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## XXI.—PARTY STRUGGLES OVER THE FIRST PENNSYLVANIA CONSTITUTION.

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In speaking of the violence manifested in Pennsylvania by the opponents of the Federal Constitution, Madison says, in one of his letters to Jefferson:<sup>1</sup> "The cause of the inflammation, however, is much more in their State factions than in the system proposed by the convention." In this statement he gives the clew to the whole course of the contest in that State. The most superficial examination of the writings of those participating in it soon brings one face to face with this fact. Yet nowhere in the later writings about the Constitution, so far as the present writer is aware, is this fact taken sufficiently into account. Bancroft quotes this statement from Madison, but gives no elucidation of it; Curtis ignores the question; and Professor McMaster, despite his research in this field, by no means makes clear the relation of State to Federal politics in this connection. A brief account, therefore, of the party struggles in the State during and immediately following the Revolution, and the way in which these influenced the contest over the Federal Constitution, may not be without some general interest to students of American history.

At the beginning of the contest with Great Britain the control of affairs in Pennsylvania was still in the hands of the aristocratic element of the province, which centered in Philadelphia and the richer and more thickly settled counties adjacent thereto, and whose power politically was supported by the requirement of a £50 property qualification for the franchise. To the natural conservatism of this element, resulting from the possession of property and assured social position, there was added the conservatism springing from the religious

<sup>1</sup> February 19, 1788: Madison's Writings, I, p. 377.

principle of non-resistance held by the Quakers, who made up the most considerable portion of this section of the community. Despite the fact, therefore, that the Revolution largely took its origin from and found its most ardent supporters in men belonging naturally to the aristocratic class in Pennsylvania, the assembly lent but a lukewarm support to the patriot cause, and many measures earnestly desired by the patriot leaders failed in that body because of the innate caution and conservatism of its members.

There was, however, another element in the province well suited by temper and circumstances to play the part desired by the radical leaders, if only power in proportion to its numbers could be given it. This was the democracy, the party of the country, as the other was the party of the city. Its strength lay chiefly in the back counties, where the independent life of the settler and farmer, and the practical uniformity of material conditions, naturally stimulated the democratic instinct. As the former was the party of the Quakers and the Germans, this was that of the Irish and Scotch-Irish who had settled the outlying districts. Its temper was naturally averse to taxes and control; for fighting and a little disorder it had the fondness of the Celt. Further, the strong political instinct which seems to mark the Irish race rebelled at the barriers which so largely excluded it from active participation in political life.

With this element, therefore, alliance was early formed by the active patriots. In the election of the extra-constitutional committees of safety and provincial conferences, which play so important a part in the actual government of the period, no property qualification was required. The result was the selection of bodies much more radical than those chosen by the constitutional electors, and the adoption of measures in their sphere satisfactory to the ultra-patriots.

At first there seems to have been no attempt at the subversion of the existing province government. Many of the wisest and most patriotic of the Whigs, including Robert Morris, John Dickinson, Charles Thomson, and Thomas Mifflin, favored the continuance of government under the proprietary charter.<sup>1</sup> Its provisions were well adapted to the emergency. Elections were annual, the assembly met on a fixed day, and the governor

<sup>1</sup> See a letter of Charles Thomson reviewing the subject in Reed's *Life of Joseph Reed*, I, p. 153.

lacked the power to dissolve or prorogue that body. With the control of the assembly in the hands of the patriot party, constitutional government might be continued, and yet, in the face of a hostile executive, aid and support be given to the American cause. The only real difficulty was to secure control of that body, and this, they believed, patience, persuasion, and the logic of events would soon achieve.

But as the Revolution gathered headway and the majority in the assembly showed itself disinclined, by voting supplies, altering militia laws, etc., to keep pace therewith, the desire arose among the more radical of the Whigs for a new constitution and a new government to supersede the one under the charter. In this condition of affairs the assembly, on November 9, 1775, voted to instruct the Pennsylvania delegates in Congress to "dissent from and utterly reject any proposition, should such be made, that may cause or lead to a separation from our mother country, or a change of the form of this government."<sup>1</sup> The implied challenge was accepted, and the conflict was at once precipitated. Defeated in the assembly, the radicals transferred the contest to the committees of safety. As early as February 28, 1776, a majority of the Philadelphia committee had come to the decision that a provincial convention to revise the form of government was necessary.<sup>2</sup> The defeat of the radicals in Philadelphia at the elections held May 1, 1776, added new incentive to the movement.<sup>3</sup> And finally, the resolution of Congress of May 10, recommending the assemblies and conventions of the colonies to form State governments where there was not already a "government sufficient to the exigencies of their affairs,"—to which, on the 15th, a broader preamble was attached, advising the suppression of all government under the Crown and the substitution of governments based upon the authority of the people alone,—opportunistically, if not designedly, gave the requisite sanction to the movement.<sup>4</sup>

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<sup>1</sup> Life of Joseph Reed, I, p. 155. John Dickinson was the mover of the resolution.

<sup>2</sup> Christopher Marshall's Diary, p. 61. The edition of 1877 is the one to which reference is made.

<sup>3</sup> Life of Joseph Reed, I, p. 184. The result in Philadelphia was said to be due to a union of "the Quakers, Papists, church, Allen family, with all the proprietary party." (See Marshall's Diary, p. 68.)

<sup>4</sup> The preamble recites the fact that the King with Parliament has excluded the inhabitants of the colonies from the protection of his Crown,

The same day that this preamble was added the committee of safety for Philadelphia held an adjourned meeting to consider the foregoing recommendation, and it was there decided to "call a convention with speed," and to get up a "protest against the present assembly's doing any business in their house until the sense of the province was taken in that convention to be called."<sup>1</sup> On the 20th the assembly met. That same day a meeting of some four or five thousand persons was held in the Statehouse yard, and a protest to the above effect was adopted, based on the fact that the assembly derived its powers from "our mortal enemy the King of Great Britain," and that it had been elected "by such persons as were in real or supposed allegiance to the said King, to the exclusion of many worthy inhabitants whom the resolve of Congress hath now rendered electors."<sup>2</sup>

Things were fast nearing a crisis. After the 30th of May the ultra-Whig members of the assembly ceased to attend its sessions save long enough to secure the removal of the injunction laid upon the Pennsylvania Delegates in Congress to oppose independence.<sup>3</sup> For the greater part of the time the assembly was thus left without a quorum. On the 28th of September it finally expired, and with it the charter government of Pennsylvania, the last act of the assembly being to enter upon its journals a series of resolutions denouncing the convention by which its functions had been absorbed.<sup>4</sup>

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and is using force to crush the colonies; whence it is concluded that it is "absolutely irreconcilable to reason and good conscience" for the people of the colonies now to take the oaths necessary for the support of any government under the Crown, and that "it is necessary that the exercise of every kind of authority under the said Crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies for the preservation of internal peace, virtue, and good order, as well as for the defense of their lives, liberties, and properties against the hostile invasions and cruel depredations of their enemies; therefore" (Journals of Congress, II, p. 166):

"Resolved, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general." (Ib., p. 158.)

<sup>1</sup> Marshall's Diary, p. 71.

<sup>2</sup> Life of Joseph Reed, I, p. 186. It is curious to note the extent to which, in this last clause, the paramount authority of the Congress is recognized.

<sup>3</sup> Ib., I, p. 187.

<sup>4</sup> Ib., I, p. 188.

In the meantime a provincial convention for the framing of a State constitution had been elected,<sup>1</sup> and was then sitting at Philadelphia. In it equal representation had been accorded to each county and to the city of Philadelphia. To insure the return of proper persons the franchise in its election had been restricted, on the one hand, so as to exclude Tories and moderate Whigs by the requirement of an oath not "to bear allegiance to George III," nor directly or indirectly to "oppose the establishment of a free government in this province by the convention now to be chosen, nor the measures adopted by the Congress," while on the other it was extended so as to take in all "associators" or militiamen over the age of 21, whether possessed of the £50 property qualification or not.<sup>2</sup> By these means the control in the convention was given to the radical democratic element in the province, and the peculiar features of the constitution which was there produced must largely be ascribed to this fact.<sup>3</sup>

<sup>1</sup> The machinery by which this convention was called was rather peculiar. The Philadelphia committee of safety submitted the resolve of Congress to the county committees of the province with a call for a provincial "conference" to act in the matter. On June 19, 97 delegates, chosen by the county committees, met in such a conference, and they in turn unanimously resolved "that the present government of this province is not competent to the exigencies of our affairs," and issued a call for the convention. (See the proceedings of the conference in *Journal of the House of Representatives of \* \* \* Pennsylvania [1776-1781]*, with the proceedings of the several committees and conventions before and at the commencement of the American Revolution, Philadelphia, 1782 [Michael Hillegas, editor]. They may also be found in an abridged form in the volume entitled *Proceedings Relating to the Calling of the Conventions of 1776 and 1790, etc.*, Harrisburg, 1825.)

