 1787, declaring that he wanted to give vent to his ideas on what he considered a proper government. Astonishingly, he wanted a government patterned after the British government. He advocated an executive elected for life, and given an absolute veto. A House of Representatives, the lower House, would be directly elected by the people for three years. The Upper House, the Senate, had members who

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<sup>185</sup> White, 178.

<sup>186</sup> Catherine Drinker Bowen, *The Story of the Constitutional Convention May to September 1787* (Boston: Little, Brown and Company, 1966), 38.

<sup>187</sup> *Ibid.*, 106.

<sup>188</sup> White, 180.

<sup>189</sup> Bowen, 111.

would be chosen for life, like the House of Lords in England. The state governors would be chosen by the national government.<sup>190</sup> Apparently, and perhaps somewhat surprisingly, Hamilton's ideas were not attacked with the expected indignation and rage. James Madison rose to the floor the next day on June 19, 1787, ignored Hamilton, and proceeded to excoriate the New Jersey Plan. Principally, Madison said the New Jersey Plan would continue to allow the states to take punitive and retaliatory actions against each other to the point of anarchy.

Immediately, the two plans Virginia and New Jersey were put to a vote. The New Jersey Plan was crushed seven to three. Maryland was divided.<sup>191</sup> The problem facing the Philadelphia Convention now was what influence the small states would have on the Constitution? The debate was bitter. But a month later, on July 16, 1787, a compromise was reached. Each state would have two Senators in the Senate, thereby giving the small states an equalizing influence.<sup>192</sup>

The Virginia Plan remained the basic model to be added to or subtracted from to reach the final form the Constitution took. The U.S. Constitution had an Executive, a President, for four years, a Congress of two branches, the House of Representatives and the Senate, and the Judiciary branch of the Supreme Court and such inferior courts that Congress would establish. Congress had a "necessary and proper clause" to enable it to carry out its express powers, such as commerce among the several states; and finally the supremacy clause of Article VI "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws

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<sup>190</sup> Bowen, 112.

<sup>191</sup> *Ibid.*, 116-117.

<sup>192</sup> *Ibid.*

of any State to the Contrary notwithstanding...”<sup>193</sup> The Constitution was signed September 17, 1787, in Philadelphia. The next day it was sent to Congress in New York. Newspapers rushed to print it for their readers. The populace was excited. The point to remember is that it was not yet the law of the land.

In Pennsylvania, the Republican majority of the Assembly, quickly set in motion the establishment of a state convention to ratify the U.S. Constitution. Their opponents the Constitutionalist railed against it. However, the Constitutionalist-Anti-Federalists were the minority party. In October, 1787, the annual election in Pennsylvania returned a Republican-Federalist majority.<sup>194</sup>

The arguments for and against the U.S. Constitution in Pennsylvania are distinctive. They echoed old sentiments that were expressed in the battle over the Bank of North America. The key figures in the debates were the leaders of both parties. For the Republican-Federalists, Robert Morris and James Wilson; for the Constitutionalist-Anti-Federalists, William Findley, George Bryan, and John Smiley. The Anti-Federalists claimed that the stronger central government of the U.S. Constitution would lead to a despotic government. It would create an unwanted aristocracy, and it would result in the destruction of state sovereignty, which was what the Revolution was fought for. This is an interesting argument and should be gone into. The state governments were closer to the people who were the foundation of popular sovereignty, and therefore liberty was secured. Samuel Bryan, the son of Constitutionalist leader George Bryan, writing under the

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<sup>193</sup> U.S. Constitution, art. 6.

<sup>194</sup> Brunhouse, 202.

pseudonym of Centinel, specifically extolled the unicameral legislature of Pennsylvania as the palladium of liberty because it was close to the people.<sup>195</sup>

The problem with these arguments as Pennsylvania Federalists (Republicans) James Wilson and Pelatiah Webster pointed out was that the ‘Union’ could not exist without a central authority; but they noted that it was grounded in the existence of the states. Wilson, speaking at a public meeting in Philadelphia, on October 6, 1787 “But upon what pretense can it be alleged that it was designed to annihilate the state governments? For, I will undertake to prove that upon their existence, depends the existence of the federal plan....The president is to be chosen by electors nominated in such manner as the legislature of each state may direct....The senate is to be composed of two senators from each state chosen by the legislature.”<sup>196</sup>

