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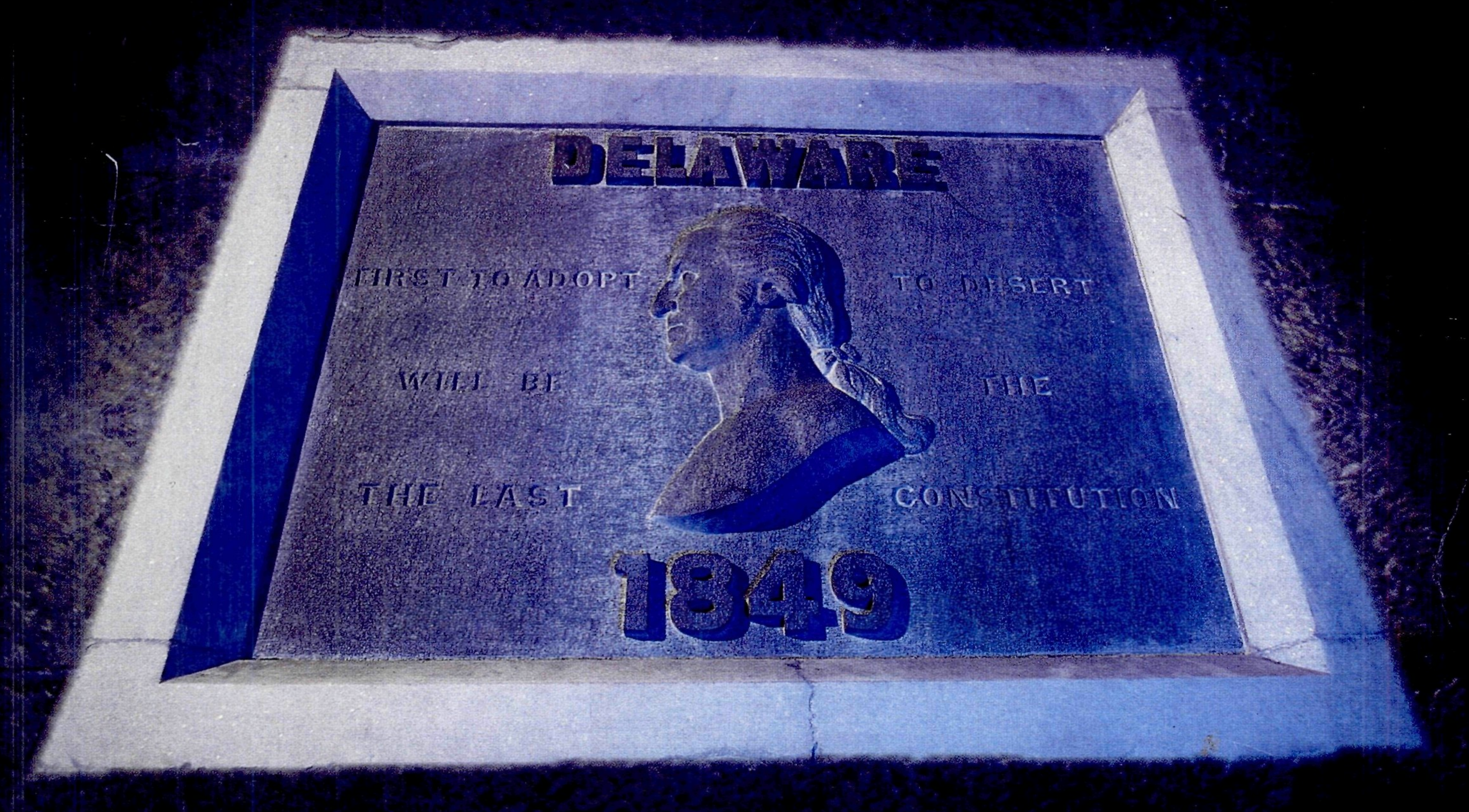

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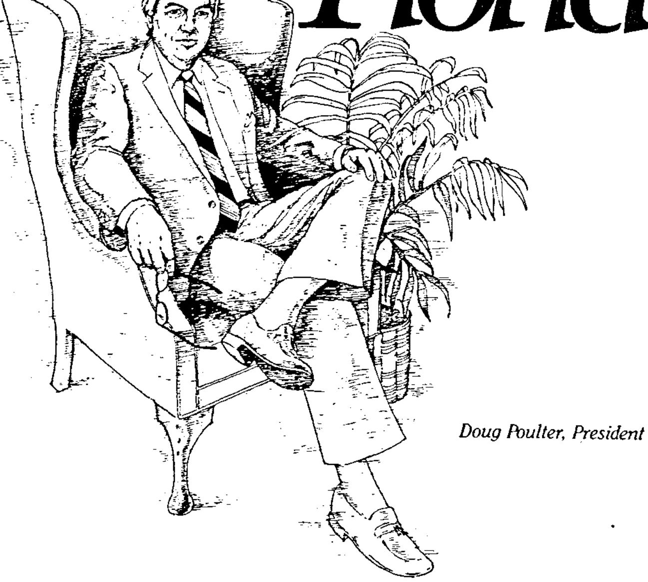

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A PUBLICATION OF DELAWARE BAR FOUNDATION

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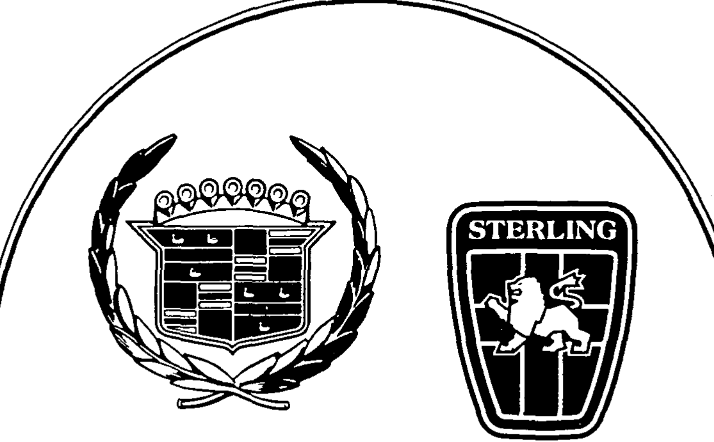

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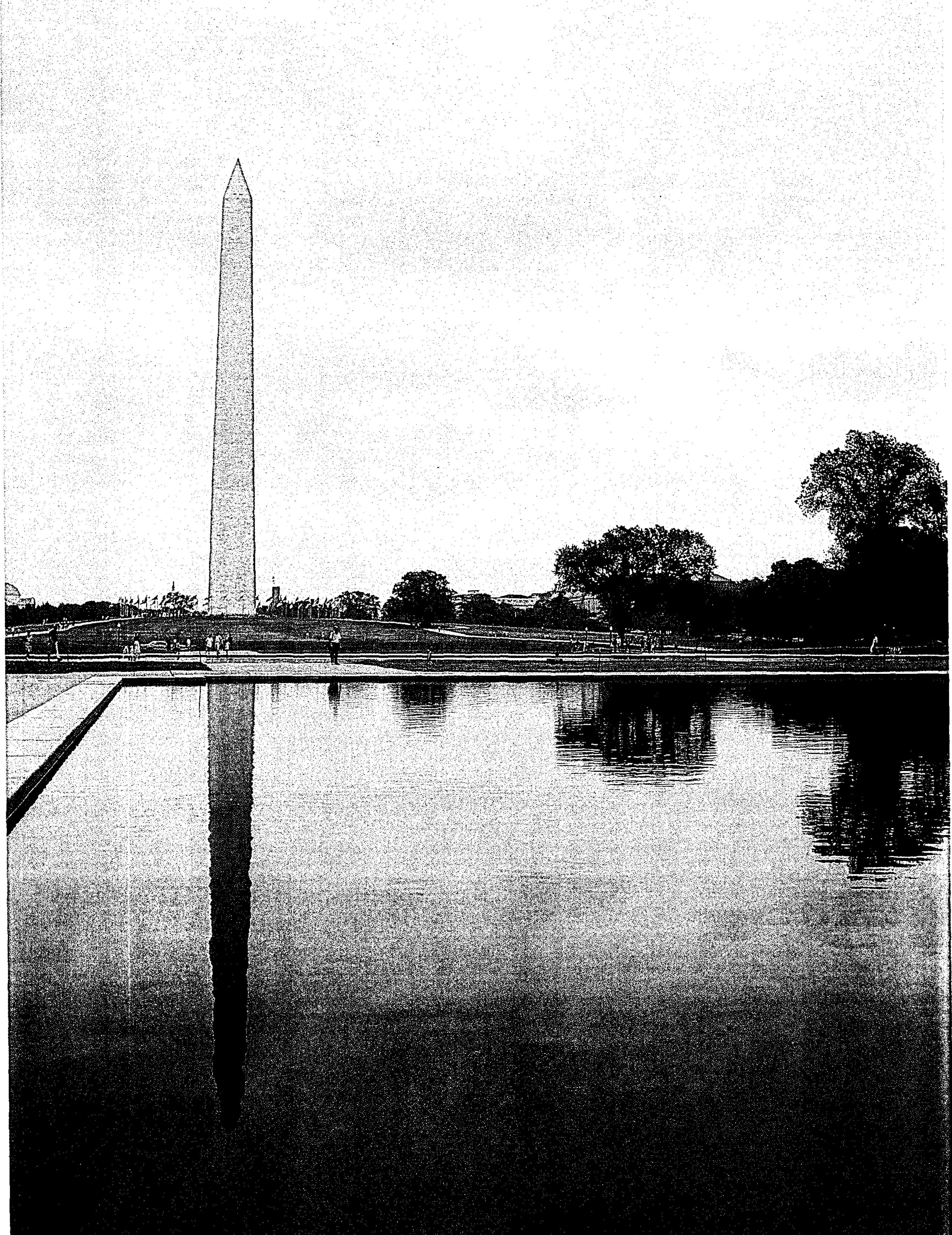

The Cover

At the thirty foot level of the closed staircase to the top of the Washington Monument there appears the first of a series of state tributes to the father of his country. "The Delaware Stone" is inscribed with a motto fitting to the occasion we celebrate:

DELAWARE — FIRST TO ADOPT
WILL BE THE LAST
TO DESERT THE CONSTITUTION.

We wish to thank Senator William V. Roth, Jr. and Becky McDonald of his Washington office for their help in arranging the photographic session. Our thanks also to Mr. William Ruback, Superintendent, National Park Central, Ranger Supervisor Ron Crawford, and Rangers Neil Lindenbaum, Barbara Blendy, and John Hannen of the Park Service for outstanding assistance in making this cover possible and in furnishing background information. We are also indebted to fellow lawyer and former Delaware State Bar Association President Irving Morris for suggesting this eloquent symbol of First Statehood as our Bicentennial cover.

Thanks are also owing to the Historical Society of Delaware and the amazing Dr. Barbara Benson. Wishing to learn more about the Delaware Stone, we asked her for help. In practically no time she responded with extensive materials from Delaware newspapers printed in 1849 and from legislative records. Some interesting history emerges: the cornerstone of the Monument was laid on July 4, 1848. Shortly thereafter the Secretary of the "Washington National Monument Society" requested all states in the Union to send "blocks" to be placed in the Monument *in the order received.*

In Delaware a Major John Jones and several other public spirited citizens went about "procuring" a piece of granite from the Brandywine Creek near the Brandywine Battlefield. He took issue with the Secretary's suggestion that placement of the stones should turn on the order in which they arrived in Washington, and urged (not surprisingly) that they be placed in the Monument "in the order in which the states accepted the Constitution." In a letter to the Editors of the *Delaware State Journal* of June 29, 1849 he graciously offered to withdraw from the leadership of a small group formed to honor the state, since others had argued that the entire citizenry should have a role in the venture.

Major Jones enjoyed some success and encountered some setbacks. His view of the primacy of the Delaware Stone prevailed. It is the first encountered by those climbing the Monument. Jones and his friends had laid out money to get the stone quarried, carved, and transported to the nation's capital. Supporters in the General Assembly tried to get state reimbursement of those who had made the Delaware contribution possible. It is uncertain whether the state ever paid a penny for what now appears on the cover.

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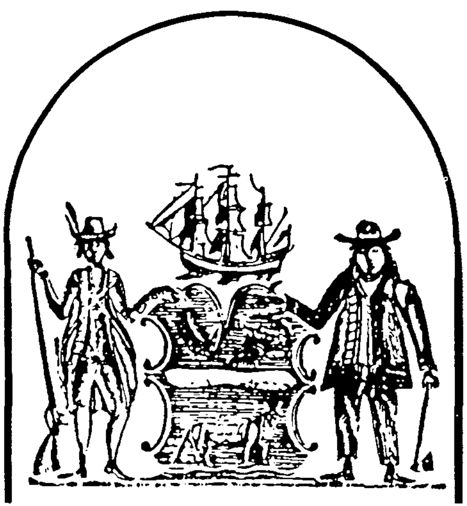

State seal used by printer Frederick Craig during the 1780's.

Courtesy of the Division of Historical & Cultural Affairs

A Message From the Governor of Delaware

Governor Michael N. Castle

It is, above all, an enduring document.

There's an inclination to see a lack of permanence in our own age, and thus to expect to find more enduring institutions in earlier times. However, change has always been part of the human condition, as Oliver Wendell Holmes Jr. pointed out more than a century ago when he wrote, "Certainty generally is illusion, and repose is not the destiny of man."

But the certainty of the United States Constitution has not been illusion, nor the stability and freedom it was intended to provide illusory.

Delaware's role in the creation and ratification of the Constitution is as well-known as any event 200 years ago can be. While there are questions and disagreements about the events of 1787, Delawareans are to be excused if their interpretation of history favors a large role for this small state. It should even be encouraged; we have license to indulge in a measure of harmless chauvinism, because it is akin to patriotism.

Elsewhere in this issue, authors will explore our state's role, and the role of our statesmen, in detail. Here I will confine my observations to the importance of this Bicentennial to the state.

John Adams, in a letter written in 1776, urged that America's declaration of independence be celebrated with "pomp and parades, with shows, games, sports, guns, bells, bonfires, and illuminations, from one end of this continent to the other, from this time forward for evermore."

The 200th anniversary of the Constitution will see its share of such festivities. But in 1987 and 1988 we are celebrating more than a revolution, important as the American Revolution was; we are celebrating the creation of a nation that has endured for two centuries. It is more subtle and more profound, and it requires thoughtful consideration of the history and future of the United States.

Fine musical instruments retain their quality centuries after they are made as long as they are played regularly. Unused, they die. I believe that the Constitution of the United States has retained its strength and vitality for the same reason; the law must be used—must be observed, honored, followed—or it, too, will die.

Without question, this Bicentennial deserves celebration. But it should also be a time of reflection on the principles that have endured in this nation. It should be a time of re-examination of the Constitution, and of our own understanding and commitment to it. ■

I. The Land and the People: Delaware in 1787

"How could a state so politically divided by factional politics show uncharacteristic unity in supporting the Constitution?"

Delaware and Ratification
A Paradox Examined

William Henry Williams

During the Constitutional Period, Delawareans shared with other Americans the eighteenth century liberal view that strong governments posed a significant threat to individual freedom. Indeed, strong governments and individual freedom were usually regarded as incompatible bed fellows. On most other political questions, however, Delawareans seldom agreed. In fact Professor Merrill Jensen, in his study of the ratification of the United States Constitution, declared that in Delaware, "the animosity among political leaders and the violence on election days was probably unmatched in any other state."[1] And yet, despite a strong suspicion of governmental power and deep political division among its citizens, Delaware committed itself to increasing the power of the national government by becoming the first state to ratify the United States Constitution. And it did so with unprecedented unanimity. Clearly this is a paradox that merits close examination. Just as clearly, a close examination must begin with a brief look at the social and economic history of Delaware during the late eighteenth century.

According to the national census of 1790, each of the three Delaware counties held approximately one third of the 59,096 inhabitants in the state. About 78 percent of that population was white, and of the white population probably two-thirds were of Anglo-Saxon stock. While Anglo-Saxons were most heavily concentrated in Kent and Sussex, the next largest white ethnic group, the Scotch-Irish, was primarily concentrated in New Castle County. By 1790 the Swedes, Finns, and Dutch, who were the earliest European settlers of Delaware, probably accounted for less than six percent of the total population. Delaware blacks, with roots in west Africa, made up twenty-two percent of the inhabitants and were most heavily concentrated in Kent and Sussex. About seventy percent of them were slaves. Only a handful of Indians—Delaware Nanticoke, Choptank and Assateague—remained in the First State. The other native Americans had long since died of white man's diseases or had migrated westward to Indian country beyond the white frontier.[2]

Because at least ninety percent of the population worked the land for a living, few Delawareans lived in towns and villages. As a result, Delaware towns were small in size and few in number. Wilmington, the largest community in Delaware, probably had no more than 2,000 inhabitants. Since the roads were poorly maintained and often impassible, and water transport was slow and uncertain, most Delawareans led lonely, isolated lives.[3]

Although there were some craftsmen, seamen, and fishermen, and a few attorneys, physicians, merchants, and millers, they represented only a tiny percentage of working Delawareans during the Constitutional Period. The typical Delawarean worked the land as owner, tenant, hired hand, or slave. His life was controlled by the seasonal cycles of clearing, plowing, planting, cultivating, and harvesting. In Sussex corn was the chief crop. In Kent it was corn and wheat, while in New Castle wheat had been the chief crop since early colonial times. Farmers near navigable rivers and creeks sent surplus wheat and corn north to be ground into flour at the commercial mills along the Brandywine. Surplus livestock were driven north to fatten on the lush meadows of New Castle County before being sold to buyers in Wilmington or Philadelphia.[4]

Most of what was raised on Delaware farms, however, was consumed by the farmer's family. Indeed, these were primarily self-sufficient farmers who were able to scratch out a rather meager existence from the soil because they needed to purchase only limited amounts of goods from the outside world. At home they raised most of what they ate and made most of what they wore. But the soil, particularly in certain sections of downstate Delaware, was losing some of its fertility. And the land was losing many young people to the more fertile virgin soil lying west of the Chesapeake.[5]

The eighteenth century was a very deferential age and nowhere was this more evident than in the Delaware countryside. Indeed, the dominance and control exercised over the countryside by the gentry caused Thomas Jefferson to compare Delaware to a county in England. Clearly education, marriage, and one's ultimate standing in one's community were largely controlled by class affiliation. The gentry and a few of the most successful attorneys, physicians, and merchants were at the top of the social pyramid. They were followed, in descending order, by yeomen farmers, craftsmen, tenant farmers, hired hands, and slaves. The lack of a frontier or of a large urban center, which have traditionally produced radical ideas, meant that there would be little challenge to the traditional hierarchical society of Delaware. Even the American Revolution did little to change the status quo.[6]

For at least some Delawareans during the Constitutional Period, life was almost animal-like. The borderline material existence provided by a self-sufficient farm, the drab monotony of farm life, and low levels of education and self-discipline were the general rule. A few years before the Constitutional Period, a traveler described Sussex Countians as "a people without learning, which proceeds altogether from their extreme poverty." To some degree this description was true of most Delawareans throughout the late eighteenth century.[7]

It was only natural that men and women, facing a lifetime of long harsh days that prematurely drained youthful enthusiasm and high spirits, would turn to alcohol and frivolous pursuits to lighten their burdens. As a result, morality suffered enormously. Indeed, it seemed that during much of the Constitutional Period, moral standards in Delaware had declined to a record low.

Predictably the disorders brought on by the American Revolution were blamed for much of the moral decline. The state government tried to deal with part of the problem by offering rewards for the apprehension of criminals and by banning commercial fairs. The latter, which met some of the economic and social needs of the rural populace, were outlawed by state law in 1785 because commercial fairs were now seen as "nourishers of vice." Delaware also outlawed the public promotion of horse racing, foot racing, cock fighting, and shooting matches "because they were frequently made with the intent to vend and sell strong liquors, to the great prejudice of religion, virtue, and industry." Wilmington discouraged vice by "drumming" undesireables out of town while bystanders pelted the moral offenders with rotten eggs.[8]

To counteract this decline in morality and to give spiritual meaning to a rather drab existence, some Delawareans turned to organized religion only to find a lack of vitality in most Delaware religious institutions. The Anglican Church, the nominal ancestral church of Delawareans of English stock, had lost its already tenuous hold over the heavily Anglo-Saxon population of Kent and Sussex during the American Revolution. Out of the ashes of colonial Anglicanism emerged the Protestant Episcopal Church during the 1780's, but it had too few clergymen to meet the religious needs of Anglo-Saxon Delawareans. Indeed, one Episcopalian complained in 1784 that there were only two Episcopalian clergymen on the entire Delmarva Peninsula, "and one of them is a drunkard". Although it was the ancestral church of the Scotch-Irish and an important presence in New Castle County, the Presbyterian Church also lacked evangelistic fervor.[9]

Just before the American Revolution, Methodism, an evangelistic and evangelical reform movement within the Anglican Church, began to set up societies in Delaware. Far more demanding of personal discipline and in calling for pacifism and the abolition of slavery than either the Anglican or Presbyterian churches, early Methodism was particularly successful in recruiting followers in Kent and Sussex. By 1784, when American Methodists declared their independence from the Anglican Church, there were more Methodists in Delaware than the combined membership of all the other Delaware churches. And yet Methodists and the members of all of the other churches combined represented only a small minority of the population. It would not be until the Second Great Awakening, at the beginning of the nineteenth century that a large percentage of Delawareans would formally belong to any church. That most Delawareans had no institutional affiliation — religious or otherwise — was very significant because it tells us a great deal about their inner nature during the Constitutional Period.[10]

Jack Greene, historian at The Johns Hopkins University, maintains that "perhaps the most powerful drive" in the early American experience was the desire for personal independence. Quite simply put, "independence meant freedom from the will of others". Because individual independence rested primarily on individual economic success, in England it was a possibility open to only a small minority at the top of the social pyramid. But in America, where land ownership was accessible to the general populace, "independence was a possibility for every able bodied, enterprizing free man". Even in Delaware economic opportunities remained great when compared to Europe. It must be added, parenthetically, that the independence of women was another matter. Women were denied true independence from the will of men for a very obvious reason. As a Lyceum of Delaware meeting held in Wilmington during the late eighteenth century concluded, in mental powers women were inferior to men.[11]

The drive for independence did not lend itself to a belief in equality, even among males. To the contrary, independence for oneself was enhanced by the dependence of others. Following this line of thinking to its logical conclusion, one must see the slaveholder as the most independent of men. Is it so surprising then that the writer of the American Declaration of Independence owned a large number of slaves?

Dr. Williams, who holds a Ph.D. in History from the University of Delaware, is now a Professor of History in the University's parallel program in Georgetown. A prolific author with a wide range of interests, he is unusually well suited to portray the social environment in which the First State's act of ratification took place.

His range of expert knowledge embraces both medical and religious history. He is perhaps the definitive authority on the growth of Methodism in the Delmarva Peninsula, and his study of the Pennsylvania Hospital during the years 1751-1775 appeared in the Journal of the American Medical Association. *His feel for the social terrain described in the accompanying article has doubtless been enhanced and deepened by his participation in community life, a contribution ranging from services to the Georgetown Public Library and to the United Methodist Church of which he is an active member.*

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Delaware and Ratification
(Continued)

Like most Americans of the eighteenth century, Delawareans devoted their time and energy to the pursuit of private gain so that they might attain personal independence. Clearly, economic success spelled individual freedom. Obsessed with private concerns, most Delawareans had little time, energy, or interest in a public life that included political and religious institutional ties. It was only when, as occasionally happened, their pursuit of private gain was threatened by government action, or even inaction, that Delawareans would briefly give their attention and energies to the public sphere.

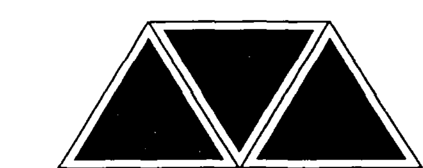
A case in point was the American Revolution. Many Delawareans were angered by the newly imposed British revenue measures such as the Stamp Tax and the Townshend Acts. They understood that as long as Delaware remained in the British Empire, other revenue measures could follow, which would further threaten personal independence. How could one's prospects improve in the face of such inhibiting taxation? Predictably, these Delawareans became rebels.

But there was another group of Delawareans who saw the threat to personal independence not in the rather benign commercial regulations of the British Empire headquartered in far away London, but in the newly independent state government, taxes, and efforts to recruit them for the state militia or, when that failed, to disarm them. In 1780 in central Sussex the Black Camp Rebellion was triggered by the perception that taxes were oppressive and draft laws unfair. These Delawareans were understandably less enthusiastic about the American Revolution because they clearly saw the distant government in London as less of a threat to personal independence than the newly organized state government that would eventually be stationed in Dover.[11]

With the end of the American Revolution, most Delawareans again turned their backs on politics as they eagerly returned to the private sphere. Attorney Nicholas Ridgely of Dover refused to run for a seat in the Delaware General Assembly in 1787, despite the fact that he was "hard pressed by friends". Explained Ridgely, "thank heaven I know my own interest too well to act so foolishly—my business is increasing, and all sides employ me..." But to run for public office, he pointed out, "would, I think, inevitably ruin me." And yet apprehensions, raised by events of the Revolutionary years, remained. They were strengthened by the adoption of the Articles of Confederation in 1781, which posited most political power in the hands of the individual states.[12]

Delaware experienced serious economic problems during the 1780s. A significant deflation combined with declining crop yields to increase the number of debtors and to make debt payments difficult to meet. Because the Articles of Confederation allowed individual states to print their own money, hundreds of debtors signed petitions sent to the Delaware General Assembly, pleading for the emission of paper currency. The petitioners hoped that an increased supply of money would replace deflation with inflation, an economic situation that would benefit debtors. Delaware's creditors, however, objected strongly because they realized that inflation would seriously hurt their interests. Twice during the 1780s bills forcing the state to print paper money were approved in the lower house but rejected in the upper house of the General Assembly. Clearly Delaware creditors were safe as long as they controlled at least one house of the state legislature. But what of the very real possibility that debtors might someday gain control of both houses of the General Assembly? Only a strong national government with the power to bar individual states from printing money could prevent the resulting economic disaster.[13]

There was another threat to the economy of Delaware directly traceable to the Articles of Confederation. Because Delaware had no large seaports, most cargoes bound for Delaware were first unloaded at the Port of Philadelphia. Thanks to the Articles of Confederation, each state had the right to tax imports from other states and nations. Consequently, Delawareans found themselves paying the Pennsylvania tariff on most of the goods that they wished to import from the outside world. In 1785 Pennsylvania significantly increased its tariff,



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clearly demonstrating that Delaware's commercial relations with the outside world were subject to the capricious taxing whims of the Pennsylvania legislature. The only hope for Delaware lay in the creation of a new powerful national government that would not allow individual states to tax imports.[14]

Delaware was also concerned about the exposed position it occupied along the Delaware River, Bay, and the Atlantic Ocean. Vulnerable to foreign invasion, Delaware could not expect much military help from the United States Government. Thanks to the Articles of Confederation, the primary responsibility for self defense was placed on the individual states. Because little Delaware had neither the manpower nor the economic resources to properly defend itself, it saw in a strong central government the only real hope for long-term survival.

When it became increasingly obvious in the mid 1780s that Delaware was facing some serious problems, many who had ignored public life now turned to the public arena because they sensed that the free pursuit of personal independence was once again threatened. Indeed, even Nicholas Ridgely finally decided to enter the public arena and was elected a delegate to the state ratifying convention.[15]

But what sort of political affiliation made sense to men who, for the most part, had never had strong, long-lasting ties to any political or religious organization? The one tie that most Delawareans could fall back on as they moved into the public arena was the old bond of ethnic blood. Those same ethnic blood ties had also dictated religious affiliations for those with a spiritual bent. Anglo-Saxons who went to church were generally Anglicans; Scotch-Irish who attended church were usually Presbyterians. Thus it was that most of the political competition that went on in Delaware featured the Anglo-Saxon Church of England faction against the Scotch-Irish Presbyterian faction.[16]

However, political factionalism based on ethnic-religious ties was complicated by the entrance of Methodism into downstate Delaware. It attracted a considerable following among the Anglo-Saxon populace because it was viewed as an alternative "English" faith. But Methodism seemed to frown on political involvement. Francis Asbury, the leader of American Methodism and a resident of Delaware for more than two years during the American Revolution, advised Methodists to steer clear of politics. Other Methodist clergy and lay leaders pointed out that political activity seriously compromised Christian principles. And yet other Methodists, such as Richard Basset of Dover who would serve his state as governor and United States Senator, felt that it was their Christian duty to participate in the world of politics. Naturally those Methodist who did become politically active were drawn to the Anglo-Saxon faction that was dominant in downstate Delaware. Indeed, one of the leaders of the Anglo-Saxon faction in Kent County supposedly called his walking stick John Wesley's staff. He boasted that with it he would break John Calvin's head. Obviously, the staff represented the votes of downstate Methodists, and he would use those votes to defeat the Scotch-Irish Presbyterian ticket. So heated were elections between the two factions, that in Kent and Sussex in 1783 and in Sussex in 1787 voters complained of considerable intimidation and violence at the polls.[17]

Francis Asbury

Photograph courtesy of the Delaware Historical Society

The conundrum was how a state so politically divided by factional politics could show uncharacteristic unity in supporting the newly written United States Constitution and thus become the first state to ratify that document. But perhaps the puzzle is not that difficult to solve.

To summarize an earlier point; before and during the American Revolution one group of Delawareans saw the real threat to their compulsive pursuit of personal gain and its corollary, individual independence, in measures taken by an increasingly oppressive British government. But other Delawareans found the new taxes and militia recruitment efforts of their newly independent state govern-

ment more oppressive than the British government could ever be. Quite naturally, the first group was far more enthusiastic about the American Revolution than the second.

