

REFERENCE MANUAL NO. 3

# A History of Pennsylvania Constitutions



THE PENNSYLVANIA

CONSTITUTIONAL CONVENTION — 1967-1968

The Preparatory Committee for the Constitutional Convention has prepared a series of nine **Reference Manuals** for the information of the delegates to the **Convention**. They are intended to give delegates general **information** on the Convention, to present a brief history of **the several** constitutions of Pennsylvania, and to provide **pertinent** information concerning each of the subject areas **that** the Convention is authorized to consider. The nine **Manuals** are—

- No. 1 The Convention
- No. 2 Constitutions of Pennsylvania—  
Constitution of the **United States**
- No. 3 A History of Pennsylvania **Constitutions**
- No. 4 Local Government
- No. 5 The Judiciary
- No. 6 Legislative Apportionment
- No. 7 Taxation and State Finance
- No. 8 Bibliography
- No. 9 Index

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A HISTORY  
OF PENNSYLVANIA CONSTITUTIONS

*The Pennsylvania Constitutional Convention*  
1967-1968

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**REFERENCE MANUAL NO. 3**

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Prepared for the Delegates by  
**THE PREPARATORY COMMITTEE**  
Raymond J. Broderick, Lieutenant Governor, *Chairman*

**Commonwealth of Pennsylvania**  
**CONSTITUTIONAL CONVENTION**  
**1967-1968**

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## *Foreword*

Act Number 2, which was adopted in March, 1967 and ratified by the voters in the following May election, authorizes the holding of a Constitutional Convention, to convene on December 1, 1967, for a period of three months.

The Act provides also for a Preparatory Committee to consist of the Lieutenant Governor and twelve officials of the General Assembly, listed opposite. A major function of this Committee is the compiling of basic information which will assist the Convention delegates in carrying out their responsibilities effectively.

To this end, the Preparatory Committee has commissioned preparation of a series of Reference Manuals, of which this is one. This volume presents, for the delegates' information, a brief summary of the historical background and development of Pennsylvania's Constitutional law, with particular reference to the four subject areas to be considered by the forthcoming Convention. Further historical detail concerning the specific subject areas is to be found in the four Reference Manuals (Volumes IV, V, VI and VII) which deal separately with each of those subjects.

The Preparatory Committee was fortunate to obtain the services of Dr. Rosalind L. Branning, Professor of Political Science at the University of Pittsburgh, and author of "Pennsylvania Constitutional Development" published in 1960, who authored this Manual. Dr. Branning also furnished historical materials and consultation for the Manuals on Local Government, Legislative Apportionment and Taxation and State Finance.

The Preparatory Committee gratefully acknowledges Dr. Branning's contribution and is confident that it will be of material assistance to the Convention and its delegates.

Raymond J. Broderick

*Chairman*

# *Constitutional History of the Commonwealth of Pennsylvania*

When the constitutional convention approved by the voters in the May primary meets at Harrisburg on December 1, 1967, it will be the fifth constituent assembly in the history of the Commonwealth. This convention will differ from those held in the past, since it is a limited convention, not authorized to draw up an entirely new constitution. It has entrusted to it, however, the most difficult areas of constitutional revision: legislative apportionment; judicial organization and administration and selection and tenure of judges; state taxation and finance (with the exception of the uniformity clause and the earmarking of gasoline taxes); and local government, including municipal finance. All four involve pressing problems and raise contentious issues. None of them could readily be satisfactorily revised by the piece-meal amending process.

## **1. PENNSYLVANIA'S FIRST THREE CONSTITUTIONS**

Pennsylvania's first constitution was drafted and proclaimed by a convention which assembled in Carpenters Hall, Philadelphia, on July 15, 1776, just one week after the proclamation of the Declaration of Independence. The character of the convention and the document it produced was marked by the revolutionary manner of its call. Continental Congress in May of the same year had passed a resolution urging the adoption of constitutions by those colonies where there was "no government sufficient to the exigency of their affairs." A few days later it urged suppression of all government under the Crown. Pennsylvania's convention was called not by the colonial assembly, which was under the control of the eastern conservatives, but by a provincial conference of the committees of correspondence of all the counties convoked by the committee of the city of Philadelphia. These were wholly extralegal bodies in which persons disfranchised under the existing property qualification and rigid naturalization procedures could and did participate.

## **Convention of 1776**

The revolutionary character of the provincial conference was reflected in the provisions for the apportionment and choice of delegates. By the apportionment provisions which assigned an equal number of delegates to each county and the city of Philadelphia the conference wrested control from the eastern counties. In no mood to disfranchise themselves, the conference participants extended the suffrage to all freeman who were taxpayers or small property-holders. At the same time, they excluded the more conservative elements in the province from participation by the denial of the franchise to persons "suspected or publicly denounced as enemies of the liberties of America" unless they publicly abjured allegiance to the Crown. The opposition was given little time to organize, since the conference met on June 24 and 25 and July 15 was set as the opening date for the constitutional convention.<sup>1</sup> \*

When the convention met the western counties had a substantial majority. Most of its members had had little or no political experience in the provincial government, though they had been active in local committees of correspondence and military organizations.<sup>2</sup> There were, however, some distinguished names on the membership rolls: Benjamin Franklin, David Rittenhouse, George Bryan and James Cannon, who gave leadership to the radical forces, and George Clymer and George Ross who led a spirited opposition. Benjamin Franklin served as President, though he shared his time with Continental Congress.<sup>3</sup>

Uppermost in the minds of the delegates from the western counties and from the city of Philadelphia (which in the colonial period was seriously discriminated against) was the need for an equitable system of apportionment. The radicals were suspicious of a strong executive; they believed popular control could be furthered by short tenure and rotation in office; they were suspicious of a too-independent judiciary. They were agreed on the need for a liberal franchise. They debated the relative advantages of a unicameral or a bicameral legislature. Benjamin Franklin urged retention of Pennsylvania's one-house legislature established by the Charter of Privileges of 1701.

## **Liberal Constitution of 1776**

The constitution, primarily the product of the pens of George Bryan and James Cannon,<sup>4</sup> had several significant features. It provided for a unicameral legislature<sup>5</sup> whose substantive powers were limited only by the Declaration of Rights.<sup>6</sup> Members were to be elected annually, and the Assembly was to meet in annual sessions. To secure just representation the constitution provided for apportionment of representation among the counties and the city of Philadelphia on the basis of the number of taxable inhabitants, and for septennial reapportionments.<sup>7</sup> All sessions of the assembly were to be public, the proceedings to be published weekly, and bills to be printed "for consideration of the people" before third reading. Except in case of an emergency, final pas-

\* Footnotes will be found starting on page 33.



sage of bills was to be held over to the succeeding session of the legislature to permit public consideration.<sup>9</sup> These popular controls were the only restraints placed on the Assembly. The executive was denied the veto power. Since the judges had limited tenure (seven years), and, though appointed by the executive, could be removed by the legislature for "misbehavior," the courts were unlikely to serve as a check on these controls.<sup>10</sup>

Frontier suspicion of a strong executive was reflected in the creation of an executive council rather than a governor, though annually one of its members was chosen by joint action of the Council and the Assembly to serve as President. The President and Council were given the power to appoint judges and most executive officers.<sup>11</sup>

The court structure set up by the constitution consisted of a supreme court; at the county level, quarterly sessions of common pleas, courts of session and orphans court; and at the base the justice of peace court.<sup>11</sup>

Suffrage provisions were liberal as compared with contemporary practice. The voting privilege was extended to all freemen over twenty-one who were taxpayers or small property-holders, and had resided in the state for a year or more.<sup>12</sup>

An unusual feature was the creation of a Council of Censors to be elected every seven years, which would sit in judgment on the stewardship of the Assembly and other public officers. By a two-thirds vote the Council could call a constitutional convention to consider such amendments as the Council might deem necessary. This was the only provision for revision of the 1776 document.<sup>13</sup>

The Constitution of 1776 was not submitted to popular vote; it was unanimously adopted by the convention which drafted it and proclaimed it as the fundamental charter of the state. The convention also served temporarily in a legislative capacity. It adjourned on September 28, 1776.<sup>14</sup>

The Constitution of 1776 represented a triumph of the radical forces which not only spearheaded the revolutionary movement in Pennsylvania, but also wrought a revolution in control of the commonwealth, wresting power from the elite circle of eastern leaders of the social, economic and commercial life of colonial Pennsylvania. Though there were misgivings among eastern conservatives, the new document served as the fundamental charter during the difficult days of the Revolutionary War. The political forces which gave it birth remained in control during the war.<sup>15</sup>

The excessive zeal and want of restraint of the radical Constitutionals led to their political decline at the end of the war. Many extreme measures had been authorized by the Assembly in the prosecution of the patriot cause. The executive archives of the period indicate the freedom with which those suspected of being disloyal were declared traitors by formal proclamation, and their property declared forfeited. The Anti-Constitutionalist or Republicans became outspoken in their attacks as the war ended and demanded constitutional reform. The Liberals, themselves, became divided and unable to act effectively.<sup>16</sup>

### ***Conservative Reaction Reflected in Council of Censors***

When the Council of Censors met as prescribed by the constitution in 1783 there was a fairly even division between the two political factions.<sup>17</sup> A committee was appointed to examine the defects of the existing constitution and to propose remedies. The majority report was highly critical of the constitutional system.<sup>18</sup> The primary need, it pointed out, was a check on the legislature. Currently there was no check save revolution. To remedy this defect the report proposed the creation of a second legislative chamber and the restoration of the executive veto.

The role of the executive was the subject of lively controversy. The majority report criticized the vestment of executive authority in a council rather than a single executive as "materially defective." A collective executive was "expensive and burdensome." A council "will never possess the decision necessary for action on sudden emergencies." There was no way of holding any one responsible for weak or corrupt action. The provision for rotation in office was "improvident." The prohibition of a successive term weakened responsibility since "the hope of reappointment to office is among the strongest incentives to the due execution of the trust it confers." Furthermore, such a practice deprived the state, for a time at least, of competent personnel, and compelled the substitution of less experienced persons. Likewise, it deprived the people of choosing for office the person they preferred. The Report recommended the creation of the office of governor in place of the President and Council, and proposed that he should be elected annually by the freemen.

The powers suggested for the governor were not significantly different, except in the legislative field, from those already vested in the President and Council. The restoration of the veto, subject to the power of the legislature to override by a two-thirds vote, was regarded as essential.

Many of the existing ills were traced to an impotent judiciary, which had been subjected to limited tenure and legislative removal. The majority report recommended life tenure on good behavior and removal only by impeachment.

A minority report was also presented.<sup>19</sup> The minority denounced the action by the majority as unconstitutional and stoutly defended the existing constitution. Though a majority of the Council approved an Address to the People counselling the calling of a convention, they could not muster the necessary two-thirds vote to issue the call. The Council adjourned June 1, 1784, without definitive action.<sup>20</sup> A second session proved equally ineffective, though it adopted a denunciatory report cataloguing the transgressions of the Assembly.<sup>21</sup>

### ***Convention of 1789-90***

The Council of Censors had demonstrated its ineffectiveness as an instrument for constitutional reform. In response to growing popular demand the

Assembly assumed the authority to act. In November, 1789, the legislature provided for the election of a convention of sixty-nine delegates to convene at Philadelphia on November 24.<sup>22</sup> No provision was made for the submission of either the convention call or the constitution to a vote of the people, though the convention was to recess for at least four months to permit public consideration before acting finally upon their draft of the constitution.

The complete reversal of popular temper that had taken place between 1776 and 1789 was revealed in the membership of the convention which was dominated by conservatives. The key leaders were James Wilson, Thomas McKean, Thomas Mifflin and Timothy Pickering. Two years earlier James Wilson had taken a prominent part at the Constitutional Convention which had drafted our national constitution.<sup>23</sup> In many respects, the new fundamental document produced by Pennsylvania's second convention reflected the influence of the national charter.