Answering Brutus I who argued that the large size of the American continent necessarily meant that federal power under the U.S. Constitution would turn tyrannical and absolutist, Pelatiah Webster wrote in Philadelphia, November 8, 1787, “...The thirteen states have a territory very extensive and inhabitants very numerous, and everyday rapidly increasing; therefore the powers of government necessary to support the Union must be great in proportion. If the ship is large the mast must be proportionally great, or it will be impossible to make her sail well....”<sup>197</sup>

Centinel’s idea that the U.S. Constitution annihilated state sovereignty, while extreme, led to a discussion of the idea of sovereignty. A residuum of state sovereignty was given up to create

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<sup>195</sup> Saul Cornell, *The Other Founders Anti-Federalism and the Dissenting Tradition in America 1788-1828* (Chapel Hill: University of North Carolina Press, 1999), 100-101.

<sup>196</sup> James Wilson’s Speech at a Public Meeting, Philadelphia, October 6, 1787, *Debate on the Constitution Part One* (New York: Literary Classics of the United States, 1993), 67.

<sup>197</sup> Pelatiah Webster’s article, Philadelphia, November 8, 1787, *Debate on the Constitution Part One* (New York: Literary Classics of the United States, 1993), 180. Webster’s antagonist, Brutus I, is identified by most scholars as Robert Yates, a New York judge, and anti-Federalist.

a centralized Federal sovereign. The processes of law flow from a rightful sovereign state and therefore an overall law would flow from the federal sovereign, while domestic processes of law would flow from the rightful state sovereign. As Madison points out in *Federalist* No. 39, it was not the people directly who voted for the federal constitution, but the people in their states through the convention instrument, that ratified the Federal Constitution. “It is to be the assent and ratification of the several states derived from the supreme authority in each state—the authority of the people themselves. The act, therefore establishing the Constitution will not be a national but a federal act.”<sup>198</sup>

The idea of ‘Union’ was not yet familiar with the ‘People.’ Having thrown off British tyranny Anti-Federalists argued that the U.S. Constitution was a disguise for a new tyranny. Centinel in reply to James Wilson’s point that the federal government cannot control the press, wrote this pungent reply—“What!—Cannot Congress, when possessed of the immense authority proposed to be devolved, restrain the printers and put them under regulation?” In the same article in *Freeman’s Journal*, October 24, 1787 (Philadelphia) Centinel argues that the assertion of a republican government in the U.S. Constitution was but a pretense, for like the Roman Republic, its democratic procedures would be thrust aside by a president become Emperor who would rule with a vast standing army. “Augustus, by the aid of a great army, assumed despotic power....”<sup>199</sup>

The sessions of the Philadelphia Convention had been held in secrecy and this was another issue that stoked Anti-Federalist fears and complaints. However, as Elkins and McKittrick point

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<sup>198</sup> Madison, *Federalist*, No. 39.

<sup>199</sup> Reply to Wilson’s Speech: “*Centinel*” [Samuel Bryan] II, *Freeman’s Journal* (Philadelphia) October 24, 1787 *Debate on the Constitution Part One* (New York: Literary Classics of the United States, 1993), 80.

out, the true issue was whether the authenticity and legitimacy of the new federal constitutional system would take hold with most Americans in all the thirteen states.<sup>200</sup>

The Pennsylvania Assembly, in the hands of the Republican-Federalist majority, decided to call a ratifying convention to endorse the Federal Constitution. On September 27, 1787, Congress agreed to submit the Constitution to the states. On September 28, George Clymer, a signer of the Federal Constitution, called for a state convention to ratify the Constitution.<sup>201</sup> The Constitutionalist-Anti-Federalists opposed Clymer's motion. A vote was taken and Clymer's motion was carried forty-three to nineteen. Official news from Congress in New York, that the Federal Constitution had been endorsed by them, did not arrive in Philadelphia until the night of September 28. The Republican-Federalist majority had wanted to set the date for the ratifying convention and the procedure to elect delegates to it, however, they were stymied because the Constitutionlists had walked out in the afternoon session, and a quorum was lacking. On the morning of December 29<sup>th</sup> the sergeant-of-arms and an assistant clerk were sent out to tell the recalcitrant Constitutionlists that the official confirmation of the U.S. Constitution had been received. However, the Constitutionlists refused to return to the Assembly. Thereupon a sympathetic federalist mob dragged James McCalmont and Jacob Miley to the State House and into the Assembly. The quorum being achieved, the House voted to have the ratifying convention the first Tuesday in November. The number of delegates would be the same as the number of assemblymen. The ratifying convention would be held in Philadelphia.<sup>202</sup>

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<sup>200</sup> Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York: Oxford University Press, 1993), 59.