During the Constitutional Period, two political factions were also present in Delaware. They too turned to violence and intimidation at polling places and differed radically on a number of important issues. And yet both factions agreed that the pursuit of private gain could only proceed if the new national constitution was ratified. To those Delawareans concerned with the inflation-deflation issue, angry over the ability of Pennsylvania to tax most of Delaware's imports, and upset with the general lack of a strong national defense, the new constitution promised a national government powerful enough to remedy a very unsatisfactory situation.

But just as important, the very act of empowering the national government with enough authority to meet those problems caused a decrease in the power and authority of individual state governments. And that, to many Delawareans and other Americans, was a welcome development. John Francis Mercer, a Maryland delegate at the Constitutional Convention, maintained that the "corruption and mutability of legislative councils of the states" had created the need for a new constitution. James Madison of Virginia pointed out that it was not so much the structural defects of the Articles of Confederation but "the deficiences and derelictions of the state governments" that made ratification of the United States Constitution essential. In Delaware George Read, the leader of one political faction, went so far as to envision the abolition of state governments. Dr. James Tilton, a leader of the opposing faction, strongly supported the United States Constitution because, upon ratification, "good men will...be more out of the reach and power of unjust and wicked oppressors than heretofore". Evidently political power in the hands of the more distant national government was considered less threatening than the same power in the hands of the more proximate state government.[18]

Clearly the United States Constitution lessened the potential of the government in Dover to interfere with the central obsession of free white male Delawareans: the pursuit of private gain. Indeed, the uneasiness of many over the unchallenged power of their state government provided the needed mortar to unite them with others in unanimously approving the new national constitution. To borrow a phrase from the present occupant of the White House, Delaware unanimously became the First State because so many Delawareans simply wanted to get government off their backs. ■

[1] Merrill Jensen, ed., *The Documentary History of the Ratification of the Constitution,* III (Madison, Wisconsin, 1978) p.39.

[2] The 1790 U.S. Census returns for Delaware can be found in Leon De Valenger, *Reconstructed 1790 Census of Delaware* (Washington, D.C. 1979) p.2; in John A. Munroe, *History of Delaware* (Newark, Del. 1979) p.269; and in Stella Sutherland, *Population Distribution in Colonial America* (New York, 1936) p. 135. The estimates of white ethnic groups are partly based on a chart that appears in Thomas L. Purvis, "The European Ancestry of the United States Population," *William and Mary Quarterly,* xli (1984) p.98.

[3] Although the exact percentage of the working population who worked the land is impossible to determine, almost all occupational information available to historians of the late eighteenth century suggest that ninety percent is a conservative figure. Although there is no official census for Wilmington during the period and the Duc de la Rochefoucault Liancourt in *Travels* III, (London, 1800) p.538, estimated that almost 5,000 people lived in Wilmington in 1797, this seems too high a figure in view of the fact that this rapidly growing port would have only slightly more than 8,000 people some forty-three years later. I am more comfortable with the estimate of Harold Hancock, in "How Delaware Became the First State," p.1 (xeroxed paper that will be published), that Wilmington's population was less than 2,000 in 1790.

[4] A good summary of economic life in Delaware in the late eighteenth century can be found in John A. Munroe's *Federalist Delaware* (New Brunswick N.J., 1954), 25-39, 114-147.

[5] For a perspective on migration from Delaware and the Eastern Shore of Maryland see William H. Williams, *The Garden of American Methodism,* (Wilmington, De., 1984) p. 72-73.

[6] For Jefferson's statement about Delaware see Munroe, *Federalist Delaware,* p. 213. Predictably, because it was closer to Philadelphia than Kent and Sussex, New Castle County seemed more comfortable and more familiar with new ideas.

[7] For description of Sussex Countians see William Stevens Perry, *Historical Collections Relating to the American Colonial Church,* II, (New York, 1969) p. 430.

[8] For discussion of the decline in morality see Munroe, *Federalist Delaware,* p. 151-152. for nature of legislation to combat the decline in morality see *Enrolled Bills, 1785-87, ±818, 866, Delaware State Archives, Dover, De.*

[9] For a general discussion of religion in Delaware during the constitutional period see Williams, *The Garden of American Methodism.* For quote about Episcopal clergymen see Thomas Ware, *Sketches of the Life and Travels of Rev. Thomas Ware* (New York, 1842) p.93.

[10] For a discussion of church membership see Williams, *The Garden of American Methodism,* p. 73-78.

[11] Jack P. Greene, "Independence, Improvement and Authority: Toward a Framework for Understanding the Histories of the Southern Backcountry during the Era of the American Revolution," in Ronald Hoffman, Thad W. Tate and Peter J. Albert, eds., *An Uncivil War: The Southern Backcountry During the American Revolution (Charlottesville, Va. 1985) pp. 3-36. For the Lyceum of Delaware see Munroe, Federalist Delaware,* p. 181. For the Black Camp Rebellion see Harold Hancock, *The Loyalists of Revolutionary Delaware* (Newark, De., 1977) pp.91-95.

[12] Nicholas Ridgely to Abraham Ridgely, Dover, August 22, 1787, RC folder 131, Ridgely Collection, Delaware State Archives, Dover, De. Even during the American Revolution it was hard to get many Delawareans to involve themselves in the public sphere. See, for example Nicholas Vandyke to Thomas McKean, Feb. 14, 1781, McKean Papers, I, 43, Historical Society of Pennsylvania, Philadelphia, Pa.

[13] *Votes of the House of Assembly of the Delaware State,* 1782-1791 (Wilmington, De., 1783-1792) in Delaware State Archives, Dover, De. Of interest are entries for June 8, 9, 17, and 18, 1786; Jan. 31, 1787; Jan. 24, Oct. 27, 1788.

[14] Delaware responded to Pennsylvania's tariff increase of 1785 with an act to make Wilmington and the town of New Castle tariff-free ports. It was hoped that this action would draw commercial shipping direct to Delaware and thus avoid paying Pennsylvania tariffs on imports. *See Enrolled Bills, 1785-87,* #831, Delaware State Archives, Dover, De.

[15] See Ratification Document, Hall of Records, Dover, De.

[16] See Munroe, *Federalist Delaware,* 97-102 and passim; Hancock, *The Loyalists of Revolutionary Delaware,* 408 and passim.

[17] For information on the Methodists see Williams, *The Garden of American Methodism* passim. for the comment on John Wesley's staff see John A. Munroe, ed., *Timoleon's Biographical History of Dionysius Tyrant of Delaware* (Newark, De. 1958) p. 43. for election riots in Kent and Sussex in 1783 and 1787 see Hancock, *The Loyalists of Revolutionary Delaware,* p.98-101.

[18] The negative feelings of James Madison and John Francis Green towards state governments are discussed in Christopher Collier and James Lincoln Collier, *Decisions in Philadelphia: The Constitutional Convention of 1787* (New York, 1985) p.195-197. For the quote from George Read see William Thompson Read, ed., *Life and Correspondence of George Read.* (Philadelphia, 1870) pp. 451-453. For Dr. James Tilton see Timoleon, *The Biographical History of Dionysius, Tyrant of Delaware,* p. 70.

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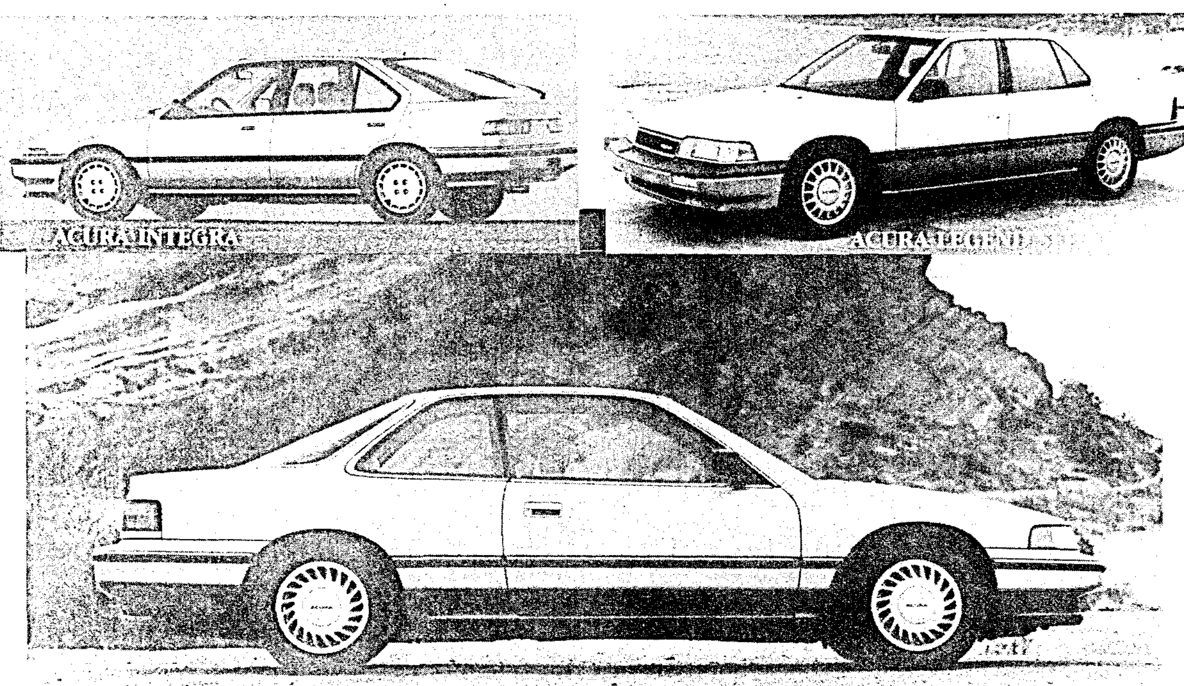

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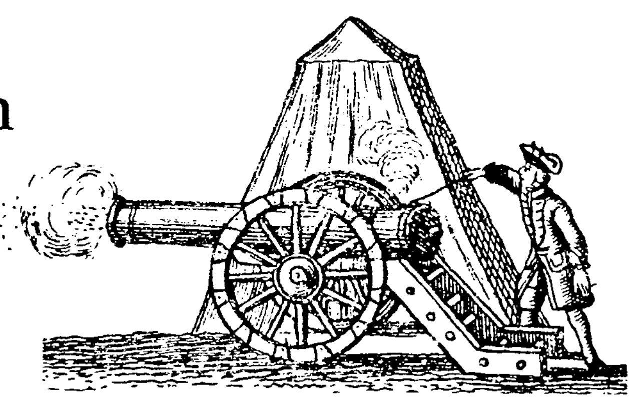
After The Revolution What Became Of The Loyalists?



Harold B. Hancock
and The Honorable Battle R. Robinson

"What is a Tory?" asked Thomas Paine in 1776 in *The Crisis*. "Good God! What is he? I should not be afraid to go with a hundred Whigs against a thousand Tories, were they to attempt to get into arms. Every Tory is a coward; for servile, slavish, self-interested fear is the foundation of Toryism; and a man under such influence, though he may be cruel, can never be brave."

As Paine wrote, the scene of the War for Independence had shifted to the middle colonies and Paine suspected one reason the British welcomed such a shift was the number of Tories in that region.

Delaware certainly had its share of Tories, or Loyalists —the names given to those who, for a variety of reasons, opposed independence and hoped for reconciliation with England. Indeed, John Adams wrote in 1780 that there are "in this little state, from various causes, more Tories in proportion than in any other." Thomas McKean declared that "a majority of the state was against independence." Although a few of Delaware's Loyalists left the colonies after independence was declared and others actually served with British forces during the revolutionary war, most Loyalists felt no need to depart. They remained on their farms and in their communities. Thus, there was a strong Loyalist presence and sentiment throughout the state.

Conflicts between the Loyalists and those who favored independence—usually known as Whigs—were frequent during the war and remained a feature of life in southern Delaware during the post-war period. By the coming of the Constitution, however, a gradual reconciliation between the two factions had begun. The treatment of those who had opposed independence tells us much about Delaware during the constitutional period and it is tempting to read into an account of the era evidence of a Delaware character of independence, moderation and reconciliation.

Delaware Loyalists came from all walks of life and were found in all three counties. Usually New Castle is considered the most "patriotic" of the three counties, though some of the inhabitants sold provisions to the British army during the invasion of 1777. Kent County was more mixed in feeling. The western part of the county along the Maryland border was particularly Loyalist. The Loyalist stronghold in the state was undoubtedly Sussex, and much of the county's political leadership was avowedly Tory.

The reasons for the sentiments of the Delaware Loyalists varied. Some simply favored the status quo or wished to avoid armed warfare; others benefited from trade with the British. Kent and Sussex were removed from the intellectual ferment and revolutionary fervor in the Philadelphia area. Most of the inhabitants of southern Delaware were of British stock and the influence of the Scotch/Irish, who were great supporters of the revolution, was less pervasive than in New Castle. Then, too, the residents of the western parts of the counties shared an affinity with the Loyalists of Maryland's eastern shore. Perhaps some were even so independent as to prefer a distant government in England to one closer to home!

Thus it was that throughout the revolutionary period large numbers of Delawareans, with varying degrees of fervor, opposed independence and opposed the war to achieve it. The conflict between Whig and Tory manifested itself in partisan and contentious quarreling, marked by civil disruptions and harassment.

On several occasions, dissension erupted into insurrection. The most notorious insurrection in Kent County was led by one Cheney Clow, whose followers built a "fort" near the Maryland line in Kenton in 1778. His forces, numbering about 100, fled after exchanging shots with the militia. An interesting historical footnote: the Reverend Francis Asbury, the early Methodist missionary, was in hiding nearby during the outbreak. About 50 of Clow's followers were later captured and 20 were sent off to enlist in the Continental Army, a common fate of captured Tories.

Sussex was the scene of several other uprisings, the most notable in June 1776, just before the Declaration of Independence and in 1780 when the so-called "Black Camp Rebellion" took place. In the 1776 incident numerous Loyalists led by Thomas Robinson, a member of the General Assembly, Boaz Manlove, the county treasurer, and Sheriff Dorman Lofland, flocked to Lewes and threatened to seize control of the government. The outbreak was quelled by the arrival of militia dispatched by the Continental Congress and the General Assembly and, perhaps, by the failure of British forces to come to their aid.

Many of the participants in the Lewes incident took part in the Black Camp Insurrection. During the course of this outbreak large numbers of Tories roamed Sussex County, seizing ammunition and threatening citizens. Most of the participants appear to have been subsistence farmers and others of small or no property. Their grievances, essentially economic, sound familiar to contemporary ears: they opposed the corn tax imposed for support of the continental army; they claimed discrimination under a draft law that permitted rich men to hire substitutes; and they opposed the seizure

of weapons and firearms belonging to Tories. Once again the insurrection was disspelled by the militia; eight of the leaders received grisly sentences: to be hanged "by the neck but not till you be dead, for then your bowels must be taken out and burnt before your face, then your head must be severed from your body, and your body divided into four quarters, and these must be at the disposal of the supreme authority in the state." All were pardoned by the General Assembly before the sentences could be carried out.

It is notable that, given the widespread Tory sympathy in the State, these episodes were few in number, readily dispelled, and did not inflict widespread loss of life or property damage. The participants suffered little punishment and were frequently pardoned by the General Assembly or treated leniently by the courts.

Several reasons have been suggested for the failure of the Tory sentiment to be transformed into armed rebellion or large-scale support for the British forces. The early departure from the state of prominent Sussex Loyalists left the Tories without influential leadership. The change to a Whig-controlled general assembly in 1778 assured that the militia could be used to control disturbances. Perhaps most significant was the failure of the British to organize and assist their sympathizers. Historians have speculated as to what might have happened in 1777 if the British under General Howe had proceeded up the Delaware River instead of the Chesapeake Bay and had landed soldiers in Sussex County to march northward. It is probable that hundreds of men would have flocked to him from all over the Delmarva Peninsula and they would have done much damage to the countryside as they advanced. If Howe had continued to hold the peninsula, he would have stopped the commerce of Philadelphia and Baltimore, held the breadbasket of the nation between the Susquehanna and Delaware Rivers, and hindered transportation on the high seas between the North and South. But his decision was to proceed by way of the Chesapeake. And as a result, British sympathizers in Delaware remained little more than that.

The Whigs had difficulty in developing policies to contain Loyalist sympathies. In 1778, the general assembly enacted vigorous laws against the Loyalists. The most important of the measures was the "Act of Free Pardon and Oblivion". It called for the taking of an oath of allegiance. The property of those who refused was to be sold by the counties. Forty-six named individuals were forever barred by the Act from voting and holding office and suffered confiscation of their property. These forty-six—20 from New Castle, 13 from Kent, and 13 from Sussex—represented a cross-section of the state. According to a rather sympathetic discussion of the career of Benedict Arnold that appeared in the October 1986 issue of a scholarly English publication, *History Today,* that cross-section included captains, military men, a lawyer, office holders and wealthy citizens. But there were also yeomen, innkeepers, pilots, three shallop men, mariners, laborers, coopers, a weaver, a coppersmith, a tailor, a saddler, a bricklayer, a hatter, and a cordwainer. Only a handful had sizeable estates.

Anti-Tory acts were not vigorously enforced. Indeed, some of the forty-six named in the Act of Free Pardon were even exempted by the courts upon payment of costs. This tolerance of Tory activity suggests that Loyalist sympathy was indeed widespread.

The end of the war and the signing of a treaty of peace did little to end the discord. Tensions between those who supported independence and those who opposed it remained high. Understandably, feelings were especially bitter between Tories and those who were veterans of the war. Not surprisingly, Whigs were determined to prevent Tories from sharing the fruits of victory. Tory "refugees"—those who had fled to the British cause and tried to return to the State—roamed the countryside, often plundering homes and terrorizing citizens.

Riotous elections, especially in Kent and Sussex Counties, were frequent. In 1787 veterans in Sussex County formed an "association" to disenfranchise those who had been unfriendly to the American cause. The situation was so tumultuous that the election could not take place at the customary time in October. The President of the State (Governor) tried to form a compromise ticket consisting of an equal number from each party, but the General Assembly refused to accept the returns and called for a new election on November 26, at the same time that delegates were to be chosen to attend a state convention to consider the proposed federal constitution. The General Assembly moved the site of the election from Lewes to nearer the center of the county.*

Tumultous elections, conflicts, and hard feelings between Whig and Tory were to continue. But by the time of the adoption of the Constitution and the establishment of a new national government some movement toward reconciliation had begun.

An example of steps toward reconciliation was the treatment of exiled Tories. At the end of the war at least 30 Delawareans were living in Nova Scotia, New Brunswick, and England. Upon the signing of the peace treaty, seventeen of these submitted claims to the state for the confiscation or loss of their property and twelve received some sort of settlement. Eventually, some of them returned to Delaware.

Riotous elections — *Courtesy of the Division of Historical & Cultural Affairs*

Of course the great bulk of the Loyalists had never left. In time they were fully accepted and readmitted into the political life of the State. In 1789 nine persons in Sussex who had been denied the franchise under the Act of Pardon and Oblivion petitioned for restoration of their rights. The legislature promptly restored their rights and eventually repealed sections of the Act dealing with disfranchisement, with the result that Tories were thereafter able to participate in elections. This outraged many Whigs—as did the fact that the electorate frequently chose Tories and conservatives for office. By the 1790's most of the Tories had become members of the Federalist party of Washington and Hamilton; Whigs generally affiliated with Jefferson's Democratic-Republicans.

**For a fuller account of this election turmoil see the discussion by Mr. Justice Holland and Judge Chandler.*

Loyalists
(Continued)

One measure that did much to soothe grievances in Sussex was the move of the county seat from Lewes to the center of the county. As early as 1770 those inhabitants of central and western Sussex—then two days' distance from Lewes—had sought a more convenient location for the transaction of county business. Following the war, numerous petitions, some signed by those who had taken part in the Black Camp Rebellion, were submitted, and in 1791 the General Assembly created the town of Georgetown to serve as the county seat.

The heritage of this era was issues, feuds, and personalities that influenced the state for some time to come. Despite an official policy of leniency and reconciliation toward the Loyalists, cries of "Whig" and "Tory" still aroused passions. The State had been divided between these two great factions, and the history of insurrections, disturbed elections, and political controversy was not soon forgotten.

Gradually this great division healed and Delawareans turned to new issues and new problems—at least until the Civil War era when the State once again became divided into two great factions. But that's another bicentennial. ■

The Honorable Battle Robinson, a Judge of the Family Court and a resident of Sussex County, is an experienced observer of government to which she contributed with distinction during her service in the administration of former Governor Pierre S. DuPont, IV. We are saddened that her collaborator, the late Dr. Harold Hancock, will not join in a Constitutional celebration he did so much to enliven and enrich. That distinguished Delaware historian, a Professor at Otterbein College of Westerville, Ohio, has exerted a powerful influence upon the contents of this issue through his generous advice to other authors and his scholarship, upon which many of them have drawn. At the time of his death in July he was completing an historical study of Delaware in the late eighteenth century, to which discriminating readers will look forward to reading with mingled enjoyment and sadness at the thought of his untimely passing.

Delaware Women and the Law

The Limitations of Coverture During the Eighteenth Century

Peggy A. Tatnall

The study of women in history has recently grown increasingly popular. Twenty years ago American historians examined primarily political, economic, and intellectual issues. History was a male domain and textbooks emphasized wars, political alliances, and presidential elections. Never the prominent participants in these situations, women were relegated to a secondary position. It seemed that Betsy Ross and Harriet Tubman were two of a mere handful of "important" women in our past. This emphasis changed, primarily as a result of the political events of the 1960s which had a tremendous impact on the field of history. The civil rights and women's movements helped many historians to realize that by ignoring the contributions of minorities and women, they were recreating only a part of the past.

This awareness led to the development of what is now called social history. Social historians focus on women, minorities, those without political power, and on everyday lives, rather than on presidents and wars. Those engaged in this "bottom-up" approach to history attempt to reconstruct the habits and life styles of middle and working class men and women. This is often problematic because most Americans did not keep detailed written records of their activities. Many women, especially working class women in the eighteenth and early nineteenth centuries, were illiterate. Even women who could write rarely engaged in public activities, such as business and politics, where the records were kept that have traditionally been considered important enough to save. As a result, those who study women's history must often search for scarce materials, including women's personal correspondence and diaries, to illuminate the diversity of women's experiences.

An alternative approach to the study of women in the past involves the examination of laws that pertained particularly to them. An explication of legal rights can provide us with one indication of the general status of women in society. Seventeenth and eighteenth century law, for example, treated married women differently from single women or men. Married women were subject to the principles of coverture. Coverture, based in English common law, stipulated that upon marriage the wife lost most of her legal rights to act autonomously. She could no longer act as an individual in most instances because the law expected her husband to act in her behalf. Coverture prevented a married woman (or feme covert) from buying, selling, or owning property in her own name. Her property automatically fell under her husband's jurisdiction, giving him almost total control.

The principles of coverture were consistent with the predominant eighteenth and nineteenth-century views of the proper gender relationships within the family and were created to complement the ideal marriage. Society expected that the husband, as provider, would act responsibly, wisely manage the family holdings, and have the final say when important decisions were made. The wife's role was primarily supportive. A woman's life revolved around the home: spinning, cooking, and caring for the family were her principal tasks.

Sir William Blackstone popularized the notion that under coverture a married woman's identity was totally sublimated to that of her husband in his book *Commentaries on the Laws of England,* published in 1765. Blackstone's views, popular in both England and the colonies, were widely read by law students. He painted a grim picture of a male-dominated society that granted married women very few opportunities to act responsibly or make decisions about their holdings:

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing.[1]

In light of the potentially debilitating effects of coverture, there has been a disagreement among scholars over the mitigating effects of equity courts on married women's status. Blackstone discounted the impact of the courts of equity, created by colonial lawmakers to correct some of the injustices of coverture. Mary Beard, an early twentieth-century historian, disagreed with Blackstone's assessment of the equity courts. She found that equity offset the limitations of coverture and successfully allowed women more control over their own lives and property by providing flexibility and a variety of relationships between family members. Yet by depicting equity as independent and equal in weight to common law, Beard exaggerated the power of equity courts to free women from the restrictions of coverture.[2] Marylynn Salmon's recent Pennsylvania research points to the conclusion that the impact of coverture on women's lives probably fell somewhere between the contrasting portrayals by Blackstone and Beard. Although equity did allow femes coverts to make con-

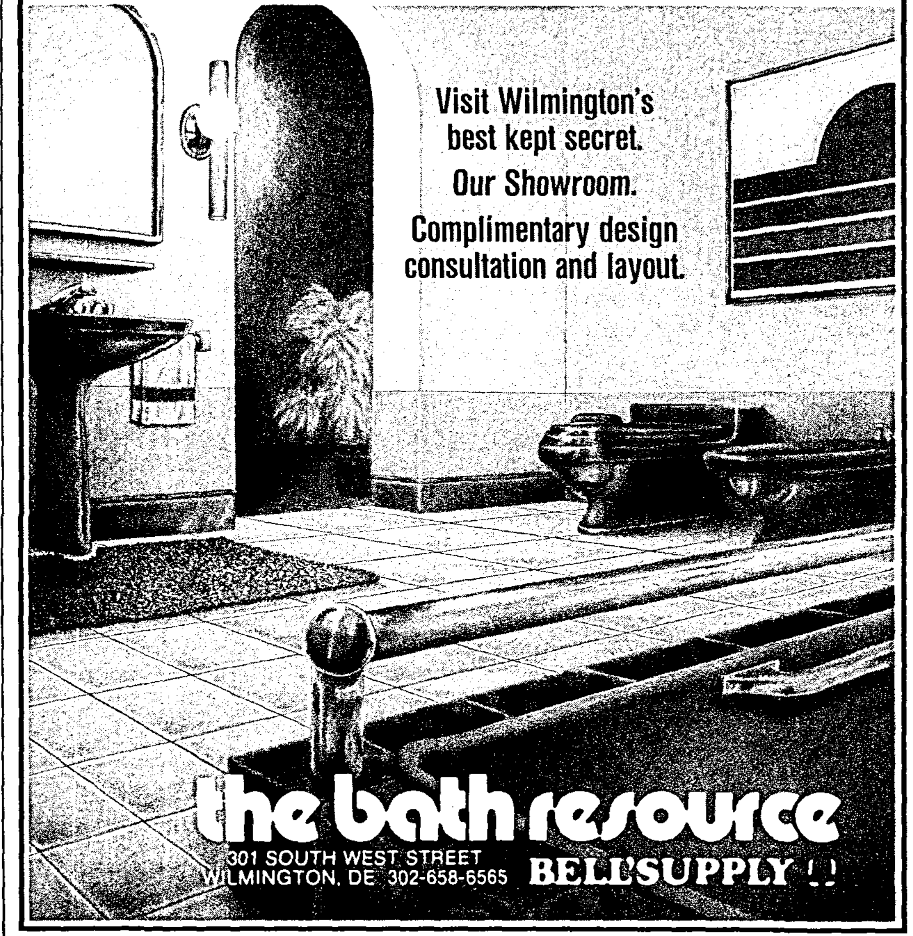
Delaware Women and the Law

(Continued)

tracts and own property, the courts required the husband's written consent, thus negating the actual independence granted to the wife.[3]

While acknowledging the importance of equity, Salmon agreed that often, as Blackstone found, coverture laws and custom rendered a married woman virtually invisible. Her legal rights were not totally subsumed, but were circumscribed to a large degree.[4] Equated by law with the incompetent, under age, and geographically absent, femes coverts were far from equal citizens. Coverture prevented a wife from suing to redress a grievance, under the assumption that her husband would handle business on her behalf. However, reality did not always live up to the ideal. Husbands did not always act in their wives' best interests, and some men deserted their families altogether. For this reason coverture, which gave a husband control of his wife's property, often failed to provide adequate protection for a married woman and her estate. Lawmakers attempted to remedy this, but new legislation rarely allowed women to act on their own initiative. Most revisions limited women to defensive responses.

Under coverture, a husband controlled the property his wife brought to the marriage unless she negotiated an antenuptial contract to prevent him from doing so. An antenuptual contract was one method by which women could defensively protect themselves from coverture restrictions. These contracts were most often drawn up before remarriage by widows who had a substantial amount of property to protect.[5] Unfortunately, antenuptual contracts were not commonly used because many women lacked the guidance, legal sophistication, and wealth necessary to create such complicated agreements. Once the marriage took place without one, women had little hope of maintaining control over their property, because the law prevented married couples from contracting with each other. As a result, most women had little influence over their own estates.



In certain circumstances married women were granted a degree of freedom from the otherwise fairly restrictive confines of coverture. Some women petitioned for and were granted "sole-trader" status which allowed them to conduct business on their own.[6] This exception was most often taken advantage of by a wife to conduct family business on behalf of her spouse when he was out of town for extended periods of time. Occasionally though, the courts granted sole-trader status to a wife, who, with her husband's permission, conducted routine day-to-day business on her own even when her husband was not absent. This indicates that despite bleak laws relegating married women to secondary status, in actuality some men realized their wives were able participants in the world outside the home. Informally men often treated their wives as equal partners, and many women participated in major family decisions, as historians have discovered by reading women's personal correspondence.