### ***Conservative Constitution of 1790***

The main issues in the convention were those labored over in the Council of Censors, and there was already consensus among conservatives on the remedies for existing constitutional ills. The legislature was made bicameral. The House was to consist of sixty to one hundred members, and was to be elected annually. The size of the Senate was set at one-fourth to one-third of the size of the House, the exact size to be determined by the legislature. For both houses the number of taxable inhabitants was to serve as the basis of apportionment, and septennial reapportionments were retained. Limitation of the representation of Philadelphia, abandoned in 1776, was reimposed in regard to senatorial representation.<sup>24</sup> Senators were given a four year term, and one-fourth of the members were to be elected annually. The substantive powers of the legislature were not modified, but legislative action was subjected to a veto.<sup>25</sup>

A single executive, a governor, elected for a three year term, was established in place of the executive council. He was given all the appointive powers formerly possessed by the President and Council. In addition he was granted the power to recommend legislation, to call special sessions of the assembly, and to veto legislation. The governor was eligible to serve nine years out of twelve.<sup>26</sup>

The judiciary also was overhauled. Life tenure on good behavior was substituted for limited tenure; judges were subject to removal by impeachment. Circuit courts were interposed between the trial courts and the supreme court.<sup>27</sup>

The rights of the people under the bill of rights remained unchanged, for these were issues on which liberals and conservatives were agreed. The suffrage qualifications underwent only a minor change; an increase of residency requirement to two years.<sup>28</sup>

The convention completed its work on February 6, 1790, then recessed

until September. When the delegates reconvened, they approved their own handiwork and proclaimed it as the constitution of the Commonwealth.<sup>29</sup> The counterrevolution was complete.

Having won so complete a victory could the conservatives prevent the political pendulum from swinging back again? The liberals were determined that it should and soon were agitating for constitutional reform. With the rise of Jeffersonianism their demands became more vocal. In 1805 the Democratic-Republicans campaigned vigorously for the governorship, using constitutional revision as their chief issue. Popular election of administrative and judicial officers were their primary constitutional aims. With their success in putting Simon Snyder in the governor's office in 1808, Democratic ardor for constitutional revision waned. Agitation for change shifted to the judiciary branch, with continued demands for popular election of judges and limited tenure. Opposition to executive authority, however, remained an undertone to all political unrest.<sup>30</sup>

### ***Liberal Reform Movement***

The War of 1812 checked reform movements on the domestic front as the nation's energies were directed toward the war effort. In the post-war period Pennsylvania party rivalries were marked by extreme bitterness. The Federalists had disappeared from Pennsylvania politics. There was a three-party division: Democrats, Whigs and Antimasons. The latter two frequently united in alliance against the Democrats, an alliance sometimes joined by conservative Democrats. Generally speaking, the Whigs and Antimasons were cool toward constitutional revision. Governor Hiester, though elected by the conservative coalition, suggested in his inaugural message to the General Assembly that the legislature "devise some method of reducing the enormous power and patronage of the governor, without impairing the other general features of our present excellent Constitution."<sup>31</sup> The coalition showed no evidence of sharing his views. After the election to office of the Antimasonic governor, Joseph Ritner, the issue of executive authority which had remained politically quiescent under Snyder's successors in office became a very live issue. When Thaddeus Stevens, as chairman of the state canal commissioners, openly used the payroll of the public works program to build up a strong organization and to colonize voting districts where the Antimasons were weak, the Democrats were enraged and renewed their attacks upon the executive with their old bitterness.<sup>32</sup>

In this atmosphere the movement for revision was revived with intensity. Democrats were again demanding the curtailment of the appointive powers of the governor. They especially pressed for the cutting off of his local patronage and for the election rather than the appointment of judges. The Whigs and Antimasons, who represented the conservative elements in the state, opposed such constitutional changes. When, after years of agitation, the Democrats at last succeeded in forcing the calling of a constitutional convention in 1837,<sup>33</sup>

they did not prove strong enough to command a working majority in the convention. They had a larger vote than either of their opponents, but Whigs and Antimasons, joined together in coalition, had one more vote than the Democrats. The result was compromise on most issues after long and often bitter debate.<sup>34</sup>

### **Convention of 1837 Called**

When the convention met on May 2, 1837, it had on its roster many distinguished names. From Philadelphia came John Sergeant, Charles Chauncey, William Meredith, Joseph Hopkinson, James Biddle and Charles Ingersoll. John Sergeant, who was elected president of the convention, had not only distinguished himself in the legal profession, but had served in Congress, run for the vice presidency of the United States as the running-mate of Henry Clay in 1826, and served as United States envoy to the Panama Congress. William Meredith later became attorney general of the state and served as president of the 1872-73 convention. Other prominent members included Thaddeus Stevens, James Pollock and George Woodward. Thaddeus Stevens had not yet risen to national prominence, but was enjoying the luster associated with his heroic and successful defence of the commonwealth's public schools when the public school law was threatened with repeal. In James Pollock's future lay the governorship, and George Woodward was destined to become Chief Justice of the Pennsylvania Supreme Court.<sup>35</sup>

### **Convention Issues**

The convention met in a period of intense political excitement. Although the question of executive authority had been a provoking cause of Democratic demands for revision, it was not the only issue which separated the Democrats and the opposing coalition. The proceedings were overshadowed by the unrest and uncertainties of the panic of 1837. Democrats were opposed to the "extravagant expenditures" authorized by the legislature for the development of Pennsylvania's internal improvements, which were being operated at a loss. They condemned the injudicious policy of the General Assembly in the granting of corporate charters, especially bank charters. This power, they felt, should be subjected to constitutional limitations. Democrats blamed economic ills of the time on speculation and inflation stimulated by the issuance of bank notes. Whigs and Antimasons defended the banks and the growth of corporate enterprise and placed the blame on President Jackson's issuance of the Specie Circular. Thaddeus Stevens heaped abuse upon the critics of banks and corporations with all the vitriol of which he was master.<sup>36</sup>

The convention was split, also, over the question of the selection and tenure of judges. The Democrats had long advocated popular election of judges and limited tenure. Their lack of a majority in the convention made the change to popular election impossible, so they centered their attack upon life-

tenure. This brought a battle between two giants of the legal profession to the floor of the convention. Joseph Hopkinson defended life tenure in a long and learned address; George Woodward replied in an equally learned address, which was almost as long.<sup>37</sup> Hopkinson stressed the need for independence of the judiciary, and Woodward, the desirability of making the judiciary accountable to the people.

There were other issues which were not based upon the split between the Democrats and the coalition; in some cases there was a division within the ranks of the Democrats. There was a sharp division of opinion, for example, over suffrage qualifications, with western Democrats urging reform. They pointed out that, since only property holders paid taxes, the taxpaying qualification was contrary to the spirit of democratic philosophy. There was also a brief contest over the use of race as a qualification for voting when "white" was inserted in the suffrage provision. This was largely a battle within the Philadelphia and Bucks county delegations.<sup>38</sup> And there was a brief outburst over the education article with Thaddeus Stevens unleashing his thunder against those who insisted that public school provisions should apply only to the children of paupers.<sup>39</sup>

### ***Constitution of 1839***

In spite of the vigor of debate, which lasted for seven months, the constitution was essentially a compromise and left unchanged the main structure established under the 1790 constitution. The "supreme executive power" continued to be vested in the governor, and he retained the power to appoint most state officers. He lost, however, the power to appoint local officials.<sup>40</sup> His appointment of judges was subjected to senatorial approval. The governor's term continued to be three years, but he was limited to one successive term (six years out of "any term of nine years").<sup>41</sup>

It is interesting to note that the legislative powers of the governor had not suffered the popular disfavor that had developed in regard to his appointive powers. The provisions of the 1790 constitution were carried over verbatim.<sup>42</sup>

Though the proponents of reforms in the fundamental law governing banking and the granting of corporate charters were not fully satisfied, they did succeed in writing into the constitution some mild reforms. The legislature was forbidden to create, renew or extend bank charters without six months public notice of the application for the legislative grant. The life of bank charters was limited to twenty years, and a separate act was required for each corporation when its charter was granted or altered. The grant of the power of eminent domain to any private corporation was made subject to the requirement that the corporation taking the property should pay for it.<sup>43</sup> This was the beginning of the imposition of constitutional limitations on the substantive powers of the legislature.

Though the powers of the legislature were modified, the provisions re-

specting the structure of the General Assembly were not significantly changed.<sup>44</sup>

Likewise the structure of the courts remained unchanged, but judges were given limited tenure, and the governor's appointment of Supreme Court and common pleas judges was made subject to senatorial approval. Justices of the peace and aldermen were made elective.<sup>45</sup>

In spite of spirited debate, the education section remained unchanged,<sup>46</sup> and the tax-paying qualification for voting was retained. The express exclusion of non-whites from suffrage was written into the constitution.<sup>47</sup> The Bill of Rights <sup>48</sup> was carried over verbatim from the Constitution of 1790.

The constitution provided for the first time a formal method of amendment by legislative proposal with popular approval.<sup>49</sup>

The convention completed its task on Feb. 22, 1838. In the popular referendum that followed, the new document won by a bare majority. The division was not on strict party lines, though Democrats generally found it more acceptable than Whigs or Antimasons. Alexander McClure in commenting on the contest stated that officeholders, especially judges, opposed the ratification with "intense and aggressive hostility." The main centers of opposition were the German counties and the large cities.<sup>50</sup>

In evaluating the modest changes effected by the new document Alexander McClure suggests that the "vital feature" was the "resumption of power by the people in taking from the Executive nearly all his patronage, and making most offices elective."<sup>51</sup>

The new provision for amendment was made use of four times during the life of the 1838 document. The first amendment came in 1850, when the movement for popular election of judges was successful. In 1857 several significant changes were made. The size of the House of Representatives was set at 100 representatives and provision was made for their selection from single-member districts. Articles XI and XII were added to the constitution. Article XI placed limitations on the borrowing power of the state and required the establishment of a sinking fund. Article XII limited the power of the legislature to create new counties. At the same time sec. 26 was added to Article I, reserving to the legislature the right to alter, revoke or annul any corporate charter thereafter granted by either special or general law. Care was to be taken not to injure the interests of the corporators.<sup>52</sup>

In 1864 the right of absentee voting was given to soldiers absent from their voting districts on election day on account of military duties. At the same time the voters approved new limitations on the legislature; they were limitations on procedure rather than substantive powers. By amendment it was provided that no bill other than an appropriation bill might contain more than one subject and that the purpose of every bill must be clearly expressed in its title. It had been the practice of the legislature to combine in one bill sections substantively unrelated, and then to identify the bill by a title clearly expressing the subject of its first section.<sup>53</sup> The voters also imposed a limita-

tion on legislative power by approving a new section forbidding the legislature to grant by legislative act any powers or privileges in cases in which the courts have authority to act.<sup>53</sup>

The final amendment came in 1871, when the treasurer, who had been elected by the General Assembly since 1776, was made subject to popular election. This action came after charges of corruption had been made following the election of the treasurer in 1869.

## **2. THE CONSTITUTION OF 1874**

Pennsylvania's present constitution is the product of the 1870's and bears indelibly the marks of that era. This document, our fourth since statehood, is the longest, the most detailed and is the most frequently amended of the four. When Pennsylvania faced the problems of the 1960's, it became apparent that in many ways the constitution we inherited from the 1870 reformers is ill-adapted to the demands of our era. Critics of the constitution charge that it has grown "old" and "outworn," though its defenders point out that the national constitution was considerably older. Yet, in a very real sense, the national constitution, though almost a century older, is younger, fresher, more adapted to the political dynamics of the mid-twentieth century than our state constitutional system. At the heart of this paradox lies the key to Pennsylvania's constitutional problem. It is implicit in the kind of constitution Pennsylvania has and the age that produced it.

### ***Economic and Political Characteristics of Era***

The delegates to the convention were elected in 1872. This was an interesting and challenging period. It was marked by great economic growth. For the railroads it was a period of development, consolidation and power, when major lines vied with one another to monopolize western freight. It was a period when expanding iron and steel mills and new oil fields bred an air of excitement. Communities appeared like magic in the petroleum fields. Pennsylvania's cities and boroughs and newborn communities were struggling with the need for water supply, gas works, streets, bridges, parks and public buildings. Local government officials were feeling the pressures of special interests in the awarding of contracts and franchises. Urban growth was reflected in optimistic municipal borrowing for public improvements.