<sup>201</sup> Brunhouse, 200.

<sup>202</sup> *Ibid.*, 201.

The annual election for the Pennsylvania Assembly took place as usual in October, 1787. The issue of course was the ratification of the Federal Constitution. A Republican-Federalist majority was returned to the Assembly. The Constitutionalist-Anti-Federalists gained their seats from the back-counties in the western frontier areas of Pennsylvania.<sup>203</sup>

Like foes of old the Republican-Federalists faced off against their Constitutionalist-Anti-Federalist opponents in the ratifying convention on the first Tuesday of November, 1787. John Smiley and William Findley led the Constitutionalist, while James Wilson, Benjamin Rush, and Frederick Muhlenberg, led the Republicans. Thomas McKean, the Chief Justice of the Pennsylvania Supreme Court, was also now in the Federalist camp. Forestalling Constitutionalist-Anti-Federalist attempts to delay ratification, the Republican-Federalists called for a vote. Ratification was carried forty-six to twenty-three. Fundamentally, as Brunhouse points out, the Constitutionalist-Anti-Federalists saw their Pennsylvania Constitution of 1776 being undermined or destroyed by the ratification of the U.S. Constitution.<sup>204</sup>

As Elizabeth Pardoe argues, the State of Pennsylvania under the Constitution of 1776 was a community of the whole. The communitarian aspect defined the sovereignty of the State. It was not possible for the community to enter into the Federal Constitution as individuals. Pardoe notes Constitutionalist Robert Whitehill (leader from Cumberland County) attacked the opening phrase of the U.S. Constitution “We the people of the United States” as creating a nationalizing government of individuals devoid of communities, and therefore destructive of state sovereignty.<sup>205</sup> This was clearly not quite correct. As James Wilson had pointed out, the Electoral

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<sup>203</sup> Brunhouse, 202.

<sup>204</sup> *Ibid.*, 207-209.

<sup>205</sup> Pardoe, 260.



College feature of electing the president, and the compromise at the Philadelphia Convention which allowed two Senators from each state, were in fact communitarian features as they supported the sovereignty of the states. The fact that the frontier counties of Pennsylvania, Cumberland and Westmoreland, for example, consistently opposed the more urbane parts of the State, and were steadfast against the U.S. Constitution, has to do with a more localist orientation. As Centinel put it, they were common folk not the few well born. Their vision barely extended beyond Pennsylvania, if not their county boundaries. Why would the U.S. Constitution care about them?

### **The Carlisle Riot and Its Implications**

Saul Cornell writes in similar fashion about what he terms “the plebeian populists.”<sup>206</sup> In analyzing the Carlisle Riot, December 26, 1787, which took place in Carlisle, Cumberland County, Cornell conceptualizes the Anti-Federalists’ behavior as plebeian constitutionalism. This expressed itself in “popular rituals of plebeian culture,” such as ‘rough music’ and legitimized community punishment of offenders to their localist beliefs i.e., anti-ratification of the U.S. Constitution and anti-the better sort. As plebeians saw it “The only way to preserve that vision was to keep politics rooted in the locality, where the voice of the people could be heard without any intermediaries.”<sup>207</sup> Cornell astutely accents the Carlisle back-county feelings about their riot. “Subjecting respected political figures to symbolic humiliations usually reserved for individuals of the lowest social standing enacted a colorful ritual of status reversal and thereby reinforced the populist democratic ideals of plebeians.”<sup>208</sup> The specific facts of the Carlisle riot are not complex.

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<sup>206</sup> Cornell, 112.

<sup>207</sup> Ibid., 111.

<sup>208</sup> Ibid., 110.

Celebrating the ratification victory, December 12, 1787, local federalists attempted to express their jovial mood when they were assaulted by Carlisle Anti-Federalists in the streets. A cannon the federalists had was spiked and destroyed. Cumberland County and its town of Carlisle had been particularly hostile to the Federal Constitution. All four delegates from Cumberland had voted against ratification of the Constitution.<sup>209</sup> As Saul Cornell notes, the Anti-Federalists in Carlisle felt offended. Their ‘localist’ community were the people and they were expressing their ‘liberty’ in taking possession of the cannon since it was the property of the United States, and what belonged to the United States belonged to the ‘People.’<sup>210</sup>