<sup>2</sup> Hillegas, *Journal and Proceedings*, pp. 36, 37.

<sup>3</sup> Other circumstances contributed to this end. The constitution was framed in the midst of war, amid the distractions of other business, and above all in what Gov. Edmund Randolph, of Virginia, speaking of the Articles of Confederation, calls "the infancy of the science of constitutions." The opponents of the constitution in the council of censors issued an address in 1784 in which they allege that errors and ambiguities were "to be expected from the time and circumstances under which the present constitution was formed. Our political knowledge was in its infancy. The passions of the State were unusually agitated. A large body of militia was busy in preparing to march to another State to oppose the progress of the British army. Another body of citizens to the amount of 5,000 was absent on the same service in the Continental Army. Amid the din of arms and the dread of invasion, and when many wise and able men were necessarily absent, whose advice and assistance would have been of great use,

The session of the convention lasted from July 15 to September 28, on which day the constitution was promulgated and the convention adjourned. From the minutes of that body<sup>1</sup> it is apparent that over its proceedings there was considerable contest, in which the minority were led by George Clymer and George Ross, while Franklin and Rittenhouse sided with the majority, but the points in dispute must largely be inferred from the nature of the constitution itself.

In this instrument<sup>2</sup> was provided what is probably the most democratic form of government ever tried by an American State. The constitution consisted of two parts—a bill of rights and a frame of government. In the former, among the usual and some quite unique declarations,<sup>3</sup> all property restrictions on the franchise were removed: the right to vote and be voted

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was it reasonable to expect that a constitution could be formed proper for a great and growing State?" (Proceedings Relating to the Conventions of 1776 and 1790, p. 81.)

<sup>1</sup> In Hillegas's Journal and Proceedings; also in Proceedings Relating to the Conventions of 1776 and 1790 (1825). The long session of the convention was due to the assumption by the convention of general legislative, executive, and judicial functions, and the transaction of much business other than that for which it had been called. This was more or less a characteristic of all the Revolutionary conventions.

<sup>2</sup> The constitution is most conveniently found in Poore's Charters and Constitutions; it is also in Hillegas's Journal and Proceedings, and several pamphlet editions are in existence.

<sup>3</sup> The following are some of the most noteworthy declarations:

"III. The people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.

"IV. All power, being originally inherent in and consequently derived from the people, therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

"V. 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 \* \* \* 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." [The last clause of this paragraph is important as affording later the basis for the extra-constitutional convention by which the constitution of 1776 was revised.]

In addition to the above, section 43 of the frame of government, which clearly belongs in the declaration of rights, secures to the inhabitants of the State the "liberty to fowl and hunt in seasonable times on the lands they hold and on all other lands \* \* \* not inclosed," and the same as regards fishing.

for was declared to be in "all free men having a sufficient common interest and attachment to the State." In the latter, the supreme legislative power was vested in a single house, unchecked by any other branch. Elections to it were annual, service in it was limited to four years in seven, and representation was proportioned to the number of taxables. The executive power was placed in the hands of a supreme executive council, whose president was a mere presiding officer. In this body each county, irrespective of population, had one representative, whose term of office was three years, followed by a four-year period of ineligibility. All executive power, including the appointing power and the granting of pardons, was vested in this body, and in addition its members were *ex officio* justices of the peace for the whole State. From all officers of government, whether legislative, executive, judicial, or military, an oath of allegiance to the State was required in the following form:

I, ———, do swear (or affirm) that I will be true and faithful to the Commonwealth of Pennsylvania, and that I will not *directly or indirectly* do any act or thing prejudicial or injurious to the constitution or government thereof, *as established by the convention.*<sup>1</sup>

The most singular feature of this singular constitution, however, is yet to come. Every seventh year, it was provided, a council of censors was to be elected, who were to hold office for one year. In this, as in the executive council, the representation was to be the same for each county, namely, two persons, no matter what the population might be. Its business was to "inquire whether the constitution has been preserved inviolate in every part, and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution." Its remedial powers, however, extended only to ordering impeachments, passing public censures, and recommending repeals. In it alone was vested the power of initiating amendments to the constitution.<sup>2</sup> If, it was provided, there should

<sup>1</sup> The italics are mine.

<sup>2</sup> In the preamble it is stated that "the following declaration of rights and frame of government [are proclaimed] to be the constitution of this Commonwealth forever, unaltered, except in such articles as shall hereafter on experience be found to require improvement; and which shall, by the same authority of the people fairly delegated, as this *frame of government* directs, be amended," etc. [The italics are mine.] This certainly

appear to the censors "an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people," they might call a convention, to meet within two years after their sitting, to effect such alteration; but in two ways the power to amend was hedged about. In the first place, in the calling of a convention the power of the censors was restricted by the requirement of a two-thirds vote; in other matters a mere majority was sufficient. In the second place, the convention when called could only consider such specific amendments as had been promulgated by the censors at least six months before the day appointed for the election of delegates—this previous publication being, as the section went on to say, to enable the people to "have an opportunity of instructing their delegates on the subject."<sup>1</sup>

The chief authors of this scheme of government, "with its plural executive and single legislature, and its universal oath of office \* \* \* not to alter or to counsel or attempt the altering of a single feature of it,"<sup>2</sup> are said to have been George Bryan, of whom we hear much from now on, and James Cannon, a schoolmaster of Philadelphia, who had taken an early and active part in the committee work of the Revolution.<sup>3</sup> The single legislative assembly is said to have been the work of Dr. Franklin, who to the end of his days retained his dislike for an upper house.<sup>4</sup>

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seems to preclude amendment in any mode other than through the agency of the council of censors, despite paragraph 5 of the declaration of rights. (See above, p. 376, note 3.)

<sup>1</sup> The only other State which has ever tried anything approaching a council of censors is Vermont. In the constitution adopted there in 1777 the Pennsylvania provision for a council of censors was copied almost verbatim, through the influence, apparently, of one Thomas Young, a citizen of Philadelphia, who had taken an active part in the Vermont movement for a constitution. In the latter State this feature of government proved more of a success than in Pennsylvania, and lasted certainly down to 1862. (See Jameson, *Constitutional Conventions* (1869), pp. 139 and 211.)

<sup>2</sup> Horace Binney, in *Penna. Mag.*, vol. 14, p. 11.

<sup>3</sup> Graydon's *Memoirs*, pp. 286, 287.

<sup>4</sup> See Sparks's *Life of Franklin*, pp. 408, 409, where this provision is said to have been carried after a brief speech by Franklin, who sat as president of the convention, in which he compared a legislature with two branches to a loaded wagon with a team at each end pulling in opposite directions. A pamphleteer of the time, while not ascribing the origin of this fea-

The constitution thus established was not then or ever submitted to the people for ratification, though a large proportion of the inhabitants of the State soon manifested signs of dissatisfaction with some of its most essential features. In less than two weeks after its promulgation "a severe satire" upon it appeared in one of the Philadelphia papers.<sup>1</sup> On the 21st and 22d of October, meetings attended by more than 1,500 people were held at Philadelphia, in which resolutions for a change in the frame of government were carried by a "large majority."<sup>2</sup> On November 5 elections for assemblymen and councilors to put the new government into execution were held. In both Philadelphia City and County the opponents of the constitution easily elected their ticket, and the voters there being called upon to pass on the question of councilors or no councilors at the same time, this provision of the constitution was condemned by a vote of more than two to one.<sup>3</sup>

"The party who believe the government to be a good one," said one writer, "is too inconsiderable to be noticed;" the only question was, whether to submit till peace came or to call for a new convention at once.<sup>4</sup> The latter was the position generally

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ture to him, says that both he and Rittenhouse supported it in the convention, and then adds: "Divine Providence seems to have permitted them to *err* upon this subject in order to console the world for the very great superiority they both possess over the rest of mankind in everything else except the science of government." (*Observations on the Present Government of Pennsylvania* (1777), p. 12.)

The origin of the council of censors some thirteen years after the convention was ascribed (whether in jest or earnest I can not say) to a waggish member, who moved this as a sort of a joke, disliking the proposed system and wishing to make it as ridiculous as possible. (*See Pennsylvania Gazette*, April 29, 1789.)

<sup>1</sup> Marshall's Diary, p. 95.

<sup>2</sup> *Ib.*, pp. 98, 99. The principal speakers against the constitution were Thomas McKean and John Dickinson; those in favor of it, James Cannon and Timothy Matlack.

<sup>3</sup> The vote stood as follows: Philadelphia City—Councilors, 211; no councilors, 406. Philadelphia County—Councilors, 133; no councilors, 370. (*Marshall's Diary*, p. 102).

<sup>4</sup> *Observations on the Present Government of Pennsylvania* (1777), pp. 20, 21.