Some scholars emphasize further exceptions to the restrictions of coverture. Gunderson and Gampel found that early eighteenth-century New York and Virginia courts interpreted feme covert status liberally. For instance, they permitted the filing of suits by married women, if they acted jointly with their husbands.[7] The key to exceptions in New York, Virginia, and other colonies is that wives acted with their husbands' permission and therefore did not pose a threat to accepted authority within the family or society at large. After mid-century, Gunderson and Gampel found that married women had less freedom to participate in the business world. The authors attribute this to lawyers' efforts to make colonial practices conform more closely to those of England, and to the increasingly widespread acceptance of the English view of the gentlewoman as an ornament.[8]

Of major interest for women's historians is the question of whether women's status changed from the eighteenth to the nineteenth century. Most scholars have argued recently that, despite the Republican egalitarian rhetoric at the time of the Revolutionary War, coverture laws, and as a result women's public lives, changed little.[9] An examination of eighteenth-century Delaware law supports this conclusion. In general, although there is a sporadic

(Continued on page 20)

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Delaware Women and the Law
(Continued)

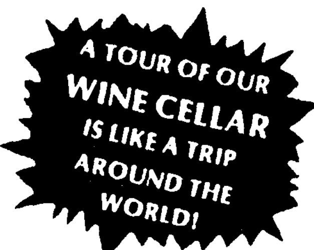
trend toward granting women more freedom of movement throughout the century, there seem to be no major changes in attitudes toward women (as would be reflected in the liberalization of coverture laws) as a result of the Revolution. The rights and obligations of women in Delaware during the Federalist era were nearly identical to those they enjoyed before the Revolution. Legislators continued to pass laws aimed at protecting women who were victims of less than ideal marriages, but they stopped short of granting autonomy to wives. Married women were granted only enough leeway to act defensively.

Aiming to prevent husbands from taking unfair advantage of wives, lawmakers in Delaware and elsewhere created statutes that prevented them from selling their wives' property outright. Ideally a husband simply managed his spouse's holdings, which often included land. On occasion the inability to sell this land and convert it to currency in order to support the family proved a financial burden in an economy where land speculation was important.[10] As a result, transactions by a husband in property owned by his wife did occur. To prevent a husband from selling his wife's property against her wishes, a 1734 Delaware law required that a judge or justice obtain the wife's consent at the time of the sale.[11] Similar laws were passed in other colonies. The court official was required by law to talk to the wife alone to insure that she freely agreed to the transaction. Although well-intentioned, this law was primarily symbolic. In many colonies the courts sidestepped this requirement or ignored it totally. Judges and clerks understood that most wives lacked the economic resources to disagree with their husbands and, in a subordinate position, had little choice but to acquiesce in their wishes.[12] Even if the law had been taken seriously, it was a halfway measure that was not designed to abate the restrictions of coverture. It granted married women veto power over impending transactions, but did not allow them to initiate business proceedings on their own.

Coverture also prevented wives from suing and from being sued. In essence the law viewed femes coverts as unable to act on their own behalf and placed the responsibility for their estates and actions with their husbands. This arrangement sometimes hurt a married woman's interests, as the law implicitly acknowledged. Early Delaware law allowed men and unmarried women to sue in order to settle grievances, but stipulated the time within which such suits had to be initiated. The number of years allotted varied with the cause of the suit. Because married women could not sue, they were apt to lose property they were entitled to if their husbands did not file suit on their behalf within the specified time. Indirectly acknowledging that men did not always diligently fulfill their responsibilities to their wives' estates, lawmakers passed an act to remedy this in 1742.[13] This act granted wives and those with other "disabilities" (minors, geographically absent, etc.) the right to sue, after removal of their disability, even if the time limit had expired. Therefore widows, no longer subject to coverture laws, could take advantage of the extension granted by this legislation and file suit even many years after the alleged wrong.

The legislature often granted this type of concession to women. For example, a 1773 act decreed that land deeded to an heir must be claimed within twenty years. It also granted infants, femes coverts, the mentally disabled, and those imprisoned or "beyond the seas," ten years to make their claims after coming of age, discoverture, coming of sound mind, release from prison, or coming to America.[14] This law gave a widow ten years after the death of her spouse to file a claim for land that her husband had failed to claim on her behalf. The act benefited widows, but did not aid married women who were still forced to rely on their husbands to file suit. Again, the law stopped short of granting femes coverts an active role, but it did acknowledge that coverture sometimes protected wives in a less than satisfactory manner. Of course, because custom prevented women from voting, they had no official role in the creation of these laws.

Although colonial law allowed single women to own property and transact business, lawmakers limited politics to



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men. In 1734 the Delaware legislature granted the franchise to those twenty-one years or over with a freehold of fifty acres (twelve cleared and improved) or forty pounds clear estate.[15] By extending the franchise to those men who owned money or property but not land, the legislature demonstrated an unusual attempt at democracy. Delaware was unique in this regard. Most colonies allowed only the most established citizens, those with land, to vote.[16] Although the Delaware legislature consciously attempted to enfranchise much of the male population, it failed to allow women to participate in the political process.

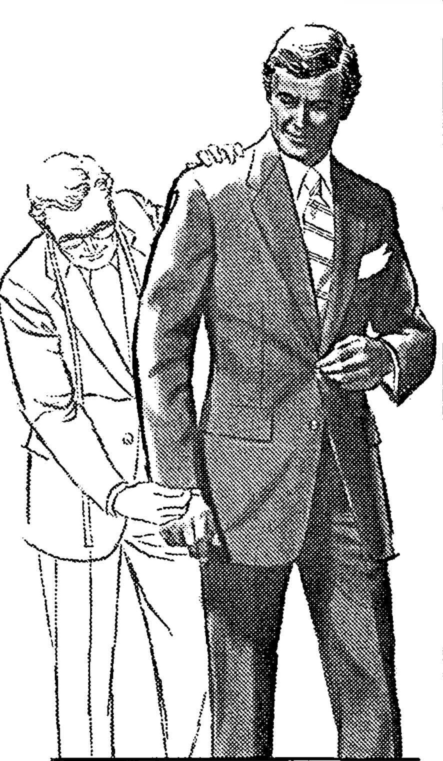
The 1734 statute did not specifically disenfranchise women, but the intent of the law was clear nonetheless. When referring to those qualified to vote, the legislature carefully used the pronoun "he" and terminology such as "every man." In contrast to this, laws referring to the population at large addressed "all persons." Only two other colonies, Pennsylvania and South Carolina, used gender specific pronouns to express their intention to restrict the franchise to men.[17] Most colonies probably did not feel the need to explicitly deny women the vote. Custom effectively precluded the participation of most women in the larger world outside the home.

The legislature clarified its intentions regarding women's suffrage in the Delaware Constitution which took effect in 1792. Lawmakers specifically limited the franchise to twenty-one year old free white males who had resided and paid taxes in Delaware for at least two years. They enfranchised twenty-one year old sons of qualified electors as well, whether or not the sons had paid taxes yet.[18] By removing the freehold and forty pound clear estate requirement, the legislature signaled a willingness to further widen male participation in the democracy. While this may have been part of a larger post-Revolutionary trend toward egalitarianism, it did not encompass women.

Although custom and law denied women the opportunity to vote, lawmakers guarded some rights of married women, particularly dower rights. The Delaware legislature realized that laws protecting femes coverts were necessary because under coverture women could rarely protect themselves. Lawmakers designed dower laws to guard women's inheritance rights and to prevent women from becoming dependent on the government. Colonial officials often modeled their statutes on English common law, which consistently upheld women's dower rights. A Delaware law passed in 1683 guaranteed a widow a share of her husband's estate even if he died intestate.[19] In Delaware, as in other colonies, widows were entitled to "thirds". This meant she inherited one-third of the couple's personal property forever, and the use of one-third of his real property for life. After the widow's death, the real property passed to the couple's children. Dower functioned as a trust, providing a livelihood for the widow while preserving the bulk of the estate as an inheritance for the children. The law allowed a husband to will his wife more than one-third of the estate if he chose but if he willed her less than her "third," the courts often intervened and adjusted her inheritance to insure that she received a full third of the estate.

Dower laws that granted the use of real property for life resulted in both good and bad consequences for the widow. As the law intended, the widow received property intended to enable her to support herself and her minor children. This prevented the family from becoming dependent on the government, a particularly important consideration to the legislature. But the widow could not sell real property without the consent of the courts, which meant that, although she possessed property and was therefore not destitute, she was often cash poor. So the use of the estate did not necessarily preclude economic hardship for the widow because she could not convert her land to currency in order to purchase necessities. In addition, the farm itself was often an unmanageable burden for an unmarried woman particularly because farm labor was difficult to obtain. Land was abundant in eighteenth-century America, leaving few men willing to farm for another when they could move west and work their own land.[20]

A 1693 Delaware law pertaining to the estates of both testates and intestates provided further evidence that although lawmakers protected dower rights, the widow's best interests were not always a top priority. This statute specified that outstanding debts and funeral expenses be paid before any distribution to heirs. Unlike most other colonies, Pennsylvania and Delaware in this instance failed to uphold the com-



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Delaware Women and the Law
(Continued)

mon law tradition of protecting the dower rights of those widows whose husbands died in debt.[21] As a result, the widow's share of the estate was diminished, and she and her children received only "surplusage or residue, if any be."[22] Lawmakers created this act to serve the best interests of the creditors, not the widow, as evidenced by the fact that it included the order in which creditors were to be paid. As a result, the dead husband's creditors received payment at the expense of the widow's inheritance. This late seventeenth-century Delaware statute foreshadowed a trend toward the erosion of dower rights that became more widespread throughout the states after the Revolution.

Possibly in response to the economic hardship that could result from the narrow interpretation of dower laws, and in acknowledgement of the difficulties faced by widows in general, a law passed in 1700 allowed widows to sell real property. Formerly entitled only to the use of this property, if the court found the personal estate insufficient to pay outstanding debts, educate children, and make necessary improvements, the widow (or an administrator of the estate) could sell land or property to raise money. Later repealed, lawmakers rewrote this act in 1706 and again in 1721; the latter with the stipulation that no land or tenements contained in a marriage settlement could be sold or disposed of contrary to the settlement. The legislature constantly revised laws involving the settling of estates. Although the changes were often minimal, new laws to replace or supplement the former ones appeared every few years throughout the eighteenth century.[23]

Some widows chose to take advantage of these laws and petitioned the courts for permission to sell land inherited from their husbands. Elizabeth Cox petitioned the Delaware legislature in 1800 for sole title to a parcel of land so she could sell it, claiming she was "advanced in years and destitute."[24] In a similar instance Rachel Sullivan wrote that she was aged and infirm and asked the legislature to "vest the fee simple of the lot in her," presumably so she could sell the five acre parcel of land left by her husband James. The legislature complied with Sullivan's request in a private act on January 30, 1795.[25] Neither petition mentioned children or other heirs who certainly would have been expected to assist in the support of these destitute women and to play a part in the impending sale of real property. Therefore it would seem safe to assume that Cox and Sullivan had no living children in the area. While the red tape necessary for these women to sell their own land may seem awkward from a twentieth-century perspective, these records provide evidence that widows sometimes successfully controlled their dowers through the use of petitions.

After the Revolution, courts throughout the fledgling nation faced increasingly difficult questions regarding dower rights as the economy became larger and more complex. In many states the widow came up short as a result of new legislation passed to compensate for these changes in the society at large. According to Linda Kerber and other historians, the most important legal development directly affecting women in the new Republic was the widespread erosion of dower rights.[26] Morton J. Horwitz cites an 1808 decision in which a Massachusetts widow was denied dower on unimproved land because the courts had previously ruled the dower was to be based on the productive value of the land; therefore there should be no dower on unimproved land because it was unproductive. Nor, according to this decision, could the widow herself develop the land and make it productive. That would constitute waste:

> *For the alteration of the property, even if it became thereby more valuable, would subject the estate in dower to forfeiture: the heir having a right to the inheritance in the same character, as it was left by the ancestor*[27]

Horwitz concluded that the central purpose of this contradictory decision was to undermine the right of dower itself.[28] Similar cases occurred in New York and Pennsylvania where courts did not always credit widows' dowers with improvements made to the land before the death of their spouses. For whatever reasons, judges often seemed reluctant to grant a woman the use of a full one-third or more of an estate.

In Delaware Sarah Bond may have faced a similar reluctance on the part of the courts after the death of her husband John in 1794, even though his will made plain his intention to leave her the whole estate. James Booth, Register for the probate of wills, quoted from Bond's will in a petition filed with the court:

> *First I give one hundred pounds currancy of Pennsylvania to my sister Ann Shelley if she dies first to her children share and share alike. Second, I give the remainder to my dear wife Sarah Bond but if she should remarry after my decease one half of all goods chattles debts of all denominations at such marriage shall desend and be paid to William Lees and I further appoint my wife Sarah Bond and William Lees my joint executrix and executor.*[29]

John and Sarah had no children, and he clearly intended that she receive the bulk of his estate. After writing the will, John bought several parcels of land and failed to add these specifically to the will as part of his bequest to his wife. Sarah feared that the will was insufficient, and that she would not be granted title to the recently purchased property, evidence that the courts had a reputation for treating widows capriciously. She filed a deposition stating that two months before his death she asked John about the land that was not included in the will. "I am sure Mr. Bond you would not wish to put me to any trouble by omissions in your will, or that I should be obliged by

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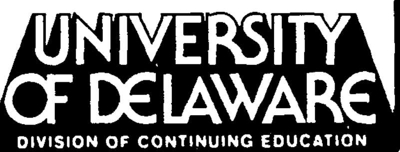

your relations, to take my thirds only." According to Sarah, he responded that no, he did not want her to get just her "thirds" and that there would be no problem with the will.[30]

John was wrong, as the flurry of petitions following his death showed. His nephews and potential heirs, Edward Shelley and Thomas Bond, supported Sarah and affirmed John's intentions to leave his estate to his wife. Each nephew filed a deposition stating that John intended to "give by his last will to his wife Sarah Bond all his property both real and personal." The legislature failed to act, reluctant to affirm Sarah's claim to the bulk of the estate even though there was no objection from the other beneficiaries. Two weeks later the nephews filed a joint petition reiterating John's intention. They assured the legislature that they "do not intend to make any application to the legislature to grant us any part of the estate." Finally, in response to this petition, the legislature passed "an act to vest certain land, in New Castle county, in Sarah Bond, widow."[31] While Sarah eventually received her dower, she did so only after convincing the legislature that John intended that she inherit the whole estate and that her nephews would not contest the will.

Sarah Bond successfully inherited the bulk of her husband's property by petitioning the legislature. William Lees, the co-executor of John's estate, assisted Sarah in her efforts. Lees cosigned one of the petitions and no doubt offered advice as well. Many women, unlike Sarah, were unaware of the legal rights enabling them to petition to redress grievances. Bond's knowledge of the law and her questions about "thirds" prior to John's death show that she was familiar with legal processes. Unlike Sarah, few other women in Delaware took advantage of this right to petition. Ignorance of the law and illiteracy probably played a large part in their failure to do so.

Most petitions filed by women in Delaware contained signatures in the same hand as that of the clerk who wrote the petition, or simply the woman's mark. This suggests that executors or husbands filed most petitions "signed" by women. In 1789 Betty Cannon, a widow, requested exclusive privilege to run a ferry on the Nanticoke in Sussex County.[32] Her signature matched the handwriting of the petition, suggesting that the clerk signed on her behalf. A private act, passed nearly four years later, granted Betty and Isaac Cannon the exclusive right to run a ferry on the Nanticoke.[33] The mention of Isaac, probably Betty's son, coupled with the fact that she failed to sign the petition herself, strongly suggests that someone filed this petition on behalf of Betty. The dearth of petitions signed by women also suggests that few women initiated legal proceedings of their own accord in eighteenth-century Delaware. Even women suffering in unsatisfactory marriages and those deserted by their husbands failed to file petitions for divorce.

Unhappily married couples could obtain divorces in Delaware only by petitioning the legislature.[34] Just three petitions have survived from the last quarter of the eighteenth century, and incredibly, lawmakers granted only one. The legislature's reputation for failing to grant divorce petitions probably led other dissatisfied couples to choose desertion, an informal and earlier method to end a bad marriage. Husbands filed all three petitions. Each cited adultery and incontinence as primary motivations for their requests. It seems unusual that men rather than women filed for divorce, considering that women, largely unskilled as providers and legally circumscribed, were more likely to suffer the effects of an unhappy union than were men. Yet in Delaware these women did not file for divorce. Poor legal advice, strong community and religious sentiment, and the lack of precedent must have proved to be overwhelming deterents to unhappily married women.

Other states granted divorces more frequently than did Delaware. In Massachusetts couples obtained divorces by decree of the Governor and Council, rather than by petitioning the legislature.[35] Largely owing to the legacy of Puritanism, Massachusetts officials viewed marriage as a civil contract that could be dissolved for adultery, absence, or cruelty. Nancy Cott, pre-eminent in the field of women's history, found that the sexual double standard was pervasive in eighteenth-century Massachusetts. She also found that men were much more likely to be granted divorces solely on the grounds of adultery than were women, particularly before 1773.[36]

Despite precedents set by other states, two of the three Delawareans who filed never received a divorce. Both of these divorces probably would have been granted in Massachusetts. One unsuccessful petitioner, Edmon Dickerson, wanted to dissolve his marriage because his wife "rendered his life miserable beyond description." He colorfully elaborated:

That it is truly painful to your petitioner to be under the necessity of representing to your honors in so disadvantageous a point of view, the reputation of the only person in this world whose character ought to be dear to him; but circumstanced as he is, his present and future happiness oblige him to undertake the disagreeable task, and her language would fail to draw the picture in its true colours, drunkard, swearer, regardless of congugal affection, unnatural, well grounded suspicions of incontinency, total neglect of all family concerns are but some of the shades in the dismal hue, for added to these she now threatens to burn the house over the head of your petitioner, destroy his property and that she will have another child let who will be the father of it.[37]

Dickerson concluded by mentioning his desire to remarry, probably a strong motivation behind his petition. A committee of three legislators read the peti-

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Delaware Women and the Law

(Continued)

tion. Despite Dickerson's impassioned pleas, they never granted the divorce.

Another petitioner, Charles Whitelock, based his request for divorce on strong evidence of his wife's impropriety.

Your petitioner had good reason to suspect her of incontinence which of course brought on a separation since the time of this separation the said Hannah has had a child and confessed to her friends that the father there of was a stranger.[38]

Evidently afraid that his accusations alone would be insufficient, Whitelock obtained depositions from two of his wife Hannah's friends to support his claims. Hannah Garratt said that John Lewis of Chester County acknowledged that Hannah Whitelock's baby was his and that he paid for the care of the child. Mary Holston concurred, adding that Hannah and John "cohabited together like man and wife always sleeping in one bed and that the said John has hitherto paid for the nursing and boarding the said child."[39] The legislature never granted Whitelock's divorce despite the fact that his wife was openly involved with another man. In Delaware, unlike Massachusetts, adultery was evidently not sufficient grounds for divorce.

James Hathaway obtained the only divorce granted by the passage of a private act during the eighteenth century in Delaware. James married Mary Sidenham in 1776. She gave birth to five children during the next nine years. Business often kept John out of town for long periods leaving Mary alone in Sussex County to fend for herself and the children. In his petition filed in June of 1786, James said that in his absence Mary "totally regardless of the solemn obligation of marriage continually entertained a great number of loose, disorderly and bad people."[40] James claimed Mary told one suitor, Captain Alberson, "that she being young airy and full of blood that if any person should ask her to commit adultery she could not refuse." To make matters worse, Mary contracted a venereal disease and passed it on to her daughter Lydia. Eventually Mary left James, taking some of his property with her. James obtained depositions from Dr. Joseph Hall, Jacob Warrington, and Luke Burton to support his assertions. In November, 1787 these affidavits were read before the legislature. It did not grant the divorce until a year and a half later. James's account of Mary's actions is indeed damning:

[She] committed the heinous crime of adultery and not only became infected herself with the venereal disease but also communicated that infection to her sucking infant, that having thus shamefully violated her husband['s] bed and house, deprived him of a considerable part of his estate and altogether deserted him, and by her lewd and wicked conduct rendered it impossible for them ever to be reconciled or again live together.[41]

Because divorce in Delaware was virtually nonexistent, desertion of one spouse by the other must have been frequent. To provide for abandoned women and children who were unable to support themselves, the legislature created poor laws. Overseers of the poor, appointed in each county, arranged or provided economic support for indigent residents. Poor laws dealt with impoverished women and children, and with those men unable or unwilling to provide economic support for their families. Lawmakers designed poor laws to prevent or curtail circumstances that resulted in the financial dependence of residents upon the government. As a result, the courts assessed monetary penalties against persons who brought into the state and subsequently abandoned slaves, servants, or anyone who would become incapable of self-support.[42]

In a similar manner, the courts held husbands accountable for the support of their wives and children. If a husband deserted his wife and children (or a woman her children), the law directed the Overseers to obtain a warrant from two Justices of Peace authorizing the seizure and sale of the family property to support the children. If the Overseers could find no personal or real estate, the Justices of the Court of Quarter Sessions would attempt to locate the husband and order him to pay whatever they deemed sufficient to support his family. If the man refused or was unable to comply, they put him in jail.[43] Poor laws encouraged, and coerced if necessary, men to support their families. Enforcing a man's economic obligation to his family was particularly important because coverture prevented married women from transacting business to support themselves and their children unless they successfully petitioned for sole-trader status. Like other colonial legislation that affected feme coverts, poor laws did not increase their ability to actively participate in society. Poor laws did attempt to address the shortcomings of coverture laws, which were designed with the ideal conscientious husband in mind.

Like poor laws, early sanctions against extramarital sex were designed to maintain order within society. The lawmakers did not want children born out of wedlock to become dependent on the government. Both men and women in colonial Delaware faced severe sanctions if they failed to adhere to strict sexual guidelines. The law treated men and women differently, defining particularly narrow boundaries of acceptable sexual behavior for women. According to the law, both sexes faced punishment for extramarital sex, but blacks and women faced the most severe sanctions. Early laws dictated that convicted adulterers of either sex be punished with a fine of fifty pounds or be publically whipped twenty-one times. The courts required evidence from a witness for conviction, deeming testimony from either party alone insufficient. Fornicators faced a less severe financial fine of three pounds or twenty-one lashes. Pregnancy was sufficient evidence to convict a single or unmarried woman of fornication, and her testimony against the father in court in turn convicted him.

One of the first recorded whippings in Delaware occurred in 1679. Agnieta Hendriks was convicted of having "three Bastard Childeren one after another" and was sentenced to twenty-seven lashes on her bare back plus costs. The lashes were publically administered "att ye forte gate in New Castle" on April third.[44] She admitted at the stillborn birth of one of these babies that the father was Sybrant Jansen who "about seven weeks before had sorely abused beaten and bruised her the said Agnieta, sense wch shee never felt the chyld Live in her boddy."[45] Yet there seems to be no evidence that Jansen was punished. In the year following her whipping Agnieta had another child out of wedlock. She was whipped again on November 4, 1689, and banished from the county for five years.[46]

If an unmarried woman chose to leave the community to avoid the ostracism and punishment associated with preg-

nancy, Delaware law required that she pay a fine or face a whipping if she returned within a year after giving birth and if she had not been punished by the county she resided in during the pregnancy. To make flight unattractive and to discourage dependency on the government, pregnant women's supporters faced punishment as well. Anyone who sheltered an unmarried pregnant woman and failed to notify a Justice of the Peace within three days was to be fined five pounds.[47]

Those who engaged in interracial sexual relations faced the most severe sanctions. The County Court required that children born out of wedlock to a white woman and a black or mulatto man be "put out to servitude" until the age of thirty-one. In addition, the woman faced a ten pound fine and a whipping. An acknowledgement of the severity of this sanction did not appear until 1795. Stating that it was unjust and inhuman to punish the child for the offense of the parent, the legislature repealed the act sentencing mulatto children to servitude for thirty-one years. The courts chose not to repeal the section of the act containing the equally inhumane punishment prescribed for the white woman's black or mulatto partner. He "after conviction hereof, shall be publically whipt with 39 lashes on his bare back, and stand in the pillory for the space of two hours, with one ear nailed thereunto, and cropped off." A white man convicted of fornication with a black or mulatto woman faced a much less severe sanction than the loss of an ear. He was to be fined twenty pounds and publically whipped twenty-one times.[48]

Although it is impossible to determine from these sources if the courts enforced laws forbidding fornication, they remained on the books throughout the eighteenth century. In 1796 the legislature repealed fines and corporal punishment for "bastardy and fornication."[49] Although adulterers still faced a $100 fine, lawmakers lost interest in regulating sex between single people.[50] New laws reflected an ongoing and increasing interest in assuring that parents supported children born of such unions. Laws forced mothers to provide security to indemnify the county from any responsibility. If the mother chose to identify the father, the financial responsibility shifted to him and he could be ordered by the court to pay between one and two dollars a month until the child reached the age of seven. If the father absconded, leaving the child maintenance expenses to the county, the county treasurer was authorized to sue the father for the money if he returned to the state.[51] The intent was to relieve the county, and the mother if possible, from the financial responsibilities associated with child rearing.

Custom and coverture, in conjunction with laws created by the Delaware legislature, combined to allow married women little formal access to the public sphere. Coverture prevented femes coverts from making wills, initiating suits, or owning property. Custom kept women from voting and usually from participating in the business realm. Illiteracy and ignorance forestalled most women from filing petitions, one avenue through which justice could be pursued legally. Lawmakers, aware that a feme covert was dependent on the good will of her husband, provided partial solutions by protecting dower rights and creating poor laws. As a result, late eighteenth-century revisions to English common law sometimes allowed women to react and respond, but rarely to initiate decisions. ■

Ms. Tatnall's article reflects extensive research. Limitations of space preclude listing the many authorities she cites. The Editors will make them available to readers interested in pursuing the topic in greater depth.

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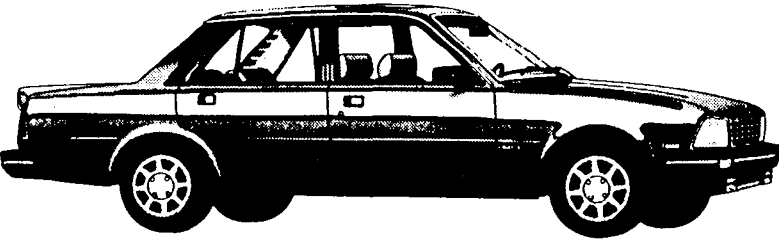

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The Practice Of Law In The 18th Century

Daniel F. Wolcott, Jr.

What would the practice of law be like without telephones, copiers, instantaneous communications, automobiles, and other aids to modern living? One assumes it would be slower paced, permitting reflection upon individual cases without the hustle and bustle one encounters practicing law in the 20th century. The practice of law, however, in the 18th century seems to have included all of the problems of today's practice without those aids we all take for granted. In fact, late night and Saturday hearings were part of the fare of the lawyer in the 18th century. Even when waiting for their cases to be heard lawyers were apt to be asked their opinions on questions that had been presented to the court. In addition the courts were difficult to get to, given the distances and poor roads.

The Courts during the 18th century were located in New Castle, Dover, and Lewes. In 1791 the Court in Lewes was moved to Georgetown after an earlier attempt to move it to a location along the Broadkill River at a place near the present town of Milton. A bill proposing such a change failed in the Assembly in March, 1770. During the 18th century there was a lot of tinkering with the system. It took a great deal of experience to discover the components of an efficient system.

The trial courts convened four times a year: February, May, August, and November. They met in Lewes on the first Tuesday, Dover the second Tuesday, and in New Castle on the third Tuesday of each of those months. The Supreme Court and Court of Oyer and Terminer sat in April and October, but only for four days. The Justices, apparently, had difficulty meeting even those dates and various schedules were attempted, changing the days and lengths of the sessions. A suggestion to appoint Justices from the counties where the Court would sit was adopted by Governor John Penn when he appointed Caesar Rodney to a vacancy on the Supreme Court so that he could sit in Kent County where he lived.

The most difficult lot, however, fell to the lawyers. While the Judges sat, most often, in the counties where they lived, the lawyers, who practiced before all the Courts, were obliged to travel the State when the courts were in session. In May, 1776 George Read, attending Court in Lewes wrote his wife in New Castle:

> *I sit down to converse with you at this distance from necessity as our separation must continue at least these eight days to come—this is Saturday evening and I am at Mr. Kollock's much fatigued with the past two weeks service—at Dover. I was in court all one night and the greater part of another; This brought on my old complaint, which has continued upon me more or less, ever since. I came to Lewes on Saturday evening last—Sunday and Monday I did not stir out, on Tuesday went into court, was up all night—Wednesday we did nothing—Thursday the dispute between the Justices and Grand Jury was heard, and determined in favor of the former—Yesterday we went into the trial of an ejectment and did not leave the court till sunrise. This morning—in all these matters I have had my share of success of the two in Dover, both went in my favor, of the 3 at Lewes, I succeeded in two.*

Apparently the lawyer's lot did not improve much with the passage of time: some 7 years later George Read would write from Court in Dover that he would be detained for several weeks and wished that he could find time for "leaving the mind perfectly freed from regular thinking and some seasonable exercise."

Not only was practicing law difficult; getting to Court was an ardous task. The roads were, at times, nearly impassable and, while travel by boat was possible, it also could be inconvenient. The travel diary of Chief Justice Ryves Holt for the period April 15, 1750 to May 23, 1753 has survived. It details what he spent on his journey, what he took with him, and how long the journey lasted. If he travelled over land it took two days to reach Dover from Lewes and three to New Castle from Dover. It is understandable that when Judges and lawyers reached their destinations they used their time to the best advantage in all night sessions. It was also a common practice for lawyers admitted in other states to be admitted *pro hac vice* in Delaware. The following is an oath of office required of both Delaware lawyers and those so admitted:

> *You shall do no falsehood or deceit, nor consent to any to be done, in this court, to your knowledge; and if you know of any to be done, you shall give knowledge thereof to the chief Justice, or any other justices of this court, that it may be reformed; You shall delay no man for lucre or malice, having reasonable fees first allowed you for the same: You shall plead no foreign plea, nor sue any foreign suits, unlawfully, to the hurt of any man, but such as shall (according to your judgment) stand with the order of the law and your own conscience: you shall not wittingly or willingly sue, or procure to be sued, any false suits, nor give aid or consent to the same, on pain of being expulsed from this court for ever. And further You shall truly use and demean* yourself in the office of an attorney within this court, according to your learning and discretion.*

This oath was adopted by the General Assembly in the early 1700s and an oath

**A breath of fresh, literate air from the 18th Century! The word "demean" properly used (in contrast to the prevailing and ignorant misapplication).*

18th Century Law
(Continued)

was required in the Delaware Constitution of 1792 for all officers, lawyers included.