An attempt to incarcerate some of the rioters essentially failed as local militia in consultation with federalists released the prisoners. There is a clear parallel here to the Fort Wilson riot of October 4, 1779, discussed above. Angry feelings were also involved there, with, unfortunately blood being shed. Cornell documents a frightening ideology which he calls “the radical democratic ethos.”<sup>211</sup> William Petrikin who was a leader of the Carlisle riot, stated that he had formed a volunteer militia company to stop the implementation of the U.S. Constitution, by blood if necessary. William Bard, a representative of Franklin County, which was directly south of Cumberland, echoed Petrikin and declared they would fight the U.S. Constitution same as they fought the British. In the radical democratic ethos the right to bear arms to form a militia-was “an expression of a permanent right of revolution.”<sup>212</sup>

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<sup>209</sup>Cornell, 110; Brunhouse, 207.

<sup>210</sup> Cornell, 113.

<sup>211</sup> *Ibid.*, 114.

<sup>212</sup> Cornell, 115.

Of course, this is exactly what was wrong with the unicameral legislature of Pennsylvania under the Constitution of 1776. Instead of the processes of law it was a license for the processes of revolution against fellow Americans. Because it supported a permanent right of revolution.

Would it be said then that rooted in popular sovereignty is a permanent right of revolution? And if so where is the law? Does the form of the Constitution as law control excessive passion of the legislature, speaking specifically of the Pennsylvania Constitution of 1776? Could the Pennsylvania Supreme Court strike down an Act of the unicameral legislature? Both the Executive Council and the Judiciary which it appointed were subservient to the legislature.

Informing on this subject, Professor G. Edward White writes:

But state judiciaries were not perceived, by those who had become disaffected with the Articles government, as truly independent of state legislatures. Nor were they perceived as a robust source of constitutional protection for individual rights, as the early American federal judiciary came to be perceived. One needs to recall that in the period between the ratification of the Articles government and the subsequent framing and ratification of the Constitution of the United States, no expansive conception of a government with power in separate branches that served to check and balance one another existed in American jurisprudence.<sup>213</sup>

As Cornell notes, Centinel, the fiery radical Anti-Federalist, was willing to go to the sword and anarchy in opposition to the Federal Constitution.<sup>214</sup> Writing in the *Independent Gazetteer*, February 26, 1788, Centinel says “The new constitution instead of being the panacea or cure of every grievance so delusively represented by its advocates will be found upon examination like Pandora’s box, replete with every evil.”<sup>215</sup>

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<sup>213</sup> White, 178.

<sup>214</sup> Cornell, 116.

<sup>215</sup> “Centinel” [Samuel Bryan] XVI, *Independent Gazetteer* (Philadelphia) February 26, 1788 *Debate on the Constitution Part Two* (New York: Literary Classics of the United States, 1993), 237.

The left wing extremism of William Petrikin and Samuel Bryan was not accepted by the middle wing of the Anti-Federalist movement, nor by its elite leaders like William Findley and Robert Whitehill. In an effort to amend the Federal Constitution to their liking or disavow it altogether, Anti-Federalists from various states moved to organize a second national convention. Federalists, naturally, opposed the second convention movement, and proposed that amendments be taken up by the first Federal Congress.<sup>216</sup>

In spite of reservations to the Constitution in many states, particularly, over a lack of a Bill of Rights, the Federalist idea of taking up this matter in the first Federal Congress was accepted by the states, except Rhode Island. Rhode Island, however, was a peculiar case, and they were not part of Anti-Federalist agitation. But Pennsylvania was. It was the first and only state to convene a second convention at Harrisburg on September 3, 1788, to take up the issue of amendments to the U.S. Constitution. Cornell emphasizes that if the “extreme democratic ethos” should prevail at Harrisburg “it would be a model for a broad national movement for a second convention and create the nucleus of an anticonstitutional movement.”<sup>217</sup> The Anti-Federalist delegates to the Harrisburg Convention were all chosen in absolute secrecy. Republican-Federalists were not aware of the organization of this event.<sup>218</sup>

William Petrikin, the violent plebeian populist from Carlisle, came to Harrisburg with the hope that his “radical program” for abolishing the U.S. Constitution would be adopted at the Convention, and then spread throughout the country.<sup>219</sup> Saul Cornell seems to replicate Steven

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<sup>216</sup> Cornell, 136.

<sup>217</sup> *Ibid.*, 137.

<sup>218</sup> Brunhouse, 214.

<sup>219</sup> Cornell, 137.