The position taken by the moderate supporters of the constitution is illustrated by the following quotation from a letter written by Thomas Wharton, the first president of the council: "True it is," says he, "there are many faults which I hope one day to see removed; but it is true that if the government should at this time be overset it would be attended

taken in the eastern section of the State. Extensive petitions from the inhabitants of Philadelphia and vicinity were the next year presented to the assembly, praying for a new convention.<sup>1</sup> That same day (June 11, 1777), the supreme executive council—despite the provision of the constitution governing amendments—was induced to submit to the assembly a proposition to “take the sense of the majority of the electors throughout the counties on the important question whether a convention be holden at some proper time to reconsider the frame of government formed by the late convention.”<sup>2</sup> On June 17 this proposition was acceded to by the assembly, and the date and mode of obtaining a fair expression of opinion were agreed to. Before this could be carried out, however, came the invasion of the State by the British; and on account of this and certain “other circumstances” not specified in the published records, the measure was not carried into effect.

By this time the opponents of the constitution were not only thoroughly dissatisfied with the frame of the government, but also with the way in which it was being administered. “I have not time nor patience,” wrote one of them to a friend, “to mention in how many instances the assembly has infringed the *inviolable* frame of government, or to point out the impropriety of some late appointments; it is sufficient to say that the late steps give infinite dissatisfaction to the men of property and understanding. *The clamors of the red-hot patriots have subsided into easy places and offices of profit.* The posts of mere *trust* go a-begging. No one can be found to accept *them*. Whenever I reflect on the times I am seized with the blue devils; I walk about the room in a sweat, look at my family, and wish them and myself out of the way of vexation.”<sup>3</sup> Accordingly, at the annual elections in the fall of 1778 they made

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with the worst consequences, not only to this State but to the whole continent, in the opposition which we are making to Great Britain.”—Penna. Mag., vol. 5, p. 436. This was also the stand taken by William Findley and Thomas Paine. See respectively in Penna. Mag., vol. 5, p. 440, and Pennsylvania Gazette, April 12, 1786 (article signed “Common Sense”).

<sup>1</sup> Hillegas: Journal and Proceedings, p. 142.

<sup>2</sup> Colonial Records [“Pennsylvania Archives”], Vol. XI, p. 220.

<sup>3</sup> Judge Yates to Colonel Burd, Lancaster, March 29, 1777. In Letters and Papers relating chiefly to the Provincial History of Pennsylvania [Shippen Papers] (privately printed, 1855), p. 258, 259. The italics are in the printed copy.

strenuous exertions to overturn the dominant party,<sup>1</sup> and made considerable gains. In the assembly which followed, the advocates of revision refused to take the oath of office, save with a reservation of their right to work for amendments.<sup>2</sup> In their endeavors for a new convention they were again so far successful as to procure the passage of a resolution to take the sense of the people on the subject, and the details for a special election by which this was to be done were all fixed, together with a list of the changes proposed to be made in the constitution.<sup>3</sup> Again, however, the movement came to naught; for before the day set for such special election had come, petitions signed by more than 10,000 persons were procured from the back counties against the proposed step,<sup>4</sup> and on the 17th of February, 1779, by the overwhelming vote of 47 to 7, the assembly ingloriously rescinded its measure.<sup>5</sup> This seems like

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<sup>1</sup> On October 10, 1778, Judge Yates wrote Colonel Burd: "I have been doing little for these ten days past but electioneering. Matters have come at length to that pass that it becomes every good man to turn out and endeavor to procure a proper representation for the county he lives in. The many violations of the constitution by the late assembly have given the people at large the most general uneasiness and disgust, and strike the most ignorant with the propriety of an exertion at the ensuing election. \* \* \* In the city of Philadelphia, and other counties, every nerve will be strained to effect a change of men and measures." (Shippen Papers, p. 267.)

<sup>2</sup> Twenty-five members out of a total of 59 took the oath thus. The reservation was as follows: "The subscriber hereby expressly reserves to himself full liberty to adopt or pursue such measures as he may judge necessary for collecting the sentiment of the people on the subject of calling a new convention to revise, alter, amend, or confirm the said constitution, and reserving also full liberty of cooperating as well with his fellow-citizens in calling the said convention as with the said convention if called." (Hillegas: Journal and Proceedings, p. 232.) The allowing members to make this reservation was one of the acts reprobated and declared unconstitutional by the council of censors in 1784.

<sup>3</sup> Hillegas: Journal and Proceedings, pp. 246, 247. Both this and the similar act of the assembly of 1777 were declared by a committee of the council of censors to have been in violation of section 47 of the constitution. (Proceedings relating to the Conventions of 1776 and 1790, p. 111.)

<sup>4</sup> Hillegas: Journal and Proceedings, pp. 323, 324.

<sup>5</sup> Robert Morris, Thomas Mifflin, and George Clymer were of the minority, and joined with the others in a spirited protest to this action. (See Hillegas's Journals and Proceedings, p. 324.) The supposition of an agreement reached about this time to defer the subject of amendments till the election of the council of censors (see below, p. 385) may help explain the overwhelming vote by which the motion to rescind was carried.

prima facie evidence that the friends of the constitution felt themselves to be an actual minority of the eligible electors under the instrument, and dared not submit their cause to the whole people of the State.

On the other hand, despite the intense opposition which the constitution excited among many, it received the enthusiastic support of a very considerable portion of the inhabitants of the State. "Many," we are told, "support it, at all hazards."<sup>1</sup> Its thoroughly democratic character won for it the love of the populace, especially of the back counties. The alluring prospect of "uniforms and epaulets, with militia titles and paper money, making numbers of persons gentlemen who had never been so before,"<sup>2</sup> stimulated this class to intense enthusiasm for the patriot cause, and the embodiment of that cause they saw in their State constitution. Their leaders, too, of whom many now came to the front, found in the ease with which legislation could be effected under it and the large number of profitable offices placed by it in their disposal means not only to that power so dear to the heart of every politician, but also to a comfortable livelihood.<sup>3</sup> They were certainly very patriotic, but then, as Graydon remarks, the part "is played in very different styles;"<sup>4</sup> and in many cases it is difficult to determine whether patriotism or self-interest was the dominating principle.

The result of the struggles for a new convention, joined to the dissensions which already existed over the question of independence and the "uneasiness and disgust"<sup>5</sup> excited in many persons by the violence of the measures which the popular leaders urged through the assembly, was the crystallization of the already discordant elements in the State into two bitterly antagonistic political parties. By what is almost a perversion of terms, the radical party, which found its ideal embodied in the existing constitution, took the name of Constitutionalists. This was the party of the ultra or "yellow" Whigs. Its strength lay chiefly in the outlying districts,

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<sup>1</sup> Yates to Burd, March 29, 1777, Shippen Papers, p. 258.

<sup>2</sup> Graydon's Memoirs, p. 285. The references are to the edition of 1846.

<sup>3</sup> For assertions of the part played by the spoils of office in the contest, see McMaster and Stone's *Pennsylvania and the Federal Constitution*, pp. 149, 451, etc.; Lloyd's *Debates of the Convention of 1787*, p. 82; and innumerable places in the *Pennsylvania Gazette* between 1785 and 1789.

<sup>4</sup> Graydon's Memoirs, p. 288.

<sup>5</sup> Yates to Burd, October 10, 1778; Shippen Papers, p. 267.

where there was little education, no newspapers, and in general scant means of communication or information. It was the party of the democracy—suspicious, bigoted, easily swayed by demagogues to their own ends. Its chief leader was George Bryan, an Irish immigrant, possessed of considerable information and ability, but apparently unscrupulous, and a born politician of a type familiar in our own day. In the convulsions to which Pennsylvania was now exposed he rose to the presidency of the council, and was then appointed one of the judges of the supreme court of the State. In Philadelphia, Timothy Matlack was one of its shining lights; and Franklin, Rittenhouse, and Jared Ingersoll were claimed for it.<sup>1</sup> In the country the efforts of Bryan were ably seconded by Robert Whitehill,<sup>2</sup> John Smilie,<sup>3</sup> and William Findley<sup>4</sup>—a trio almost constantly

<sup>1</sup> Upon Franklin's return from France in 1785 his position was rather that of a neutral. "His demeanor to both parties," says Graydon, "was so truly oily and accommodating that it always remained doubtful to which he really belonged, and while president of the executive council, to which office he had been elected on his return from France, he sedulously avoided voting on questions which partook of the spirit of party." (Graydon's *Memoirs*, p. 286.) See also his own letters to Thomas Paine (Franklin's Works, Bigelow's edition, IX, p. 266), and to Edward Bancroft (*ib.*, p. 279). Neither Rittenhouse nor Ingersoll took an active part in the contest either way.