It was an era of rapid growth of corporate business and of banks, at a time when every charter was granted by special legislative act. It was a period when investments in Pennsylvania's extractive industries were measured in the millions and investment in the state's manufactures approached half a billion. Investment in its heavy industry rose to four billion. Annual insurance premiums were three times the total state budget. Nevertheless, the economy was far removed from the twentieth century. Electric power, motor and air transport lay in the future. The assembly line which ushered in mass production



was decades away. The world of electronics and automation, of jet travel and space-probing was farther away in thought than in time.

Economic expansion was reflected in the growth of cities. Philadelphia ranked second only to New York City. Pittsburgh, Allegheny (now part of Pittsburgh), Reading and Scranton were numbered among the top fifty in the nation. Yet, Pennsylvania remained an important agricultural state, and a majority of its three and a half million inhabitants still lived on farms or in small towns. The political thinking, also, remained rural and small-town in outlook. There was strong suspicion of city politics and a widespread feeling that cities, such as Philadelphia and Pittsburgh, were non-productive parasites.<sup>54</sup>

In spite of the truly remarkable post-war economic growth, 1873 proved to be a depression year. But the full significance of economic events was not yet clear when the convention put the finishing touches on the Constitution, and it bears no mark of depression philosophy.<sup>55</sup>

A probing of the political characteristics of the period reveals an era of disillusionment. Newspapers made veiled references to the "ring" in control in Harrisburg and its local counterparts in Philadelphia and Pittsburgh. They complained openly about lobbying abuses, the bartering of corporate charters, and wholesale voting frauds. They inveighed against unethical practices in the handling of municipal finances and the awarding of franchises. They expressed grave fears of the threat of corporate power, and more particularly of railroad interests, which allegedly sent their local attorneys to sit as representatives in the General Assembly. They took note of growing popular distrust of legislators who considered time spent on anything but private bills a waste of time. A contemporary political leader said of the period that "venality in legislation reached its tidal wave." It invaded every phase of the legislative process. Anyone wanting to put through a bill could, by seeing the leaders in the two houses and arranging suitable compensation, have the desired number of votes delivered.<sup>56</sup>

### **Convention Called**

It was against this background that the movement for revision developed. Demand for reform became so insistent in 1871 that the General Assembly enacted the necessary legislation for a referendum on the calling of a convention.<sup>57</sup> In the vote taken at the general state election on October 10, 1871 the convention proposal was overwhelmingly approved. The next session of the legislature passed the enabling legislation, setting up a convention of 133 members. Three delegates were to be elected from each senatorial district, twenty-eight at large from the state, and six at large from Philadelphia. A limited vote plan guaranteed that it would not be a one-party convention.<sup>58</sup>

The election took place at the regular October election in 1872, when there was a particularly bitter gubernatorial contest. As was anticipated the Republicans won a majority of the delegates, but the party division was close. When the convention met at Harrisburg on November 12, 1872, the Republi-

cans organized the convention, but gave some committee-chairmanships to leading Democrats.

### **Convention Leaders**

The convention had on its roster of membership men who had distinguished themselves in both state and national political life. William Bigler and A. G. Curtin were former governors of the commonwealth. Jeremiah Black had served in Pennsylvania as chief justice of the Supreme Court and in Washington as Attorney General, Secretary of State, and as reporter of the United States Supreme Court. William Meredith, who was elected president of the convention, had served in Washington as Secretary of the Treasury and at Harrisburg as attorney general. Charles R. Buckalew, a lawyer by profession, was Democratic leader in the convention and one of the chief architects of the constitution. He had served as state senator and as United States Senator; he had also represented the United States as envoy to Ecuador. In 1872 he was the Democratic candidate for governor. Wayne MacVeagh, Republican state chairman, served as his party's leader in the convention. He was a leading member of the Bar. Some years later he became United States Attorney General.

George Woodward, the voluble judge who had been a delegate to the 1837 convention was serving again. He had been president judge in the fourth judicial district for ten years, and had served for fifteen years as state Supreme Court justice, including a tour of duty as chief justice. William Meredith, also, had been a delegate to the earlier convention.<sup>56</sup>

The competence of members is suggested by the fact that six had been members of the United States Congress, and twenty or more had served in the state legislature. Two, as already indicated, were ex-governors and two had served as state chief justice. Of the 133 members, 103 were lawyers. According to the press, fifty to sixty lawyers were corporation lawyers. Especially well represented among these were the railroad attorneys. Many railroad officials were delegates to the convention. Franklin Gowen was president of the Philadelphia and Reading Railroad; William Bigler was president of the Philadelphia and Erie Railroad; E. C. Knight and William H. Smith were directors of the Pennsylvania Railroad, and Theodore Cuyler was its chief counsel; William Lilly was an official of the Lehigh Valley Railroad and George M. Dallas of the Reading Railroad. Since it was a foregone conclusion that the convention would fashion constitutional restraints for the railroads, as the recent Illinois convention had done, it was not surprising that the railroad officials hoped to exercise a moderating influence on convention action.<sup>57</sup>

### **Key Issues**

The chief issues before the convention were, first and foremost, reform of the legislature and the outlawing of special legislation. There were other issues

almost as pressing in spite of the preoccupation with legislative reform: restraint of the power of corporations, especially railroads, elimination of abuses in management and service discriminations; extension to municipal finances of the restraints designed to eliminate fiscal irregularities and promote fiscal responsibility; reform of election processes to curtail the evil machinations of the political "rings" that manipulated affairs at Harrisburg and at the local levels; reform of the judiciary to eliminate the back-log of cases at the Supreme Court level.

The convention set about its task with a will, but made progress slowly. Proposals relating to the legislative article and, more particularly, the judiciary article, provoked long debate. It was mid-June, 1873, before first reading in the Committee of the Whole was completed. A month later second reading had been completed, and the convention recessed from July 16 to September 16. Third reading, begun on the 25th of September, was completed by the end of October. The final draft reported by the Committee on Revision and Adjustment was approved on November 1. The convention completed its task by preparing and adopting an ordinance of submission of the constitution to the people, setting Dec. 16, 1873 as the date for the referendum on the new charter. The constitution was submitted as a unit, though there had been efforts by members dissatisfied with the Judiciary Article to compel its separate submission. The convention then recessed until Dec. 27, when it met to canvass the election returns.<sup>58</sup>

### **Legislative Reforms**

As has been indicated, the overriding purpose of the convention was the elimination of legislative abuses, and this the delegates sought to achieve by several devices. They enlarged the size of the legislative houses, increasing the house from 100 to 200<sup>59</sup> and the senate from 33 to 50. This change was not based on any prevailing theory of representation, but upon the assumption that it would be harder to corrupt the larger number! They changed from annual to biennial sessions so that the legislators could not alter the laws too frequently, and so that lobbying would languish during the long intervals when the legislators were absent from Harrisburg.<sup>60</sup> They spoke confidently of the adequacy of three months every other year for the consideration and passage of all necessary public laws, but did not put a time limit on the length of sessions.<sup>61</sup> They regulated legislative procedure by detailed provisions to guarantee regularity of passage.<sup>62</sup> They increased the majority required for the passage of bills to a majority of the whole number of members in each house and for appropriations to charitable or educational institutions not under the direct control of the commonwealth to two-thirds of the whole number of members.<sup>63</sup> Though no such purpose was expressed at the convention, this provision has strengthened dissident forces in the legislature and has at times made executive leadership difficult even when a governor has a legislative body of his own party.

Not content with setting legislative procedure, the convention more importantly placed new limitations on legislative powers. Special legislation was regarded as the major evil of the day, the prime source of legislative corruption. In the 1872 session of the General Assembly 1,232 special acts had been passed and only 54 general laws.<sup>64</sup> There were those who charged that the legislators' primary concern was with special legislation. The proposal made by the Committee on Legislation called for the elimination of special legislation on an enumerated list of subjects, including the granting of charters to either municipal or private corporations. There was no opposition to this proposal, which was agreed to with a few minor amendments.<sup>65</sup>

The convention imposed limitations on the substantive powers of the legislature, especially in the field of fiscal affairs. They limited the power to tax by imposing the uniformity clause and limiting the types of property which may be exempted from taxation. Prior to this tax exemptions had been granted by special acts as well as general law. These provisions did not prove controversial.<sup>66</sup> The convention delegates carried over from the prior constitution, almost verbatim, the provisions adopted by amendment in 1857 limiting the borrowing power of the state both as to purpose and amount (except that the limit for deficiencies in revenue was increased to \$1,000,000), requiring a sinking fund and prohibiting the investment of state funds in the stocks of private corporations. These provisions provoked almost no debate.<sup>67</sup>

In so far as the constitution contains in minute detail the structure of the courts and enthrones in the constitution the long list of elective county officers, it limits the jurisdiction of the legislature in these areas. Likewise, the county government provisions make it impossible for the legislature to act directly in respect to many metropolitan area problems.

### ***The Executive Article***

The Executive Article proved the least controversial of any of the main articles. The only issue that really provoked debate was the subject of executive pardons, and the limitation of the governor's power to grant pardons was the only new limit on executive authority.<sup>68</sup> At the same time there was an increase in his legislative powers.

There were several significant changes in the executive article. The governor's term was increased from three to four years, but he was denied a successive term.<sup>69</sup> The office of lieutenant governor was created.<sup>70</sup> The constitution named six administrative heads: the attorney general, the secretary of the commonwealth, the superintendent of public instruction, the secretary of internal affairs, the auditor general and the treasurer. The convention members did not follow the pattern of the day and make them all elective. The secretary of internal affairs and the two fiscal officers were made elective, but the other three were made appointive.<sup>71</sup> The lieutenant governor, the auditor general and the treasurer were denied a successive term.

The legislative powers of the governor were strengthened, not as a vote of

confidence in the governor, but as a further check on the legislature. The veto provisions of the 1838 constitution were retained, but the vote to overcome his veto was increased from two-thirds of those present and voting to two-thirds of the whole number of members in each house. He was given the single item veto of appropriation bills.<sup>72</sup> The 1838 provision giving him the power to call special sessions of the legislature is repeated verbatim in the new article, but to this is added the power to name the legislative subjects upon which the special session may act. The General Assembly cannot go beyond this authorization.<sup>73</sup>

### **Judiciary Article**

Though the Judiciary Article was the most bitterly disputed article in the convention, it produced only modest changes in the court system. The popular election of judges which had been adopted in 1850 was retained.<sup>74</sup> The court structure was slightly modified. The register's court was abolished; in Philadelphia and Allegheny County a multiple common pleas court system was set up with four courts in Philadelphia and two in Allegheny County; and in Philadelphia the aldermanic courts were superseded by magistrates courts.<sup>75</sup> The Supreme Court also was subjected to some changes. The size of the bench was increased from five to seven and the term of the judges increased from fifteen to twenty-one years. The limited vote plan was provided for any election at which two or more judges were to be chosen. There was some modification of supreme court jurisdiction. The much criticized *nisi prius* jurisdiction of the court was abolished. The court was assigned an almost exclusively appellate jurisdiction; it retained original jurisdiction only for the purpose of the issuance of certain writs against state officers.<sup>76</sup>

There were changes also in the provisions respecting judicial districts. For the first time the discretion of the General Assembly was limited by the prescription of a population minimum to govern the erection of counties into separate judicial districts. Every county with a population of 40,000 or more would be a separate district; those with a smaller population were to be united together or joined to an adjacent county large enough to be a separate district. The actual setting up of the districts was left within the power of the legislature, but it was forbidden to unite more than four counties in creating a judicial district. An unsuccessful attempt was made to eliminate the role of the associate justices in the combined districts.<sup>77</sup> Counties with a population of more than 150,000 were to have a separate orphans' court.<sup>78</sup>

The convention debated with vigor, and sometimes with acrimony, every section of this long article. The debate on the floor of the convention was the continuance of the division which had split the Committee on the Judiciary Article, a feud that was continued on the election stump during the battle over ratification. It took five weeks to hammer out the twenty-seven sections on first reading, an additional fifteen days on second reading, and approval came on third reading only after numerous proposals for change had been voted

down. Dissatisfied members even presented a petition signed by more than one third of the members requesting the separate submission of the Judiciary Article when the constitution was presented for ratification. The President of the convention declined to receive the petition because some of the signers were absent from the convention.<sup>79</sup>

The chief issues over which the sharp division was drawn were the method of choosing judges and the question of whether there should be an intermediate appellate court. On each of these issues there was a three way split within the committee and on the floor. At all points Judge Woodward was determined that his plan should be substituted for the committee proposal. Debate on the circuit court issue came first, forced by Judge Woodward's insistence that his substitute proposal be accepted at the outset, before the committee chairman had had a chance to present and explain the committee plan.