Precedent in the 18th century consisted mainly of *English* precedents and statutory law. Blackstone's *Commentaries* were also widely cited. Libraries held a wide variety of law books, many of which were handed down from one lawyer to another. The following is a partial order of law books placed by George Read with a London bookseller in the 1750s:

- *The Vernon's Cases* argued and adjudged in the High Court of Chancery — Two Vols. folio — printed in England in 1720.
- *Strange's Reports*-Two Vol. folio -printed in 1755.
- *Cases in Equity* during the time of the late L. Chancellor Talbot folio -printed in 1741.
- *Pigott's Treatise of Common Recoveries—Quarto*—printed in 1739.
- *History and Practice of the Court of Common Pleas-Octavo* by a late learned Judge said to be Baron Gilbert-printed in 1737.

Like so many of the contributors to this issue, Daniel Wolcott is both a lawyer and a keen student of history. He is the Vice-President of the Historical Society of Delaware and the President of the New Castle Historical Society. And, like his uncle, Edward Cooch, Jr., and his cousin, Richard R. Cooch, also contributors, he is a direct descendant of George Read, a delegate to the Constitutional Convention. Wolcott, a member of the firm of Potter, Anderson & Corroon, practices law in Wilmington.

In the 18th century lawyers studied under the tutelage of practicing lawyers until they became learned in the law and were admitted to the Bar. Until recently, Delaware allowed the study of law under preceptors in lieu of attendance at a law school. Prospective lawyers were, in effect, apprentices to practicing lawyers while being instructed in the law. George Read entered into such an agreement with John Moland, a Philadelphia lawyer on September 28, 1749.

Some aspiring lawyers also attended the Inns of Court in England. John Dickinson attended the Middle Temple in the 1750s. Dickinson's biographer has described his education there as follows:

in what was technically called "bolting" (a strange name for an intellectual process) in "mootings" and in attendance upon the lectures given by the readers who were members of the Inns. "Bolting" consisted in conversational arguments upon cases put to the student by a bencher (an officer of the inn) and two barristers sitting as his judges in private. After a man became an expert "bolter" he was admitted to the "mootings" which were public disputations on legal questions held in the presence of The Fellows. in the meantime, lectures on the English statute and common law were delivered. After seven years of this sort of work had been gone through, a successful examination had been passed, and proof had been made that a certain number of dinners had been duly eaten in the hall of the society by the candidate, he was presented by the benchers to the judges as a fit person to be admitted to the bar.*

During the 18th century several acts affected the Court system. The first applicable to the Courts for the counties of New Castle, Kent, and Sussex upon Delaware, appears to have been adopted between 1705 and 1710. In approximately 1732 an act was passed creating the Courts of General Quarter Sessions, Common Pleas and Orphans Court. The Act provided for a Supreme Court of three Justices rather than the six member court then in existence. A third Act reforming the courts was adopted in 1760. Its stated purpose was "an Act for the better regulation of the Supreme court within this Government". The Act provided that the Court would sit in each county twice a year. This system was in place until the Constitution of 1777 when County Courts of Common Pleas were created.

It is thus apparent that being a lawyer in the 18th century was a challenge not only in the actual practice of law but also in the practical aspects of the law. There was little precedent, the courts and legal system were undergoing change, and the physical challenges of practice were substantial. Thus 18th century lawyers needed not only a solid background in the law but an even temper and ability to withstand hardship. The absence of copying machines, telephones, and other technology may seem a paradise to a 20th century lawyer, but the problems that 18th century lawyers encountered may seem nearly insurmountable. ■

*Aspiring English barristers must still "eat their dinners" at Inns of Court.

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II. What Manner of Men Were These? Delaware at Philadelphia

"...to join...in devising, deliberating on and discussing such alterations and further provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union..."

—Mandate of the General Assembly to the Delawareans sent to Philadelphia

Richard Bassett: Patriot or Tory?

The Honorable Maurice A. Hartnett, III

Was the Fourteenth Governor of Delaware, Richard Bassett, a patriot or was he loyal to the King during the American Revolution? At first blush the question would seem preposterous, considering the many offices of honor Bassett held, including those of Chief Justice, signer of the Federal Constitution, and United States Senator. He was the only Delawarean to participate in all three of the critical conventions held in 1786 and 1787, the Annapolis Convention, the Federal Constitutional Convention, and the Delaware Convention that ratified the Federal Constitution on December 7, 1787. He was also elected and appointed to numerous other offices both during and after the Revolution.

During the 1798 Delaware gubernatorial election Bassett was accused of being a Tory during the Revolution, which was the same as calling him a traitor. Bassett's followers attempted to refute these charges by circulating a broadside, which stated:

SLANDER DETECTED,
or
DEMOCRATIC PROOF OF
RICHARD BASSETT's TORYISM.

The following Certificate is calculated to produce a Blush on the Brazen Fronts of those who regardless of truth have attempted to circulate a report that Judge Bassett was a

TORY,

Will not the advocates of Colonel Hall, who was absent from his Regiment for the space of Years together, and receiving from the Public at the same time the Emoluments of Pay and Rations, find it difficult to produce a Testimonial equally honorable?

"The Dover Troop of Light Horse, under the command of Captain Bassett, being relieved by the Virginia Light Horse, are at present dismissed from further service.

"In justice to Captain Bassett, his officers and men, I am bound to declare, that I have ever found them at all times ready and willing to undertake any duty required of them; for their punctual performance of which they have my thanks, and are deservedly entitled to those of the Public. Given at Head Quarters, at Morris Town, this 2d day of February, 1777."

George Washington

The Original Certificate, signed by General Washington, is in the Possession of a Gentleman residing in New-Castle; any person wishing to be satisfied of its Authenticity, may, by an Application to the Editors of the Delaware and Eastern Shore Advertiser, *be informed where it may be seen and inspected.*

This circulation by Bassett's supporters was obviously intended to refute claims by Colonel David Hall, Bassett's opponent in the election, that Bassett was disloyal to the American cause during the Revolution. The same assertion was made by none other than Thomas Rodney, the brother of Delaware's best known patriot, Caesar Rodney. The alleged certificate of George Washington was apparently in the possession of Kensey Johns, mentioned in the broadside as "the gentleman residing in New Castle". The broadside was probably printed for Colonel Allen A. McClane, a war hero and, like Bassett, a Federalist and a Methodist. David Hall, a Revolutionary War hero, although narrowly defeated by Bassett, became Governor at the next election in 1802.

The claim of David Hall and of Thomas Rodney against Richard Bassett was not a total fabrication, although, like most political propaganda, it was an overstatement. Their allegation was based on an actual occurrence during June of 1776, which Thomas Rodney called "Black Monday".

Richard Bassett was born on April 2, 1745 at Bohemia Ferry in Cecil County, Maryland. His father, Major Michael Bassett, operated a tavern at Bohemia Ferry, and his mother, Judith Thompson Bassett, was the great granddaughter of Augustine Herrmann, the founder of Bohemia Manor. This huge estate, consisting of 15,000 acres on the Bohemia River, once stretched from the Chesapeake Bay to the Delaware River at Augustine Beach. Shortly after Richard Bassett's birth his father left, never to be heard from again. However, his mother continued to operate the tavern. Peter Lawson, who lived at the tavern, became Bassett's surrogate father, and has been referred to both as his "stepfather" or "adopted father", although there is no evidence that he ever married Bassett's mother or adopted Richard. Lawson was a shrewd lawyer (some say an over-reaching one). He taught Richard law. His instruction was suplemented by that of Judge Robert Goldsborough of Cambridge, Maryland. Peter Lawson also favored Bassett as the primary beneficiary of his considerable estate.

In 1770, at the age of 25, Richard, who was stoutly built and of medium height, moved to Dover to become a planter and to commence the practice of law. He was quite successful, owing in part to his strong and musical voice and benign appearance.

Richard Bassett married at least twice and perhaps three times. On December 22, 1774, he married Ann Ennals, who was a member of a prominent Dorchester County, Maryland family. This may have been his second marriage. She died sometime between 1780 and 1793 after her husband's conversion to Methodism, in which she had been influential. Bassett married again. His wife's name was Elizabeth. Her maiden name is unknown. Either she or an earlier wife was a member of the prominent Bruff family of Talbot County, Maryland.

In 1783 he acquired one of the largest houses in Dover. It was located on the west side of The Court House Square (The Green), and he lived and practiced law there until 1804. In 1807 he leased that building to The President, Directors, and Company of the Farmers Bank of the State of Delaware for the use of the newly formed bank. Some of the outbuildings from that time and perhaps part of the main building itself still survive at 30 The Green. In 1804 he purchased the house at the northwest corner of State and Water Streets, where he then moved both to live and to practice law. Except for some minor enhancements during the Victorian period, that ancient house, including the law office, remains today at 438 South State Street, relatively unchanged. In the year of his death, 1815, while quite infirm, he sold both properties and moved back to the manor house at Bohemia Manor. For most of his later life he maintained residences in Dover, Wilmington, and Bohemia Manor.

"Black Monday" had its antecedents in 1774. In that year Bassett, then 29 years old, was elected a member of the Kent County Committee of Correspondence and the Boston Relief Committee, both formed in response to the news of the closing of the Boston Port by the British. His election to the Committee of Correspondence took place at a supposedly spontaneous mass meeting held on the Dover Court House Square. On July 20th of that same year Bassett voted in favor of some "fierce resolves" protesting the actions of the English Government.

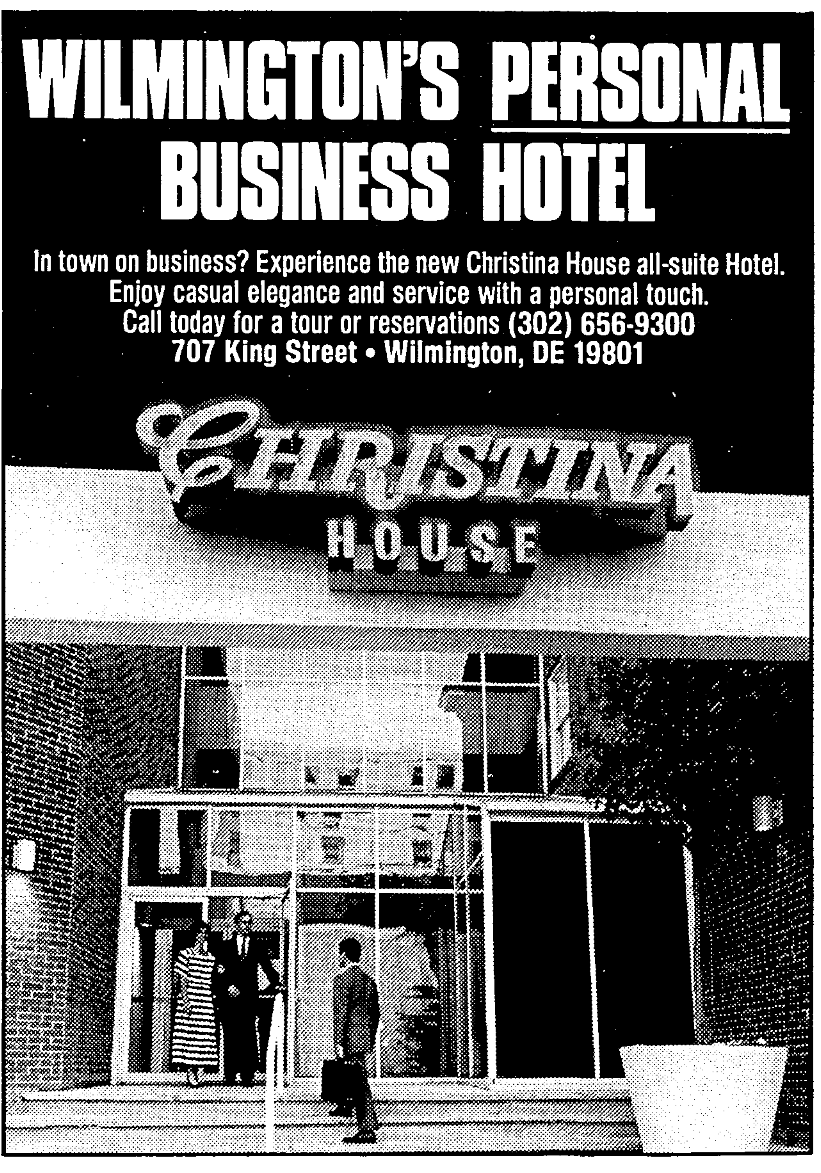
In 1775 a new Committee of Correspondence was elected and Bassett was excluded in favor of members more committed to strong action such as Caesar and Thomas Rodney, James Tilton, William Killen, John Banning, and Vincent Loockerman.

In 1776 he became the Captain in charge of a company of troops called "the Dover Light Horse", which was formed as one of 20 companies in response to the shots fired at Lexington and Concord. At the end of 1776, this militia company served with him under Washington in New Jersey, although its actual role seems to have been limited and obscure. (It was the troop referred to by Washington in the broadside.) They returned to Dover in February 1777.

In the late spring of 1776 there occurred the events that led to Richard Bassett's being accused in 1798 of disloyalty to the cause of the American Revolution. In May the Continental Congress had recommended to the colonies that they form new governments to remove the "absurdity of swearing allegiance to the Crown".

The radicals in Kent County decided to use the means of a public meeting to adopt by resolution instructions to the Assembly to form a new government. They chose this method because they were unsure of what might occur if there were a special election or resolution proposed in the Assembly. This action drew a line between those committed to independence and those still opposed or undecided. Persons opposed to independence immediately began to circulate petitions against the formation of an independent government.

On Saturday, June 8, 1776 the Committee of Inspection for Kent County (which oversaw the Committee of Correspondence) met in Battell's Sign of the Golden Fleece Tavern on the Court House Square to discuss opposing resolutions—one in favor of forming an independent state and the other opposed. A large crowd assembled outside and promptly turned into a mob. John Clarke of Kent County, a member of the Committee of Inspection, but opposed to independence, came forth with a resolution opposing the formation of a new government and was immediately seized, put in the pillory alongside the Kent



Richard Bassett
(continued)

County jail on The Court House Square, and pelted with eggs. Thomas White, a supporter of Clarke, burst into the meeting of the Committee of Inspection seeking aid for Clarke but without avail and was roughed up. He and Clarke then ran to the home of Richard Bassett, who responded by sending some of his troops for reinforcements in the countryside.

Around midnight Thomas Rodney heard of Bassett's actions and alerted his own Light Infantry Company and other Companies strongly committed to the Revolutionary cause. At daybreak on Monday, June 10, 1776 he seized Bassett, who was in bed, and also seized his store of arms. Forces in sympathy with Clarke and Bassett had in the meantime formed in the south and moved towards Dover, arriving at Puncheon Run at 9:00 a.m. primed for a fight. (This site is nearby the present intersection of U.S. 113-A and U.S. 13 in Dover.) Rodney also showed up, but reason prevailed, and he sought out Clarke and White. They explained the presence of the troops as retaliation for the abuse Clarke had received, and they demanded that the four men responsible be delivered to them for hanging. Rodney responded with a demand that they disperse, or he would march against them. "When the People with them heard this, they all rose like a flock of sea fowl from the shore and fled home...". Many of the supporters of Clarke and White then removed to Sussex County and became part of a general Loyalist uprising, which required a considerable force under Caesar Rodney to quell.

Richard Bassett's part in this fiasco earned from Thomas Rodney, the quintessential radical, the epitaph that he was the "Instigator of the first Insurrection in Delaware against the Revolutionists". Although Rodney wrote of Black Monday as early as 1776, his charges against Bassett became more vitriolic in the 1790s. At this time Rodney thought he was able to converse with Julius Caesar and was making many wild claims about his own role in the Revolution. It was also a period when Bassett was a leading Federalist political leader who was receiving many honors and offices, while Rodney was an out-of-power Democrat, impoverished, bitter, and a heavy consumer of alcohol. Later Rodney was to take hold of himself and become a prominent judge in Mississippi Territory.

In assessing Bassett's role in the Black Monday affair and the Revolution it is important to keep in mind that the term "Tory" was used in the 18th Century in many contexts, often as a derisive term by political opponents. Most persons in Kent County who were termed "Tories" considered themselves to be supporters of the Continental Congress, although they viewed separation from the mother country with caution and reluctance.

Then, as now, the typical native Kent Countian tended to be a moderate in politics. Then, as it often has been since, Kent Countians neither completely sided with the proponents of change who dominated New Castle County politics nor with the advocates of the *status quo* who dominated Sussex County. Even Caesar Rodney initially did not advocate a formal break with the King, and in 1776 he had to be pushed towards revolution by his more radical brother Thomas. Unlike Thomas, however, Caesar Rodney always remained on good terms with the less radical Kent Countians and constantly sought to cooperate with them. Indeed, the ability to remain on good social terms with a political opponent was, and for the most part has been, the rule in Kent County.

Like Richard Bassett most Kent Countians in 1776 were upset or incensed by the acts of the Crown and Parliament. Most, however, initially thought the problems could be resolved if only the King would become aware of the facts, and they expected that to happen. By July Fourth, many (but not most) had come to believe that independence was the only remedy for an intolerable situation. After the Declaration of Independence most Kent Countians accepted the break as irreconcilable and became strong supporters of the Continental Government. The essential political difference between Richard Bassett and radicals like Thomas Rodney, James Tilton, and William Killen was his later recognition that independence was inevitable. The radicals early sought independence. Caesar Rodney accepted it in June of 1776. Bassett and most of the other leaders in Kent County did not accept it as the only solution until after July 4, 1776.

In one sense, therefore, Bassett was a "Tory" until July of 1776 (if that term has any real meaning), but there is no evidence that he was anything but loyal to the Revolutionary cause after independence was proclaimed.

The Black Monday incident of June 1776 was Bassett's lowest political ebb. A little over a month later Bassett and his fellow Conservatives, Clarke, White, Ridgely, Stout, and Cook, were elected

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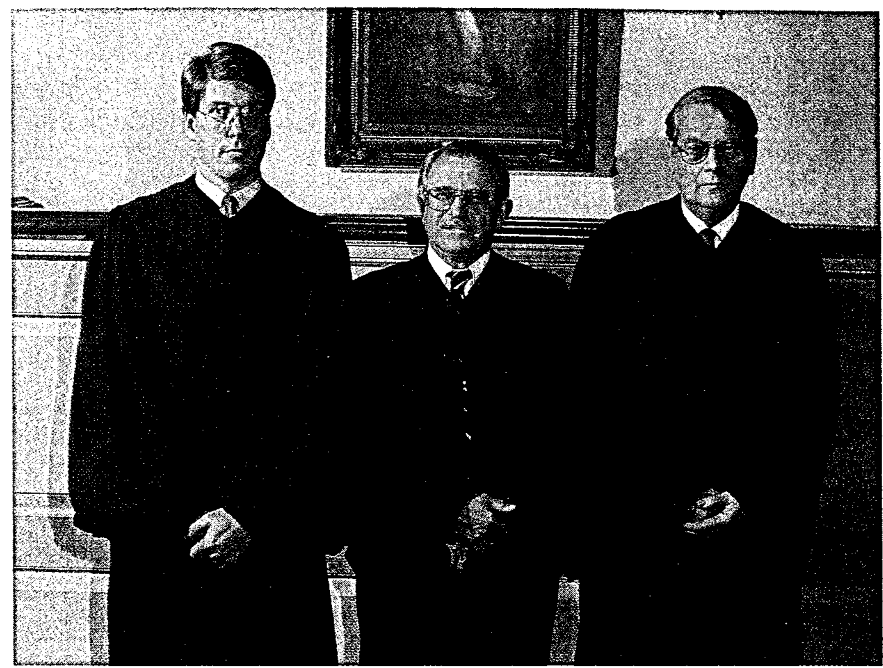
members of the Council (Upper House) of the Assembly from Kent and throughout the rest of the Revolution the radicals from Kent were for the most part excluded from office. Bassett was also chosen to be a member of the Council of Safety, and he was elected to the Council again in 1777 and 1782.

Also in 1776 shortly after Black Monday Bassett was elected to the Convention that wrote Delaware's First Constitution, and he was a member of the committee that drafted a Declaration of Rights quite similar to the Bill of Rights of the Federal Constitution.

A decade later, in 1786, he was chosen, along with John Dickinson and George Read to be a delegate from Delaware to the Annapolis Convention, which he attended. In 1787 he served in the Continental Congress under the Articles of Confederation.

Early in 1787 Bassett was elected by the Delaware Assembly to be a delegate to the Federal Constitutional Convention, which met in Philadelphia that summer. William Pierce, a Georgia delegate, wrote: "Mr. Bassett is a religious enthusiast, lately turned Methodist, and serves his country because it is the will of the people that he should do so. He is a man of plain sense, and has modesty enough to hold his tongue. He is a gentlemanly man and is in high estimation among the Methodists. [He] is about 36 years old." Bassett was actually 42 at the time.

By 1787 the Conservatives were firmly in control in Delaware. George Read, one of the delegates to the Federal Constitution Convention, had opposed independence on July 2, 1776, in Philadelphia, and all the other Delaware delegates were considered to be conservatives or moderates. Bassett was the only delegate living in the two lower counties in 1787, although John Dickinson had grown up in Dover. At this time Bassett owned 6,000 acres of land at his ancestral home, Bohemia Manor, in Maryland and, although his annual income has been estimated to have been $533, he was also perceived to have had a large fortune (perhaps mostly in land). He said very little during the debates on the Federal Constitution, although he attended all the sessions and is believed to have been very influential as a moderating influence in the numerous caucuses and meetings between sessions. He opposed a Federal veto over State legislation and was against federal assumption of state debts.



Photography by Albert C. Johns

Standing to the right in the picture above is Vice Chancellor Maurice A. Hartnett, author of the accompanying article. To his *(not our) immediate right is Justice Henry R. Horsey of the Delaware Supreme Court, and to* his *right, Judge Henry du Pont Ridgely of the Superior Court. Overshadowing their group portrait, which was taken in the Chancery Courtroom in Dover, is a likeness of Chancellor Nicholas Ridgely, whose biography appears in another part of this issue. Photographs are intended to disclose, but this one, without caption, would conceal under the facade of a group judicial portrait some interesting Delawareana: the jurists have a common ancestor, the half brother of the Chancellor beneath whose likeness they are posed.*

But this is Vice Chancellor Hartnett's article (of the others and Chancellor Ridgely more subsequently). Maurice Hartnett is a native of Dover, where he lives and where he presides in the Court of Chancery. An enthusiastic and resourceful student of Delaware history, the Vice Chancellor has exercised strong leadership in readying his home city, the state capital, for this year's celebration of the Constitution. The renovation of the stately and historic Kent County Court House is but one example of his diligence and hard work.

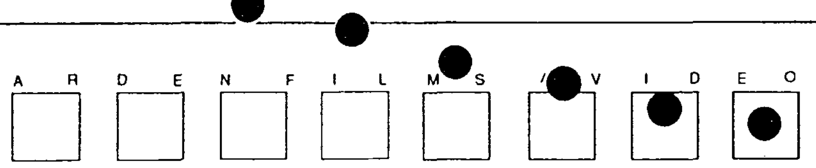
He and Gunning Bedford, Jr. were the only Delaware delegates to the Federal Constitutional Convention who were also present at the Delaware Convention, which met at Battell's Tavern on the Court House Square in Dover and unanimously ratified the Federal Constitution on December 7, 1787. Bedford, known as a firebrand, had made intemperate remarks in Philadelphia. Bassett's role as a mediator in the five-day Convention was therefore crucial, although often overlooked.

Partially as a result of his role in the Federal Constitution Convention, Bassett's popularity was assured. In 1789 he and his fellow Federalist George Read were elected as United States Senators to the first Congress held under the Constitution. Although a Federalist, he often voted independently. He voted to remove the Capital to the Potomac and in favor of the right of Presidential removal of appointments, but he voted against many of Hamilton's proposals, including the assumption of State debts by the Federal Government. In 1792 he was elected delegate to the Convention that adopted a new Delaware Constitution. At that Convention he sponsored the resolution that created a separate Court of Chancery. In 1793 he resigned from the U.S. Senate to become the first Chief Justice of the Delaware Court of Common Pleas.

In 1799, while Chief Justice, he was elected Governor as a Federalist. His Federalist Party, which disintegrated nationally after the election of Jefferson in 1800, continued to win most elections in Delaware until the Second decade of the Nineteenth Century. As Governor he proposed the abolition of judgment bonds, which he perceived

1755. RICHARD BASSETT 1815.

Photo courtesy of Delaware Division of Historical and Cultural Affairs.



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Richard Bassett
(continued)

gave an unfair advantage to monied creditors and was an early backer of the Penitentiary Movement, which proposed incarceration in lieu of the then custom of mutilation. He proposed a general reform of the criminal laws including abolition of branding and whipping for the crime of receiving stolen goods. He was instrumental in the enactment of a general revision of the laws relating to the militia.

On February 20, 1801 Bassett resigned as Governor to accept appointment by outgoing President John Adams as a Judge of the United States Circuit of Appeals. The opposition of the incoming Jefferson administration to Adam's "midnight appointments" led to the famous case of *Marbury v. Madison,* 5 U.S. 137 (1803) and to the repeal of the statute that led to the appointments. Bassett found himself removed as a Judge and, because he had resigned, no longer Governor. This was apparently enough for him, and he held no further public offices.

In 1778, when he was 33 years old, Bassett had met Francis Asbury, the great Methodist evangelist. He befriended him at a time when many looked upon Asbury with contempt because his religion was considered both Tory and socially unacceptable.

Although Bassett considered embracing Methodism for some time, the date of his actual conversion is disputed. Some believe it was in 1780, one year after his wife's conversion. Others believe it was after 1782. In any case, Methodism became a strong influence. For awhile he was shunned for his beliefs by many former associates and even ridiculed for his enthusiastic fervor. He was one of the first men of prominence in Delaware to become a Methodist, and his conversion was a tremendous boost to the religion that would soon become predominant in the state. He was the first of many Methodists to serve as Governor of Delaware and, as a result of his conversion, he abandoned his fashionable dress and extravagant living. Before his conversion he had a reputation as a lavish entertainer but afterwards his hospitality became more modest, although he never totally foreswore alcoholic beverages as did many later Methodists. His reluctance to engage in debate

at the Federal Constitutional Convention may have been due to his Methodist scruples, which encouraged modesty in speech. During the election of 1799 he was accused, in addition to Toryism, of having used itinerant preachers to warn his fellow Methodists that "No salvation is to be expected for those who support Thomas Jefferson". It seems likely that by 1799 Methodism was not entirely a political liability.

Although the views of many later Methodists would be different, the early followers of Wesley (like the Quakers, with whom Bassett was friendly) opposed slavery, and promptly after his conversion Bassett freed his numerous slaves. During his term as Governor Negroes were permitted by statute to testify in court in criminal cases for the first time. As a member of the Assembly in 1787 he proposed a bill blocking the exportation of slaves from Delaware, and in Dover in 1788 he co-founded the Delaware Society for Promoting the Abolition of Slavery, Superintending the Cultivation of Young Free Negroes and for the Relief of Those Who May be Unlawfully Held in Bondage. In 1797, as a result of the advocacy of Bassett and others, who were mostly from New Castle County, the Delaware Legislature came very close to adopting a plan to gradually abolish slavery.

In 1795 Ann, a daughter of Richard Bassett, married James A. Bayard, the Elder, one of the negotiators of the Treaty of Ghent. Richard Bassett therefore is an ancestor of many U.S. Senators from Delaware and other prominent members of the Delaware Bar including the recently deceased former Lt. Governor Alexis I. du Pont Bayard and two distinguished present members, Richard H. Bayard, Esquire, of Wilmington, and Eugene H. Bayard, Esquire, of Sussex. An adopted daughter, Rachael, married Governor Joshua Clayton, who later appointed Bassett Chief Justice.

Richard Bassett died on September 15, 1815 at Bohemia Manor where he was buried alongside James A. Bayard, the Elder. Subsequently, their remains were reinterred in Wilmington.

Like many native Kent Countians of today, he was a true moderate, basically conservative but with many liberal views. Most of all, he had an open and inquiring mind and made his choices only after carefully weighing the alternatives. In 1776 he agonized between the arguments in favor of independence and the

SLANDER DETECTED,

OR

DEMOCRATIC PROOF OF RICHARD BASSETT's

T O R Y I S M.

THE following Certificate is calculated to produce a Bluſh on the Brazen Fronts of thoſe who regardleſs of truth have attempted to circulate a report that Judge Baſſett was a

T O R Y.

Will not the advocates of Colonel Hall, who was abſent from his Regiment for the ſpace of Years together, and receiving from the Public at the ſame time the Emoluments of Pay and Rations, find it difficult to produce a Teſtimonial equally honorable?

"THE Dover Troop of Light Horſe, under the command of Captain Baſſett, being relieved by the Virginia Light Horſe, are at preſent diſmiſſed from further ſervice.

"In juſtice to Captain Baſſett, his officers and men, I am bound to declare, that I have ever found them at all times ready and willing to undertake any duty required of them; for their punctual performance of which they have my thanks, and are deſervedly entitled to thoſe of the Public. Given at Head Quarters, at Morris Town, this 2d day of February, 1777.

"GEORGE WASHINGTON."

☞ The Original Certificate, ſigned by General Waſhington, is in the Poſſeſſion of a Gentleman reſiding in New-Caſtle; any perſon wiſhing to be ſatisfied of its Authenticity, may, by an Application to the Editors of the Delaware and Eaſtern Shore Advertiſer, be informed where it may be ſeen and inſpected.