<sup>2</sup> Whitehill was the only one of the three born in this country, and he was of north-of-Ireland blood. His entrance into politics was in the constitutional convention of 1776. Of his obstinacy in debate Robert Morris said: "Even were an angel sent from Heaven with proper arguments to convince him of his error, it would make no alteration with him." (Carey's *Bank Debates* of 1786, p. 77.) To the same effect is the testimony of a moderate Federalist, who, in speaking of his speeches in the ratifying convention of 1787, calls him "the monotonous and pertinacious Whitehill." (McMaster and Stone's *Pennsylvania and Federal Constitution*, p. 450.)

<sup>3</sup> Smilie was an Irish immigrant whose family had settled in Pennsylvania. His first State service was in the provincial conference of 1775. Almost continuously from 1778 to his death he was prominent in State politics, and he served for nine terms in Congress under the Constitution.

<sup>4</sup> Findley also was an immigrant of Scotch-Irish blood, who finally settled in the western parts. His first State service was in the council of censors of 1783, which, he says, was "the best public school in which I have ever sat." He seems decidedly to have been the ablest and most fair-minded of the three. Morris, in the *Bank Debates* above quoted, speaks of him as "a gentleman for whose understanding and abilities I have great respect, and who generally supports what he undertakes to defend not only with strength of reasoning, but manages it with candor." (Carey, p. 86.) Findley himself, writing in 1812, says: "Through three

in office, in the assembly or council, and almost invariably in unison upon every detail of political policy.

To this party was opposed those who styled themselves Republicans and whose political platform may be summed up as opposition to the constitution of 1776 and the party by which it was conceived and administered. Among its active leaders were Robert Morris, James Wilson, Dr. Benjamin Rush, George Clymer, Thomas Mifflin, and others whose names are intimately connected with our national history.<sup>1</sup> Here were ranged the Whigs of the "better sort"—the "well-born"—who believed that "power \* \* \* had fallen into low hands."<sup>2</sup> It was preeminently the aristocratic party, and though the pulses of its leaders had "beaten high in the cause of Whigism and Liberty" during the first stages of the struggle with Great Britain, it was more than suspected that the extent to which that struggle had been pushed and the violence which had characterized the administration of internal affairs in the hands of the popular party had considerably cooled them. They were generally the men of property and of education in the State. The lawyers were almost unanimously of this party, and for a time were in substantial agreement not to practice or accept office under the constitution so long as that instrument remained unamended.<sup>3</sup> The Quakers were practically driven into this party by the requirement of test oaths or affirmations which no conscientious member of that society could take.<sup>4</sup> Aside from these elements from the

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of the four years in which by rotation I could serve in the legislature, the parties were pretty generally balanced, and I was allowed to have the principle [sic] influence, and this induced me to be very carefull [sic] to conduct myself with moderation." (See *Penna. Mag.*, vol. 5, p. 444.) In the whisky insurrection of 1794 Findley played a prominent part, and wrote a history of that movement in apology therefor. In later life he served for twenty-four years in Congress from one of the western districts of Pennsylvania.

<sup>1</sup> As an offset to the foreign birth of most of the Constitutionalist leaders, it should be noted that many of the most prominent among the Republicans also were foreign born, viz, Morris in England, Wilson in Scotland, and Fitzsimmons in Ireland.

<sup>2</sup> Graydon's *Memoirs*, p. 283.

<sup>3</sup> *Ib.*, p. 332.

<sup>4</sup> A clause of the oath which gave particular offense was that requiring affiants to turn informer by discovering to some justice of the peace "all treasons or traitorous conspiracies \* \* \* against this or any of the United States of America" of which they might then know or thereafter

disintegrating Whig party, the Republicans seem also to have courted an alliance with the passive Loyalists who remained in the State,<sup>1</sup> and though by this means their numerical strength was somewhat increased, the additional odium which thereby attached to their party in the eyes of the populace more than compensated for the gain.

After the failures in 1778-79 of the attempt to secure the voice of the people on the question of a new convention, no further efforts were made in that direction for ten years. Some sort of an agreement seems to have been entered into between the friends and the opponents of the constitution<sup>2</sup> to let the matter rest until the council of censors should meet, when amendments might be procured in a constitutional way—by implication, at least, the Constitutionalists promising not to oppose the attempt when that time should arrive.

From 1778, accordingly, party disputes centered in the measures by which the constitution was administered. But the briefest summary can be given here of the course of events. In 1779 the Constitutionalists "got full possession of the government."<sup>3</sup> On October 1 of that year there was then enacted a test law surpassing all previous efforts in this direction, by which it was provided that all white males who had not taken the previous oaths of abjuration and allegiance should, within

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become informed. No neutrals, apparently, were to be allowed save under penalty of loss of citizenship. Those refusing to take the oath were to be debarred from voting or holding office, serving on juries, suing for debt, selling or transferring real estate; were liable to be disarmed, and upon traveling out of their city or county might be arrested as spies. (See the oath in Westcott's Test Laws, p. xviii.)

<sup>1</sup> Graydon's Memoirs, p. 332.

<sup>2</sup> Various traces of such an agreement are to be found, for example in the letters of Gen. Joseph Reed of this time (see Reed's Life of Reed). In Stillé's Life of Wayne, p. 303, is also an assertion of such an agreement. Thomas Paine, with characteristic egotism, ascribes the cessation of attacks in the papers upon the constitution after 1779 to the fact that at that time he lent the aid of his pen to the Constitutionalists. (See Pennsylvania Gazette, April 12, 1786.)

<sup>3</sup> Paine ("Common Sense") in Pennsylvania Gazette, April 12, 1786. 1779 was a crisis year in Pennsylvania, when the rise of all prices, actually due to the depreciation of the currency, but ascribed to "forestalling," "engrossing," and kindred abuses practiced by Tories and Moderates, was just beginning severely to be felt. This fact appears to be of prime importance in explaining the Republican reverse of that year, and also the riot at Philadelphia October 4, 1779. (See note 2, p. 386.)

sixty days, take a yet more stringent oath on pain of forfeiture of their civil rights.<sup>1</sup> By this act "several thousand persons," including "many valuable Whigs" who were "principled against war," were excluded from all active participation in public affairs. Other measures of equal violence followed; in short, the political condition from 1778 to 1781 can not better be expressed, from the Republican point of view, than in the words of a correspondent of Gen. Charles Lee. "Poor Pennsylvania," he laments, "has become the most miserable spot upon the surface of the globe. Our streets, alas, have been stained already with fraternal blood, a sad prelude we fear to the future mischiefs our constitution will bring upon us; they call it a democracy—a mobocracy in my opinion would be more proper. All our laws breathe the spirit of town meetings and porter shops."<sup>2</sup>

In this condition affairs continued until 1781. In that year the Republicans succeeded for the first time in getting control of the assembly, and for the next three or four years the administration of government was practically in their hands.

<sup>1</sup>For the date of this act see Hillegas's Journals, etc., p. 379. For the oath and arguments against the act see a pamphlet entitled *Considerations upon the Present Test Law* (2d ed., 1785). The material portion of the oath was as follows: "I, A. B., do solemnly and sincerely declare and swear, or affirm, that the State of Pennsylvania is and of right ought to be a free, sovereign, and independent State; and I do forever renounce and refuse all allegiance, subjection, and obedience to the King or Crown of Great Britain. And I do further swear that I never have, since the Declaration of Independence, directly or indirectly, aided, assisted, abetted, or in any wise countenanced the King of Great Britain, his generals, fleets or armies, or their adherents in their claims upon these United States, and that I have ever since the declaration of the independence thereof demeaned myself as a faithful citizen of this or some one of the United States; and that I will at all times maintain and support the freedom and sovereignty and independence thereof." (*Considerations on the Test Law*, p. 3.)

<sup>2</sup>See letter of October 24, 1779, signed "An Old Friend," in *Memoirs of Charles Lee* (London, 1792), p. 286. The author of this and other letters over the same signature was probably Dr. Benjamin Rush. The bloodshed alluded to occurred at Philadelphia October 4, 1779, when a mob of the ultra-Revolutionists attacked the house of the eminent patriot, James Wilson, where he and some thirty others of the Republicans had barricaded themselves. Wilson's offense seems to have consisted in defending in his professional capacity certain Tories on trial on various charges; but see also note 3, p. 385. For very full contemporaneous accounts of this riot see *Life of Joseph Reed*, Vol. I, p. 149 et seq., and Vol. II, appendix; also, *Penna. Mag.*, vol. 5, p. 475.