### ***Dispute Over Circuit Court***

The majority report provided for the creation of a "circuit court," a single distinct court with its own bench elected at large. It would be primarily an appellate court. Relief to the Supreme Court struggling with a difficult backlog of cases would be achieved by giving the new court final jurisdiction in smaller cases, and the hardship of double hearings would be avoided by the provision that larger cases (perhaps, those involving over \$2,000) would go directly to the Supreme Court.<sup>80</sup>

Judge Woodward agreed with the proposal of an intermediate appellate court, but he wanted an alternative scheme. He urged the division of the state into twelve circuits in each of which there would be an appellate tribunal. The bench in each case would be composed of a circuit judge elected in the district and two common pleas judges. This court would hear all appeals, but the right of appeal to the Supreme Court would be preserved. The judge observed that the fairness of the review received in such a tribunal would make appeals to the higher court unnecessary in most cases. He, therefore, anticipated that this system would bring the relief to the Supreme Court needed.<sup>81</sup>

The third group wanted no intermediate court at all. They suggested that past experience indicated that such a court, whether the convention accepted the committee plan or Judge Woodward's plan, would simply provide additional delays. The majority proposal was also criticized for setting up a distinction between the rights of the rich and the poor, since smaller cases would ordinarily end in the circuit court.<sup>82</sup> The Woodward proposal, its critics charged, would create diversity of law; the inclusion of common pleas judges on the bench was condemned as creating an awkward situation which would not give full unprejudiced review. Furthermore they questioned the judge's assumption that most cases would end at the circuit level.<sup>83</sup> Several other schemes were proposed and discussed. In the end the whole idea of an intermediate court was rejected. One member pointed out that if such a tribunal proved necessary, the legislature would have full power to create it.<sup>84</sup>

### **Choice of Judges Debated**

On the issue of the method of choice of judges the split was among those who wanted to return to the old system of appointment of all judges, those who clung to the 1850 reform of popular election of all judges, and the advocates of compromise. The proposal of the majority report was essentially a compromise and defended as such by the committee chairman. The committee plan was to return to the appointive system for the choice of justices of the supreme court, but to retain popular election for all other judges.<sup>85</sup> This compromise was defended as substantively sound. The electorate was in a better position to evaluate the qualifications of judges who served them locally than of appellate judges serving on a statewide basis. Furthermore, under the system of popular election, supreme court candidates were nominated by the party caucus and convention. The choice of the nominee was influenced by the desire of party leaders to strengthen the ticket of the gubernatorial candidate, and questions of strategy, such as a regionally balanced ticket, took precedence over the choice of a professionally competent judicial candidate. The change to appointment by the governor with consent of the senate would likewise tend to weaken the influence of corporate interests over the choice of judges, since such interests had more access to the inner party leadership than to the governor and senate.<sup>86</sup>

Judge Woodward would not accept this compromise. He insisted that experience under the 1850 Amendment abundantly demonstrated the error of the system. He would accept nothing less than a return to appointment of all judges.<sup>87</sup> He was supported in his position by Wayne MacVeagh<sup>88</sup> who insisted that judges were degraded by being politically chosen. The courts were not representative bodies and should not represent any party or interest. Judges should not be made subject to the irresponsible choice of a party caucus or convention.

The majority of delegates, however, sided with the committee members who wished to retain popular election of all judges. The people, these delegates argued, were the safest depository of this power. Under the appointive system, whenever one party was in control in Harrisburg for a long period of years a one-party bench would result, as had been the case at the time of the adoption of the Amendment of 1850.<sup>89</sup> As has already been indicated the convention, after extended debate on the subject, agreed to popular election.<sup>90</sup>

### **Election Reforms**

Another problem regarded as urgent by the convention delegates, especially the Democrats and Liberal Republicans, was the elimination of election irregularities. The Democrats charged that they had been deprived of election victory in 1866 by the election officials of Philadelphia, who were accustomed to "counting in" or "counting out" such candidates as they chose. They regularly held up Philadelphia returns, in state elections, until the margin of

votes necessary for victory became evident, and reported Philadelphia returns accordingly. Governor Geary's 6,500 majority, the Democrats alleged, was produced in that fashion. Senator A. K. McClure, Liberal Republican, charged that Philadelphia registration officials could, and regularly did, disfranchise whom they chose. He related his own difficulties in getting his name on the registration list.

At the convention the sins of the political "rings" were detailed at length, including colonizing, ballot-box stuffing, farcical naturalization proceedings on a wholesale scale to produce controlled voters and use of "floaters." Delegate after delegate rose to portray the misdeeds of the election manipulators, and to indicate that though Philadelphia was the chief sinner, it was not alone in these faults. Two major remedies were proposed. The plan urged by the Democratic leader in the convention, Charles R. Buckalew, was to require all ballots to be numbered, the number to be recorded by the elector's name on the ballot list, and the voter endorse his ballot by his signature.<sup>91</sup> Mr. Buckalew admitted that secrecy was important, but the enormity of the election frauds demanded a severe remedy. Without some means of identifying his ballot the courts would not permit a voter to challenge the manner in which his vote had been counted.<sup>92</sup>

The Democrats and Liberal Republicans were united in their demand for this reform, but the regular Republicans opposed it. The issue split the Philadelphia delegation, with Liberal and regular Republicans engaging in bitter exchanges. The opponents of the reform minimized the irregularities in Philadelphia and stressed the importance of secrecy. Strong opposition developed also in the interior and western counties, where the requirement of a signature would work a hardship because of the large number of persons who could not write.<sup>93</sup>

After five days of debate the proposal was rejected; the following day it was reconsidered and approved in a close vote. The division was primarily on party lines, the Democrats voting as a bloc in its favor. Enough Republicans joined them to give victory to the reform proposal. As finally approved on third reading the provision made the signing of the ballot optional, but required the numbering of ballots and the recording of the numbers.<sup>94</sup>

The second line of attack was a change in election dates for state and local elections. Under the existing election laws the state election took place in October, and local election dates varied with the provisions in the individual charters or legislative acts. This made the work of "colonizers" and importers of "floaters" easier. For state elections (since they did not coincide with the national election in November) illegal voters could be imported across the state line, and whisked back to a refuge from prosecution if any charges of irregularity resulted. Moving the state election to November would tend to stop this practice. The delegates were convinced of the desirability of having all municipal elections on the same day, but of keeping state and local elections separate. They therefore moved the state election to coincide



with the national, and set the municipal elections for the third Tuesday in February.<sup>95</sup>

The suffrage qualifications were modified to conform to the Fifteenth Amendment. There was a lively, but fruitless, debate of woman suffrage with John M. Broomall serving as the chief champion of women's rights. There was also an unsuccessful attempt made to remove the tax-paying qualifications.<sup>96</sup>

### ***Regulation of Corporations and Railroads***

A third matter of urgent business, as viewed by the delegates, was the placing of "salutory" restraints on corporations, and especially, railroads. Articles XVI and XVII were fashioned to meet this need. These articles froze into the constitution provisions that were in reality of a legislative character, but the delegates did not trust the legislature to enact the necessary legislation. Some of the provisions respecting corporations were carried over from the 1838 constitution, but most of the article was new. Regulations designed to prevent abuses in corporate management and prevent clique control reflected the thinking of the reformers of the 1870's. Buckalew's limited vote plan was applied to the choice of corporate directors. This guarantee of a minority voice, it was anticipated, would prevent the repetition of abuses of minority interests which had been characteristic of the period.<sup>97</sup> Further reforms included the revocation of all charters under which bonafide organization had not already taken place. This was to eliminate the evil of "floating" charters offered on the market to the highest bidders. Corporations were to be confined to the specific businesses for which they were chartered. Much of the rest of the article was in reality a "blue-sky" law elevated to constitutional status.

The railroad article was a subject of lively interest. As already noted, the railroad interests were well represented at the convention. Nevertheless, a railroad article patterned after the Illinois "model" was put through with ease on first and second readings. The only proposal provoking long discussion was a section which would have subjected railroad property to local taxes. This proposal was abandoned with the understanding that the legislature could, in its discretion, determine whether railroads should be taxed by the state or be taxed locally.<sup>98</sup>

By the third reading the opposition had stiffened. Nevertheless, Article XVII survived third reading without any emasculating amendments. Then, in a surprise move late in the convention when convention attendance had thinned to a minimum, the pro-railroad delegates put through a proposal to recommit the railroad article to a special committee to "improve" the language of the text. Since the special committee was heavily weighted with known pro-railroad delegates, there was a furor in the press. Absentee delegates hastened to Philadelphia to be present when the special committee gave its report. At a tense session the original article was reinstated in place of a new draft, and the day was won by the champions of the people's rights.<sup>99</sup>

Critics of the railroads feared railroad domination of mining, manufacturing, lumbering and real estate development in the state. They resented discriminations against various local interests and communities. They protested against the unwillingness to handle freight of competing lines. They denounced the fiscal irresponsibility of many lines. To cure these ills the new railroad article declared all railroads (and canals) to be "public highways" and the corporations operating them to be "common carriers." All forms of discrimination were forbidden: common carriers were required to accept each other's cars, passengers and freight. Consolidation of parallel or competing lines was forbidden. To promote access to information, railroads were required to maintain a public office where their books would be kept open for inspection by stockholders or creditors and the names of shareholders and officers would be available. Railroad corporations were forbidden to engage in mining, manufacturing or any business other than a common carrier, or to acquire real estate other than that essential for their operations as a common carrier. The granting of passes to persons other than officers or employees was forbidden.<sup>100</sup>

### **Local Government Articles**

Local government did not escape the reformers' attention. Provisions were included in the constitution imposing new limitations on the creation of counties,<sup>101</sup> enlarging the list of constitutionally named elective county officers,<sup>102</sup> abolishing the fee system for county row officers in Philadelphia,<sup>103</sup> and restricting local debt. Mr. Buckalew succeeded in imposing his limited vote plan for the election of county commissioners and county auditors in the counties not large enough to have a controller. The delegates left city government free from constitutional prescription except in respect to finances.

The most controversial provisions were those governing municipal indebtedness. This argument tended to divide delegates from communities which had already embarked upon broad programs of capital improvements and were struggling with the burdens of a heavy debt from delegates whose home communities were only in the beginning stages of such development. The former generally were demanding restraints, whereas the latter were determined that the growth of expanding communities should not be sacrificed. After a long debate, the convention agreed upon a formula which served as the basic rule until the amendment of 1966. The debt limit was set at 7% of the assessed value of taxable property. This provision applied to counties, cities, boroughs, townships and school districts. Any increase in debt at any one time amounting to more than 2% of the like assessed value required approval by the voters.<sup>105</sup>

### **Bill of Rights**

The enabling statute governing the convention had forbidden the constituent body to touch the Bill of Rights. The convention delegates regarded this stricture upon its substantive powers as *invalid*. Nevertheless, most of the Bill

of Rights was carried over verbatim from the 1838 statement of fundamental rights. The convention made a change in the provisions affecting the law of libel, to give more protection to newspaper editors accused of libel when they published materials critical of public officials. Waiver of trial by jury in civil cases was authorized. Irrevocable grants of special privileges or immunities were expressly prohibited. The guarantee of free elections was strengthened by an added precautionary provision forbidding any power "civil or military" to interfere at any time with the free exercise of the vote. There were also a few modifications which did not affect substantive guarantees of rights.<sup>106</sup>

### **Convention Completes Its Task**

For more than a year the convention had struggled with its constitutional task before it gave final approval to the finished document. It is impossible in this brief survey to give more than a hint of the intense earnestness with which the reformers among the delegates worked to create a system which would rid the state of the evils that permeated the whole political structure. With excellent hindsight, we who are faced with the problems of the space-age know that the very devices intended to restrain the forces of self-interest and corruption have in many respects placed the Commonwealth itself in chains.