Rosswurm's ideas of violent revolutionary action. Rosswurm, regarding the Fort Wilson riot of October 4, 1779, deplored what he termed the betrayal of the "lower sort" (the Philadelphia militia) by the middling and elite Constitutionalists.<sup>220</sup> Cornell points to similar forces. The moderate Anti-Federalists, led by Charles Pettit, an establishment Constitutionalist-Anti-Federalist leader, and Robert Whitehill, also a strong moderate Anti-Federalist, repelled the violent ideas contained in the "radical democratic ethos" of William Petrikin. "For Pettit, the willingness of plebeian populists to take their grievances into the streets was an example of mobocracy, not republicanism, and had to be prevented at all costs....Middling democrats appreciated that latent radicalism unleashed by the riot could undermine their more moderate democratic agenda."<sup>221</sup> The Harrisburg Convention approved a set of amendments which would augment states' rights and individual rights, and limit the Federal Constitution to its express powers. These amendments were sent to the Pennsylvania Assembly to be communicated to the first Federal Congress.<sup>222</sup>

The annual election in October, 1788, to the Pennsylvania Assembly returned a two-to-one Republican majority. The main issue now was who would represent Pennsylvania in the first Federal Congress. Not trusting in this election, the previous majority Republican-Federalist Assembly, had chosen William Maclay and Robert Morris as Senators to the first Federal Congress. Members of the House of Representatives would be chosen in an election on the last Wednesday in November, 1788. Eight representatives and ten presidential electors were to be chosen by the people. Six Republican-Federalist representatives were elected along with two

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<sup>220</sup> Rosswurm, 226.

<sup>221</sup> Cornell, 138.

<sup>222</sup> *Ibid.*, 139.

ethnic German representatives, Peter Muhlenberg and Daniel Heister. These latter two representatives voted conservatively, as it was a straight Republican-Federalist victory.<sup>223</sup>

Part of the opposition in Pennsylvania to the U.S. Constitution, as well as in other states, was due to the lack of a Bill of Rights. Brunhouse mentions the Bill of Rights in a terse sentence, but it deserves more explication. Many Americans used to their individual states' Bill of Rights, were frightened by the spectre of a huge centralized apparatus ignoring them. James Madison of Virginia played the key role here. Initially opposed to a Bill of Rights, he reversed position and became its chief exponent and drove the first Federal Congress to pass the ten amendments known as the federal Bill of Rights.<sup>224</sup> This was done and much of the opposition to the Federal Constitution was defused. Rhode Island immediately assented to the Federal Constitution. Pennsylvania Anti-Federalists of the more moderate wing were also pleased.

Republican-Federalists in Pennsylvania, in majority control of the legislature, now moved to replace the Pennsylvania Constitution of 1776 with a state constitution similar to the new Federal Constitution. In the spring of 1789, on March 19, 1789, Republican-Federalists coalesced together at the City Tavern in Philadelphia, to discuss calling a convention to change the Pennsylvania Constitution of 1776.<sup>225</sup> The reasons were fairly logical. The U.S. Constitution should be emulated, since the continuance of the Pennsylvania Constitution of 1776 should be cast aside. The Republican-Federalists felt the unicameral legislature needed a check, like the Senate in the Federal Constitution. There was also the point that the Executive Council was not elected on the basis of population. An independent executive (Governor) like the president in the U.S.

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<sup>223</sup> Brunhouse, 215.

<sup>224</sup> Elkins and McKittrick, 61.

<sup>225</sup> Brunhouse, 222.

Constitution, was needed to more effectively handle business matters in Pennsylvania, and to veto legislative acts if necessary. The Republican-Federalists did not think changing the Pennsylvania Constitution of 1776 through its Council of Censors feature, was realistic. Assuming it would even agree to a convention, the process would take about three and a half years.

The best argument the Constitutionalists had was their point “that frequent changes in government would create a disrespect for constituted authority.”<sup>226</sup> The Constitutionalists returning again to the Council of Censors’ feature in the Pennsylvania Constitution of 1776, reiterated the point, that it would be meeting in a year, and that was the best method of changing the Constitution of 1776. However, the spirit of most of the populace of Pennsylvania was to effectuate immediate change. The Constitutionalists were employing delaying tactics. They were hoping to forestall Republican-Federalist attempts to replace the Constitution of 1776. There was no legal requirement to use the Council of Censors. The Republican-Federalist majority’s desire to call a convention was perfectly appropriate. Similar to what the Constitutionalists had done on any number of issues, the Republican-Federalists would pass an act in the legislature, the supreme body of the Pennsylvania government, to call a convention. In September, 1789, after due deliberation, the Republican-Federalists voted thirty-nine to seventeen to have a state constitutional convention in November, 1789.<sup>227</sup> The October, 1789, elections in Pennsylvania returned a decisive Republican-Federalist majority. Brunhouse states “that the Radicals were so far discredited as to be submerged by the increasing wave of conservatism.”<sup>228</sup>

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<sup>226</sup> Brunhouse, 222.