In 1783 a council of censors was elected, and during this and the next year held several sessions.<sup>1</sup> In it, owing to the

<sup>1</sup> The journal of the council of censors, a committee report, and some other matter relating to its sessions was printed in German and English at the time. Its proceedings may also be found in the volume entitled *Proceedings Relating to \* \* \* the Conventions of 1776 and 1790.* (1825.) But as all these sources are comparatively scarce a synopsis of the proceedings is given here. The council met November 10, 1783, and organized with the election of Frederick A. Muhlenberg, who was later to be Speaker of the first Federal House of Representatives, as president. It held two sessions, the first lasting until January 21, 1784, and the second beginning June 1 and continuing until September 25. In the first session the Republicans had a majority of the members present. Two committees were appointed, the one "to inquire whether the constitution has been kept inviolate," and the other to consider what alterations, if any, were necessary in the constitution.

On January 17 the latter committee reported, proposing two houses to the legislature, a single executive, life terms for supreme judges, and no compulsory rotation in office; and this report was adopted, 12 to 9, on every point. But as this was less than two-thirds of the whole, the Republicans had to content themselves with issuing (by a vote of 12 to 10) an address to the people, whom they styled "the sovereigns of Pennsylvania," urging them to initiate a revision of the constitution through agencies other than the council of censors. "Nothing," the address says, "can be obligatory on you which is contrary to your inclinations or repugnant to your happiness." In the second session, however, the Constitutionals had more of their members present and controlled proceedings. By a vote of 14 to 10 it was then "*Resolved*, That there does not appear to this council an absolute necessity to call a convention to alter, explain, or amend the constitution." Thus the movement for amendments failed.

The final report of the committee on violations was not handed in until August 5. By repeated additions to its numbers, the Constitutionals had secured a majority of its members, hence the report was strongly Constitutional. "Various and multiplied instances of departure from the frame of government" were reported, among which were: (1) Acts for seizing goods for the use of the army and setting prices on them, and also acts fixing the prices of commodities; (2) the permitting members of the assembly to hold other offices at the same time (the office of county treasurer, etc.); (3) the allowing assemblymen in 1778 to take the qualified oath of allegiance; (4) the passing of many bills without publication, and at the same session, against section 15 of the constitution; also legislation by resolves only, unpublished and und deferred (among others, the assent to the Congressional scheme of 1783 for changing the mode of assessing quotas); (5) the assumption by the assembly of power to appoint to office in cases not reserved to it by the constitution; (6) the withholding of trial by jury in many instances; and (7) the recognition in the bank act of 1782 of the right of Congress to erect corporations. But on the general subject of the constitution the committee said: "The supposed

equal representation of counties and the requirement of a two-thirds vote to call a convention, the Constitutionalists had full control. The proposition to call a convention to take into consideration certain amendments to the constitution was defeated by them, and the agreement of 1778-79—if such existed—was broken. The indignation of the Republicans was intense. "The rascals know well enough," wrote Frederick A. Muhlenberg, then the president of the council of censors,<sup>1</sup>

doubts and difficulties, the contradictions and absurdities imputed to the constitution, which have been industriously and insidiously suggested to the people as rendering it an impracticable system of administration, and as justifying acts of government in violation of it, have vanished before us as we proceeded." This report was then adopted by a vote of 14 to 9.

Finally, the day before its adjournment, the council, by a vote of 12 to 9, adopted an address, saying: "We are firmly persuaded that the constitution of Pennsylvania needs only to be faithfully administered by men who are honestly disposed to support it according to its true spirit and intentions [i. e., by the Constitutionalists, who were then out of power] to be the best system of government in the world."

<sup>1</sup> To his brother, June 28, 1784. The letter is excellent as showing the tone of party feeling. "The blind passion and mad party spirit of the common crowd," says he, " \* \* \* are so strong and bitter that they would rather put up with three times as many defects of the constitution than with a convention. But is this not a real aristocracy when a few leaders of the party, by untiring effort, manage to withhold from the people, of whom their power is derived, the people's own power? Do they not betray a ridiculous fear that in a convention based upon equal representation of the people (for such does not exist in the council), the people might alter the constitution? \* \* \* Is it just that 1,500 taxables in Washington, Bedford, Westmoreland, or other back counties, who, by the way, have paid little or no tax during this Revolution, should have as much to say in the council of censors as 8,000 from Lancaster, or 7,000 from Philadelphia, who bear the burthen of the State? \* \* \*. Take the real number of taxables each member of our council represents, and you have a great majority of the good people of the State for a convention. \* \* \* In brief, the whole thing is a farce, costs the State five thousand or six thousand dollars, keeps the people in a ferment, and is not worth a farthing. I am ashamed to be a member, and if it might not be said, 'You forsook the vessel in the storm,' or 'You are afraid to weather it out,' I would have resigned long ere this; perhaps I should do so yet, for I can neither before God nor the world answer for thus wasting my precious time, robbing the State, and doing only mischief. The fellows from the back counties now hope to stay here till next October to draw their 17s. 6d. and to return home with a well-filled purse. Some of them will get at the end of the session more money than they ever had in their lives. In short, dear brother, I am losing patience and draw a deep sigh at the corrupt political condition of our State." (*Penna. Mag.*, vol. 13, pp. 199, 200).

"if the intelligent part of the people and, I assert also, if a majority of the people were properly and equitably represented in the convention, that a change would be the consequence, and they would be unhorsed."

Nevertheless, owing to the intemperance with which the Republicans urged amendments, to the economic evils following on the heels of peace and for which the party in power was held responsible, and to the active exertions of their opponents, by "a turn of the elections" the Constitutionalist party was reinstated in power in 1785. Their action thenceforth was more violent than ever. The State charter of the Bank of North America, which a Republican assembly had granted in 1782, was repealed—clearly in violation of all law and justice.<sup>1</sup>

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<sup>1</sup> For the struggle over the bank, see *Considerations on the Bank of North America* (1785); "Remarks," on the above (1785); *Matthew Carey's Debates and Proceedings \* \* \* on the Memorials Praying a Repeal \* \* \* of the Law Annulling the Charter of the Bank* (1786); Paine's articles on the bank in the *Pennsylvania Gazette*, 1785-86, etc.

The chief objections alleged against the bank were three: (1) A "progressive diminution of the circulating medium" must ensue, owing to the limited ability of the bank to supply circulation and its interested hostility to the issue of other paper, whence would result a "high rate of money," discouraging agriculture and immigration, encouraging importation, and "expediting the transportation of gold and silver to other countries." (2) Its large capital (\$10,000,000), small number of directors (twelve), and unlimited duration, coupled with the natural conflict of interest between it and "the State" (i. e., the agricultural interest) as to paper money, made its political influence dangerous. (3) It was adopted merely to facilitate, not to augment, circulation, and hence was beneficial only to the mercantile class. (See "Remarks," etc., above.)

Paine, who had supported the Constitutionalist cause hitherto, broke with that party on this issue. He had attempted to dissuade Smilie, who seems to have headed the movement, from this measure, warning him that it "would ruin the whole interest of the Constitutionalist party" and "overset the constitution," but in vain. The moving cause of the opposition to the bank Paine charges to have been the self-interest of certain moneyed citizens of Philadelphia, especially of "Mr. George Emlen," with whom Smilie et al. had formed a coalition. (*Pennsylvania Gazette*, April 12, 1786.)

The revocation of the charter was carried by a vote of 50 to 12. In the next assembly (1786) a committee reported that "the report made to the late house [which had led to the repeal of the charter] was grounded in general notions preconceived, or on the current popular opinions and speculations;" that that committee had not investigated the bank or made any charges against its administration, and that it had been denied a hearing in the house until after a second reading and publication of the

A loan office—"one of the most masterly strokes of national good sense," as it was characterized by John Smilie<sup>1</sup>—was then set up in its stead for the issue of more paper to swell the volume of the already depreciated currency. To petitions of the nonjurors for readmission to the rights of citizenship a deaf ear was long turned, and the official recommendation of President Franklin alone procured for them a tardy and partial amelioration of their lot.<sup>2</sup> Two measures were then passed, by a deal through which it was sought on the one hand to conciliate certain city adherents, and on the other to gratify the back-county settlers.<sup>3</sup> The first of these was a funding measure, by which Pennsylvania agreed to pay the interest on all the Federal debt held by its citizens, thus assuming a much larger proportion of the same than was her just quota. The other was a land law, by which State lands were to be sold at a price fixed, it was alleged, considerably below their market value. Finally, a new election law was passed, which their opponents charged was directly in the interest of their own party.<sup>4</sup> No limitations imposed by their boasted constitution,

bill, and therefore the repeal of the repealing act was recommended. This report was then debated for about a week, Robert Morris (a stockholder), George Clymer (a stockholder and director), and Thomas Fitzsimmons taking the lead on the Republican side, while Robert Whitehill, William Findley, and John Smilie spoke for the Constitutionalists. The report was then rejected by a vote of 28 to 41.

I have gone thus fully into the details of this measure because it unquestionably contributed more than any other element to the overthrow of the Constitutionalists in 1786 and secured the submission of the Federal Constitution to a Republican assembly.