### **Ratification Battle**

When the convention recessed in mid-November the delegates still had a formidable task before them; that of persuading the electorate to accept the new constitution. The time was short, the forces against them powerful and ingenuous. In general, leadership of the regular (Radical) Republicans was against the constitutional reforms embraced by the convention. Wayne MacVeagh, who had participated prominently in the convention, was an exception, as he gave the constitution his loyal support. Democrats and Liberal Republicans generally supported it. Strong opposition came from the local officers in Philadelphia who resented the abolition of the fee system. Those delegates who were incensed by the refusal of the convention to submit the judiciary article separately also took the stump against it. For the most part the reformers had the press on their side. The major journals had given full coverage to the convention throughout, and had carried editorials explaining new provisions and challenging the voters to vote favorably.<sup>107</sup> The campaign was short, but intense, with public meetings held throughout the state. In Philadelphia and Pittsburgh mass meetings with prominent speakers were held on the eve of the vote.

Even a brief note on the ratification would not be complete without some reference to the legal moves that were made by the opposition to block adoption of the constitution. In Philadelphia court action was prosecuted in the Supreme Court, sitting *nisi prius* to restrain the submission of the document in referendum on the grounds that the convention had exceeded its authority in appointing a commission to administer the election in Philadelphia and that the ordinance of Submission was defective by virtue of the

failure of the convention to submit the Judiciary Article separately.<sup>108</sup> The court sustained the right of the convention to make the decision to submit the constitution as a whole, but denied its authority to intervene in the Philadelphia election by the appointment of the commission. The latter act was in the nature of a legislative act. This meant the election would be administered by the regular election officials.

In Allegheny County also a restraining suit was filed, as the Common Pleas Court was petitioned to issue an injunction to prevent the placing of the issue on the ballot. The petitioners alleged that the enabling act itself was invalid, since the 1838 Constitution made no provision for a constitutional revision; the limited vote plan under which the delegates had been elected violated both the national and the state constitutions,<sup>109</sup> that the convention had exceeded its authority as granted in the enabling act by amending the Bill of Rights and by refusing to submit Article V separately when such action was requested by a petition signed by one-third of its members. Judge Stowe denied the injunction, upholding the right of the people to call a convention as an inherent right. He disposed of the other objections *seriatim*. The legal barriers having been overcome, the architects of the constitution awaited the verdict of the voters.

When the returns were counted it was quite evident that the voters had been ready for a constitutional change, as the new constitution won by a two to one margin. A hint of this came just before the election, when Simon Cameron, wise in the ways of politics, gave a belated endorsement.<sup>110</sup>

### 3. TWENTIETH CENTURY CHALLENGE

For more than a quarter of a century the constitutional amending power lay dormant, but in 1901 Pennsylvania began the long, slow process of modifying its detailed, restrictive constitution. By the half-century mark seventy amendments had been considered by the voters, and they had approved fifty-one.

#### **1900-1920—Elections and Municipal Debts**

During the first two decades of the twentieth century, Article VIII on Suffrage and Elections and the municipal debt provisions of Article IX were the primary subjects of constitutional modification. In 1901 three amendments were approved, all relating to Article VIII. The "great reform" of the constitutional convention requiring the numbering and recording of ballots and permitting the voter to endorse his ballot with his signature was repealed. The two companion amendments related to registration. By one, the legislature was authorized to make registration a voting requirement. By the other, registration laws were, if enacted, to be uniform for the same class of communities, but the legislature might at its discretion limit registration to cities.<sup>111</sup>

Eight years passed before amendments were again on the ballot, but in

November, 1909, the voter in the election booth was faced with ten amendments. Nine of them won the voters' approval. By this series of amendments the municipal election was shifted from the practically "impossible" date of the third Tuesday in February to the first Tuesday in November, but the municipal and state elections were kept separate. The municipal elections were set for the odd-numbered years and the general elections were made to coincide with the national elections. This change necessitated modifications in the terms of office of county officers and of some state officers as well. Terms of elective county officers were changed from three to four years, and they were to be chosen in the municipal elections. Terms of justices of the peace, aldermen and Philadelphia magistrates were changed from five to six years, and they, too, were to be elected at the municipal election. The state treasurer and auditor general received lengthened terms, their new term being four years. They were made elective in the general election not coinciding with the election of the governor. Judges elected from the state at large might be elected in either general or municipal elections as circumstances required, but the election of district court judges was assigned to the municipal election year.<sup>112</sup>

In 1911 two amendments were submitted, both of them local in application. The municipal borrowing limitation in Article IX was amended on behalf of Philadelphia to permit an exception from the debt limit of money borrowed for municipal subways for transit purposes, docks and wharves if the revenue yield from such capital investments was sufficient to cover interest and sinking fund charges to amortize the debt. This was the first of a series of special provisions for Philadelphia.<sup>113</sup>

By the second amendment, the number of common pleas courts in Philadelphia was increased from four to five, and authority was conferred on the General Assembly to make such increases in the future as might prove necessary. At the same time the two courts in Allegheny County were united into one court.<sup>114</sup>

Two years later the voters approved an additional liberalization in the municipal debt provision for Philadelphia and adjusted judicial terms to allow for the change in election from February to November.<sup>115</sup>

In 1915 the voters were called upon to exercise their judgment on three widely different subjects. By approval of one amendment they removed the cloud of constitutional doubt from workmen's compensation; by a second they again stretched Art. IX, sec. 8 to accommodate the needs of Philadelphia. The third proposal was a technical one, hardly of constitutional caliber, relating to certain aspects of the registration of land titles.<sup>116</sup>

The year 1918 is, in a sense, a constitutional amendment landmark for it was the year that ushered in the first of a long series of constitutional amendments by which specific state borrowing beyond the constitutional limitation in Article IX, section 4 has been authorized by the voters. At this time the borrowing of \$50,000,000 for state highways was approved. Section 8 of the same article was again changed at Philadelphia's request.<sup>117</sup>

## **1920-1940—Local Government and State Borrowing**

In 1922 when the electorate was preoccupied with the issues involved in a movement for constitutional revision it gave its assent to an important amendment which authorized, but did not mandate, home rule to all cities. The General Assembly was given the power to grant home rule to all cities or to cities of any particular class. The legislature was also given discretion in regard to optional charters for cities or boroughs.<sup>118</sup>

Four amendments were approved in 1923, including two of importance. The classification of municipalities according to population and passage of general laws relating to a particular class was authorized. The number of classes for particular types of local units was limited.<sup>119</sup> The borrowing for highways authorized in 1918 was now increased to \$100,000,000. The limitation on the General Assembly's power to exempt property from taxation was modified to permit the exemption from real property tax of the property of veterans' organizations. At the same time the constitutional barrier was removed from the granting of railway passes to clergymen. Such is the variety of subjects on which the sovereign voter must register his judgment!<sup>120</sup>

In 1928 the voter was faced with the staggering task of passing on fourteen amendments, four of them authorizing additional state borrowing totaling \$230,000,000. The proposed borrowing and six other amendments were rejected. The most important of the amendments that received the voter's approval, in potential at least, was the Metropolitan Charter provision for Allegheny County.<sup>121</sup> The voters also approved the use of voting machines and accepted a minor modification of the provisions regarding voting districts. Curiously, out of the long list of amendments, they selected for approval an amendment permitting reciprocity in the granting of exemptions to residents or estates of residents of other states.<sup>122</sup>

The voter had a heavy burden, again, in the depression year of 1933. This time he was in a more receptive mood and approved ten of the twelve submitted. By three of those approved, the state was authorized to borrow \$85,000,000. The other six covered a wide variety of subjects: blind pensions; excess condemnation; special assessments in Philadelphia; a second metropolitan charter plan for Allegheny County; removal of the tax-paying qualification and restrictions as to sex in the suffrage provisions; modification of the restrictions on investment of trust funds; removal of the constitutional prohibition on differentials in railroad freight rates between intrastate and interstate transit. Included in the authorized borrowing was a \$50,000,000 veteran's bonus for veterans of World War I, significantly foreshadowing future events.<sup>123</sup>

By contrast with their major task in 1933, the voters approved only one amendment in 1937; it removed constitutional doubt from certain aspects of the public assistance program.<sup>124</sup>

## **1940-1960—State and Local Borrowing, Local Government, and Absentee Ballots**

In 1943 they substituted legislative for judicial control of the establishing of election districts. In 1945, they ear-marked gasoline taxes for highway purposes, authorized \$50,000,000 worth of borrowing and approved two other minor amendments.<sup>125</sup> Two years later, in a reversal of mood, the voters rejected a proposal to raise the debt limit to \$50,000,000. They accepted in 1949, however, borrowing up to \$500,000,000 for a bonus for veterans of World War II; but in 1952, changing again, rejected a proposed borrowing of \$210,000,000 to refund the General State Authority and State Highway and Bridge Authority debt with general obligation bonds. This would not have increased the actual public debt; it would simply have changed its form.<sup>126</sup>

The voters were kept busy during the 1950's with constitutional decisions, some local in effect or affecting a limited sector of the electorate, others involving major borrowing. They also rejected a proposal for a constitutional convention, but this will be discussed later. In 1951, two amendments applying only to Philadelphia were approved. The first consolidated the city and county of Philadelphia, the other modified the constitutional borrowing power of the city.<sup>127</sup> As has already been related, in 1952 the voters rejected a proposed borrowing amendment. A year later, they again amended the absentee voting provisions, extending the privilege to incapacitated veterans even if not bedridden. At the same time they rejected three amendments; they again refused to permit county treasurers to succeed themselves in office, refused to permit the assignment of Allegheny County Court judges to sit in the criminal division of common pleas and rejected tax benefits to encourage private reforestation practices.<sup>128</sup> In the elections of 1955 and 1956 the voters approved two more amendments, one removing constitutional doubt from legislative provisions increasing retirement benefits for employees already retired. This was a tardy acknowledgement of rising post-war cost of living. They also approved the repeal of constitutional regulations respecting stock issuance by corporations, leaving the regulation to the discretion of the General Assembly.<sup>129</sup> In 1957 a general absentee ballot amendment was finally approved, and the voters gave assent to borrowing \$375,000,000 for a soldiers' bonus to veterans of the Korean conflict. It differed from prior borrowing provisions by holding in abeyance the granted authority unless the General Assembly provided the additional revenue to service the debt at the time it approved the bond issue.<sup>130</sup> In 1958 approval was given to a plan previously rejected, to encourage private measures for reforestation by tax benefits.<sup>131</sup>

For fifty-eight years the voters had been called upon to make judgments on constitutional issues great and small. Few of them had been of a fundamental nature. The general character of the constitution remained unchanged. Rather than undertaking major surgery to remove a general restriction, the voter had been asked in case after case to permit a special exception. Of far

greater significance, in many cases, were the fundamental changes introduced by statute, such as the executive budget, and the authority method of borrowing for both state and local purposes. By March 1959, when the Woodside Commission made its report, the patient voters had been called upon to review eighty-six amendments. Fifty-nine had been approved. The remainder of this constitutional story will be focused on the broader issue of constitutional revision. The mere detailing of the bewildering list of amendments approved and rejected is itself revealing, pointing to the urgency of a way out of the voter's continuing dilemma.