Signed by George Washington, this authentic broadside refuted rumors of Richard Bassett's support of Toryism. Reproduced with kind permission of Richard H. Bayard, Esquire.

pleas against a formal breach with the Crown. He seldom spoke except when he had something to offer, and he remained on friendly terms with his more radical friends. He even supported the candidacy of William Killen, a radical, to be the first Chancellor of Delaware. He maintained friendly relations with Caesar Rodney and often befriended Thomas Rodney's son, Caesar Augustus Rodney, who became a prominent Democrat and Attorney General of the United States. On many occasions he entertained the radicals James Tilton, John Banning, Vincent Loockerman, and even Thomas Rodney. He was quick to spring to the aid of those he felt were being treated unfairly such as John Clarke, and he did not hesitate to advocate publicly unpopular but just causes such as the abolition of slavery. Like many other framers of the United States Constitution, he was able to compromise his own interests for what he perceived to be the greater public good. ■

Condensed Bibliography

Conrad, Henry C., *History of the State of Delaware*, 3 vols. (1908), Published by the author, Wilmington, DE

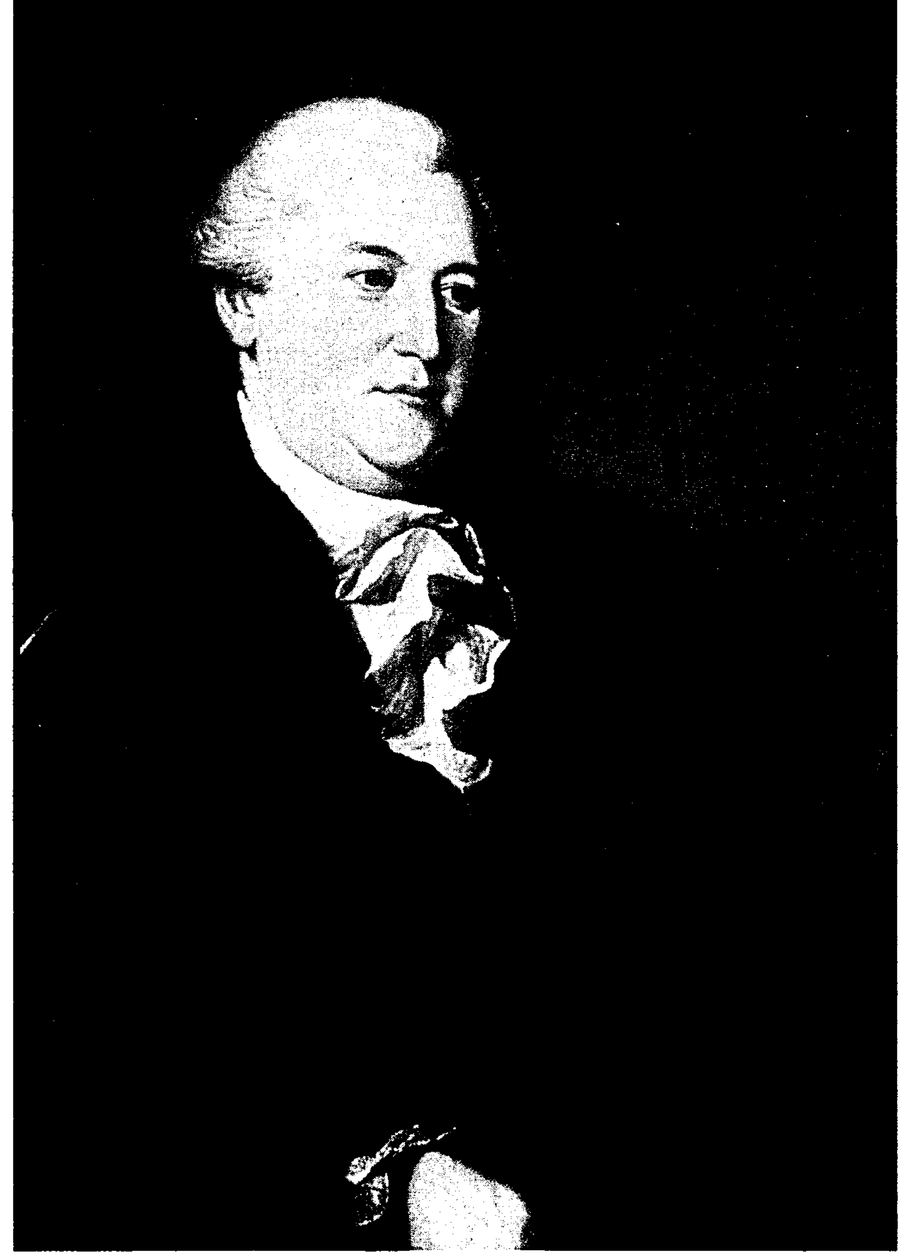
Green, Charles E., *Delaware Heritage, The Story of Delaware in the Revolution* (1975), William N. Cann, Inc., Wilmington, DE

Hamilton, William Baskerville, *Thomas Rodney Revolutionary and Builder of the West* (1953), Duke University Press, Durham, N.C.

Martin, Roger A., *A History of Delaware Through Its Governors (1976-1984)* (1984), McClafferty Printing, Wilmington, DE

Williams, William H., *The Garden of American Methodism: The Delmarva Peninsula 1769-1820* (1984), The Peninsula Conference of the United Methodist Church, Dover, DE

A much more thorough bibliography will be made available to readers interested in further study of this subject.



Photograph courtesy of Harold T. J. Littleton.

Gunning Bedford, Jr., portrait by Charles Willson Peale in the United States Capitol.

Gunning Bedford, Jr.

Charles M. Allmond, III

Gunning Bedford, Jr. was one of the delegates who framed the United States Constitution and a member of the State Convention that ratified it on December 7, 1787, thereby making Delaware "The First State." He was a lawyer who served his State as Attorney General and was the first Judge of the United States District Court for the District of Delaware.

Bedford was born in 1747 in Philadelphia. He was one of eleven children of Gunning Bedford and Susannah Jacquett Bedford. His father was a prominent Philadelphia builder and alderman who had served as a Lieutenant in the French and Indian Wars.[1]

There have been ten men named Gunning Bedford, a fact that has sometimes confounded historians. Bedford generally, but not always, used the designation "Jr." with respect to his name. He is most frequently confused with his cousin, Gunning Bedford, the son of William Bedford of New Castle. That Gunning Bedford was born in 1742 and married a sister of George Read, the signer. He was a Lieutenant Colonel in David Hall's Regiment in the Revolution, later served as Prothonotary and Register of Wills for New Castle County, and was elected Governor of Delaware in 1795.[2]

Gunning Bedford, Jr. married Jane Parker, the daughter of James Parker, a well known printer and journalist of New York.[3] He was at that time a student at Nassau Hall (now Princeton). Among his classmates were James Madison and Hugh M. Brackenridge. He graduated in 1771 at the head of his class and was valedictorian.[4]

After Princeton, Bedford studied law with Joseph Reed, an able and well-connected Philadelphia lawyer. Reed was only six years older than Bedford. He, too, had graduated from Princeton and had studied law with an established mentor. He had spent two years at the Middle Temple in London before opening his practice in Philadelphia in 1770. Early in the Revolution General George Washington made Reed his military secretary and later appointed him Adjutant General. Reed declined the chief justiceship of Pennsylvania in 1777; however, he served three consecutive terms as President of the Supreme Executive Council of Pennsylvania prior to his death in 1785 at the age of 44.[5]

Bedford's role in the Revolutionary War has always been something of a mystery. He was appointed Muster Master General of the Continental Army in June, 1776, and held that position until April, 1777, although some sources suggest he may have served longer.[6] It is not clear that this job carried a military rank, although Washington in assigning a matter to Bedford as Muster Master General, referred to him as "Colo. Bedford."[7] Elizabeth Montgomery described Bedford as "an officer of the Revolution."[8] His daughter, Henrietta Bedford, referred to her father as an aide de camp to General Washington. She stated in her will:

During the Revolutionary War General Washington, desiring my father to go from Trenton to New York on some important secret embassy at night, and fearing he was not sufficiently armed

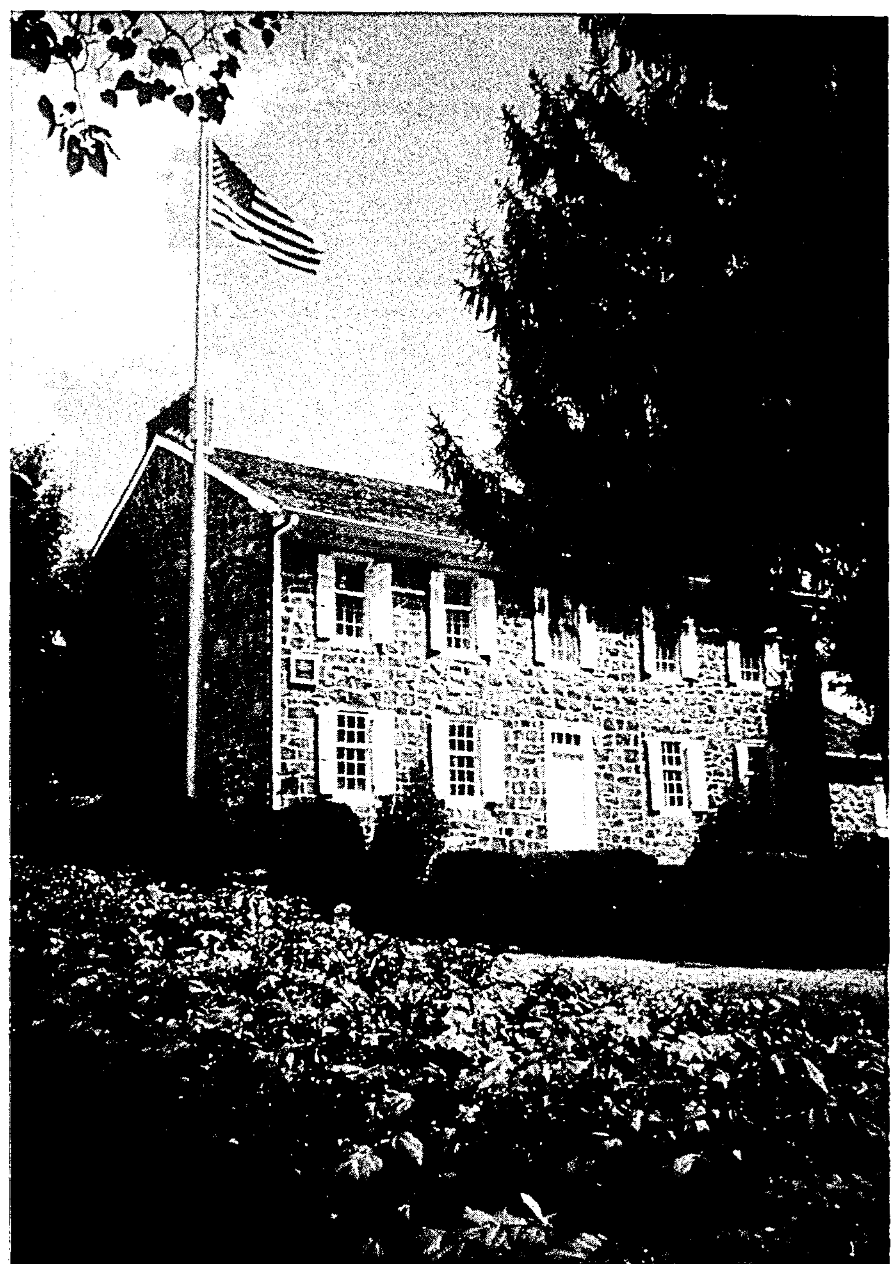
with the pistols in his holsters, presented him with a pair of pocket pistols with a view to his protection and greater security. [9]

The pistols are now in the collection of the Historical Society of Delaware.[10]

In June, 1777 Jonathan D. Sergeant, a member of Congress, made a reference to Bedford in open debate which Bedford found to be offensive. Bedford accused Sergeant of insulting him and challenged him to a duel. Sergeant responded by saying he had mentioned Bedford only in Congress in the course of business and not in an insulting manner. Bedford, refusing to be put off, answered with an even stronger letter and demanded satisfaction. Sergeant sought the help of his peers and submitted this letter to Congress. The delegates were thrown into an uproar. Many saw Bedford's action as a threat to freedom of debate and resolutions were offered calling for his imprisonment and dismissal as Muster Master General. Congress finally satisfied itself with extracting an apology from Bedford for committing "a high breach of the privilege of this house, in sending a challenge to one of the members of this house, for words spoken by him in this house, in the course of debate."[11]

On October 12, 1778 Bedford wrote to Caesar Rodney, then President of the Delaware State, to advise that he had heard, "the Prosecutors place for your State is vacant," and to indicate that he had some interest in the position.[12] He wrote again, on January 16, 1779, to express his willingness to move to Delaware and serve.[13] He got the job as Attorney General but had difficulty finding a suitable house in Dover.[14] A house was found and Bedford was officially admitted to practice in Sussex County on August 4, 1779.[15] He did not stay in Dover for long and moved his family to 606 Market Street, Wilmington, where they remained until 1793.[16] The building still stands, although it has been greatly altered, and is used as law offices.

Bedford remained Attorney General of Delaware until his appointment as District Judge in 1789. He prosecuted cases of assault and battery, larceny, fornication, horse stealing and keeping tippling houses.[17] The Revolution was in full sway when he became Attorney General. There was considerable Loyalist activity in Delaware and Bedford was called upon to prosecute several persons charged with treason. Among the more colorful of these was the notorious Cheney Clow. Clow had instigated a Loyalist revolt in 1778. He and about one hundred insurgents built a fort near Kenton with the idea of later mounting an attack on the Assembly in Dover. The fort was besieged by the militia. The revolt was crushed and about fifty of Clow's followers were captured. Twenty were forced to enlist in the American forces. Clow himself escaped and was not captured until 1782, after a sheriff's posse cornered him in his home. One member of the posse named Joseph Moore was killed in the scuffle, apparently shot accidentally by one of his own men.



Photograph courtesy of Lombardy Hall Foundation.

Lombardy Hall, home of Gunning Bedford, Jr., on the Concord Pike, Brandywine Hundred, Delaware, now administered by Lombardy Hall Foundation.

Clow surrendered in a British uniform and produced a commission in the British army. He was freed of the charge of treason much to the dismay of the populace. Here was a villain about to escape. No matter, he was simply held on bail set at an unattainable 10,000 pounds until he could be indicted for the murder of Moore. The evidence was flimsy but he was convicted. There were various stays of execution until 1788, when Clow, worn out and discouraged, said he was ready to die. The State obliged and marched him off to the gallows, clothed in his tattered British uniform.[18]

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Gunning Bedford, Jr.
(Continued)

Bedford did not confine his activities to prosecuting cases during his years as Attorney General. In June 1783 he was one of the signers of a petition to the Assembly to increase the salary of the President of the Delaware State.[19] He signed a petition in June, 1784, to prevent "vexatious" suits by Loyalists and others whose property had been seized and sold during the war. These were threatened actions not simply against the State, but against those persons who were perceived as responsible.[20] Bedford, as Attorney General during those troubled times, clearly had cause to be nervous about such suits. The Assembly responded and quickly enacted "an Act to prevent vexatious prosecutions and suits against such as acted in this State for the defense of the Liberties of America."[21]

Bedford served in the Assembly in 1784, 1785, and 1786. The oath of allegiance that he took reflects a religious commitment no longer demanded of public servants:

I, [Gunning Bedford, Jr.], will bear true Allegiance to the Delaware State, submit to its Constitution and Laws, and do no Act wittingly whereby the Freedom thereof may be prejudiced. So help me God.

I, [Gunning Bedford, Jr.], do profess Faith in God the Father, and in Jesus Christ his only Son, and in the Holy Ghost, one God blessed for evermore; and I do acknowledge the Holy Scripture of the old and new Testament to be given by Divine Inspiration. [22]

He was elected as a delegate to the Continental Congress on February 1, 1783, and was re-elected twice; October 26, 1784, and November 4, 1785.[23] His first term saw Delaware take the initiative in Congress in providing for a common treasury to be supplied by the several states proportional to population.[24] Bedford did not attend Congress during his third term.[25]

In 1786, Virginia proposed a convention of all the states to discuss the general condition of interstate commerce and to suggest appropriate legislation to Congress. The commissioners selected to represent Delaware were George Read, Richard Bassett, John Dickinson, Jacob Broom and Gunning Bedford, Jr., any three of whom were authorized to act.[26] The conference has come to be known as the Annapolis Convention. Neither Bedford nor Broom went to Annapolis. The delegates who attended, representing only five states in all, realized that many questions in addition to commerce required resolution. They recommended that the states send delegates to a convention in Philadelphia to consider these questions and other problems inherent in the Articles of Confederation.[27]

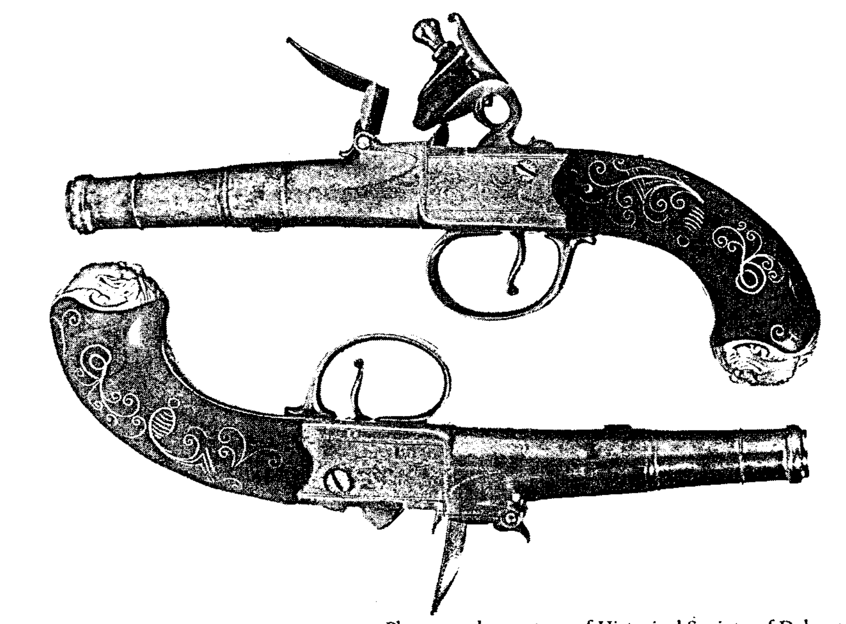
The General Assembly, acting upon this recommendation, appointed the same five Annapolis delegates to meet with representatives of the other states in Philadelphia in May, 1787,

*to join with them in devising, deliberating on and discussing such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union; ...provided that such alterations, or further provisions, or any of them, do not extend to that part of the fifth article of the confederation of the said states, finally ratified on the first day of March, in the year One Thousand Seven-Hundred and Eighty-one, which declares, that **in determining questions in the United States in Congress assembled, each State shall have one vote.*** [28]

If Bedford had not seen fit to attend the Annapolis Convention, he made up for it at the Constitutional Convention in Philadelphia. He and Richard Bassett were present at nearly every session.[29] His physical appearance at the Convention was described by William Pierce, a delegate from Georgia, as "very corpulent ...a bold and nervous Speaker," with "a very commanding and striking manner ...but warm and impetuous in his temper, and precipitate in his judgment."[30]

Warm and impetuous he was; it was Bedford who made the most intemperate speech when the large state-small state rivalry threatened to sink the Convention. Many delegates had come to the Convention believing they were simply to strengthen the Articles of Confederation. The Virginia Plan introduced by Madison went far beyond this and was a clear call for a new Constitution. The plan subordinated the states to a strong federal government with representation in both houses to be based on population or upon monetary contributions. The small states resented the loss of equal power and feared being swallowed up by the larger states. The issue was debated hotly, and it became apparent the small states would not give in.[31]

The problem was not insubstantial. Delaware had given specific instructions to its delegates not to consent to any change in the rule of equal representation of the States in Congress. What if the Convention decided to change this



Photograph courtesy of Historical Society of Delaware.

Pair of pistols given to Gunning Bedford, Jr. by General George Washington. Gift of Henrietta Jane Bedford to the Historical Society of Delaware.

Gunning Bedford, Jr.
(Continued)

rule? The amendment would have to be submitted to Congress. If Congress approved it would be sent to the states for ratification. It could not be part of the Articles of Confederation unless it was approved by every state. Delaware, for example, with a population of about 60,000, could block the change even if every other state was in favor of it.[32]

While the debate became more intense, even bitter, in late June and early July, no one was prepared for the angry and accusatory blast delivered by Bedford. He said flatly that the large states were acting out of self-interest while they pretended otherwise, and further,

> *Georgia has an eye to her future wealth and greatness— South Carolina, puffed up with the possession of her wealth and negroes, and North Carolina are all, from different views, united with the great states ...Pretenses to support ambition are never wanting. Their cry is, where is the danger? and they insist that altho' the powers of the general government will be increased, yet it will be for the good of the whole; and altho' the three great states form nearly a majority of the people of America, they never will hurt or injure the lesser states ...I do not, gentlemen, trust you...The small states can never agree to the Virginia plan; and why then is it still urged?* [33]

He chastised the large states for blocking the confederation, saying that if the union were to fall the fault would be theirs. He went on to say:

> *But what is to become of our public debts if we destroy the union? Where is your plighted faith? Will you crush the smaller states or must they be left unmolested? Sooner than be ruined, there are foreign powers who will take us by the hand.* [34]

The convention was thrown into chaos. Rufus King criticized Bedford for his "vehemence unprecedented in this House," and was particularly alarmed by the reference to aid from a foreign power.[35] Gouverneur Morris stated that the small states were seeking to preserve "their suddenly precious rights" at the expense of the national government.[36]

Bedford apologized to his fellow delegates. He did not, he said, really mean that the small states would join with a foreign power. Moreover, some allowance should be made for the habits of his profession in which warmth was natural and sometimes necessary.[37]

A few days later a special committee was appointed with one member from each state to attempt to work out a compromise. Bedford represented Delaware. The committee recommended equal representation of the states in the upper house and representation in accordance with population in the lower. The Convention adopted the recommendation in what has come to be called, "The Great Compromise" on July 16.[38]

The compromise was not completely satisfactory to the small states but Bedford's comment was pragmatic: "Better a defective plan should be adopted than that none should be recommended."[39]

One historian has assessed Bedford's role in the Convention as "useful," and sees him as an interesting example of the "small-state nationalist." He has observed also that Bedford was one who "proved explosively that the Framers were not really demigods."[40]

After returning home from the Convention, Bedford was elected as a delegate from New Castle County to the state convention called to consider ratification of the new Constitution. Each county sent ten delegates who on December 7, 1787 unanimously approved the document, thereby making Delaware the first state to ratify.[41]

The Framers of the Constitution had earned places in the hearts of their countrymen. Many of them also received more tangible recognition in the form of public employment. Bedford was appointed by President Washington as the first United States District Judge for the District of Delaware on September 26, 1789, and George Read became the first United States Attorney for the District.[42]

Bedford usually convened his Court in Town Hall in Wilmington. The first case tried in the new Court was an action by the United States to recover four hundred dollars from Adam Caldwell in November 1789. Read prosecuted and Kensey Johns Sr. and James A. Bayard represented the defendant. Judgment was for the Government. The Court saw little business in those early years and the next case did not come along until May, 1792.[43] The most important litigation of the Bedford Court arose from the seizure of vessels and their cargoes for violation of the revenue laws and the non-intercourse and embargo acts. Thirty-eight such seizures were made in Delaware between 1795 and 1812.[44]

In addition to presiding over the District Court, Bedford also sat with a Justice of the United States Supreme Court in the Circuit Court, the country at that time being divided into three circuits. The District and Circuit Courts were held alternately at New Castle and Dover.[45] It is in his capacity as Circuit Court Judge that we find Bedford involved in two important matters of the day; the impeachment of Justice Chase and the Penn family ejectment suits.

The seeds of the Delaware connection to the Chase impeachment were sown in 1800. In that year a Wilmington newspaper owned by James Wilson criticized the conduct of Supreme Court Justice Samuel Chase at several trials under the Sedition Act at which he had presided. Chase considered such criticism itself a violation of the Act. When he came to New Castle where he and Bedford held the Circuit Court for the June Term, 1800, Chase addressed the grand jury. He pointedly told them that one of the state's two printers published a "very seditious" paper. He urged them to indict. He even directed the Attorney General to obtain the necessary evidence against the printer and produce it by the next day to present to the grand jury. He refused to discharge the jury, ordering them to appear the next day: "I am determined to have these seditious printers prosecuted to the extremity of the law."[46]

An obviously uncomfortable Bedford took Chase aside and spoke to him privately, "I believe you do not know where you are, the people in this place are not well pleased with the sedition law."[47] Chase declined to moderate his position and expressed his displeasure when the grand jury refused to indict Wilson the next day.

The Sedition Law was extremely unpopular in Delaware. It had been enacted by the Federalists to restrict public criticism in time of peace. Opposition could be lawfully voiced only in the cumbersome form of petition on the theory that criticism tended to overthrow the government. The debate on this Act in 1798-1801 brought freedom of speech and the press to the fore as an issue in American politics.[48]

Chase's conduct at New Castle, together with several other heavy-handed actions, formed the basis of the eight-count articles of impeachment presented

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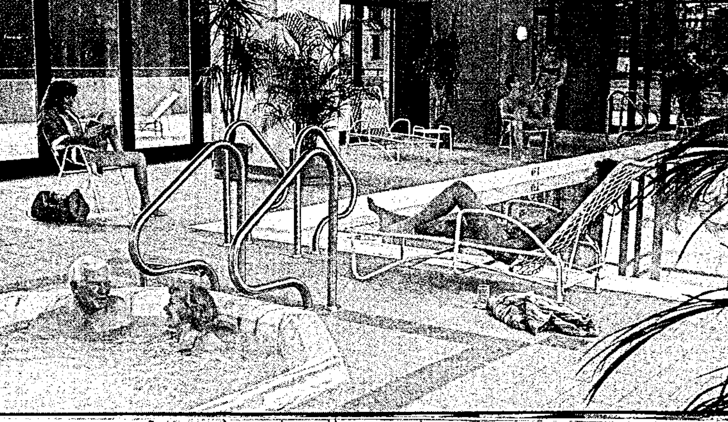

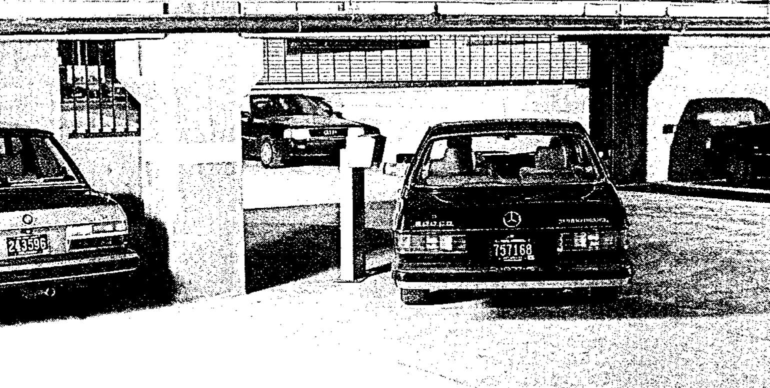

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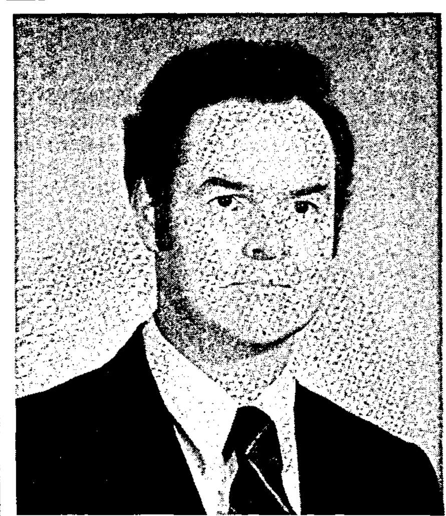

Charles Allmond, a graduate of the University of Delaware, holds a Masters degree in agronomy. He is also a graduate of the Temple University School of Law. A member of the firm of Allmond, Eastburn & Benge he has practiced law in Delaware since 1964. He has a wide range of interests in charitable, intellectual, and cultural activites. He is an accomplished wood carver-sculptor and a recently elected member of the Society of Animal Artists. His close study of Delaware history and legal history in particular virtually dictated his selection as the author of this biographical study.

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Gunning Bedford, Jr.