<sup>1</sup> Carey's Bank Debates, p. 124.

<sup>2</sup> Act of March 4, 1786. An oath or affirmation was still required renouncing allegiance to George III, promising to "bear true allegiance to the Commonwealth of Pennsylvania as a free and independent State," and declaring that the affiant had not, since the Declaration of Independence, "voluntarily joined, aided, assisted, or abetted" the British forces. A petition was presented from Dauphin County about this time, signed by 144 persons, in which armed resistance was threatened if the nonjurors were admitted to citizenship. The total repeal of all laws requiring an oath or affirmation of allegiance to the State was not secured until March 13, 1789. (See *Pennsylvania Gazette*, March 18, 1789.) The best account of the prolonged struggle on this subject may be found in Westcott's *Names of Persons who took the Oath of Allegiance, \* \* \* with a History of the Test Laws*.

<sup>3</sup> *Pennsylvania Gazette*, May 4, 1785.

<sup>4</sup> Among other objections the Republicans alleged that the polling places were so placed that members of their party must travel long distances in order to vote. (See *Pennsylvania Gazette*, September 21, 1785.)

it was claimed by the Republicans, could hinder the party in power from achieving their ends. "Those gentlemen who pretend to be Constitutionalists," exclaimed one assemblyman in 1786, "thought themselves exempt from attending to the constitution; they made it a nose of wax, which they twisted at pleasure."<sup>1</sup>

Despite the active canvass made by the Republicans in 1785 their opponents were again successful at the election held in the fall of that year. By the next election, however, the tide had turned. The violence of the last two sessions—especially the unwarranted and unjustifiable measures against the bank—failed to meet with the approbation of the more moderate and intelligent of the citizens, and the result was the election of a strongly Republican assembly.

This, then, was the situation in Pennsylvania when the people were called to pass upon the momentous question of the new Federal Constitution. In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two—Franklin and Ingersoll—if not neutral, were at most but moderate Constitutionalists.<sup>2</sup> On the other side the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.

Before the work of the convention had been made public, it was anticipated that the Constitution would be such a one as would strengthen the Republican cause. "The new Federal

<sup>1</sup> Carey's Bank Debates, p. 114. To the same effect is the testimony of a writer signing himself "A Citizen," in the *Pennsylvania Gazette* for September 28, 1785: "The constitution," wrote he, "which ought to be the bulwark of the people's rights and privileges, has been trod under foot, and a majority of the present assembly, rather than relinquish the scheme of governing for their own benefit exclusively, would sacrifice the constitution itself and all its real friends."

<sup>2</sup> Findley had declined an appointment to the convention because no "wages" were to be paid, and he, as a poor man, living remote from the seat of deliberations, could not afford to attend at his own expense. (See his letter to Plummer, in *Penna. Mag.*, vol. 5, p. 444.)

Government," Rush had written to Pickering, August 30,<sup>1</sup> "like a new continental wagon, will upset our State dung cart, with all its dirty contents, reverend and irreverend, and thereby restore order and happiness to Pennsylvania." All Republicans, accordingly, were prepared to accept it. On the other hand, as early as July—so it was asserted<sup>2</sup>—the leaders of the Constitutionalists had agreed that if the plan proposed interfered in the least with the constitution of Pennsylvania it ought to be rejected.

On September 17, 1787, the Federal convention rose from its long session and transmitted the result of its labors to Congress. At 11 o'clock the next morning Franklin and the other delegates from Pennsylvania waited upon the assembly of that State and laid a copy of the Constitution before it. At first the Republican leaders seemed disposed to await the formal submission of the new plan by Congress. But the action of that body was unexpectedly delayed; the 29th was the day set for the final adjournment at the assembly, and the friends of the new Constitution found that they must take some decisive step, else the question would go over to the next assembly, which might or might not be of the same political complexion.

Accordingly, on the morning of the 28th, a series of resolutions was unexpectedly introduced, arranging the details for a convention to pass upon the proposed frame of government. The Constitutionalists were taken unawares. They protested loudly against the precipitancy of the measure, but in vain. They were outnumbered, and before the adjournment for the midday recess the first resolution, that a convention be called, was carried by a vote of 43 to 19. Then the Constitutionalists absented themselves to break the quorum and prevent the fixing of the necessary details of time, place, etc.<sup>3</sup> For a while

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<sup>1</sup>Upham's Pickering, II, p. 301.

<sup>2</sup>See newspaper extract in McMaster and Stone's *Pennsylvania and the Federal Constitution*, p. 114.

<sup>3</sup>Notall, however; nine of that party remained and acted with the Republicans in this matter. (See McMaster and Stone's *Pennsylvania and the Federal Constitution*, p. 110.) The presence of two-thirds of the members was necessary to constitute a quorum, under the State constitution. A similar attempt to block legislation by breaking the quorum by concerted absence had been made by the same party in 1784, when a proposition was under consideration to mitigate the rigors of the test laws. It is curious to note, also, that exactly the same number, namely, nineteen members, were concerned in it. (See Westcott's *Names of Persons taking the Oath of Allegiance*, etc., p. xxxiv.)

it looked as if these tactics would succeed and the call be aborted. But on Saturday, the last day of the session, two of the bolting assemblymen were forcibly hustled into the Statehouse by a mob of Philadelphia citizens, and with a quorum thus secured the call was perfected and the assembly adjourned *sine die*.

It is easy, of course, to understand the reasons which operated with the Republicans in inducing them to this step, but the seriousness of the consequences to the Federal cause which followed therefrom, not only in Pennsylvania, but throughout the Union, is not thereby lessened. The opposition which before was merely latent among the Constitutionalist leaders, at once became active. The division over the Federal Constitution came to be largely on the lines of the existing division over the State constitution, with the relations reversed. The Republicans "to a man" became Federalists. With them, it is true, acted on this issue "many of the wisest and best Constitutionalists."<sup>1</sup> But under the "maddening jealousy of partizanship"<sup>2</sup> the major portion of the latter party, including its active leaders, Bryan, Whitehill, Findley, and Smilie, became bitter and vehement opponents of the proposed scheme of government. "The unaccountable zeal and precipitation" with which the Republicans sought to "hurry the people into a premature decision"<sup>3</sup> aroused the jealousy and suspicions of the back-country settlers, and this being artfully fanned by the Constitutionalist leaders resulted in an opposition which was the most vehement experienced in any State, and which lacked little of ending in armed conflict.

The essence of the objections urged to the proposed Constitution was that it was anti-democratic. "The present con-

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<sup>1</sup> Pickering; see Upham's *Life of Pickering*, II, p. 340.

<sup>2</sup> This is the cause assigned by a moderate writer in the *Pennsylvania Gazette*, February 6, 1788. Among other causes for the opposition, Republicans charge: (1) The fear of the Constitutionalist leaders lest they should have fewer offices and smaller salaries for themselves and their friends; (2) a fondness for paper-money, tender and bankruptcy laws, and (3) the knowledge that under the new order of things the collection of taxes would be more rigidly enforced. (See McMaster and Stone's *Pennsylvania*, etc., p. 83.)

<sup>3</sup> Petition for delay presented to the ratifying convention. (See McMaster and Stone's *Pennsylvania and the Federal Constitution*, p. 432.)

X spiracy," wrote the author of a long series of articles,<sup>1</sup> "is a continental exertion of the well-born of America to obtain that darling domination which they have not been able to accomplish in their respective States." The success of this line of argument is shown by the results of the election for delegates to the ratifying convention. In four counties—Lancaster, Berks, Westmoreland, and Dauphin—the anti-Federalists made gains over their showing in the assembly, amounting to 8 votes. In three counties—Northumberland, Washington, and Franklin—they supported losses amounting to 5 votes; but 2, at least, of these were cast in the convention against the wishes of the people of the county, making 5 votes the net gain.<sup>2</sup> In the convention which met at Philadelphia on November 21, a question arose almost immediately which afforded a test vote as to the strength of the parties in that body.<sup>3</sup> The division recorded is exactly the same as that on the final question of ratification, except that one member who finally votes with the Federalists here sides with their opponents. His conversion, therefore, if conversion it was, must be taken as the sole tangible result of the three weeks' debate in the convention, though interspersed with some of the ablest and most elaborate speeches in the Federal cause made anywhere during the contest in the several States. Even after the convention had ratified the Constitution by the vote of 46 to 23 the opposition continued with unabated violence. The validity of that ratifi-

X <sup>1</sup> The letters signed "Centinel." These are reprinted in McMaster and Stone's *Pennsylvania*, etc., where this extract may be found, p. 627. To the same effect as this is a statement made by Smilie in the ratifying convention just before the final vote was taken. "Since the peace," said he, "there has been a set of men from New Hampshire to Georgia who could not bear to be on the same footing with other citizens. I can not tell how many of these men were in the [Federal] convention." (Wilson's notes, in McMaster and Stone, p. 785.) In this same connection should be taken the prophecy of Findley in the convention, clearly a reminiscence of that of George Mason: "This government," said Findley, December 6, "may go into the channel of monarchy, but more likely of aristocracy; I could not contrive a better plan than this for introducing aristocracy." (Wilson's notes, *ib.*, p. 778.)