#### **4. MOVEMENT FOR REVISION**

In so brief a story of constitutional change, primary attention must be given to the modern movement for revision, dating from the Report of the Woodside Commission, but a short review of the past is significant and revealing in respect to the changes in emphasis over the years. The first proposal for a convention came as early as 1891 under the leadership of Governor Robert Pattison, but the voters flatly rejected the convention call by a three to one vote. The early years of the present century, as we have seen, did usher in a new era of use of the amending process. Twenty-one amendments were added in eighteen years, and others were pending in the General Assembly. When William C. Sproul ran for governor in 1918, he made constitutional reform a campaign issue. As governor, he appointed a Commission on Constitutional Revision (the Sproul Commission) chaired by his attorney general, William I. Schaeffer.<sup>132</sup>

##### ***Sproul Commission, 1921***

The commission's deliberations extended over a year. It prepared a draft constitution which proposed 130 changes, some purely minor in nature, others of considerable significance. As a prime reform it proposed an executive budget; under its terms the governor would be required to send a General Appropriation bill along with the budget, and appropriations to educational and charitable institutions would be by general category of institutions. The commission also proposed state and local civil service, a broadened educational commitment, an easier amending process and a specific provision for the calling of constitutional conventions. The only change in the executive department was a change from an elective to an appointive status for the secretary of internal affairs. There were several changes proposed in the judiciary article, but the basic system was not overhauled. The supreme court was increased from seven to nine members, the superior court given constitutional status, the separate common pleas courts in Philadelphia consolidated into one, and the associate judges in combined districts abolished. The limited vote plan for choice of supreme court judges was dropped. Interestingly, there was a proposal that the state be districted for justices of the peace courts, reducing the number of minor justices. State and municipal borrowing provi-



sions were overhauled. State borrowing up to \$150,000,000 for highways and \$25,000,000 for forests could be accomplished by a two-thirds vote of the two houses of the legislature, with voter approval; the local borrowing limit was raised to 10% of taxable property values; excess condemnations were authorized.<sup>133</sup>

The question of the calling of a convention was submitted to the voters in the September primary: if the proposal had been approved the voters would have elected three delegates from each congressional district in the November election and the twenty-five commission members would have become delegates. Governor Sproul and Senator Pepper urged ratification and members of the commission generally were active in supporting it. Some conservative leaders cautioned that a post-war period was a dangerous time for constitutional changes, and liberals attacked the attempt, as they viewed it, to stack the convention by including the appointed delegates. The proposal was defeated by a 100,000 margin.<sup>134</sup>

### ***Pinchot Convention Proposal***

The issue of revision could not, however, long lie dormant. Gifford Pinchot, as governor, led a renewed effort for revision, but was rebuffed by a three-to-one vote against the call. The problems of the Great Depression made revision seem more urgent than ever to those struggling with governmental problems at Harrisburg. In the 1934 campaign both parties pledged themselves to revision. In the 1935 session the submission of the question to the voters was authorized, but a limitation was placed on the substantive power to change the state borrowing power. The \$1,000,000 limitation could not be increased to more than \$50,000,000.<sup>135</sup>

### ***Earle Advisory Committee, 1935***

Governor Earle appointed an Advisory Committee on Constitutional Revision with Attorney General Charles Margiotti as chairman and William A. Schnader, former attorney general, as vice chairman. Mr. Schnader was in reality the working chairman of the commission. In a month's time, its hard-working subcommittees prepared draft recommendations which were submitted to the governor on September 12, 1935, just five days before the primary vote. Their work was cut short at this early stage by the defeat of the proposal in the September primary. Like the proposals of the Sproul Commission, the Earle Commission recommendations did not suggest an overhauling in the terms of the basic characteristics of the constitution. This is not to minimize the importance of the proposals. It attacked fiscal problems caused by constitutional limitations by proposing the modification of the uniformity clause to permit graduated income, gift and inheritance taxes. It recommended modifications of the borrowing power, both as to purpose and amount, but thought the \$50,000,000 limit set in the legislative act too high. The legislature should be required, each time it borrowed, to enact the taxes to service the debt.<sup>136</sup>

Among its other proposals was constitutional status for the budget system, compulsory civil service, special provisions for metropolitan areas and urban counties and broadening of the legislature's power to classify municipalities, a new provision to permit amendments by action in one session of the legislature by a two-thirds vote followed by approval by a 60% popular majority. This does not do full justice to the report, but suggests the breadth of its changes.<sup>137</sup>

In spite of an active campaign on the part of Governor Earle and other Democratic leaders, the convention call was rejected by a 56% majority.<sup>138</sup> The problems of government, however, could not be put off as easily as the convention itself. Informal methods of "amendment" were developed in the form of state and municipal authorities. By 1953 this persistent issue was raised again, and again the voters dealt it a defeat, or perhaps more accurately apathy did, since over 1,200,000 registered voters failed to express a choice. In this election the convention proposal had been caricatured by its opponents as a disguised attempt to impose an income tax.<sup>139</sup> Looking at the problem objectively, one might assume that five rejections, four of them coming in a time span of scarcely more than thirty years, would have set the issue at rest. On the contrary, the very persistence of the issue indicated an awareness on the part of political and civic leadership of the increasing difficulties in meeting the rapidly mounting problems of our urban society.

### **Woodside Commission, 1959**

With an awareness of the urgency of change, the decision was reached at Harrisburg in 1957 to appoint a new study commission.<sup>140</sup> The chairman of the commission was Judge Robert Woodside of the Superior Court of Pennsylvania, and the commission is commonly referred to as the Woodside Commission. The commission was assisted by a research staff. It organized into committees to study the various articles of the constitution, and it held hearings in Harrisburg, Philadelphia and Pittsburgh. After a year of such study and canvassing of opinions, the commission prepared a report released March 9, 1959. The *Report of the Commission on Constitutional Revision* runs to over two hundred pages and does not lend itself readily to a brief survey. The commission did classify its recommendations into three categories: thirty-three reforms it classified as "critically needed" (Class I changes); twenty-two more were labeled "very desirable" (Class II changes); sixty-eight more amendments were designed to improve the language and form of the constitution (Class III changes).

### **Legislative, Executive and Judiciary Articles**

Included in the Class I changes were several relating to the General Assembly. Perhaps most significant was the proposal not only making the sessions annual, but making the legislative body a continuing body during the two-year period for which representatives are elected. In order to make the decennial reapportionment enforceable, the commission proposed that if the

first session of the legislature following the census fails to act, the governor should immediately after adjournment call a special session, with the proviso that the special session may not be adjourned *sine die* until it has acted on apportionment. A third proposal removed the governor's power to limit the subject-matter to be acted upon when he convokes a special session of the legislature.<sup>141</sup> It also proposed to redress the injustice done Philadelphia by removing the discrimination against it in regard to full representation in the senate. The most important change recommended in the Executive Article was the change permitting the governor to succeed himself for one additional term. There was also a modification of the Board of Pardons. Among Class II changes, was a shortening of the list of elective officers and the removal of constitutional status from some administrative posts.<sup>142</sup> The vote for senatorial approval of appointments was reduced from two-thirds to a majority vote.

The judiciary article received a considerable overhauling. Included in Class I changes was the Pennsylvania plan for the choice of appellate judges and common pleas judges in Philadelphia and Allegheny County. The plan was made optional for other judicial districts. Judges of courts of record were forbidden to make contributions to political parties, hold a party office or become a candidate for a non-judicial post. Also included was a reform of the justice of peace system by a reduction in number. The state would be divided into minor judiciary districts (as the Sproul Commission had proposed). The common pleas court would have the duty of prescribing rules of procedure. In Philadelphia the separate common pleas courts would be consolidated.<sup>143</sup>

### **State and Local Finance**

The Commission attacked the problems relating to state and municipal indebtedness. It proposed that state borrowing for capital improvements should be unlimited as to amount, but in each case should have voter approval. Such borrowing would be secured by general obligation bonds. Under the Commission formula, all authority borrowing except that financed through revenue bonds would be forbidden.<sup>144</sup> Likewise, the Commission proposed the removal of constitutionally imposed limits on the amount of local debt. This did not mean that the Commission favored unlimited local borrowing, but that state legislative control would be restored. Municipal authorities, other than those financed by revenue bonds, would be forbidden.<sup>145</sup>

The Commission did not show a similar boldness in regard to state taxation. Though a minority of the commission felt that it was urgent that the uniformity clause be modified to permit graduated income and inheritance taxes, the majority did not support this position.<sup>146</sup>

### **Home Rule and Optional Government Plans**

A carefully drawn text on home rule, to apply to boroughs as well as cities, and the authorization of optional charter plans were included in the

local government provisions. For counties, the Commission proposed the removal of the constitutional status of county row officers, giving the General Assembly the authority to legislate on county government by general laws or optional government plans.<sup>147</sup>

The Commission proposed the repeal of portions of the article on corporations and all of the article on railroads and canals as outdated or obsolete. To the article on amendments it appended a long new section providing for constitutional initiative, and a provision<sup>148</sup> for periodic review of the Constitution.

For the accomplishment of this major surgery on the Constitution, the Woodside Commission proposed the use of the system of piecemeal amendment for all Class I and Class II recommendations, and included the necessary draft proposals in the report. A minority of the commission urged the calling of a convention, but the majority pointed to the fact that the voters had already rejected such a proposal on five occasions.<sup>149</sup>

### **Lull in Revision Movement; Convention Rejected Sixth Time**

During the next five years little progress could be reported on the achievement of the critical reforms urged in the *Report*. Of the eleven amendments considered by the voters, only one was a major recommendation of the Commission, and it was rejected—the proposal that the governor might succeed himself for one successive term.<sup>150</sup> In 1959, a proposal to permit annual sessions of the General Assembly was approved, but it fell short of the Commission goal, since the second session (in the even-numbered year) was limited to budget action. At the same time approval was given an amendment permitting voters who had moved within sixty days of an election to return to the old district in which they had registered and voted. This was a commission recommendation, but not of major importance in overall revision. In November, 1961, three amendments were approved, one permitting exemption from real estate taxes for needy veterans who had suffered extreme disabilities, and the other two making minor adjustments. In 1963, the voters approved a \$70,000,000 borrowing authorization for Project 70, and approved provision for an emergency interim government in case of an attack on the United States. Still there was no progress on the revision front. It appeared that the Woodside Commission *Report* would become simply another document in the public archives.

Census figures for 1960 were disturbing. Pennsylvania not only was below the national average in population growth, but was losing in terms of persons in their prime work years. Furthermore, large areas of Pennsylvania were depressed economic areas. Bold action was needed. A modernized constitution seemed more urgent than ever. When Governor Scranton took office he pledged himself to give constitutional revision a high priority. Upon his recommendation the legislature again submitted the question of a convention call to the voters, but on November 5, 1963, the proposal was defeated.

Two more amendments were added to our aging document in November, 1965, when the use of former judges (not defeated for reelection) for temporary duty was approved and a minor exception to the tax uniformity clause was accepted.

### **Revision by Article**

Beginning with the May 17, 1966 primary election there has been a marked change. The voters approved an increase in municipal borrowing power in the usual pattern of piecemeal change. At the same time they approved a new Article on Public Officers, which combined the significant sections of Articles VI, VII and XII, eliminated archaic provisions, and provided a new simplified, dignified oath of office.

On November 8, 1966, the voters approved a three months training course for new justices of the peace and aldermen. Moving ahead on the revision front, they also approved a new concise Article on Corporations which eliminated the purely legislative provisions in the old Article XVI. The truly remarkable step forward, however, came in the May primary of 1967, when in one monumental effort the electorate gave its consent to the calling of a limited constitutional convention and approved eight amendments, six of them of a general revisory nature. By these the voters approved some added protections in the Declaration of Rights; revised in part the Legislative Article (II), significantly making the legislature a continuing body; pruned out the obsolete, detailed reformist provisions of the Article on Legislation (III), and combined with it such sections from Articles X and XI as were worth saving; revised the Executive Article (IV), making the governor and lieutenant governor elective as a team and making them eligible for one successive term; removing the constitutional status of the secretary of the commonwealth and the secretary of internal affairs; and revamping the membership of the board of pardons; revised the Article on Suffrage and Elections (VIII) reducing the residence qualification to ninety days; removing the administrative duties of courts in election administration; and giving the General Assembly the duty to enact appropriate legislation; and, finally, repealed in entirety the archaic, purely legislative Article on Railroads and Canals (XVII). In addition to all this the voters accepted a speeded up amending process for emergencies, as proposed by the Bar Association, and gave their blessing to a \$500,000,000 borrowing for conservation and reclamation purposes.

How can we account for so abrupt and remarkable a change in the quality of amendments appearing on the election ballot? The answer cannot be found merely in a change in climate in the General Assembly in which revision proposals languished for years. Rather it is to be explained by the imaginative new approach brought to the movement by the Pennsylvania Bar Association. Revision article by article, permitting the voter to do the whole job on a particular article rather than tinker with revision by a section by section approach, brought new hope by the simplification of voter task. This idea was

embraced by the Scranton Commission with full endorsement by the Governor, and won support of A Modern Constitution for Pennsylvania, Inc.