<sup>227</sup> *Ibid.*, 224.

<sup>228</sup> *Ibid.*

The State Constitutional Convention met in Philadelphia, in November, 1789. The Republican-Federalists were in strong majority control. The Anti-Federalists were in the minority. They were led as usual by their back-country men, William Findley, Robert Whitehill, John Smiley, and James McLene. Also with the Anti-Federalists was an able young newcomer Albert Gallatin. Similarly, the Republican-Federalists marshalled their astute veteran leaders, men with formidable legal talent, such as James Wilson, William Lewis, and a recent convert to the federalist cause, Thomas McKean, Chief Justice of the Pennsylvania Supreme Court.<sup>229</sup>

There were no bitter obstacles in this Convention. Early in the convention session William Findley and James Wilson had a quiet talk where Findley asked Wilson and his Republican members not to attack the Pennsylvania Constitution of 1776. Wilson agreed, but there was no question as to replacing it. A spirit of unanimity and compromise held in the Convention. For example, ultra-conservatives had proposed that a senate should be elected by the lower house. A coalition of Constitutionalist and moderate Republicans defeated the proposal and opted for the election of the senate by the citizens of Pennsylvania.<sup>230</sup>

The Constitutionalist-Anti-Federalists contributed to the writing of the Republican-Federalist Constitution of 1790. As Brunhouse notes “several of the provisions for popular education were credited to Findley.”<sup>231</sup> With everything agreed upon except for some details, Findley headed a committee of four to adopt a methodology for the transition of the government under the Constitution of 1776 to the new Constitution of 1790. Laws not contrary to the Constitution of 1790 would remain in force. The President and Executive Council would retain

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<sup>229</sup> Brunhouse, 225.

<sup>230</sup> *Ibid.*, 225-226.

<sup>231</sup> *Ibid.*



their authority until the third Tuesday in December. Vacancies, however, would not be filled. All appointees of the Council would remain in power until the first of September, 1791. Judges of the Supreme Court would serve out their terms. The first Senate would have eighteen members, who together with the President would be elected in the same manner as assemblymen. Brunhouse also notes that even in the heated back-county area of Carlisle, no petitions were offered against the Constitution of 1790.<sup>232</sup>

The convention adjourned on September 2, 1790. The Constitution of 1790 was signified as adopted by the people of Pennsylvania. It was not presented to the people of Pennsylvania for a vote, similar to the case of the Pennsylvania Constitution of 1776, which was also not submitted to the people for a vote. The Constitution of 1790 met with general acceptance by the Pennsylvania polity. On the next day, September 3, 1790, the Assembly rose up in unison and closed the House. The Pennsylvania Constitution of 1776 was no more.<sup>233</sup>

The issues of processes of law and processes of revolution are at the core of pre-civil war American Constitutionalism. The Pennsylvania Constitution of 1776 reflected the intertwining of law and revolution, while the Pennsylvania Constitution of 1790 reflected the victory of law as superior to popular sovereignty. For example, the Constitution of 1790 did not have any reference to community in its section of the text (Article IX) which contained the Bill of Rights... "they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper." In the Pennsylvania Constitution of 1776, the comparable text in the Fifth Declaration of Right... "And that the community hath an indubitable, unalienable

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<sup>232</sup> Brunhouse, 225-226.

<sup>233</sup> *Ibid.*, 227.

and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.”

The elimination of the reference to community in the Pennsylvania Constitution of 1790 is significant. The idea of community which has been discussed above was considered too attached to the potential for excessive majoritarian abuse of power, which the Republican-Federalists felt had been the case with the unicameral legislature under the Pennsylvania Constitution of 1776. The Carlisle Riot is another indication of this. There William Petrikin, the plebeian revolutionist, wanted to attack the Federal Constitution the same way his fellow Americans attacked the British. He believed in a permanent right of revolution derived from the fundamental idea of popular sovereignty. However, there in the community ethos of Carlisle, the people were above the law.