(Continued)

by the House of Representatives to the Senate on December 7, 1804. One of the managers of the impeachment in the Senate was Caesar A. Rodney from Delaware.[49]

Bedford wrote to Chase before the impeachment trial to advise him that he thought the case was weak and that Rodney had been heard to say that he doubted the Senate would convict.[50] Bedford appeared as a witness for Chase on February 18, 1805. Chase was acquitted on all articles.[51]

The Penn ejectment suits represented the final efforts of the heirs of William Penn to establish their rights to the entire area of Delaware many years after the State had become sovereign and independent. An excellent essay by Richard S. Rodney tells the whole story; it need not be repeated here.[52] It is enough for our purposes to remember that the pivotal case, *Penn's Lessees v. Pennington,* was presented to Justice Chase and Judge Bedford at New Castle on June 5, 1804. The result was that the Penns were nonsuited; the case was dismissed for want of jurisdiction.[53]

In 1785, Bedford purchased a farm of 250 acres in Brandywine Hundred on what is now the Concord Turnpike. He added a south wing to the 1750 stone house on the tract and named the place "Lombardy." In 1793 Lombardy became the permanent home of Bedford and his family. The house still stands and has been designated a National Historic Landmark. It has been carefully restored by Lombardy Hall Foundation, a charitable, tax exempt organization, which maintains a museum and Masonic library on the premises.[54]

The Bedfords had five children of whom two, Juliana and Susanna, died young. Their son, Gunning James, was mentally retarded. Neither he nor the remaining daughters, Anna Maria and Henrietta Jane, married. As a consequence, Bedford's immediate family disappeared with the death of Henrietta Jane in 1871.[55]

Mention has been made of Bedford's physical appearance.[56] In 1789, he was described as, "a very large, stout, bony brown horse 16½ hands high."[57] Elizabeth Montgomery remembered him and Mrs. Bedford as "remarkably handsome persons of noble stature."[58] One of his early biographers, William Thompson Read said, "His form was goodly, his temper amiable, his manners winning, and his discharge of his private duties exemplary."[59] He was remarkably conservative in dress, and continued to appear in breeches and knee buckles instead of trousers, his hair in a cue with a powdered wig, long after the styles had changed.[60]

It should be mentioned that Bedford was not admired by everyone. Peter Jaquett, in writing to Caesar A. Rodney in 1804, gave this account of the Judge:

> *Airly in the War he joined the Army as Deputy to the Muster Master General, but being Naterly of an indolent lazey disposition he Stayed so long at home With his famely that he was Superceeded by order of Congress before he had been three year in Commition. He then removed from Philadelphia to Kent, Where your Uncle Gouvener Rodney appointed him atturney General to this State. In this office he continewed through the Worst of times, and in high Estimation by the Wigs was carryed in the Legislator evory year by large Majoritys. He continewed a Good Wig Until the present Constitution was Established, when that Arch trator Dynoetious Reed [George Read] found Meens to buy him off, by procuring for him the Place of District judge which he now fills. From that Moment he became a federlist or tory and Joined the Party heart and hand...* [61]

Jaquett went on to describe the various judicial indiscretions he perceived to have been committed by Bedford. The vitriolic tone of the writer is understandable in light of the fact that Jaquett, who had served his country faithfully for seven years during the Revolution, had been ruined by the depreciation in currency. A disappointed federal-office seeker, he despised anything connected with the Federalists.[62]

Something of Bedford's character can be learned if we consider the things in which he was interested. He was an early opponent of slavery and was one of the signers, in 1788, of a petition to the Assembly to limit the slave trade.[63] He was also one of the signers on another petition the same year for a charter for the Library Company, which established a public library in Wilmington.[64] In 1803 the old Academy building on the East side of Market Street between Eighth and Ninth Streets was remodeled. Caesar A. Rodney, Gunning Bedford, Jr. and Nicholas Ridgely asked the legislature to reincorporate the Wilmington

Academy as a college. The College of Wilmington was incorporated as a result. High school classes were held but the collegiate department was never set up. Bedford was the first president of the board of trustees. Delaware at that time had no public school system.[65] He also became president of a debating society known as the Lyceum of Delaware in 1799.[66]

Bedford was an active Freemason at a time when the popularity of fraternalism and the secret society was at its zenith. The Age of Enlightenment saw the rapid spread of Freemasonry, particularly in England and America. Freemasonry, a system of morality taught by allegory and symbol, had special appeal to men of the eighteenth century. This was probably due to the manner in which it combined four basic themes: the conviviality of the lodge, the ideological motivation of the tolerant, egalitarian atmosphere of the lodge, the charitable feelings engendered by Masonic mutual aid, and the appeal of the occult.[67]

The importance of Masonry at the time of the Revolution and in the early years of the Republic is evidenced by the Masonic membership of many influential men of the day such as Washington, Franklin, and Paul Revere. At least eight and perhaps as many as thirty signers of the Declaration of Independence were Masons.[68] Six of Washington's aides and military secretaries, and thirty-three general officers of the Continental Army were Masons, including VonSteuben, DeKalb, and Lafayette.[69] No less than thirteen of those who signed the Constitution were members of the fraternity, including Delaware's Bedford and Broom.[70] Washington, acting as Grand Master of Virginia, conducted the laying of the cornerstone of the Capitol while serving as President of the United States.

Bedford became a Mason in Wilmington in 1782, in Lodge No. 14. Lodge No. 14, now known as Washington Lodge No. 1, remains active to this day. The minutes of the Lodge mention his attendance and participation.[71] George Washington, in recognition of his fraternal tie to Bedford, presented him with his own Masonic sash.[72]

News of the death of Washington on December 14, 1799 was received with great sadness throughout the Republic. Masons in Wilmington reacted swiftly. *The Mirror of the Times and General Advertiser* for December 21, 1799 printed the resolution of Lodge No. 14,

> *that out of respect to the memory of their great, good and beloved Brother, George Washington, grand master of the Lodges of the United States, the members go into mourning, by wearing a black crape upon their arm for one month.* [73]

On December 27, 1799 the society of Freemasons with the insignia of their order led a memorial procession in honor of Washington, followed by the military and the citizens generally. They marched from the lodge room at Town Hall with slow and solemn step to the beat of muffled drums and martial music, playing the Dead March, to the Lower Presbyterian meeting house at Fifth and Walnut Streets. There they were led in prayer by Dr. Reed and listened to an "Elegiac Ode," prepared for the occasion and sung by a choir. Bedford delivered an oration on the life and death of Washington, after which the procession marched back to Town Hall and disbursed.[74]

The early lodges in Delaware operated under charters from the Grand Lodges of Pennsylvania or Maryland. When these lodges decided to form a separate Grand Lodge of Delaware in 1806, Bedford was selected as the first Grand Master. He served in that office until 1809.[75]

In later years Bedford's health began to deteriorate. In a letter to Richard Bassett in 1809 James A. Bayard commented on Bedford's illness and said,

> *He has capacity to distinguish between common propositions and that is all. When it comes to express himself he is all confusion.* [76]

Bedford died intestate March 30, 1812, at Lombardy. He was buried in the First Presbyterian Churchyard at the southeast corner of Tenth and Market Streets. A marble column was placed on his grave by his daughter Henrietta Jane Bedford in 1858 engraved with a lengthy inscription composed by William T. Read. His remains and the monument were removed in 1921 to the grounds of the Masonic Home of Delaware on the Lancaster Pike.[77]

Bedford's place in history as a signer of the Constitution is assured. Perhaps he is best remembered as the delegate who lost his temper, but in retrospect it appears that he lost it at the right time and in the right cause. Moreover, once the Great Compromise was made, and the Constitution signed, he returned to Delaware and worked very hard for ratification. Many of his more famous contemporaries left larger footprints, but Bedford can be remembered as one who lived a useful life and helped make Delaware a better place. ■

The numerous footnotes which accompany this article reflect the thoroughness of the author. Because of space limitations they are not included in this issue. Interested readers may obtain a complete list of the references cited from the Editors.

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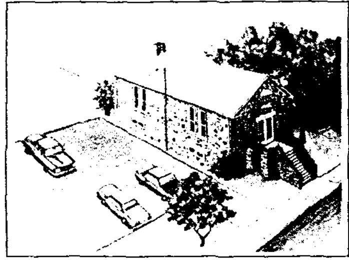
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Jacob Broom
1752 - 1810

The Honorable Roger A. Martin, Lawrence S. Drexler, and William E. Wiggin

Broom had the least political stature and prominence of any member of the Delaware delegation to the Constitutional Convention. In spite of this, he etched his name in Delaware history in another fashion. It was he who owned land on the banks of the Brandywine eventually acquired by Pierre Samuel du Pont de Nemours in 1802.

Son of James and Esther Broom, Jacob came from a family that claimed to be descended from England's Plantagenets[1]. Educated at Wilmington Academy, Broom married Rachael Pierce in 1773, and the couple brought forth eight children.

A surveyor, he prepared a map of Delaware, Maryland, and Pennsylvania in 1777 for Washington's use in his Delaware Valley Campaign that autumn. Broom's map appears in Washington Irving's celebrated "Life of Washington". Broom's path crossed with that of Washington again in 1783 when the latter passed through Wilmington after resigning his commission. As Chief Burgess of the city, Broom prepared a welcoming speech. Presumably Washington had not forgotten this hospitality when in 1790 he appointed Broom the first postmaster of Wilmington.

Entering state politics, Broom was elected to the General Assembly in 1784, and again in 1788. In the Fall of 1786, he was chosen a member of the Annapolis Convention. Though he and his fellow delegate Gunning Bedford did not attend, they did accompany the three others to the Constitutional Convention the next summer in Philadelphia.

If the convention had been besieged by the agents of modern-day media, Broom wouldn't have been one of the members sought out by the press. One biographer described him as being neither a loquacious man nor a blatant patriot. Broom did strive for certain things such as the President's serving on good behavior. He also wanted Congress to be able to oversee and approve state laws. Another biographer observed: "Broom, the youngest, was thirty five, 'a plain good man, with some abilities, but nothing to render him conspicuous, silent in public, but chearful [sic] and conversible in private.' "

It is said that once the Constitution was adopted Broom urged the choice of Dr. James Tilton's property (now the site of the University and Whist Club) on what is today Broom Street as the site of the national capital.

By 1790 Broom was very active in business and civic affairs around Wilmington. Living in the old Dr. Nicholas Way Mansion on the southwest corner of 3rd and Shipley, he engaged in building roads, wharves, bridges, and in the promotion of agriculture. He also was a shipper, who sought to eliminate illegal slave trade. He operated a machine shop at 7th and Shipley, and later established one of the first cotton mills in the country at the site of Wilmington Academy (east side of Market Street between 8th and 9th Streets). He moved this operation to the banks of the Brandywine in 1795 where it is said he also built a fine mansion.

On February 6, 1797, fire destroyed the $10,000 venture, only half of which was covered by insurance. Broom in turn petitioned the General Assembly for a lottery to raise $4,000, but for some reason he never pursued it. Instead, he sold the property five years later to du Pont.

Broom died April 25, 1810, probably in Philadelphia, where he was buried in an unmarked grave in the Old Christ Church Cemetery at 5th and Arch Streets. At a public auction of his properties in November of that year it was shown he owned much land in Wilmington as well as 500 acres in Ohio.

R.A.M.

[1] Planta Genista (Lat.) means Broom (Eng.)!

Enter the Reverend Campbell

In December 1908 at a meeting of the Historical Society of Delaware the Reverend William W. Campbell read a paper entitled "The Life and Character of Jacob Broom". It is a remarkable performance, cast in a late Victorian style heavy with the aromas of piety and dusty mohair. It is the literary equivalent of an antimacassar. It contains snatches of bad poetry, digressions on the evils of strong drink, and a long, irrelevant genealogical passage in which Campbell seeks to link Broom with his supposed kinsman, King Henry II. (Campbell seems to have been absolutely transfixed by the glories of hereditary monarchy.) His little monograph is nonetheless a period piece of considerable mildewed charm*. And it records Broom's astonishing record of varied and unremitting labor for the public good. Of course, every time Campbell gets his narrative rolling really well he screeches to a stop in order to say something nice about King Henry and his asserted similarity of character to that of Jacob Broom. How Broom, reverent and generous, would have felt about being likened to a king who connived at the assassination of his Archbishop of Canterbury is not disclosed.

Campbell begins by solemnly promising not to overpraise his subject, but he falls off the wagon almost immediately in a binge of panegyric alliteration: "Practical, profitable, personal usefulness seems to have been the law of his life."

When Campbell gets down to business he reveals the catholicity of Broom's interests and labors, and he hints at a spiritual subtlety unexpected in a hard-driving entrepreneur.

Let us hope that eighty years from now someone will be able to say the same of this issue of DELAWARE LAWYER.

Jacob Broom
(Continued)

Broom's grasp of the world around him appears to have been enhanced by the conflicting influences of Quakerism and its pacific counsels and the religious training he received under the last three Swedish pastors of the Old Swedes' Church in Wilmington. Campbell suggests that Broom was torn between Quaker pacificism and the patriotic urgency of securing independence by arms. "That he had mental conflicts of this kind is evident from the fact that after twelve years he was able to see his way clear to have his children baptized according to the rite of the Protestant Episcopal Church."

The tension of conflicting views may have achieved a progressive breadth of vision not typical of that era. His will is fascinating: though an Episcopalian, he was still loyal to Quakerism. He seems also to have been very much the literate and open-minded product of the 18th Century Enlightenment. He left a bequest to the Overseers of the Friends Meeting at Wilmington for the use of the Female Benevolent Society in conducting a school for the instruction of blacks. Broom's devotion to learning and higher education appears to have been a lifelong commitment. In 1788 he was an original incorporator and first treasurer of what is today the Wilmington Free Library. In 1803 Broom, along with such prominent figures as Gunning Bedford, John Dickinson, Caesar Rodney, and James Bayard, served on the first Board of Trustees of the College of Wilmington. He was diligent in seeing that his eight children were well educated, and he left his library to his eldest son, a Princeton graduate.

What emerges from the Campbell account is a persuasive picture of an extremely diligent man, engaged in nonstop public service and a variety of useful commercial enterprises, who somehow found the time to be reflective, wise, and foreseeing. His sound, low key judgment at the Constitutional Convention contrasts attractively with the flashier rhetoric and the more theatrical posturings of some of his fellow delegates. In the same way he persisted in lifelong public service shrouded in becoming modesty.

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The Broom Descendants

Jacob Broom was the father of five daughters (Ann, Elizabeth, Sarah, Rachel, and Esther) and three sons (Jacob Pierce, James Madison, and Nicholas Way).

Of the sons, little is known about Nicholas Way Broom except a Baptism record of 1793. As noted above, his eldest son, James Madison Broom, attended Princeton from which he graduated in 1794. In April, 1801 he was admitted to the Bar of New Castle County, where he practiced until 1805 when he served one term as the Delaware member of the House of Representatives. He thereafter moved to Baltimore. In 1815, he returned to Wilmington and resumed his legal practice. Still later he relocated to Philadelphia where he remained in practice until his death in 1850. The only evidence of the eldest son, Jacob Pierce Broom's existence is a provision that one-seventh of his father's estate be paid to him, or his "lawful" children after his death.

Jacob Broom's daughters married as follows: Esther Lewis Broom (Hetty) married Samuel Lyon of Baltimore. Ann Broom married John Littler. Elizabeth Broom married John Roberts. Sarah Broom married Jacob Brinton, who died leaving her with one child, Elizabeth. Sarah then married James Roberts and bore him five daughters. Rachel married Samuel Henry of Philadelphia.

Of Jacob Broom's grandchildren, James Madison Broom's son, Jacob, ran for the Presidency of the United States on the National American Party ticket with Dr. R. Coats of Camden, New Jersey as his running mate. The children of Esther and Samuel Lyon, who distinguished themselves in their respective communities, included a lawyer, a pastor, and a merchant. The great grandsons of Jacob Broom included a Commissioner of the Internal Revenue and a paymaster in the United States Army.

Insofar as we can determine, the only progeny of Jacob Broom remaining in Delaware are Patricia Phillips and her mother, Mildred H. Dyke.[1] Mrs. Dyke is a sixth generation Broom descended through Sarah Broom and her second husband, James Roberts.[2] She is a retired Home Economics teacher who has recently returned to Delaware after living in Pennsylvania. Her daughter, Patricia Phillips, is also a former school teacher. She and her husband are circus aficionados who conduct a business specializing in the sale of circus collectibles.

A family tree on file with the Delaware Historical Society contains a genealogy dated 1932 charting the descendants of Jacob Broom through daughter Ann Broom Littler. We have been unable to reach members of this branch, although we are aware of descendants in the Washington, D.C. area. History has not recorded the identity of descendants through Esther, Nicholas, Jacob, Elizabeth, Rachel, and James.

The known descendants of Jacob Broom bear the following surnames (among others): Dyke, Rock, Ulmer, Wood, List, Fiedler, Phillips, Campbell, Cahill, Howell, Flinn, Mettee, Mannakee, Jones, Waters, Deighton, More, Littler, Snyder, Clark, Murray, Poole, Bond, and Pratt. Descendants live in Pennsylvania, Delaware, Washington, D.C., California, New Jersey, and Maryland. They are the distinguished and unassuming progeny of a distinguished and unassuming man.

L.S.D

[1]Your authors are indebted to James Van Etten, Vice Chairman of the Descendants Committee of We The People. If any of our readers are familiar with any descendants, or are descendants, of signers of the Constitution, we encourage them to be in touch with The Descendants Committee at P.O. Box 54317, Philadelphia, PA 19105.

[2]The genealogy is as follows: Jacob Broom; Sarah Broom Deighton (1812-1896); Charles DeCoursey Deighton (1830-1905); Charles Thomas Deighton (1858-1910); Mabel Alberta Deighton Howell (1893-1964); Mildred Beryl Howell (Mullen) Dyke (1919-present); Patricia Pence Mullen Phillips (1944-present).

Senator Roger Martin is a legislator, a teacher, an historian, and a talented writer. A previous contributor to this magazine, he is also the author of that gem, A History of Delaware Through Its Governors. *His co-author, Larry Drexler, is an editor of this magazine and a recent contributor. Larry practices law in Wilmington with the firm of Elzufon & Associates.*

Senator Roger Martin's acclaimed book, A History of Delaware Through Its Governors 1776-1984, *has been a major source of information for writers of articles in this issue. It can be purchased at $25 a copy, plus $3.00 for postage and handling, by application to the author at 13 Pinedale Road, Newark, DE 19711. (302)737-5487. Caveat: this classic of Delawareana is in short supply.*

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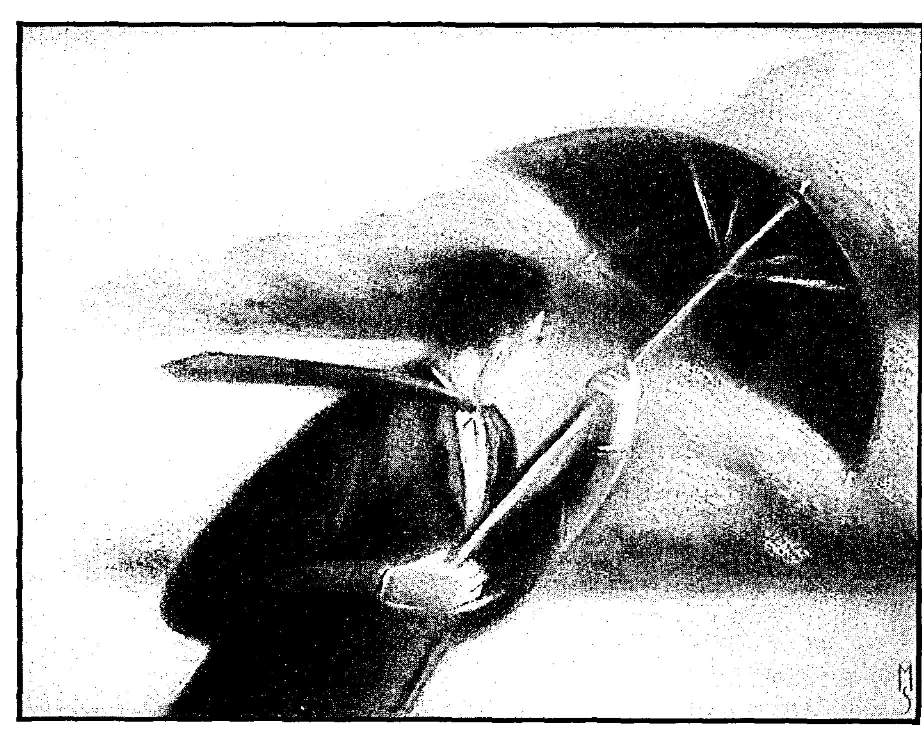

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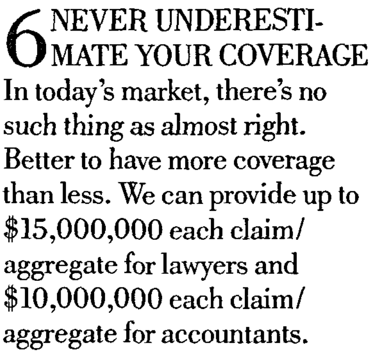

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George Read: Father of the Delaware State

Carol E. Hoffecker and Richard Rodney Cooch

Among Delaware leaders of the Revolution none was more important than George Read. This conservative man, a reluctant revolutionary, guided his state through its most tumultuous era. At the national level, he was one of only six statesmen to sign both the Declaration of Independence and the United States Constitution. Indeed, no Delaware lawyer played a more prominent role in making Delaware the First State than George Read of New Castle.

Read, the eldest son of Colonel John Read and Mary Howell Read, was born in 1733 in Cecil County, Maryland. Read's father, by birth an Anglo-Irishman, lived the life of a country gentleman, owning farms and slaves in both Delaware and Maryland. It is probable that early in life George Read demonstrated a proclivity for an intellectual life. He received a classical education under the guidance of Dr. Francis Alison, a Presbyterian minister, at the New London Academy in Chester County, Pennsylvania. The Academy, which later moved to Newark, Delaware, was the forerunner of the University of Delaware. Among Read's fellow students were Thomas McKean, also a future prominent Delaware lawyer, politician, and signer of the Declaration of Independence, and Charles Thomson, Secretary of the Continental Congress.

In 1749 at the age of 15, Read commenced the study of law with John Moland, Esquire, an eminent English-born lawyer and King's attorney in the City of Philadelphia. Read's contract of indenture, typical of the day, called for him to "put himself an apprentice...to learn the science, business and mystery of an attorney at law." The apprentice was to live with Moland for four years during which time he was to be subject to the master's will and to abstain from playing at dice, fornication (either in the master's house or elsewhere), frequenting taverns, or contracting marriage. It is easy to imagine that young Read diligently applied himself to his studies, especially since so many possible diversions were denied to him by the indenture. John Moland was apparently impressed with George Read's abilities for he assigned a good part of his legal business to Read before the apprenticeship expired, and, in his will, Moland enjoined his family to consult with Read. John Dickinson, who was to play a prominent role in the history of the Revolution and Constitutional period, was also a student of Moland's at that time and the two apprentices began their lifelong friendship in the office of the Philadelphia lawyer. Another Moland student, Samuel Wharton, also became Read's friend and was later to be his business partner.

Read did not journey to London for any further study of the law as did some of his contemporaries, including John Dickinson. Admitted to the Philadelphia bar in 1753, Read decided to move to New Castle, then the capital of the "Three Lower Counties" and the seat of the courts in Delaware. His decision was in part prompted by the fact his father was then living nearby at Christeen Bridge (now Christiana). John Moland admonished Read not to settle at New Castle. In a 1753 letter to his parents at Christeen Bridge, Read writes:

> *[Moland's] reasons for my not settling at New Castle were that the county was poor, and not able to support more of the fraternity than were in it already, and not fit for any person [to] live in...*

Nevertheless, George Read began his law practice in New Castle in 1754. Among the established attorneys resident in New Castle at that time were John Ross, then Attorney General, Benjamin Chew, Joseph Galloway, George Ross, John Dickinson, and Thomas McKean.

Surviving court records in the Bureau of Archives in Dover show that by the 1750s and 1760s George Read's practice was an active one. For example, in the May term of the Court of Common Pleas in 1755, Read is frequently seen to enter his appearance on behalf of defendants in debt actions. In one such case he represented John McNaill, "labourer" sued by one John Van Gezell (probably a cousin of his future wife, Gertrude Ross, the daughter of the Reverend George Ross and Catherine Van Gezell Ross. George Read and "Gitty" married in 1763). The allegation was that in 1753 John McNaill had acknowledged a debt of £12,19s to John Van Gezell but had not paid it. The disposition of the Court of Common Pleas recites Read's consent to judgment in the amount originally demanded and court costs in the amount of 39 shillings. Similar appearances on behalf of defendants and similar modes of handling debtor cases also appear in the records of the May 1755 term of the Court of Common Pleas.

George Read did not, however, spend the rest of his career defending collection cases. On April 30, 1763 he succeeded his wife's half-brother John Ross as Attorney General. In those days the Attorney General did not leave prosecutions to deputies. He prosecuted most criminal cases himself. Furthermore, he was permitted a separate practice, undoubtedly a necessity, for his salary as Attorney General in 1767 was £70.

Much of Read's law practice at this time, like that of other Delaware attorneys, concerned land. Surviving court records in the Bureau of Archives show that Read frequently appeared in such cases. On July 2, 1763, representing one Alexander Lewis and others, he filed a partition action in the Court of Chancery with respect to a 72-acre parcel in Pencader Hundred, New Castle County. Defending the case on behalf of one Thomas Lewis was George Read's friend from New London Academy days, Thomas McKean. Unfortunately, as is the case with many of the surviving

George Read
(Continued)

court records, the final result of this litigation cannot be determined.

Like lawyers then and now, George Read did not win all his cases. He personally prosecuted one Edward Carland in the Court of Oyer and Terminer (where most criminal prosecutions were maintained) in 1767 for the charge of "Housebreaking in the Daytime" (ancestor of present day 11 *Del. C. §832)*. The Grand Jury had returned an indictment in August 1767 against Edward Carland, alleging that on July 26, 1767, "about the Hour of Six in the afternoon," Edward Carland did break into a dwelling house in White Clay Creek Hundred owned by one Rachel Black, and did feloniously take away certain bed curtains, linens, cloth cloaks, blankets, a pillow case, a linen towel, a linen handkerchief, and an apron, among other cloth items. For reasons lost in the mists of time, the jury delivered a verdict of not guilty. It is also unknown whether Read was able to take any comfort from the fact that, although Edward Carland was found not guilty, he was committed to the custody of the Sheriff until he paid the requisite court fees, as was the practice of the day.

Read might fairly be called a general practitioner. Surviving court records reveal another case in which he successfully defended one David Miller against a charge of theft of two red heifers brought by one George Hillis, complainant. Miller was acquitted in 1757. In 1761, Miller, represented by Read sued Hillis, alleging that from the time of Miller's

nativity [he] hath hitherto lived and Continued unhurt, unstained, & unsuspected of any sort of Theft, Robbery, Falsehood, or from the stain of any such sort of Crime and hath always hitherto lived a pious honest life...

Miller's suit further claimed that his "Good Name, Fame, Credit, and Esteem" were injured in part because he was "forced & compelled to lay out and expend divers great sums of Money in and about the defense of his Innocence and the clearing, delivery and acquitting of him." Miller sued for £500, historical precedent for present day complaints demanding large damages. Again, unfortunately, court records are unclear about the final disposition of the case, although a record of the Clerk of the Supreme Court shows George Hillis was in prison in 1761 and that trial on this civil case was scheduled for April of that year. Presumably Read's early experience as a collection defense lawyer caused him to conclude that the defendant nevertheless had deep pockets to some degree.

Read's grandson, William Thompson Read of New Castle (also a lawyer), described his grandfather's characteristics as an attorney:

Mr. Read was particularly eminent as a deep-read lawyer, and he was versed in special pleading, the logic of the law. His elocution was neither flowery nor rapid ...on the contrary, he was somewhat slow in his speech, and negligent in his manner; but his profound legal knowledge, his solidity of judgment, and his habit of close and clear reasoning, gave him an influence with juries and judges which the graces of the most finished oratory would have failed to gain for him. His conclusions were always founded upon calm and cautious deliberation, and seldom led him into error. His legal knowledge and judgment were so conspicuous that his opinions were in high and general estimation, and he had given such evidences of his integrity that he was called the 'honest lawyer.' William Thompson Read, *Life and Correspondence of George Read*, (Philadelphia 1970)

A more recent and possibly more objective historian, Dr. John A. Munroe, has described Read as "a tiresome orator with feeble voice and poor articulation [at the 1787 Constitutional Convention]."

The Reads lived in a large hipped roofed brick house in New Castle that overlooked the Delaware River. "So near was his house to the Delaware," wrote William T. Read, "that when the tide was high one wheel of a carriage passing the street in front of it was in the water..." The house, which burned in the Great Fire of 1824, was on the Strand (then Water Street) on the site of the present gardens of the George Read II house. Read kept his law office in his house and maintained a large garden and stable on the property. He also owned a farm south of New Castle that brought him additional income. The Reads were among the most prominent families in the town and, in the custom of the day, extended their hospitality to important travelers. This practice undoubtedly enlarged Read's acquaintance with other significant men both in Delaware and beyond.

In addition to maintaining his law practice and farm Read invested in speculative ventures in the West in association with his old friend from John Moland's office, Samuel Wharton. Daniel T. Boughner, in his dissertation entitled "George Read and the Founding of the Delaware State" (Catholic University, 1968) argues that on the two most important political issues of his lifetime, independence and the Constitution, Read's views were in part shaped by his experience in Wharton's land company.

Wharton's firm profited enormously from the fur trade in the early 1760s until the Indians destroyed thousands of pounds of the company's goods during Pontiac's War in 1765. His company bankrupt, Wharton tried to gain support from powerful English politicians to force the Indians to compensate the company with land. For this purpose, he went to England in 1769. While in London, Wharton wrote frequent letters to Read keeping him apprised of the situation. Several problems thwarted Wharton's efforts. The reigning Tory ministers refused to allow British subjects to move beyond the Appalachians, and Virginia laid claim to the same Ohio Valley lands sought by Wharton. His interest in Wharton's land company thus introduced Read into the larger world of imperial politics at the very time he was first entering politics at home.

Read was elected to the General Assembly of the "Three Lower Counties on Delaware" in 1765, the same year in which Parliament passed the Stamp Act. Although he was a novice in the legislature, George Read helped draft resolutions condemning the act as a Parliamentary usurpation of the "inherent Rights and Liberties" that Delawareans claimed as Englishmen.

In the years that followed, Read was conspicuous for his leadership in each of his colony's responses to Parliamentary efforts to tax the American colonies. Following the passage of the Townshend Duties, he worked to assure Delaware's compliance with the non-importation agreement among the colonies, and, in 1773 became a member of the Committee of Correspondence for Delaware. His personal views on the growing political crisis can only be determined by his support of these measures, but it is probable that he concurred with the arguments offered by his friend John

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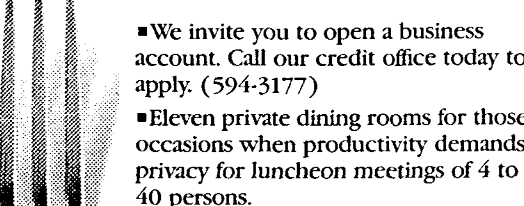

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George Read
(Continued)

Dickinson. In a series of influential newspaper articles entitled "Letters of a Pennsylvania Farmer," Dickinson argued that Parliament could tax the colonies only incidentally for the purpose of controlling imperial trade. This argument ruled out all Parliamentary taxes on the Americans except for tariffs designed to discourage trade between British subjects and foreigners. By distinguishing between the actions of Parliament before and after the Stamp Act, Dickinson demolished the British claim that nothing fundamental had changed in the relationship binding the colonies to the mother country.