This is a dramatic story, difficult to compress into a few short paragraphs. In 1961, on the inspirational urging of William Schnader, who had given leadership to Governor Earle's commission, the Board of Governors of the Pennsylvania Bar Association appointed fourteen study committees, to each of which an article of the constitution was assigned. By January, 1963, a final report on Project Constitution was made to the Association. By this time the project had taken the form of twelve proposals for article by article amendment of the constitution, the reduction in number resulting from the combining of several articles. While these proposals embraced many of the Woodside recommendations, they went further in pruning out legislative details and combining related materials in a single article. They proposed a new article on local government, combining Articles XIII, XIV and XV, and transferring the municipal finance provisions from Article IX to the new article. Their judiciary proposals were more constructive, including unification of the courts and complete reform of the minor judiciary. Though equally willing to broaden borrowing power, the Bar dealt less harshly with authorities. Since Project Constitution is a continuing effort, later versions of the Project have dealt with new problems.

These proposals were approved by the membership of the Bar Association in a referendum in 1963, and the Board of Governors appointed a Special Committee to guide efforts to implement the program. The 1963 session of the General Assembly was preoccupied with the problems of the constitutional convention and gave little attention to the new approach. After defeat of the convention proposal, Governor Scranton appointed a Commission on Constitutional Revision which reviewed the Bar proposals, and produced a slightly revised version. William Schnader served as chairman, and in a sense as liaison between the two groups.

The twelve proposals were introduced into the legislature with Governor Scranton's backing. As we have seen, nine of the proposals have been approved by the voters. Three of the areas to be considered by the convention—the articles on judiciary, local government, taxation and finance (in part) were subjects of three of the proposed "article by article" revisions, but have not received legislative approval.<sup>151</sup> The Special Committee has also prepared proposals on the apportionment problem, but the legislature has not acted on them since this is an issue to come before the convention.

When the convention meets in Harrisburg in December, it will find that much groundwork has been laid for its efforts. It will find also that it has been given some of the most difficult issues to resolve.

Success of the convention call after six rejections is perhaps more surprising than the sudden success of the article by article amending process. It is to be explained in part by the fact that the convention is a limited convention, and the troublesome issue of a graduated income tax has been avoided. The federal and state court decisions had already removed such advantages as

rural and small town interests had enjoyed under the old constitution. More important was the vigor with which Governor Raymond Shafer and his bi-partisan team gave unequivocal support to the proposal. Governor Shafer was joined in this demonstration of bipartisan support by two former governors, William Scranton and George Leader, both veterans of the revision battle, and by Milton Shapp, Democratic candidate for governor in 1966. Mr. Shapp had earlier, as chairman of the State Committee on Constitutional Revision, conducted a state-wide educational campaign supporting the 1963 convention proposal. Governor Shafer's running-mate, Lieutenant Governor Raymond Broderick, rounded out the team. Any remaining public fears regarding revision seem to have been swept aside by this display of high level bi-partisan unity, and the voters voted "Yes" nine times as urged by the team, responding by unmistakable majorities.

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### Notes

1. Day, Sherman, *Historical Collections of the State of Pennsylvania*, 1843: Philadelphia (George W. Gorton), p. 37.
2. Nevins, J. Allan, *The American States During and After the Revolution*, 1924: New York (The Macmillan Company), p. 149; Ford, P. L., "Adoption of the Pennsylvania Constitution of 1776", *Political Science Quarterly*, X (1895), p. 450.
3. Harding, Samuel B., "Party Struggles over the First Pennsylvania Constitution", Annual Report of the American Historical Association, X (1895), 371-402. Franklin was unanimously elected president of the convention. *The Proceedings Relative to Calling the Conventions of 1776 and 1790*, 1825: Harrisburg (J. S. Weistling), (hereafter cited as *Proceedings*), p. 46.
4. Harding, Samuel B., *op. cit.*, 376.
5. Constitution of 1776, sec. 2.
6. Sec. 1. The Frame of Government was preceded by a Preamble abjuring Allegiance to the Crown and the Declaration of the Rights of the Inhabitants of the Commonwealth.
7. Sec. 17.
8. Secs. 13, 14 and 15.
9. Sec. 23.
10. Secs. 19 and 20. The treasurer was to be elected by the Assembly.
11. Secs. 4, 23, 26 and 30.
12. Sec. 6.
13. Sec. 47.
14. *Proceedings*, 54. It entrusted the keeping of the Constitution to the Council of Safety. *ibid.* p. 66.
15. Brunhouse, Robert L., *The Counter-Revolution in Pennsylvania, 1776-1790*, 1942: Harrisburg (Pennsylvania Historical Commission, Department of Public Instruction), pp. 82-87.
16. *Ibid.*, pp. 88-120.
17. The Council of Censors convened on Nov. 1, 1783, but was slow in obtaining a quorum. *Proceedings*, p. 66.
18. *Ibid.*, pp. 66-77.
19. *Ibid.*, pp. 77-80.
20. *Ibid.*, pp. 80-82.
21. *Ibid.*, pp. 83-128.
22. *Ibid.*, 135.

23. Brunhouse, Robert L., *op. cit.*, p. 225, Robert Whitehill, William Findley, John Smiley and James McLene provided leadership for the Liberals.
24. Constitution of 1790, Art. I, secs. 2-8.
25. Art. I, sec. 22.
26. Art. II, secs. 1-4; 8-13.
27. Art. V, secs. 2, 4 and 10.
28. Art. IX, containing 26 sections is the Bill of Rights; suffrage qualifications were defined in Art. III, sec. 1.
29. For minutes of the convention see *Proceedings*, pp. 137-382; for a commentary on the significance of the change in political temper reflected in the new constitution, see Brunhouse, *op. cit.*, p. 227.
30. Sharpless, Isaac, *Two Centuries of Pennsylvania History*, pp. 252-3.
31. *Archives*, ser. 4, V, 946.
32. Dunaway, Wayland F., *A History of Pennsylvania*, New York: Prentice-Hall, 1935, pp. 431-454.
33. In 1835 the General Assembly submitted the question of a convention call to the voters (1835 P.L. 151), but it was rejected; opposition to the convention was based in part upon the failure of the 1835 Act to require a popular referendum on any constitution drafted by the convention. This defect was corrected in the 1836 Act, 1836 P.L. 70. In the referendum that followed it was approved by a narrow margin of 13,000 votes.
34. Akagi, Roy H., "The Pennsylvania Constitution of 1838", *The Pennsylvania Magazine of History and Biography*, XLVIII (1924), 301-333; The Democrats elected 66 delegates: the Whigs, 15; and the Antimasons, 52.
35. For the complete list of delegates see *Pennsylvania Constitutional Convention, Proceedings and Debates*, 1837-39; Harrisburg (Packer, Barrett & Parke), hereafter cited as *Proceedings and Debates*, I, 10, 11. For description of delegates see Jenkins, Howard M., *Pennsylvania, Colonial and Federal*, 1903: Philadelphia (Pennsylvania Historical Publishing Association), II, 280-1.
36. Report of the committee on Currency, Corporations, Public Highways and Eminent Domain (favoring no change in the constitution on this subject), *Proceedings and Debates*, I, 358; minority report, *ibid.*, I, 358-367. Debate on the subject lasted for a month, *ibid.*, VI, 36-VII, 36.
37. *Ibid.*, IV, 278-315; 315-345.
38. Debate on suffrage dragged on for a week, *ibid.*, II, 470-III, 178. See especially remarks of Mr. H. G. Rogers, *ibid.*, II, 474-5 and Mr. Thomas Earle, *ibid.*, 554-7.
39. *Ibid.*, V, 300.
40. Art. II, secs. 1, 7, 8, and 13. He lost the power to appoint prothonotaries, clerks of court, registers of wills and recorders of deeds, Art. VI, sec. 6; or sheriffs, coroners, justices of peace and aldermen, Art. VI, secs. 1 and 7. With the exception of prothonotaries of the Supreme Court, they were made elective. Appointment of the state treasurer remained in the hands of the legislature, Art. II, sec. 8.
41. Art. II, sec. 3.
42. Art. II, secs. 11, 12; Art. I, secs. 22 and 23.
43. Art. I, sec. 25; Art. VII, sec. 4.
44. Article I is the legislative article; secs. 1-9 contain the provisions on the structure, apportionment, tenure and qualifications of members.
45. Supreme Court judges were given a 15 year term; the president judge of common pleas, a 10 year term; associate common pleas judges and justices of the peace and aldermen, 5 year terms. Art. V, sec. 2; Art. VI, sec. 7.
46. Art. VII, sec. 1, which provided for the establishment of schools so that "the poor may be taught gratis." Sec. 2 provides for the promotion of the arts and sciences in one or more "seminaries of learning."
47. Art. III, sec. 1.
48. Art. IX, secs. 1-26.
49. Art. X. This article was carried over verbatim in our present constitution: it requires approval by a constitutional majority in two successive sessions of the



- legislature and approval by the voters by a majority of those voting on the amendment. No amendment could be submitted more often than once in five years.
50. The vote was 113, 971 to 112, 759, *Proceedings and Debates*, XIII, 260-1; McClure, Alexander K., *Old Time Notes of Pennsylvania*, 1905: Philadelphia (J. C. Winston, Co.), I, 39; Sharpless, Isaac, *op. cit.*, 309-10.
  51. *Op. cit.*, I, 72.
  52. In article 25 of the same article there was a requirement that banking charters should include a clause reserving such a right to the legislature.
  52. Article XI, sec. 8.
  53. Art. XI, sec. 9.
  54. For a brief survey of the social and economic conditions of the period, see Branning, Rosalind L., *Pennsylvania Constitutional Development*, 1960: Pittsburgh (University of Pittsburgh Press), pp. 37-54.
  55. *Ibid.*, pp. 105-6.
  56. McClure, Alexander K., *op. cit.*, II, 410-21. McClure was at this time a member of the state senate.
  57. 1871 P.L. 262, approved by Governor Geary, June 2, 1871.
  55. 1872 P.L. 53, approved by Governor Geary, April 11, 1872.
  56. Two other delegates were serving a second time as constitution-makers, William Darlington and Samuel Purviance.
  57. For a brief biography of each of the delegates, see Harlan, A.D., ed., *Pennsylvania Constitutional Convention, 1872 and 1873: Its Members and Officers and the Results of Their Labors*, 1873: Philadelphia (Inquirer Book and Job Press).
  58. Branning, Rosalind, *op. cit.*, pp. 63-4, for text of Ordinance of Submission, see *Debates of the Convention to Amend the Constitution of Pennsylvania, 1872-1873* (hereafter cited as *Debates*), VIII, 703, ff.
  59. Approximately. Two hundred is used as the divisor for determination of the representation quotient; since every county was assigned at least one representative and counties with fewer than five representatives received an additional representative for a fractional remainder of more than half a quotient, the number was never exactly 200. Art. II, secs. 16 and 17. Originally, the convention agreed to 150, but for various reasons of strategy finally agreed on 200.
  60. See remarks of Mr. MacVeagh, chairman of the Committee on the Legislature, *Debates*, II, 237; and of Mr. Hazard who predicted that the vocation of lobbyist would end with the change to biennial sessions, *ibid.*, pp. 381-383.
  61. There were those who raised their voices against the change from annual sessions: Mr. Darlington, *Debates* II, 356-7; Mr. Biddle, *ibid.*, pp. 364-8; Mr. Walker, *ibid.*, p. 373. Mr. Buckalew urged annual sessions combined with a two-year term, *ibid.*, p. 359; Mr. D. N. White, *ibid.*, p. 393.
  62. Art. II, secs. 1-6, 9, 13-15.
  63. Art. III, secs. 4 and 30.
  64. Remarks of Mr. Manton, chairman of the Committee on Legislation, *Debates*, II, 590-3. He pointed out that on the subject of railroads alone, 450 special acts had been passed between 1866-1872; in the same period the total number of general laws passed was 475.
  65. Approved on first reading in Committee of the Whole, *Debates*, II, 622; action on second reading, *ibid.*, V, 248-265. This became Art. III, sec. 7, and included 27 subjects on which special legislation was outlawed.
  66. Art. IX, sec. 1.
  67. Art. IX, secs. 4, 5, 6 and 11.
  68. The governor's pardon was made subject to approval by a Board of Pardons, composed *ex officio* of the lieutenant governor, the secretary of internal affairs, the attorney general and the secretary of the commonwealth (the first two were elective, the last two were appointive). At least three favorable votes were necessary before a pardon could be granted.
  69. Art. IV, sec. 3. Mr. Buckalew was the only delegate who rose to challenge the limitation on succession, *Debates*, II, 341-2. On second reading sixteen others joined with him to vote to remove the restriction, *ibid.*, V, 205.