<sup>2</sup> The basis of this computation is the assumption that the vote calling the convention, and that in the convention on the question of ratification, were party votes. See below for justification of this last. The yeas and nays in each case may be found in McMaster and Stone.

<sup>3</sup> This was the question whether the Constitution should first be taken up in committee of the whole.

cation was denied,<sup>1</sup> the appeal to arms, if not actually advised, was countenanced and condoned;<sup>2</sup> and, in short, it was, as Madison wrote in the letter before quoted, only the acceptance of the Constitution by Massachusetts, the next large State to consider the matter, that averted very serious consequences in Pennsylvania.<sup>3</sup>

On the question of the adoption of the Federal Constitution, a majority of the people of the State was undoubtedly on the Republican, or Federal, side. At the annual elections of 1787 and 1788, accordingly, and at the general election for Congressmen in the latter year, the Federalists carried the State by safe majorities.<sup>4</sup> Elated by their success on this issue, the

<sup>1</sup> See the address giving the reasons of dissent of the minority of the convention, in McMaster and Stone, pp. 454-483.

<sup>2</sup> Take as an example the riots at Carlisle in December and March, 1787, and 1788 (Shippen Papers, p. 289; McMaster and Stone, p. 486, etc.), and the anti-Federalist comment thereon (e. g., in McMaster and Stone, p. 494). In an address adopted at Carlisle in February, commending the conduct of the minority in the ratifying convention, it is asked whether the people will "submit to be circumvented or cajoled out of their freedom and invaluable rights by a few petty domestic tyrants," and to this an emphatic "no" is returned. (See McMaster and Stone, pp. 498-501.)

<sup>3</sup> In the circular letter calling the Harrisburg convention of September, 1788, one of the objects of that meeting is stated to be to avert the "calamities of a civil war." (See McMaster and Stone, pp. 552, 553.)

<sup>4</sup> The vote for Congressmen was not by districts, but on a general ticket. The vote (exclusive of Fayette County, for which I have not seen the returns) stood: Federalist, highest, 8,697; lowest, 7,074. Anti-Federalist, highest, 7,415; lowest, 5,856. As the highest two anti-Federalist candidates received more votes than the lowest two Federalists, they were elected. The Federalists, however, elected the other six. (See *Pennsylvania Gazette*, December 24, 1788, for the returns by counties.) The distribution of Federal and anti-Federal areas corresponding to the vote in the ratifying convention may be seen in the map accompanying Orin G. Libby's monograph, *The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution*. (Bulletin University of Wisconsin, Vol. I, No. 1.) But to obtain an approximately accurate conception of the division among the people, it must be borne in mind: (1) That the northwestern third of the State, which was joined to Northumberland County, and is figured by Mr. Libby as Federal, had less than two inhabitants to the square mile in 1790—in fact, was practically an unsettled wilderness in 1787; (2) that the two votes of Northumberland County were cast in the convention for the Constitution through the influence of the Continental officers, who everywhere favored the Constitution, and who here procured the election of two of their number as delegates (*Pennsylvania Magazine*, Vol. XI, p. 272); for Congressman the county was safely anti-Federal; (3) that the Federal vote cast from Franklin County was so cast in opposition to the wishes of the majority of the people of the county (*Pennsylvania Magazine*,

Republican leaders resolved to push at once for a convention to revise the State constitution. A council of censors was to be elected in 1790, but owing to the inequality of representation and the requirement of a two-thirds vote in that body, they had nothing to hope for from its deliberations. As early as December, 1788, the agitation began,<sup>1</sup> and was continued without intermission until the call for a convention was secured. The present constitution, it was urged, "had never received the sanction or the approbation of the people; it was forced upon the State by a few needy men, while the best men of the State were in the field opposing the enemies of their country."<sup>2</sup> Its many absurdities had long exposed the people to ridicule and its corruptions had long oppressed and injured the State.<sup>3</sup> But aside from these grievances of long standing, there were other reasons, it was contended, which now made a change in the constitution imperative. The first was the intolerable expense of the State government, with its 18 councilors (soon to be again increased by the formation of new counties) at 15s. a day, and a president at £1,500, and a vice-president at £500 a year.<sup>4</sup> The second was the conflict which existed in many particulars between the State and Federal constitutions;<sup>5</sup> especially, it was urged, State officers could not take the oath of allegiance to the Federal Government, without perjury, "till they are absolved from their former oaths of allegiance to the constitution of Pennsylvania in its present form."<sup>6</sup> "The call-

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Vol. X, p. 447), and (4) that the vote cast by Thomas Scott, of Washington County, for the Constitution was also against the wishes of his constituents (Pennsylvania Magazine, Vol. XI, p. 264; see also Pennsylvania Gazette, November 26, 1788); the vote for Congressmen here was anti-Federal, seven to one.

<sup>1</sup> Pennsylvania Gazette, December 31, 1788.

<sup>2</sup> *Ib.*, February 18, 1789.

<sup>3</sup> *Ib.*, January 14, 1789.

<sup>4</sup> Pennsylvania Gazette, January 14, 1789: This was the Pennsylvania pound and shilling. In order to prevent the exportation of specie, it had been ordered by an act of the assembly before the Revolution that 5s. sterling should pass in the colony for six and eightpence. These sums, accordingly, are only three-fourths of the same amounts in sterling money, excluding the depreciation for paper.

<sup>5</sup> See the resolutions of the assembly of March 24, 1789, in Pennsylvania Gazette, March 25.

<sup>6</sup> Pennsylvania Gazette, December 31, 1788: This was the ground taken by the Constitutionalists in the assembly of 1788-89, who refused to take the Federal oath at the beginning of the session. By August 25, however, all had taken it. (See Pennsylvania Gazette, May 13 and August 26, 1789.)

ing of a convention now," it was said, "is not a matter of choice. The late convention, by adopting the Federal Government, has made it a matter of necessity. If it is not called immediately and the constitution altered we renounce our connection with the Government of the United States. All other language is anti-Federalism."<sup>1</sup>

As early as the 4th of March, 1789, the Republican assemblymen were busy preparing petitions to be circulated in the counties, urging the assembly to call a convention to meet in October next.<sup>2</sup> On the 24th the project was, by a vote of 41 to 16, formally submitted to the people by the assembly. In a series of resolutions,<sup>3</sup> the immediate necessity for amendments is set forth; the inherent power of the people to change their form of government is shown by quotations from the Declaration of Independence and from the State declaration of rights (in which is a clause asserting that "the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government, *in such manner*"<sup>4</sup> as shall be by that community judged most conducive to the public weal"); whence it is concluded that the people are not limited to the mode of amendments prescribed in the constitution;<sup>5</sup> and, therefore, it is recommended to the people, whose right alone to determine the question is recognized, to take the subject of a new convention into consideration—the assembly offering to provide by law for the expenses and to arrange the time and place of meeting if the desire of the people for a convention is signified to them at their next sitting.<sup>6</sup> With this the

<sup>1</sup> Pennsylvania Gazette, March 4, 1789. It is interesting to note the way in which anti-Federalism had by this time come to be a term of reproach.

<sup>2</sup> *Ib.*, March 4, 1789.

<sup>3</sup> *Ib.*, March 25, 1789.

<sup>4</sup> The italics are in the resolutions.

<sup>5</sup> The language of the preamble of the constitution, however, is against this line of argument. See note 2, p. 377. A writer in the Pennsylvania Gazette for April 1, 1789, arrives at the same end by a different line of reasoning. The constitution of 1776, he says, was a compact between the rulers and the ruled. In 1787 the ruled (i. e., the people), by the act of the ratifying convention, broke the compact, as they had a right to do. Hence the rulers are absolved from their oaths to support that constitution, and are free to work for amendments.

<sup>6</sup> The supreme executive council was requested by the assembly to promulgate this recommendation, but, by a vote of 7 to 6, refused compliance therewith. (Colonial Records, Vol. XVI, p. 41.) A majority of the council, however, were said to be unfriendly to the existing constitution. (Pennsylvania Gazette, April 8, 1789.)

assembly adjourned for the summer recess, in order to give its members opportunity to canvass the subject before the people.