Dickinson and Read were both fundamentally conservative men whose fondest wish was to see the restoration of the old empire of pre-Stamp Act days. As men of means they recognized that their fortunes and those of their countrymen would suffer a very different course if Parliament were free to exact tribute from her colonies. As lawyers they were trained in the doctrines of the liberty of British subjects from arbitrary taxation, embedded in Magna Carta, the common law, and in Parliamentary statutes.

MANSION OF THE HONOURABLE GEORGE READ.

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By 1776 George Read had become the most influential politician in Delaware. Together with Thomas McKean and Caesar Rodney he represented his colony in the Continental Congress. He led a group of men in Delaware politics that historians John A. Munroe and Harold Hancock* have called the Moderates or Moderate Whigs. To the consternation of more radical Whigs such as Caesar and Thomas Rodney, Thomas McKean, and Doctor James Tilton, Read's faction controlled the convention of 1776 charged with writing the state's first post-colonial constitution and Read himself was the principal author. In keeping with his moderate views Read borrowed heavily from Delaware's colonial frame of government. The new constitution provided for a strong legislature and weak executive. It did not enlarge voting rights, but it did make Delaware unique among the states at that time by forbidding the slave trade.

The most striking illustration of George Read's conservatism was his initial reluctance to approve the Declaration of Independence. Every school child in the First State is familiar with Caesar Rodney's ride to Philadelphia to break the tie vote between McKean who favored the Declaration, and Read, who did not, to put the Delaware delegation on the side of independence. Read agreed to sign the Declaration when he saw that it was the will of the majority. His earlier reluctance had stemmed from his belief that reconciliation with Britain was still possible and that the Americans had not yet demonstrated the ability to build an independent nation. These views were shared by his friend John Dickinson, who was then representing Pennsylvania in Congress. Un-

*See Dr. Hancock's discussion of 18th century Delaware elsewhere in this issue.

like Read, Dickinson declined to sign the Declaration.

From the time of independence on, George Read was devoted to strengthening the government of his state and of the United States as a whole. He carried out his duties during an era in which Delaware had become a theater of war. In the late summer of 1777 Lord Howe landed an army of more than 15,000 men near Elkton, Maryland. The British marched toward Newark, Delaware, brushed aside an American infantry attack at Cooch's Bridge, and proceeded to Chadd's Ford on the Brandywine where they defeated Washington's army. By October Howe had not only achieved his goal of conquering Philadelphia but had wreaked havoc throughout northern Delaware and southeastern Pennsylvania. Dr. John McKinley, the chief executive of Delaware, was captured together with the most important state documents. British troops entered Wilmington and New Castle and the British navy controlled the Delaware River. Vice-President George Read was required to assume leadership in Delaware at this most critical time. George Washington wrote to Read from Valley Forge begging for supplies, especially blankets for his men. Read, with no bureaucracy to assist him, did his best to be helpful but he acknowledged that northern Delaware had already been stripped bare. The experience of that frightening winter must have seared Read's consciousness as a gruesome foretaste of the potential for lawlessness and anarchy, and taught him the advantages of a strong executive power in government.

As the war continued into the early 1780s Read agonized over the impotence of both Congress and his state in the face of increasing economic crises and the threatened breakdown of public order. In spite of recurring bouts of ill health he remained a member of the State Council. When the Articles of Confederation were presented to the states for ratification, Read took the lead in defining the terms under which Delaware would ratify. It may seem ironic that the state that was to be first to ratify the Constitution later in that decade was among the last to accept the Articles.

Delawareans were reluctant to accept the Articles of Confederation because Delaware owned no western lands and feared that larger sister states with western land claims would become even larger

Richard Cooch, like his father, whose article on New Castle County Delegates to the ratification convention appears elsewhere in this issue, is a lawyer and an accomplished historian. During this Bicentennial year he is extremely active as a member of the Delaware Heritage Commission. Previously he served as Co-Chairman of the Battle of Cooch's Bridge Reenactment Committee and the William Penn Landing Commemoration Committee. He has written A History of Christiana Delaware *and had been active in the New Castle Historical Society and the Christiana Historical Society. The accompanying article, written in collaboration with Professor Hoffecker, commemorates his ancestor, George Read.*

Carol Hoffecker, Richards Professor of History at the University of Delaware, is in all probability the premier historian of the First State. She has published no less than eight books on various aspects of Delaware history, including Wilmington, Delaware: Portrait of an Industrial City, 1830-1910 *and the vastly popular* Delaware, Small Wonder. *Befitting her distinction as Chairperson of the Department of History at the University of Delaware, she is in exhausting demand as a public speaker, a demand she honors both cheerfully and gracefully. We are proud to have her as a contributor to this Bicentennial issue.*

and more powerful. Read, together with many other Delawareans, was determined that Congress should become the legal owner of the western lands in the name of the United States as a whole. Some other states, notably Virginia, pressed independent claims to the trans-Appalachian region. Delaware, one of the "landless" states, refused to accept the Articles until the states that claimed western lands agreed to relinquish them to Congress. The intransigence of the landless states on this issue laid the foundation for the Northwest Ordinance and the eventual creation of new states in the west.

The uncompromising Delaware view on the western land issue can be traced directly to George Read and to his continuing connection with Samuel Wharton, who had been battling the Virginia claim since the 1760s. In the end, both the "landed" states and the land companies ceded their claims to Congress. Read's position on the disposition of the western lands also presaged his espousal of a Continentalist position at the Constitutional Convention.

Delawareans consider Caesar Rodney's role in the Declaration of Independence in July 1776 his greatest moment as a statesman. George Read's ultimate accomplishment was his role in the ratification of the United States Constitution in 1787. More than anyone, Read was responsible for making Delaware the First State. Read's achievement is all the greater in that he suffered debilitating illnesses throughout the critical period for the Constitution. In addition unanimous support in his state for the new federal plan was won against a background of severe political disharmony within Delaware.

As a proponent of orderly, energetic government and sound finances, George Read must have known moments of despair in the months and years that followed the Treaty of Paris in 1783. Delaware voters had returned Read's opponents, the Whigs, to public office in that year and, true to their convic-

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George Read
(Continued)

tions, the Whigs offered the state minimalist government. The Delaware delegates to the Congress in Philadelphia seldom made the effort to attend the sessions. The financial condition of the state remained grave as unsound money undermined efforts at economic revival. Worst of all, near chaos reigned in southern Delaware where serious rioting among armed bands of partisans mocked free participation in elections.

By 1786 when the Delaware legislature was invited to send commissioners to Annapolis, Maryland in September to consider problems of interstate trade, the political pendulum was swinging back in the direction of Read's Moderates. Read and John Dickinson were the most significant political leaders among the five men chosen by the legislature to represent Delaware. Only one other Delawarean, Richard Bassett of Kent County, attended the convention. In Annapolis Read was elected to the important Committee of Five who recommended that a second convention be held the following summer "to deliberate on all...measures...necessary to cement the union of the states."

When the all-important second convention met in Philadelphia in 1787 Read and Dickinson again headed a delegation of five. These two were by far the most conspicuous speakers on behalf of their state. Determined to prevent the creation of a union that would allow the big states to smother the small, the Delawareans, joined with delegates from the other small states, cajoled and argued and threatened delegates from the larger states until they achieved the "Great Compromise." Thanks to their efforts the upper house in the new federal legislature represented each state equally while the lower house represented the population of the states. The Great Compromise was a major achievement for the small states and evidence of the yearning of all the delegates to produce a workable federal government. The Compromise was not, however, what George Read would have preferred. He was a Continentalist who favored dissolving the states altogether into one large national entity. Such a plan would have further eroded the advantages of the large states and was, for that reason, unacceptable to them. Had Read's plan succeeded, the First State would have ceased to be a state at all.

The positions that George Read adopted on other matters that faced the convention were consistent with his political and social conservatism and his conviction that orderly government required a strong executive. He favored the election of Senators for life so that they would be free from popular influence to support positions they believed to be in the national interest. He argued also for an absolute executive veto. Read was later to be one of the minority of United States Senators who supported John Adams's proposal that the President of the United States be styled "His Highness the President of the United States and Protector of the Regents of the Same." In a similar vein he approved calling the President's State of the Union Address "His most gracious speech" in accordance with British monarachical practice.

On September 17, 1787 when the delegates signed the Constitution Read signed the document twice, both for himself and for John Dickinson who was too ill to attend. Returning to Delaware, Read, the only member of the State delegation who was also a member of the legislature, presented the Constitution to the General Assembly and urged them to take rapid action to ratify it.

The timing of the ratification process in Delaware was propitious for men of Read's political persuasion, who now styled themselves Federalists. The Whigs were out of power and could only scoff from the sidelines. Their longtime leader, Caesar Rodney, was dead. Dr. James Tilton, the vitriolic Scotch-Irish physician, called the proposed Constitution monarchical and prophesied that adoption would raise taxes and destroy personal rights. The doctor wrote a series of newspaper articles in hopes of destroying Read's influence. The series was republished in 1788 as a pamphlet entitled *"Timoleon's Biographical History of Dionysius, Tyrant of Delaware."* The tyrant castigated in its pages as an inveterate Tory was, of course, George Read. "Timoleon's History," edited by John A. Munroe and reissued by the University of Delaware Press in 1958, makes interesting reading today as an example of 18th century political invective. Arguments of Whigs allied with Dr. Tilton retarded the ratification of the Constitution in some states for many months, even years. But Delawareans chose delegates to their ratification convention who harbored no serious doubts concerning advantages of the new Constitution for their state. On December 7, 1787, while George Read lay ill at his home in New Castle, the Delaware Convention meeting in Dover voted unanimously to ratify the Constitution, making Delaware the first state in the new federal union.

George Read lived twelve years after ratification. He was elected by the Delaware General Assembly, together with Richard Bassett, to represent the state in the United States Senate. In the Senate Read supported Federalist positions such as Secretary of the Treasury Alexander Hamilton's sound money policies. In 1793 Read resigned from the Senate to accept the post of Chief Justice of Delaware. Chronic poor health undoubtedly played a role in that decision. He died in 1798.

George Read has rightfully been called the "father of the Delaware State." He was an able, ambitious, well-educated man, comfortable and self-confident in his elite status as a member of the gentry class. In politics he was a strong partisan, but he accepted the necessity of compromise. From the perspective of our national history, Read was among the second rank of that remarkable generation of Revolutionary leaders, often lawyers, who led thirteen disorganized colonies to overcome the most powerful nation on earth and forge a new nation. ■

John Dickinson

David A. Drexler

It is a curious paradox that the watershed event in the career of John Dickinson, which permits Delaware to claim him as perhaps the most eminent of its constitutional forefathers, is the same event which foreclosed to him an even more illustrious place in American history. His career in hindsight leaves little room to question that, but for a single decision, Dickinson would today be celebrated as one of the revolutionary giants in the class, say, of Benjamin Franklin, Thomas Jefferson, and Alexander Hamilton. However, had he achieved this stature, it would have been as a Pennsylvanian, a Philadelphian whose Delaware connections would make an interesting, but largely irrelevant, footnote, much like Franklin's Boston origins.

This key event was Dickinson's refusal, as a Pennsylvania delegate to the Continental Congress, to vote for or subscribe to the Declaration of Independence. He didn't actually vote against it, and his abstention enabled Franklin to swing Pennsylvania into the pro-independence camp. Nonetheless, his act of conscience—based not on toryism but on his convictions that reconciliation with England was still possible even after Lexington, Bunker Hill, and more than a year of open rebellion, and that conflicting western land claims would split asunder any effort to forge a single nation from the thirteen colonies—led him to reestablish his Delaware political roots. Though there remained ahead of him nearly 20 years of distinguished service to Pennsylvania, Delaware, and the new nation, his opportunity for a unique place in history had been lost forever.

The Delaware to which Dickinson returned, part-exile, part-refugee, in December, 1776, had been his boyhood home and was still the source of much of his wealth. Born in Talbot County, Maryland in 1732 to a long-established and well-to-do Quaker family, he emigrated to Delaware in 1740 when his father, already Kent County's largest landowner, moved permanently to his plantation at Jones' Neck outside Dover. Dickinson's mother was from a wealthy Philadelphia family, and his upbringing and subsequent life was patrician. Although he was an offspring of his father's second marriage, the early deaths of his half-brothers made him his father's prime heir. When he finally married in 1770, it was to one of the preeminent heiresses of Pennsylvania. He was throughout his life among the most prosperous men in America, and it is plausible to speculate that his wealth might have added to the vehemence with which he was denounced by political opponents in Pennsylvania and elsewhere at various stages of his career.

His early education was by private tutor. For many years legend had it that his tutor had been William Killen, an orphaned Irish immigrant who lived with the Dickinson family and who later as a lawyer became, successively, Delaware's first Chief Justice and first Chancellor. However, recent research suggests that Killen, though some years older, was more a fellow student than teacher. At seventeen, Dickinson moved to Philadelphia to clerk for William Moland, Esquire, who had succeeded Andrew Hamilton of Zenger trial fame as the city's foremost lawyer. There he joined, among his fellow clerks, another Delawarean, George Reed, a lifelong friend, whose career, recounted elsewhere in these pages, meshed with Dickinson's in many respects.

In 1753, Dickinson enrolled in the Middle Temple in London, where for three years he underwent formal legal training. Attendance at the Inns of Court was not unusual for scions of wealthy colonial families. Among his classmates were Charles Cotesworth Pinckney of South Carolina, a fellow delegate to the 1787 Constitutional Convention. Indeed, a few years after Dickinson went to London, his path was followed by Thomas McKean, a pro-independence Delaware delegate to the 1776 Constitutional Congress, who after the Revolution settled permanently in Pennsylvania where he ultimately became Governor.

Returning to Philadelphia in 1757, Dickinson practiced law and became deeply involved in the political life of that colony, although he continued to oversee the family plantation in Kent County, which he inherited upon his father's death in 1760. Delaware, then known as the Lower Three Counties, shared a Governor, a Penn descendant, with Pennsylvania, but had a separate representative assembly. Dickinson was elected to both legislatures—in Delaware he briefly served as Speaker—but Pennsylvania was the focal point of his professional and political career.

The burning issue in Pennsylvania in the early 1760's was the Penn proprietorship. Governmental authority over the colony had devolved upon absentee heirs of William Penn, whose local agents were rapacious in accumulating land and other wealth for themselves and their patrons. Their land-grabbing policies led to bloody Indian retaliations on the frontier. At the same time, the Penns refused to permit the proprietorship lands to be taxed for the common defense or other expenses of government, citing, among other reasons, pacifist religious beliefs. There were class and ethnic differences underlying the dispute as well. The quarrel tended to pit the comfortable and secure English Quakers of the Delaware Valley against the German and Scotch-Irish settlers of the western Pennsylvania frontier.

The leading Pennsylvania politician of the period was Benjamin Franklin, and his solution to the proprietorship problem was, curiously enough, abolishing it in favor of direct rule by a royal appointee. For the first, but not the last, time Dickinson found himself opposed to Franklin. Acknowledging the grievous faults of the Penn overlordship, he nonetheless contended that a royal governor could be worse and that reform of the proprietorship was the better course.

Emotions on the issue ran high and Dickinson's position was not popular with his particular constituency. When the anti-Penn forces prevailed, he was

unceremoniously dumped by the electorate. However, Franklin, by this time Pennsylvania's London agent, never delivered the Assembly's request to the King. The enactment of the infamous Stamp Act mooted the argument, and, incidentally, demonstrated that Dickinson's fears of royal heavy-handedness had indeed been justified.

As a consequence Dickinson found himself a Pennsylvania delegate to the Stamp Act Congress of 1765 and, for the first time his talents as a draftsman were recognized. He was selected to draft the Congress's petition for relief from the detested document tax. In this initial effort at joint action by the colonies, Dickinson argued against taxation without representation and urged for the colonists the full rights of native Englishmen. Th Stamp Act was repealed even before Dickinson's petition reached London, but it was followed almost immediately by enactment of a series of repressive trade acts perceived in the colonies as benefitting native English interests at the expense of the colonists.

Dickinson now achieved his most widespread contemporary fame and popularity. The favored form of political dialogue of that era was the pseudononymous newspaper column. Dickinson, affecting the pose of a self-educated farmer with time on his hands—which he decidedly was not—wrote a series of polemics known to history as the "Farmer's Letters of 1767", which argued for the repeal of trade barriers on grounds that free trade would be beneficial to both colonies and motherland. His authorship became known, and he was celebrated throughout the colonies as their most eloquent spokesman. His political rival Franklin arranged for publication of the letters in England. Dickinson was even awarded an honorary degree by Princeton.

His fame and talents drew him into the Philadelphia branch of the Committees of Correspondence, but, as events unfolded, his steadfast belief that the liberties of the colonists and removal of the barriers to free trade were achievable through peaceful reform of the existing relationship between motherland and colonies led to a widening gulf between him and the more militant colonists, typified by Sam Adams of Massachusetts, who more and more favored separation. These differences came to a head over the reaction to the Boston Tea Party of 1773. The dumping of the tea by a Boston mob had led to special sanctions on the Port of Boston. This in turn led to the convening of the Continental Congress in 1774. Because of political in-fighting in Pennsylvania Dickinson was not initially a delegate. However, he was elected to the Pennsylvania delegation some weeks later, and immediately assumed a leadership role in the proceedings.

With his eye still on a negotiated elimination of the broader trade laws, Dickinson viewed the Bostonians' particular problem as a nettlesome sideshow. There is a story, perhaps apocryphal, that Dickinson and his associates urged Boston to make a deal—pay for the damned tea in return for the removal of the special sanctions. This concilia-

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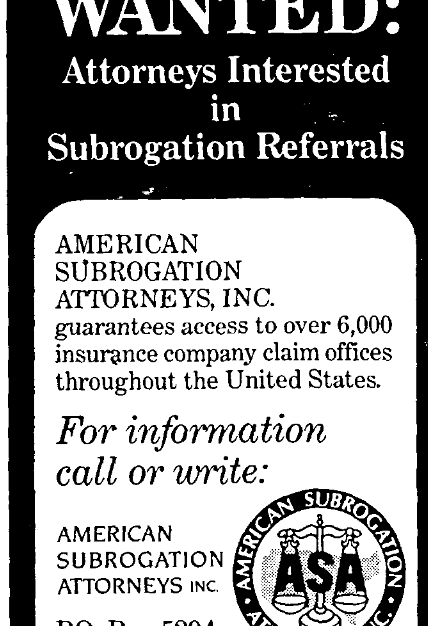
David Drexler, a partner in the Wilmington firm of Morris, Nichols, Arsht & Tunnell is a long-time member of the Board of Editors of this magazine. The March 1984 issue, which dealt with the Court of Chancery, is remembered as a model of design and artful editorial treatment. David's interest in Delaware history was displayed in his three-part digest and running criticism of the memoirs of Mr. Justice Pennewill, printed in earlier issues of DELAWARE LAWYER. We consider the accompanying article the ideal expression of his combined scholarship and literary artistry.



John Dickinson
(Continued)

tory attitude angered the New Englanders who were demanding a more militant stance. However, the majority position of the Continental Congress was anti-separatist during 1774 and 1775, and Dickinson remained in the forefront of leadership.

Upon his election to Congress in October, 1774 Dickinson had become its principal draftsman. He authored virtually all of the statements of policy and petitions in the first Continental Congress of 1774 and in its 1775-6 successor, including the first draft of what became some years later the Articles of Confederation. Indeed, until he parted company with his fellows on the issue of independence, Dickinson could fairly have been called "the Penman of the Colonies". When Thomas Jefferson came to Philadelphia as a substitute Virginia delegate in 1775, he was in effect assigned to what in modern parlance would be deemed the Resolutions Committee, John Dickinson, chairman. However, as the tide of events—Concord, Bunker Hill, Ticonderoga—swept Congress toward separation, Dickinson held back and ultimately was left behind.

This background leaves little room for doubt that had John Dickinson moved with the tenor of the times and joined the Congressional majority in July, 1776, when it opted for independence, it would have been he, not Thomas Jefferson, who would have been assigned primary responsibility for drafting the Declaration of Independence. Had this occurred, Dickinson would no doubt have remained in Philadelphia for the rest of his life and been celebrated as one of its colonial giants, one who happened to have owned considerable land in Delaware. What other roles Dickinson, with the political support of a major state behind him, might have played in the new nation and with what consequences make fascinating speculation.

Even before 1776, as the prospects of armed confrontation increased, Dickinson had been elected a colonel of the Philadelphia militia. A few days after refusing to vote for independence, his regiment was called to the defense of New York, which was then under siege by the British. Dickinson was not a practicing Quaker, and voluntary military service was compatible with his views. His sense of duty compelled him to serve, even though he disagreed with the cause he served.

He led his troops to Elizabeth, New Jersey, where, though facing the enemy, his sector remained quiet throughout the summer. However, the political fall-out of his anti-independence stand began to manifest itself. A special election in late July cost him his seat in the Continental Congress. In September, he was passed over for promotion to general in the Pennsylvania militia. He resigned his commission and returned to his home near Philadelphia.

A few days later, the British and their Hessian allies began the march from New York toward Philadelphia, an incursion which was at year end destined to be repulsed at Trenton. In early December, however, Philadelphia looked ripe for the picking. Dickinson gathered up his family and fled to Kent County. It was not his finest moment, and when several years later his Pennsylvania opponents accused him of having deserted in face of the enemy, which was technically untrue since he had no command at the time, Dickinson's response to the implication of cowardice was largely a plea for understanding of his acknowledged temporary weakness.

Upon arrival in Delaware, he pulled himself together and joined the New Castle militia as a private soldier. His Nineteenth Century biographer later stated upon inconclusive evidence that Dickinson fought at the 1777 Battle of the Brandywine, but this seems unlikely. Dickinson in a spirited post-war defense to the aforementioned charges of desertion made no such claim. Considering the context, it is something he would have mentioned if he could have. Rather, his only claim to combat duty was to have volunteered for a raid across the Christina River from New Castle against British forces then occupying Wilmington, an assault which was called off at the last minute. He was, after all, in his mid-forties, and war, even in those days, was a young man's exercise.

The 1777 campaign led to the British occupation of Philadelphia, and Dickinson remained in Delaware. However, surviving correspondence discloses that his family spent a considerable part of this time at their Philadelphia home, and one suspects that he and his wife still viewed Pennsylvania as their real home. In those pre-airconditioning, pre-mosquito control times, Jones Neck

was surely not the pleasantest of places, especially during summer months. It would be another ten years before Sally Norris Dickinson became reconciled to leaving her native city and shifted her religious allegiance from the Philadelphia Quaker meeting to that of Wilmington.

During 1777 and 1778, Dickinson resisted efforts of Delawareans to involve him in public affairs. He declined an appointment as brigadier in the Delaware militia. Instead, he remained for the most part in Kent County, devoting his efforts to the improvement of his extensive properties. After the British evacuated Philadelphia in 1778, he went home but, finding the political climate still inhospitable, came back to Delaware. In early 1779 he was finally persuaded to become a Delaware delegate to the same Continental Congress from which Pennsylvania voters had ousted him nearly two and one-half years earlier. One of his first duties was to subscribe Delaware's ratification to the Articles of Confederation, which had been substantially modified from his original 1774 draft.

The issues that Congress faced in the 1779 term were critical. The war effort was bogged down. The national government was wholly dependent upon the states for manpower and funding, and the states were not responding. Dickinson, once again the draftsman, was charged with preparing an appeal to the states to meet their obligations. In addition, the first rumblings of a peaceful resolution to the war were being aired, and Congress was striving for a consensus on the terms the new nation should pursue in peace negotiations. Once again regional differences led to conflicting priorities and once again Dickinson was perceived by his opponents as less than fully committed to the independence of the new nation. However, his service in Congress, though for but one term, was on the whole successful, and it restored his appetite for public office. Philadelphia was still controlled by his political foes, so he remained in Delaware. In late 1780, he was elected to the Delaware General Assembly, but, still hopeful of returning to Pennsylvania, he declined to serve. Finally, in October of 1781, he tested the Pennsylvania political waters by running for election to its Assembly. He was defeated in a bitter campaign, in which his anti-independence stand of five years earlier became the major issue.

At the same time, he was elected without his consent to the Executive Council of Delaware, a sort of quasi-cabinet, executive committee vested with administrative authority over state affairs, whose chairman, designated President, was in substance the Governor. Although initially disinclined to serve, after his defeat in Pennsylvania he accepted and in November, 1781, Dickinson was elected President (*i.e.,* Governor) of the Delaware State by the Delaware General Assembly.

The problems that Delaware faced were multi-faceted. Financial resources, to meet the state's own needs as well as its obligations to the national government, were virtually non-existent. In the lower two counties, the five-year-old guerilla-like struggle between loyalists and patriots had deteriorated into rampant lawlessness and piracy. Dickinson's own plantation house had been savaged by an outlaw intrusion in the summer of 1781. Dickinson as President struggled manfully with these problems. He successfully cajoled the Assembly into tax reform and into establishing a militia force to restore law and order. On several occasions he advanced personal funds to meet the state needs.

Although Dickinson had taken up residence in Wilmington upon his election to the Presidency of Delaware, his family remained in Philadelphia. In late 1782, the forces of moderation with which Dickinson was aligned regained the upper political hand in Pennsylvania. As a consequence, on October 10, 1782, Dickinson, the President of Delaware, found himself elected to the Supreme Executive Council of Pennsylvania, and in November he was elected President of Pennsylvania. Although he immediately relinquished his duties in Delaware he did not actually resign until January, 1783, so that for two months he served simultaneously as President of both states. However, by early 1783 he was fully committed once again to Pennsylvania.

Although he served the maximum three-year term, being reelected on two occasions, his service as chief executive of Pennsylvania was marked by great controversy and personal travail. The opposition refused to permit the events of 1776 to die and he was subjected to

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John Dickinson
(Continued)

constant personal as well as political attack. In addition, two major controversies during his term of office fueled the fires of acrimony.

In late 1783 Congress was besieged by a mob of disgruntled veterans seeking back pay. When Dickinson, who as President of Pennsylvania was charged with providing security, hesitated in calling out the militia, Congress decamped to Princeton. Dickinson's indecision, perhaps influenced by uncertainty as to whether the militia could be relied upon, was blamed for costing Philadelphia its place as the national capital. Indeed, one of his contemporaries later wrote that, had Dickinson not vacillated in calling out the militia, Philadelphia would probably have remained the permanent national capital as a matter of course, and the issue of a permanent site elsewhere, which led ultimately to establishment of the District of Columbia, might never have arisen.

The other maelstrom of Dickinson's service as president of Pennsylvania, involved the Wyoming Valley of northeast Pennsylvania, where a longstanding conflict over territorial rights between Pennsylvania and Connecticut was finally resolved by Congress in favor of Pennsylvania. Dickinson's attempts to salvage something for the Connecticut settlers of the valley, who had devoted their lifetimes to developing it and who now found themselves without good title to their properties, though fair-minded to a fault, ran counter to the prevailing mood of the electorate.

One lasting monument of his Presidency of Pennsylvania is the college bearing his name in Carlisle. Its founders chose to honor Dickinson's name in part to acknowledge his assistance in helping them get started, but they were perhaps equally influenced by the hope, not fully realized, of inspiring Dickinson's ongoing financial support. However, his initial participation as chairman of the College's board of trustees deteriorated into the political squabbling that marked his entire term as President of the state, and he virtually abandoned his interest in the college when he left office.

Given the vituperativeness of these political and personal struggles, it is understandable that, upon completion of his term in 1785, Dickinson departed Pennsylvania forever. In his mid-fifties, of uncertain health, he built a mansion at the corner of 8th and Market Streets in Wilmington. The location was a good compromise between his wife's desire to remain in Philadelphia and his need to oversee his Kent County holdings. He was no doubt contemplating a quiet retirement devoted entirely to personal interests. However, it was not to be.

Even though the new nation had been independent and at peace for two years when Dickinson moved permanently to Delaware, the state of the union was deeply troubled. The national government remained unable to operate effectively on any level because it had no taxing power. Moreover, interstate barriers to trade were stifling commerce to an extent even greater than had been imposed under the British. For example, cargo crossing the Hudson River from New Jersey to New York had to clear customs and pay duty. Reform was badly needed but change was also resisted, especially by the smaller and rural states, which believed that they would suffer at the hands of large state commercial interests if the national government were strengthened.

Thus, when New York and Virginia persuaded Congress in 1786 to convene a convention in Annapolis to deal with trade and commercial reform, only five states sent delegates, and Delaware was the only small, primarily rural state among them. But that presence and that of John Dickinson as the leader of the Delaware delegation lent great credibility to the proceedings from the point of view of the absentees. Dickinson was elected chairman of the convention, no doubt because the two principal proponents of economic reform, James Madison of Virginia and Alexander Hamilton of New York, viewed the symbolism of his appointment as crucial to the ultimate success of their endeavors.

But Dickinson was no mere figurehead. He was in the forefront of the singular accomplishment of the Annapolis proceedings—the call for a further convention in Philadelphia in May, 1787, for the purpose of officially rewriting the Articles of Confederation. The response to what became the Constitutional Convention was nearly unanimous. Only Rhode Island remained aloof. There is little reason to doubt that the signature of John Dickinson of Delaware on the

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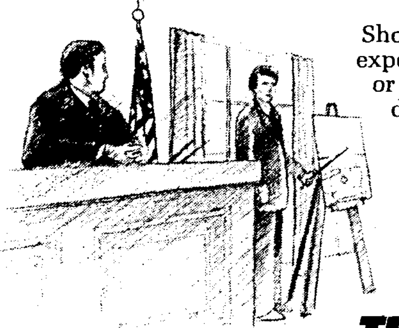

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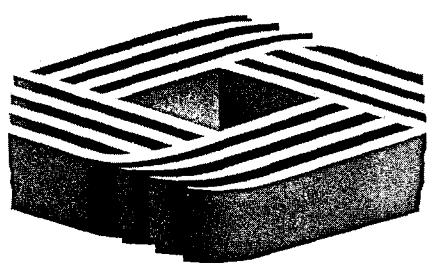

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John Dickinson
(Continued)

call for the convention helped to achieve this result.