The preamble to the U.S. Constitution begins with “We the People,” but it does not have the clause which is in the Pennsylvania Constitutions of 1776 and 1790, that the ‘people’ can alter or abolish their government. Article V of the U.S. Constitution lays out a difficult process of amending the U.S. Constitution, “the Congress, whenever two thirds of both houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of the Constitution, when ratified by the Legislatures of three fourths of the several States.”<sup>234</sup>

The Pennsylvania Constitution of 1776 reflected in its emphasis on community the immediate revolutionary ethos of the people that was considered in perfect harmony with the revolution against the British. However, in post-war Pennsylvania, the excessive majoritarian emphasis of the unicameral legislature could not adequately adjust to the needs of a new America.

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<sup>234</sup> U.S. Constitution, art. 5.

It was out of tune, and therefore the Constitution of 1790 and the U.S. Constitution which it was patterned after, both were written in an attempt to deal with the new America, politically, socially, and economically.

The Pennsylvania Constitution of 1790 reflected, as did the U.S. Constitution, a more conservative approach to government, where law and its authority were more important than impassioned popular will. Dr. Christian G. Fritz points out that the Pennsylvania Constitution of 1790 “cut the electoral tie between county officials and the protesters. Instead of locally electing justices of the peace as under the 1776 Constitution, the 1790 Constitution gave the governor the power to appoint the justices. The new Constitution also expanded the jurisdiction of the county court of common pleas (whose judges were also appointed by the governor) and gave the court oversight of the justices of the peace.”<sup>235</sup>

### **The Whiskey Rebellion and Its Implications**

In referring to the protesters, Dr. Fritz is analyzing the constitutional issues raised by the Whiskey Rebellion (1794) in western Pennsylvania. Alexander Hamilton, Secretary of the Treasury under President George Washington, had recommended to Congress an excise tax on whiskey. Congress, in 1791, heeded the recommendation and passed the whiskey excise tax to be collected at the point of production. The excise tax applied to several states, but the farmers in western Pennsylvania were very upset at the tax.<sup>236</sup> Resentment against the excise tax smoldered in western Pennsylvania. What Cornell calls the “rituals of plebeian protest,” such as burning of excise men in effigy were undertaken. In July, 1794, armed tax resisters marched on the home of

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<sup>235</sup> Christian G. Fritz, *American Sovereigns The People and America's Constitutional Tradition Before the Civil War* (New York: Cambridge University Press, 2008), 161.

<sup>236</sup> Cornell, 200.

tax collector John Neville. This violent act precipitated further violence, as seven thousand tax resisters from western Pennsylvania marched on Pittsburgh.<sup>237</sup> To contain what he called an armed insurrection, President Washington in his address to the nation on September 25, 1794, where he proposed to march on western Pennsylvania. Quoting from his address “when the opportunity of examining the serious consequences of a treasonable opposition has been employed in propagating principles of anarchy, endeavoring through emissaries to alienate the friends of order from its support, and inviting enemies to perpetrate similar acts of insurrection...the contest being whether a small proportion of the United States shall dictate to the whole Union.”<sup>238</sup> President Washington summoned the militia of New Jersey, Pennsylvania, Maryland, and Virginia, totaling almost 13,000 men. Together with Hamilton, Washington marched his troops to Carlisle, then farther west to Fort Cumberland, and finally as far west as Bedford, Pennsylvania.<sup>239</sup>

Constitutional issues were raised by the insurrection in western Pennsylvania and the reaction to it by Washington who referenced defending the U.S. Constitution against “the combinations against the Constitution and laws of the United States, in certain of the western counties of Pennsylvania.”<sup>240</sup> Did the protesters in western Pennsylvania have a right to violently resist the excise tax on whiskey? If not, what were their rights under the U.S. Constitution? Saul Cornell raises these constitutional issues in a perceptive way, analyzing the objectives of the Anti-Federalists who were opposed to Washington’s military reaction. Some of these Anti-Federalists,

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<sup>237</sup> Cornell, 200.

<sup>238</sup> *Proclamation Concerning the “Whiskey Rebellion,”* Philadelphia, September 25, 1794, *George Washington Writings* (New York: Literary Classics of the United States, 1997), 882.

<sup>239</sup> Fritz, 153.