70. Art. IV, sec. 4.
71. Art. IV, secs. 8 and 24. The treasurer was given a 2 year term and auditor general a three year term.
72. Art. IV, secs. 15 and 16.
73. Art. IV, sec. 12; Art. III, sec. 25.
74. Art. V, secs. 2 and 15.
75. Art. V, secs. 6, 12 and 22.
76. Art. V, sec. 3.
77. Art. V, secs. 4 and 5.
78. Art. V, sec. 22.
79. *Debates*, VII, 695. Mr. Buckalew said that the constitution could not be torn apart and submitted separately; the provision for separate submission of articles on petition of one-third of the members applied only in event the convention chose to amend the 1838 constitution rather than to draw up a new document, *ibid.*, 567-8.
80. Remarks of William H. Armstrong, chairman of the Committee on the Judiciary Article, *Debates*, III, 639-653.
81. *Debates*, III, 653-663.
82. See especially remarks in *Debates*, III, 674-6; 717-721.
83. *Debates*, III, 664-729.
84. Mr. Mann, *Debates*, III, 703-5.
85. *Debates*, IV, 28-33.
86. *Ibid.*
87. *Debates*, III, 732-8; 742-5.
88. *Ibid.*, 761-5. Mr. Temple, *ibid.*, 751-61, and Mr. Gowen, *ibid.*, 772-8 took a like position.
89. *Debates*, IV, 4-6.
90. *Debates*, IV, 41. It is interesting to note that although the proposal was never considered by the convention, there was referred to the Committee on the Judiciary a plan for choosing all (except Supreme Court justices) judges by appointment by the governor followed by a vote on the governor's appointee at the next general election; if the electorate voted against the governor's choice, he would name another appointee, who in turn would be voted upon. There would be no opposing candidate. *Ibid.*, I, 113.
91. This proposal was made formally by the Committee on Suffrage, Elections and Representation, of which Mr. Buckalew was a member; the chairman of the committee, Mr. McAllister, was a Republican, but supported the committee plan; Mr. Buckalew was its chief defender in the floor debate. *Debates*, I, 503.
92. *Ibid.*, 731-3. It should be remembered that the convention antedated the introduction of the Australian ballot system in the United States. There were some delegates who wanted to go further than Mr. Buckalew proposed and require *vive voce* voting! See remarks of Judge Woodward and Messrs Simpson and Gowen, *ibid.*, 728-9; 741-3; 778-82.
93. *Debates* on this subject are recorded in *ibid.*, I, 723- II, 28.
94. The vote was 53 to 47, *ibid.*, II, 124. The provision became sec. 4 of Art. VIII.
95. Art. VIII, sec. 3.
96. Suffrage provisions appear in Art. VIII, sec. 1. The debate of woman suffrage, which occupied three days, is recorded in *Debates*, I, 525-628. For Mr. Broomall's remarks, see *ibid.*, 647-8.
97. Art. XVI, sec. 1. See Mr. Buckalew's remarks defending the limited vote plan, *Debates*, VI, 37-8.
98. *Debates*, III, 337. For discussion of this proposal, see *ibid.*, 337-366.
99. *Debates*, VIII, 130-203. The vote was 76-11, *ibid.*, 304.
100. Art. XVII. Sec. 1 designates railroads and canals as public highways; sec. 2 requires the maintenance of a public office; secs. 3 and 7 forbid discriminations; sec. 4 forbids consolidations; sec. 5 confines them to the business of a common carrier; sec. 8 outlaws passes.
101. Article XIII, sec. 1.

102. Art. XIV, sec. 1.
103. Art. XIV, sec. 5.
104. Art. XIV, sec. 7.
105. Art. IX, sec. 8. Municipalities were required to maintain a sinking fund and to amortize their debt in thirty years. Art. IX, sec. 10: Art. XV, sec. 3. Municipalities which already had an indebtedness of 7% of the assessed valuation, might be authorized by law to incur an additional 3%.
106. Art. I, secs. 5, 7 and 17. The guarantee of trial by jury in sec. 6 remained unchanged, but by Art. V, sec. 27 waiver of jury trial in civil cases was authorized. For debate on the right of the convention to revise the Bill of Rights, see *Debates*, I, 61-2.
107. The *Pittsburgh Commercial*, *Harrisburg Telegraph*, *Beaver Radical* and the *Philadelphia Evening Bulletin* were exceptions. The first three named were owned by men who were tools of Simon Cameron.
108. *Wells v. Bain, et al.*, 75 Pa. 39.
109. Art. IX, sec. 5 of the Pennsylvania Constitution providing that all elections shall be free and equal; and Art. IV of the national constitution, guaranteeing a "republican form of government" to the states: *Robert Wood and Reese Owens, et al., vs. M. S. Quay*, in Common Pleas in Equity. December term, 1873.
110. For an analysis of the campaign and vote see. Branning, Rosalind L., *op. cit.*, pp. 109-122.
111. Amendments no. 1, 2 and 3 of November 5, 1901 amending secs. 1, 4 and 7.
112. Amendments no. 1-6 and 8-10 of November 2, 1909 amending Art. IV, sec. 8; Art. IV, sec. 21; Art. V, secs. 11 and 12; Art. VIII, secs. 2 and 3; Art. XII, sec. 1; Art. XIV, sec. 2; Art. XIV, sec. 7. The voters rejected a proposal to change the term of judges and inspectors of election from one to two years. The election is held on the first Tuesday unless November 1 falls on Tuesday, in which case the election takes place on the second Tuesday.
113. Amendment no. 1 of November 7, 1911, amending Art. IX, sec. 8. Other amendments relating to borrowing in excess of the debt limit where the income is expected to cover interest and amortization costs and extending the amortization period to 60 years were adopted in 1913 (adding sec. 15), 1915 and 1920 (amending Art. IX, sec. 8. In 1918 the general debt limit of Philadelphia was raised to 10%, and in 1951 to 13%.
114. Amendment no. 2 of November 7, 1911, amending Art. V, sec. 6.
115. As noted in footnote 114 sec. 15 was added to Art. IX; amendment no. 3 of Nov. 4, 1913 amended Art. V, sec. 6. Three other amendments submitted at the same time were rejected; one of these would have authorized a \$50,000,000 borrowing for highways.
116. Amendments no. 1-3 of November 2, 1915, amending Art. VIII, sec. 21; Art. IX, sec. 8; and adding a new section to the Constitution, which was neither assigned to an Article nor given a section number.
117. Amendments no. 1 and 2 of November 5, 1918 amending Art. IX, secs. 4 and 8.
118. Amendment of November 7, 1922, amending Art. XV, sec. 1.
119. There may not be more than eight classes of counties, seven classes of cities, five classes of school districts, or three classes of boroughs. The legislature has not exhausted its options. Amendment no. 3 of November 6, 1923, amending Art. III, sec. 34.
120. Amendments no. 1, 2 and 4 amending Art. IX, secs. 1 and 4; Art. XVII, sec. 8.
121. The plan was never put into effect; though the charter was approved by a majority vote throughout the county, and received a majority vote in two-thirds of the units of government, it failed to receive a two-thirds vote in a majority of the units of government. As originally drafted the requirement was a majority vote in two-thirds of the units. The change to a two-thirds vote in a majority of units was allegedly a "printer's error." Amendment no. 14, November 6, 1928, adding sec. 4 to Art. XV.
122. Amendments no. 3, 6 and 12 of November 6, 1928 amending Art. XIII, secs. 7 and 11; and adding sec. 1B to Art. IX.

123. Amendments no. 1, 3, 4, 5, 7, 8, 9, 10, 11 and 12 amending Art. III, secs. 18 and 22; Art. VIII, sec. 1; Art IX, sec. 4, and adding secs. 16, 17 and 19; Art. XV, secs. 4 and 5 (added); Art. XVII, sec. 3.
124. Amendment no. 1 of November 2, 1937, amending Art. III, sec. 18, permitting assistance to widowed mothers with dependent children and pensions for the aged.
125. Amendment no. 1 of November 2, 1943, amending Art. VIII, sec. 11: Amendments no. 1-4 of November 6, 1945, amending Art. IX by adding secs. 18 and 21.
126. Amendment no. 1 of November 4, 1947, proposing a change in Art. IX, sec. 4, rejected; amendment no. 1 of Nov. 8, 1949, amending Art. IX by adding sec. 22; amendment no. 3 of November 4, 1952, proposing amending Art. IX, by adding a new section. In 1949, the voters approved an amendment granting absentee ballot rights to bedridden veterans, amendment no. 3, amending Art. VIII, sec. 18; they rejected an amendment permitting tax forgiveness for property acquired by redevelopment authorities for redevelopment purposes.
127. Amendments no. 1 and 2 of November 6, 1951, amending Art. XIV by adding sec. 8 and amending Art. IX, sec. 8.
128. Amendment no. 2 of November 3, 1953, amending Art. VIII, sec. 18. Amendments no. 1, 3 and 4 were rejected.
129. Amendment no. 1 of November 8, 1955, amending Art. III, sec. 11; amendment no. 2 of November 6, 1956, amending Art. XVI, sec. 7.
130. Amendments no. 1 and 2 of November 8, 1955 and November 5, 1957 amending Art. IX by adding sec. 22 (Korean Bonus) and amending Art. VIII, by adding sec. 19.
131. Amendment No. 3, November 4, 1958, amending Art. IX, sec. 1.
132. A commission of twenty-five members was authorized by 1919 P.L. 388.
133. For the deliberations of the commission, see Pennsylvania Commission on Constitutional Revision, *Journal of Proceedings*, 3 vols., 1921: Harrisburg; see also, *Preliminary Draft of Constitution*, 1920: Harrisburg.
134. Smull's *Legislative Handbook*, 1921-22, p. 763.
135. 1935 P.L. 212.
136. Draft Art. VIII. Taxation and Finance.
137. Draft Art. II, The Executive; Art. VI, Public Officers; Art. VIII, Local Government and Art. IX, Future Amendments.
138. For a discussion of this election contest, see Branning, Rosalind L., *op. cit.*, pp. 138-141.
139. For election results see, Bureau of Commissions and Elections, *Election Statistics*, 1954, p. 38.
140. Created by 1957 P.L. 927. Under the terms of the act the commission was composed of fifteen members, five each appointed by the Governor, the President pro tempore of the Senate and the Speaker of the House.
141. *Report*, pp. 19-23.
142. *Ibid.*, pp. 24, 25; 67-71.
143. *Ibid.*, pp. 26-38.
144. The Commission suggested that the \$1,000,000 limitation on borrowing for casual deficiencies in revenue should be retained, since it has the effect of requiring a balanced budget. *Ibid.*, pp. 40-2.
145. Voter approval would be required for any debt increase at any one time of more than 2% of the market value of taxable property. *Ibid.*, pp. 42-3. The *Report* also included recommendations for the repeal of obsolete sections: 13, 15, 16, 17, 21 and 22, *ibid.*, 146-151.
146. For the minority position, see *ibid.*, pp. 216-7; 219.
147. *Ibid.*, pp. 48-54. These are Class I proposals. The Commission also recommended repeal of Art. XIV, secs. 3, 4, 5, 6 and 7.
148. Art. XVI (Corporations), secs. 5, 6, 7, 9, 11, 12 and 13; Art. XVII (Railroads and Canals) to be repealed, *ibid.*, pp. 171-175. Art. XVIII (Amendments), new secs. 2, 3 added, *ibid.*, pp. 76-8.
149. *Ibid.*, pp. 14-5; for minority position, see *ibid.*, pp. 210-12.
150. Amendment no. 2 of November 7, 1961, rejected.

151. For a brief story of the Pennsylvania Bar Association's work in this field, see Pennsylvania Bar Association, *Pennsylvania Constitutional Revision*, 1966 Handbook, 1966: Harrisburg. For the Project itself, see, *A Revised Constitution for Pennsylvania*, Dec. 17, 1963; *Report of the Special Committee On Project Constitution*, Dec. 7, 1964; *Report of the Special Committee on Project Constitution* to the Annual Meeting of the Pennsylvania Bar Association, Jan. 1965 and January 1966. For the report of the Scranton Commission, see *Report of the Governor's Commission on Constitutional Revision*, 1964.