As may well be imagined, these maneuvers of the Republicans were stubbornly resisted by the leaders of the opposite party. In a long address to the people,<sup>1</sup> fourteen of the assembly minority endeavor to show that the expenses of Pennsylvania are less than those of Massachusetts or Virginia; that the amendments desired by their opponents (e. g., a second branch to the legislature), will increase rather than diminish expenses; that the ratifying convention, by its adoption of the Federal Constitution, has already repealed those articles of the State constitution in conflict therewith; that the Pennsylvania constitution is "equal to any in the Union," and lastly, that continued anarchy and disorder must result from amendment in the irregular manner proposed. In Cumberland County—notorious already for its anti-Federal violence—many who would otherwise have signed the petitions to the assembly were intimidated therefrom by the threats of the Constitutionals.<sup>2</sup> John Nicholson, comptroller-general of the State and a leader of that party, was charged in writing by five members of the executive council with not only having advised, but endeavored strenuously to bring others into the measure "of taking up arms to prevent the free and unbiased sentiments of the good people of this Commonwealth being taken in the manner proposed by the general assembly, \* \* \* thereby endeavoring, as much as in him lay, to cause a civil war, and to deluge the country in blood."<sup>3</sup>

But "the professional wielders of the people," as Graydon calls the leaders of the popular party, found "the potency of their incantations most cruelly impaired" by the adoption of the Federal Constitution.<sup>4</sup> In general, the project for amendments seems to have been discussed with "candor and good humor." "Many sensible and learned men, formerly much opposed to alterations," says a correspondent of the *Pennsylvania Gazette*,<sup>5</sup> "have, without hesitation, signed the petitions to the legislature for calling a convention, convinced that

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<sup>1</sup> See *Pennsylvania Gazette*, April 8, 1789.

<sup>2</sup> *Ib.*, May 13, 1789.

<sup>3</sup> *Colonial Records*, Vol. XVI, p. 343. [Minutes of the supreme executive council.]

<sup>4</sup> Graydon's *Memoirs*, p. 343.

<sup>5</sup> September 9, 1789.

though it may have been heretofore prudent to defer a revision of the constitution, this is the happy moment when it will be done with wisdom and moderation." Accordingly, when the assembly met after the summer recess, being "satisfied"—from the petitions returned to it, and from the personal inquiries made by members during the recess—that a convention was the will of the people, a formal call for such was voted September 15, 1789.<sup>1</sup> Delegates were to be chosen the next month at the annual elections; they were to assemble at Philadelphia on the fourth Tuesday in November; were to frame such amendments as they deemed necessary, publish them, and then, after an adjournment of four months, during which the will of the people might be ascertained, were to reassemble at the same place and finish their work.

When the convention met<sup>2</sup> it was found that each party had sent its most prominent men. On the Republican side Wilson, McKean, Mifflin, and Timothy Pickering are some of the familiar names which greet us; among the Constitutionalists we find Findley, Smilie, Whitehill, and Albert Gallatin. For a while the old party jealousies held full sway. The Republicans spent some days in declaiming against the constitution of 1776, a procedure which tended only to "irritate the spirit of party and make things worse instead of better."<sup>3</sup> In this, however, Wilson took no part. As for the Constitutionalists, they seem to have felt themselves discredited in the eyes of the

<sup>1</sup> By a vote of 39 to 17. Ten of the minority, in accordance with a custom sanctioned by the constitution of 1776, entered their reasons of dissent upon the journal. The principal reasons were as follows: (1) The assembly had no power to issue such a call; (2) even if it had the power there were not sufficient grounds for a convention; the majority of the people of the State were averse to it, the assent having been extorted from not more than (about) one-seventh of the people, "and often under false pretenses;" (3) the call "infringes the solemn compact entered into by the people of this State with each other," and would "render government precarious and unstable, encourage faction, and subject the lives and liberties of the good people of this Commonwealth and all law and government to uncertainty." (Proceedings Relating to the Conventions of 1776 and 1790, etc., pp. 136, 137.)

<sup>2</sup> The journal of the convention, together with the minutes of the committee of the whole, may be found in the volume entitled, *Proceedings Relating to the Calling of the Conventions of 1776 and 1790, etc.* (Harrisburg, 1825).

<sup>3</sup> Findley; see his letter to Plummer of February 27, 1812 (*Penna. Mag.*, V., pp. 440-450).

people by their late unbridled opposition to the Federal Constitution, and to have been anxious to reinstate themselves in public opinion by a fair revision of the State constitution. Findley, the most influential and candid of their leaders, accordingly approached Wilson on the subject.<sup>1</sup> Between them an agreement was soon reached as to the course to be pursued. The constitution of 1776 was to be "treated with a delicacy approaching to reverence." Findley was to make a preparatory speech, the object of which was to reconcile parties, and then Wilson was to follow with a series of resolutions embodying the changes which had been agreed upon.

The operation of the scheme was all that could be desired. In his opening speech Findley urged "that even though the present constitution might be good in theory, yet so many deviations had been made from it, so great a difference of opinion had always existed about it, and \* \* \* the voluntary election of the present convention was such a testimony of want of confidence in it that it was vain to think of restoring its energy without essential alterations." In the divisions over the resolutions which were then introduced, as recorded in the minutes of the committee of the whole, all party barriers seem removed. By the 9th of December, the lines along which the constitution was to be altered were settled, and that with but few dissenting votes. The legislature, it was agreed, should consist of more than one branch; the executive power should be vested in a single person; judges of the supreme court should hold office during good behavior, and be independent as to their salaries; the executive should have a qualified negative upon the legislature; and the bill of rights was to be revised so that the rights of citizens might be more accurately defined and secured, and be made to conform to the rest of the system.<sup>2</sup>

The broad principles once settled, the rest, though involving the expenditure of much time and labor, was yet comparatively easy. Friction, of course, there was over various matters

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<sup>1</sup> Of his own position as to the State constitution Findley says: "I had supported the constitution because it was inexpedient to make a change, yet that I never approved of its principles was well known to all my friends." (See his letter to Plummer, cited above. In this is found the account of the agreement narrated here.)

<sup>2</sup> See Minutes of the Grand Committee of the Whole (1790), pp. 8, 9. These may be found also in Proceedings Relating to the Conventions of 1776 and 1790 (1825).

of detail. A proposition to reestablish a property qualification for the franchise at one time threatened to make trouble, but it was withdrawn the next day. The clause embodying the comparatively novel doctrine that in prosecutions for libel the truth of the publication might be offered in defense was narrowly carried by Constitutionalist and moderate Republicans against the efforts of Lewis, McKean, and Pickering. By a like coalition propositions were defeated to fix the representation in the upper house on the basis of a ratio compounded of wealth and numbers, and to vest the choice of its members in a college of electors, as was the case in Maryland, and as had just been done in the Federal Constitution for the President of the United States.<sup>1</sup> Among the more aristocratic Republicans, who saw themselves thus defeated by their own party, the result was "no inconsiderable degree of ill humor." But on the whole the work proceeded harmoniously. On the lines above indicated the revision of the constitution was completed. As instructed by the call of the assembly, the convention then, on February 26, 1790, adjourned to enable the people to inspect their work. On August 9 it reassembled; three weeks were spent in making minor changes and perfecting detail, and then finally, on September 2, 1790, by a vote of 61 to 1, the constitution was formally ratified and proclaimed.

Thus ended the long contest which centered in and about the constitution of 1776. In the struggle our sympathies are in the main with the party which opposed that instrument. Its leaders unquestionably were superior in ability, in education, in the breadth of their views. The policies which they advocated were sounder and better digested than those of their opponents. Doubtless the help rendered the patriot cause would in the end have been as abundant and efficient—nay, probably more so—had Morris, Thomson, Mifflin, and McKean prevailed and the government been continued under the proprietary charter. On the Constitutionalist side there was certainly much ignorance, bigotry, and violence, and not a little self-seeking demagogism. It was surely a public misfortune that throughout so large a portion of the State news-

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<sup>1</sup> Upon all three of these questions Wilson acted with the Constitutionists, and endeavored to dissuade the ultra members of his party. Of his whole course in the convention, Graydon, who was himself a member and voted with Wilson, says he "was truly great, but enthusiastically democratic." (Graydon's Memoirs, p. 354.)

a/ papers and educational facilities were so lacking as to permit of this condition of affairs. Nevertheless, conceding all this, it may be asserted that the Constitutionalist party of Pennsylvania had a mission, and fulfilled it. It was the entering wedge which was to force asunder the old aristocracy and let in the new democracy. It was a manifestation of the great movement for more equal political and social rights, of which the Revolution was both a cause and an effect. In a far truer sense than can be said of the Virginians, it formed the nucleus of the Jeffersonian Democracy, which ripened in time into the Democratic party of Andrew Jackson. The spirit and tendency of the ultra-aristocratic wing of the Republican party may be seen in its conduct in the convention of 1789-90, and may be inferred from the <sup>alien</sup> and sedition laws of rampant Federalism. The one party looked backward, the other forward. The progress which the Constitutionlists brought was costly. They were untrained to participation in public affairs, and naturally fell often into error; but the progress was permanent.