<sup>240</sup> *Proclamation Concerning the “Whiskey Rebellion,”* Philadelphia, September 25, 1794, *George Washington Writings* (New York: Literary Classics of the United States, 1997), 882.

like William Findley, had fought for the Pennsylvania Constitution of 1776 and against ratification of the U.S. Constitution. William Findley and Albert Gallatin were two of the foremost leaders of Anti-Federalists, Democratic-Republicans who opposed the federalist Washington-Hamiltonian policies.<sup>241</sup> These two men were against violence, such as plebeian “crowd action” and other extra-legal maneuvers. They were what Cornell calls middling democrats. They emphasized legal dissent based on the First Amendment’s Freedom of speech. But they were against speech that would be declarative of violence.<sup>242</sup>

According to Cornell, Findley also did not accept the concept of a natural aristocracy, which would be the steward of government.<sup>243</sup> Findley wanted government in the hands of the common man, the yeoman farmer, who would exercise governmental authority more as agents of the people that would recognize popular sovereignty as the ruler.<sup>244</sup> Cornell points out that “Findley repudiated the essential principle of plebeian populist constitutionalism, wherein the will of the people could be reconstituted spontaneously in local organizations such as the militia, the jury, or even the crowd.”<sup>245</sup> This is a reference to the radical plebeian democrat of the Carlisle Riot, William Petrikin, who again became a trouble-maker in the Whiskey Rebellion. “For Petrikin, erecting liberty poles was, not the end of protest, but merely the beginning. He sought to dissuade the local militia from joining federal forces marching against the rebels.”<sup>246</sup> In an

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<sup>241</sup> Democratic-Republican societies had sprung up against what they considered centralizing tendencies of the federal government, particularly Hamilton’s economic policies.

<sup>242</sup> Cornell, 202.

<sup>243</sup> *Ibid.*, 205.

<sup>244</sup> Fritz, 155.

<sup>245</sup> Cornell, 206.

<sup>246</sup> *Ibid.*, 208.

argument with moderate Anti-Federalist leader Robert Whitehill who warned Petrikin against violence and revolution, Petrikin reiterated his views that western Pennsylvania had the right of revolution against the Federal government and that the people of that region should set up a separate government.<sup>247</sup>

It was necessary for President Washington to march on the tax resisters in western Pennsylvania, because the legitimacy of the new U.S. Constitution was at stake. It had to be clear to all Americans that there now was a real Union with law flowing from the new U.S. Constitution. However, the new policies of the Washington administration, particularly, Hamilton's Bank of the United States, created fears on the part of even original supporters of the Constitution, like Madison and Thomas Jefferson, that the components of state sovereignty were under serious threat, due to centralizing tendencies of the central government. This was really the crux of the issue, the relationship of state sovereignty to the new federal government.

The Pennsylvania Constitution of 1790 had confirmed the conservative view of law as superior to popular sovereignty. The Pennsylvania Constitution of 1776 saw the people as superior to law. And that was the problem. There was the view, particularly in western Pennsylvania, that rooted in popular sovereignty was a permanent right of revolution. The Constitution of 1776, in its strong communitarian language in the Declaration of Rights gave license to this idea of permanent revolution.

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<sup>247</sup> Cornell, 209.

## CONCLUSION

As John Locke says “the end of Law is not to abolish or restrain, but to preserve and enlarge Freedom: For in all the states of created beings capable of Laws, where there is no Law, there is no Freedom.”<sup>248</sup> The forces of law shaped the expression of liberty in the construction of the American Union and in the Pennsylvania polity. My aim in this paper was to discuss the Pennsylvania Constitution of 1776, its causes and effects, through the prism of a methodological perspective of processes of law and processes of revolution. The processes of revolution engendered the political movement that gave birth to the Pennsylvania Constitution of 1776. But within the core of this movement the adherence to the idea of law and its expression in written constitutions remained paramount. The danger was that the revolutionary ethos of the Pennsylvania Constitution of 1776, particularly, as expressed in its unicameral legislature, was overflowing its embankment. There is a tension between structure and fluidity and the fluid nature of the Pennsylvania unicameral legislature, due to its belief that the formation of the U.S Constitution, which was an indigenous American legal structure, threatened all the achievements of the American Revolution in Pennsylvania and her sister states.

Of course this was not true. The inability of the Constitutionalist-Anti-Federalists to imagine a broader American universe resulted in their defeat, both in Pennsylvania, which saw the ratification of the Pennsylvania Constitution of 1790, and in the United States at large, with the ratification of the U.S. Constitution in 1789.

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<sup>248</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett, student edition (New York: Cambridge University Press, 1988), 306.

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