Dickinson was, of course, a Delaware delegate to the Constitutional Convention, and the role that he and Delaware played in forging the consensus that created the Constitution will not be recounted here. Once the convention started, Delaware found a natural alliance among the smaller states. Dickinson's health at age 55 was not good that summer of 1787, but he stuck it out in Philadelphia, attended most of the sessions, participated effectively in the debates and contributed to the compromises that led to the creation of the bicameral Congress, the electoral college, and the separate judiciary. His health collapsed before the Constitution received final approval, and leaving a proxy with fellow delegate George Read, Dickinson went home to Wilmington.

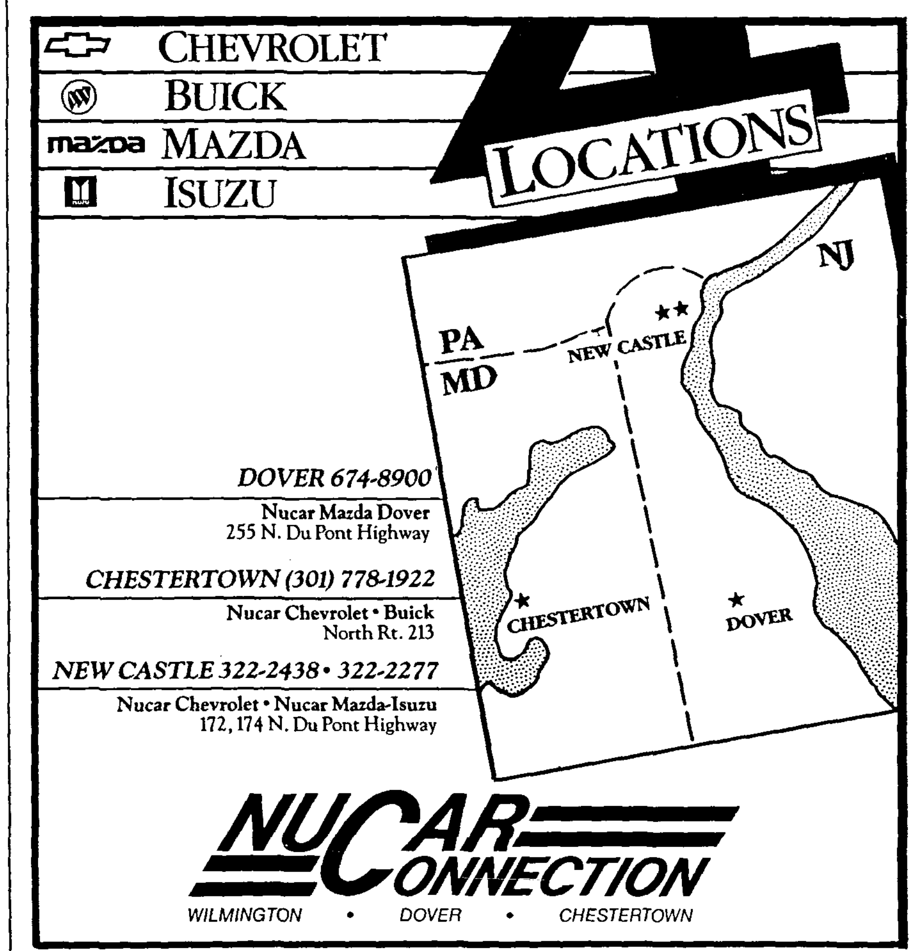
The speedy ratification by Delaware should not obscure the fact that the Constitution met serious political resistance in other states. To overcome this opposition, Dickinson in early 1788 wrote a series of articles in support of ratification, using the pseudonym "Fabius". He took great pains to keep his identity secret, possibly because he realized that in Pennsylvania and elsewhere he was still a controversial figure. The impact of the "Fabius" papers is difficult to gauge; they obviously did not achieve the historical significance of the Hamilton-Madison-Jay Federalist Papers, which were published at the same time in New York, the site of the crucial ratification struggle. The Federalist Papers, dealing as they do with the Constitution clause-by-clause, have become through the passage of time the *de facto* "legislative history" of the Constitution, but, the "Fabius" papers, more general and philosophical, did receive broad contemporaneous circulation, particularly in Pennsylvania, and undoubtedly contributed to acceptance of the Constitution by that state.

After 1787, Dickinson withdrew almost completely from the national scene, but he continued to serve Delaware. He was briefly a judge and in 1791 served as the first chairman of the Delaware State Constitutional Convention. However, he relinquished the chair before that convention completed its work in 1792. Thereafter, he lived quietly in Wilmington for 15 more years as a respected senior citizen, resisting the urgings of many that he seek office as Governor or Senator. He remained allied politically with Jefferson and corresponded with him and other national figures regularly during the course of Jefferson's presidency, offering counsel and opinions on innumerable subjects. His home became the place of call in Wilmington for distinguished former colleagues and visitors passing through on their way to the new national capital in Washington. He died in 1808 and is buried alongside his wife, who had predeceased him by several years, in the Friends burying ground near Fourth Street in Wilmington. He was survived by two daughters.

In the Nineteenth Century, Dickinson as a national figure lapsed into quasi-obscurity. He was, after all, not in the American Pantheon known as "The Signers". Moreover, unlike Jefferson, Hamilton, Madison, John Adams and others, he had receded from national politics after the 1787 Convention. Unlike Caesar Rodney, Paul Revere, and Patrick Henry, his accomplishments had not been of the dramatic stuff from which legends are spawned. Hence, his contributions, at least those subsequent to the "Farmer's Letters", tended to be overlooked or downplayed.

It was not until 1891 that a biography was written, and that effort, based on superficial research and a larger-than-life, Parson Weems-like approach to its subject and the other personalities of the colonial period, was deservedly relegated to the back shelves.

It was well into the present century before Dickinson's place in American history began to receive a true assessment. A major impetus was the restoration of the Dickinson plantation house outside Dover at the behest of the Friends of the John Dickinson Mansion. This is mildly ironic because Dickinson never lived there. The home, not really a "mansion", is an 1804 reconstruction of the earlier farmhouse on the site, which had been destroyed by fire. Moreover, the only extended period when Dickinson had lived in the original was as a boy in the 1740's. During his adult life it was occupied most of the time by his



farm managers. The true John Dickinson mansion, his home for 23 years on the site of what is now the Rite Aid Drug Store on the Mall in Wilmington, had been razed in 1926. However, the Friends, together with Dickinson College, sponsored a thoroughly researched, definitive biography, "John Dickinson, Conservative Revolutionary" by Professor Milton E. Flower, published in 1983, which documents the due to which Dickinson is entitled.

It is not easy 200 years after the fact to get a firm handle on Dickinson as a personality. There plainly were some warts. He had a healthy, if not obsessive, regard for the value of money. One episode continually thrown in his face was his intercepted advice to his younger brother, a prosperous New Jersey landholder, given during the black days of 1776, to refuse Colonial money offered in payment of debts.

He was plainly opportunistic, as when he rather cavalierly abandoned the Presidency of Delaware for that of Pennsylvania after his friends regained the political upper hand there. His correspondence reflects more than a small streak of ego. For example, he took excessive personal umbrage when an early historian attributed to another the authorship of one of his Continental Congress petitions, even though the misattribution was undoubtedly a mistake and not a calculated slight. The passionate enmity he aroused in his political foes suggests a large degree of rigidity and pomposity, a quality frequently observable in later life in those who, like Dickinson, have achieved renown at an early age.

Yet these flaws seem more than counter-balanced by his singular integrity, both in public and private life. His career is a virtual monument to the principle of not surrendering one's convictions to a current perception of the popular will. He inspired great loyalty among his friends and supporters, especially in New Castle County, where his continual calls to positions of leadership from 1777 on cannot be ascribed to his position as reigning "Lord of the Manor", as might have been the case had those calls originated in Kent.

His skills as political theorist and polemicist are perhaps given their highest accolades by the vehement denunciations of his enemies. He was obviously viewed as a powerful opponent and not as a mere gadfly. Yet to wrap all of these qualities into a three-dimensional, recognizable personality is difficult today, when even contemporary leaders are converted by the mass media into cardboard figures.

If Dickinson, the man, is something of an enigma, there can be no argument about his accomplishments. He was, in sum, a major contributor to the formation of the United States of America, a Delawarean for the ages. Yet, the fascinating question persists—What if John Dickinson, Pennsylvanian, had responded "aye" to the roll call on the historic resolution that was before the Continental Congress on July 2, 1776? ■

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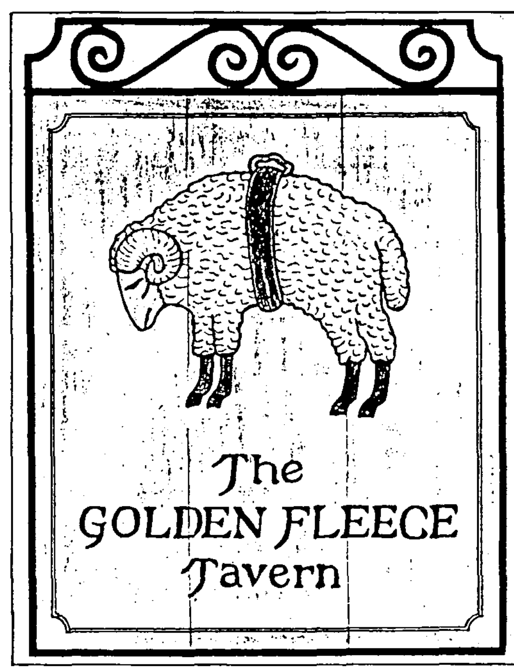


III. In Attendance at the Golden Fleece

When Benjamin Franklin urged the delegates to the Constitutional Convention in Philadelphia to approve the Constitution unanimously, he noted that, "when you assemble a number of men, to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interest, and their selfish views." The Kent, Sussex, and New Castle Countians who met in Dover to consider the ratification of the Constitution were no doubt accompanied by their own predilections due to their diverse backgrounds and experiences. We can be grateful that those citizens of the Delaware State who came to Dover to apply their joint wisdom led the way as the first Americans to "fully, freely and entirely approve of, assent to, ratify and confirm" the United States Constitution as the Supreme Law of the Land.

The Stage Is Set

The fall of 1787 was a time of fast-moving and momentous events. On September 17 the Constitution of the United States of America had been approved by the unanimous consent of the Deputies from the twelve states present at the Convention in Philadelphia. Article VII of the proposed Constitution provided that the ratification of the Conventions of nine states "shall be sufficient for the establishment of this constitution between the states so ratifying the same." A further resolution of the Convention directed that the Constitution "be laid before the United States in Congress assembled, and... that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its legislature for their assent and ratification..." On September 28, the same twelve states of "The United States in Congress Assembled" unanimously resolved that the "report of the Convention... be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case."

On November 9, the House of Assembly of the Delaware State passed resolutions calling for an election of delegates to be held November 26 in each of the Counties.

The New Castle County Delegates

The Honorable Clarence Taylor, Kevin Healy, and Edward Cooch

Each of the three counties sent ten Delegates to Dover and Battell's Tavern to vote on ratification of the Constitution. In this article Judge Taylor and Kevin Healy furnish the first five biographies of the New Castle County contingent. Mr. Edward Cooch discusses four of the five remaining Delegates. (The fifth, Gunning Bedford, Jr., who attended the Constitutional Convention in Philadelphia, is the subject of the preceding biography by Charles Allmond.)

James Black

James Black was a gentleman farmer, who owned large gristmills on the bank of Millcreek. Black married Mary Reece, with whom he had eight children, and the Black family resided in Millcreek Hundred, New Castle County. In 1778 he was commissioned as a Justice of the Peace for New Castle County. Under the 1776 Constitution of the Delaware State, the House of Assembly named 24 persons for each county as potential Justices of the Peace. From this number, the President of the Delaware State, with the approval of Privy Council, appointed twelve Justices of the Peace for each county. At this time, Justices of the Peace served for seven-year terms "if they behave[d] themselves well".

Black also served in the Delaware Militia between 1779 and 1781, holding the rank of Major.

Under the Constitution of the State of Delaware of 1792, the two branches of the General Assembly were for the first time referred to as the Senate and the House of Representatives. James Black was elected to the State House of Representatives in 1793, representing New Castle County. To qualify as a representative, a person had to be at least 24 years old, have a freehold in the county from which he was chosen, and have been a citizen and inhabitant of the State for at least three years. The representatives were chosen annually, and there were seven representatives from each county. As a representative, Black was automatically considered by the State Constitution to be a conservator of the peace. He served as a Representative for one year. He died in December of 1794 at his home in Millcreek Hundred.

Thomas Duff

Thomas Duff was a landed proprietor who lived near Newport, Delaware. He is distinguished for his military service and his prominence in the public affairs of Christiana Hundred and the State of Delaware. In 1756 Duff served as an ensign in the Upper Regiment of the New Castle County Militia. He held the office of Sheriff of New Castle County for the years 1763, 1765, 1769, and 1770.

In 1775 Thomas Duff was chosen as commander of the Upper Division, New Castle County, of the Delaware Militia, holding the rank of Major. Major Duff was eager to respond to the call for troops issued by the Continental Congress in late 1776. He was eventually promoted to the rank of Colonel. It is reported that Duff was wounded in a skirmish near Christiana in September 1777. The General Assembly chose him in 1779 to be the purchaser for the army for New Castle County.

In 1780 Thomas Duff was elected to the House of Assembly, as a Representative of New Castle County. He was re-elected annually for the next several years, and in 1784 the House of Assembly elected him Speaker.

While a representative in the House of Assembly, Duff was appointed a Justice of the Peace for New Castle County

in 1783. After a seven-year term he was reappointed in 1790.

Thomas Duff married Jane Williams in 1751, with whom he had six children. In addition to his military and political service, Duff served as trustee for Wilmington Academy, and was a member of the vestry of St. James Church in Stanton, Delaware.

He died in 1807.

Kensey Johns, Sr.

Kensey Johns, Sr., was a prominent lawyer and jurist in the early years of the State of Delaware. He was born June 14, 1759 on West River in the State of Maryland. He studied law in Maryland under the wing of Judge Samuel Chase, who later became a Justice of the United States Supreme Court. Johns completed his study of the law in New Castle, Delaware under the elder George Read. Owing to his talents and position, Johns developed a lucrative law pratice and eventually accumulated a handsome estate.

In 1784 Johns married Ann Van Dyke, the daughter of then Governor Nicholas Van Dyke. The wedding took place in the Amstel House in New Castle, and George Washington was in attendance.

Johns was a member of the State Constitutional Convention of 1792, and contributed significantly to the drafting of the 1792 Constitution. In March of 1794 Governor Joshua Clayton appointed Johns to succeed George Read as United States Senator, following Read's resignation. However, Johns was refused admission to the Senate on the ground that Governor Clayton had no constitutional right to make an appointment after the meeting of the General Assembly, which had failed to fill the vacancy. This was the first time the question arose as to the power of the Executive to fill such a vacancy.

Soon after the invalidation of his appointment to the Senate, Johns became an associate justice of the Supreme Court of Delaware. The Chief Justice of the Supreme Court at that time was George Read, Johns' former preceptor in his professional studies. Justice Johns succeeded to the office of Chief Justice upon the death of Chief Justice Read in 1798. He presided as Chief Justice for over 30 years, and his decisions were well respected.

Upon the death of Ridgely in 1830 Governor David Hazzard appointed Johns Chancellor. As a result of his long experience as President of the Court of Errors and Appeals in all Chancery cases, Johns was highly qualified for this office. In 1832 Chancellor Johns voluntarily withdrew from the office of Chancellor and from public life altogether. He was 72 years old upon his retirement to private life. His son, Kensey Johns, Jr. succeeded him in the office of Chancellor. He retained his relations with the Bar for several years thereafter, acting as counsellor at law.

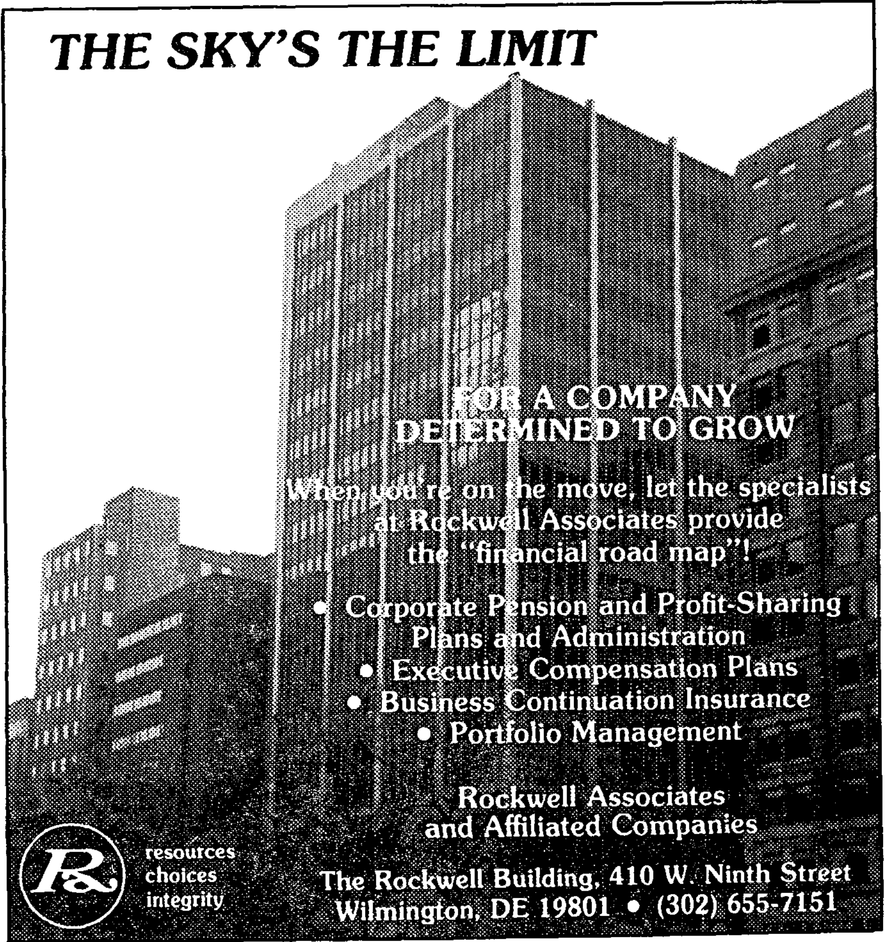
Johns lived in New Castle in a house built by local craftsmen under his direction. He died in December of 1849 at the age of 90.

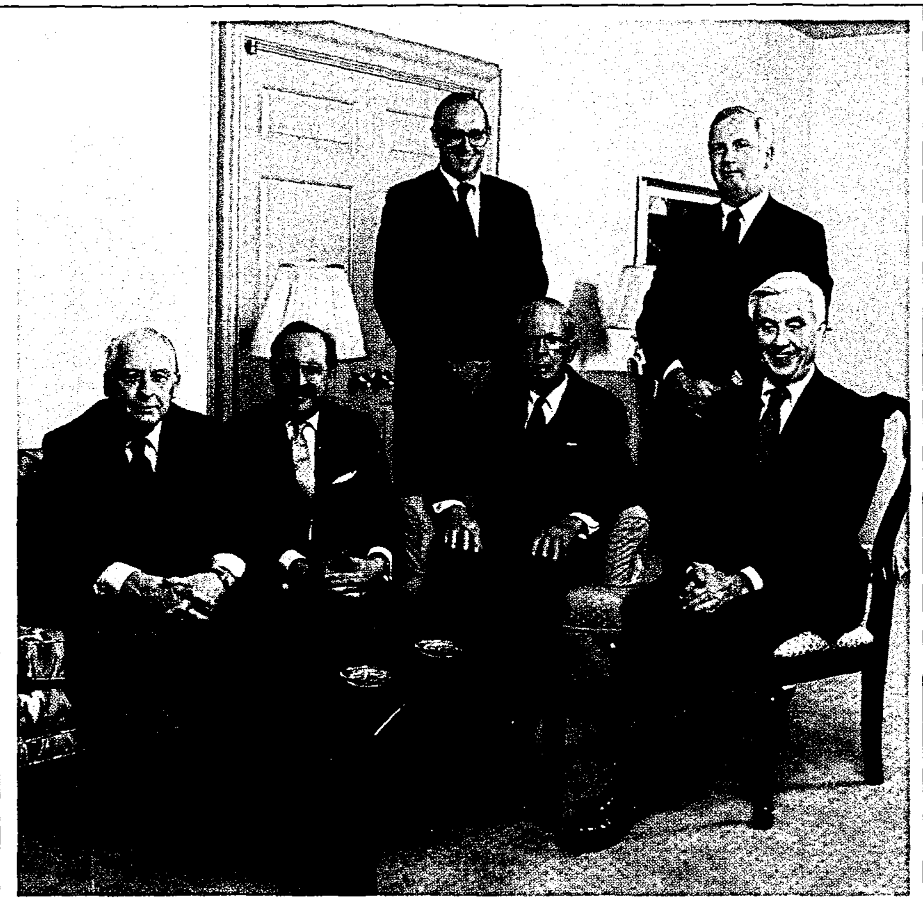
James Latimer

James Latimer came to America, probably from Ireland, in 1736, and settled in Newport, New Castle County, Delaware. He married Sarah Geddes with whom he had ten children. Latimer established a grain and shipping business with Philadelphia.

During the Revolutionary War Latimer served as a Lieutenant Colonel in the Upper Division of the New Castle County Branch, Regiment of the Delaware Militia. He also served in 1776 as a member of the Council of Safety from New Castle County. The Council acted as an executive body for military matters affecting the Delaware colony. In December, 1775 the Continental Congress called upon the Council to raise troops for the Continental Army.

In 1779 Latimer was appointed to the office of Justice of the Court of Common Pleas. From 1781 through 1793 he presided as Chief Justice of that Court. At this time, appointment to the Court of Common Pleas was by joint ballot of the President and General Assembly of the State. Once appointed, a Justice continued in office "during good behavior". In addition to exercising a common law jurisdiction, the Court of Common Pleas was an inferior Court of Chancery. While the Delaware Constitution of 1792 deprived the Court of equity jurisdiction, it increased the importance and dignity of the justices by making them statewide rather than county judges. Latimer pre-





A Court of Conscience and Conspicuous Talent

Of the nineteen Chancellors of Delaware since 1793 six are now, happily, among us. They are seated left to right, Collins J. Seitz, who presided in Belton v. Gebhart *and* Bulah v. Gebhart, *Chancellor William T. Allen, William Marvel, who decided* Burton v. Wilmington Parking Authority, *and William Duffy. Standing, William T. Quillen and Grover C. Brown.*

They are successors in the great tradition to Johns, discussed in this article, and to Ridgely, portrayed elsewhere here. The landmark Constitutional decisions of this Court referred to above are discussed in an article beginning at page 122.

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sided as Chief Justice of this Court during the transition period that followed the Constitution of 1792.

James Latimer died on October 15, 1807, at the age of 87.

Dr. Nicholas Way

Nicholas Way was born in Wilmington, Delaware in 1750, or possibly earlier. He graduated from the University of Pennsylvania School of Medicine in 1771, and thereafter commenced his county medical practice in the Wilmington area. Dr. Way was a member of the Delaware Regiment in the Revolutionary War.

Dr. Way manifested his love and devotion to mankind in many different ways. One particular incident is especially outstanding. In 1793 a yellow fever epidemic broke out in Philadelphia. Consequently, crowds of Philadelphia citizens sought asylum in Wilmington. Many were refused entrance into Wilmington until Dr. Way, along with Major George Bush, interceded for their reception. Thereafter every door was open and every house was filled. In his historical account of the epidemic Matthew Carey wrote that the houses of Dr. Nicholas Way and Major George Bush "were always open to the fugitives from Philadelphia, whom they received without the smallest apprehension, and treated with a degree of genuine hospitality that reflects the highest honor upon them".

In 1797 Dr. Way himself died of yellow fever in Philadelphia. The great devotion he displayed in administering to those suffering from the disease can best be summarized by the remarks of Dr. Stellwagen, author of the 1896 paper "Delaware Doctors", who claimed that "greater love hath no man than this!"

Dr. Way was one of the corporators of the Delaware State Medical Society, incorporated February 3, 1789 by the Legislature, one of the oldest institutions of its kind in the country. Way was elected as a censor and curator of the Society.

Aside from his prominence in the medical profession, Dr. Way was one of the first members of the Board of Trustees of The Old Academy (later "College of Wilmington"), and was instrumental in the establishment of the Library Company of Wilmington in 1788.

Judge Taylor and Mr. Healy wish to thank the Historical Society of Delaware for an invaluable contribution in assembling this article. ■

Part II
Delegates James, Bedford, Maxwell, and Wattson

Edward Cooch, Esquire

John James

John James was born in 1752 near Newark, New Castle County, Delaware, where in later years he possessed substantial land holdings. He and his wife, Susanna, who died March 8, 1812, had four children, John, Jr., James, Sarah and Susanna.

In 1787 New Castle County selected James as a delegate to attend the convention held at Dover, December 7, 1787 to ratify the United States Constitution.

James was appointed September 16, 1775 a Captain in a Battalion of Militia of the State of Delaware, formed for the "protection and defence thereof." He served for the duration of the Revolutionary War. In 1780 he was a Captain in the 2nd Company of the Delaware Militia.

After the war he held the Office of Justice of the Peace for New Castle County, 1783-1790, and State Senator for New Castle County in 1796 and 1798. He also served as chairman of the Trustees for the Poor of New Castle County in 1791.

James died at his home January 2, 1811, and is buried on Iron Hill in the Welsh Tract Baptist Church yard. He had served as Trustee for the Church in 1798.

Gunning Bedford, Sr.

Gunning Bedford, Sr., sometimes referred to as Colonel or Governor Bedford, was born near New Castle, April 7, 1742, the son of William Bedford and the grandson of a Gunning Bedford, who had settled in Delaware in the early 1700s. He studied law and was admitted to the Bar in 1779 at the age of 37. He later served as Prothonotary for New Castle County.

Bedford married Mary Read of New Castle, whose brother, George Read, was a signer of the Declaration of Independence.

Commissioned as Major in the Revolutionary War, he was wounded in the Battle of White Plains. He was appointed Lieutenant Colonel of the Delaware regiment on January 19, 1777.

His numerous patriotic and civil services included membership in the House of Representatives in Dover in 1784, 1785, and 1786, the Legislative Council in 1788, and the Privy Council in 1783 and 1790. In 1788 he was appointed Register of Wills for New Castle County and in the following year Justice of the Peace for New Castle County.

Bedford was elected a delegate to the Continental Congress in 1786 but did not serve. He was also elected a delegate to the convention that met in Dover, December 7, 1787 to ratify the United States Constitution.

Elected Governor of Delaware in 1796, he held that office until his death September 30, 1797. He and his wife left no issue. An Episcopalian, he is buried in the Immanuel Church yard, New Castle, Delaware.

Bedford at times would add the suffix "Sr." to his name to distinguish himself from his cousin, Judge Gunning Bedford.

Solomon Maxwell

Solomon Maxwell was born in 1742 on board ship enroute to America from Ireland. His family settled in the village of Christiana in New Castle County, where he lived for much of his life and carried on his occupation as a merchant. He possessed wharves on the Christina in Christiana, which was then a trade center for the County. Scharf records that he owned an Inn in Christiana, as

The Honorable Clarence W. Taylor is a student of history and genealogy, well qualified by research and inclination to write of the 18th century figures portrayed in the accompanying article. Judge Taylor's ancestry is an interesting one: in 1634 one forebear sat in the "General Court" (legislature) of the Massachusetts Bay Colony. Another owned land near Dover that eventually became part of the plantation acquired by John Dickinson's father. Judge Taylor has long been active in the Sons of the American Revolution and has recently joined the Society of Colonial Wars. He has been a Judge of the Superior Court of the State of Delaware since 1972.

The happy collaboration between Judge Clarence Taylor and Kevin Healy began with the latter's selection by the Ruby R. Vail Foundation Judicial Clerkship Committee to serve as Judge Taylor's law clerk. It's appropriate to this pleasantly insular celebration of distinguished locals, that Healy is very much a native Delawarean, a graduate of Archmere, the University of Delaware, and the Delaware Law School. He is now an Associate with the Wilmington firm of Prickett, Jones, Elliott, Kristol & Schnee.

Edward W. Cooch, Jr., is the son of former Lt. Governor Edward W. Cooch. Reared at the family home at Cooch's Bridge, where he now lives, he is of the seventh generation of this family to occupy that home, which overlooks the site of the Battle of Cooch's Bridge, the only Revolutionary battle on Delaware soil.

His service to his community and State is exemplary. A former President and Director of the New Castle Historical Society, he has maintained a lifelong interest in Delaware history. He practices law in Wilmington as a senior member in the firm of Cooch and Taylor.

New Castle County Delegates
(Continued)

well as land in New Castle, St. George's and White Clay Creek Hundreds.

Maxwell married Elizabeth Cooch, the daughter of Thomas Cooch, Jr., who lived on Rappelye Farm near Hares Corner. They had five children, Solomon, Jr., George, Lydia, Sarah and Eliason.

His services include Receiver of Supplies for New Castle County in 1778, and membership in the House of Representatives at Dover in 1791. A letter to Caesar Rodney dated August 11, 1780 indicates he was the "Superintendent of Stores." He was a delegate from New Castle County to the convention in Dover, April 19, 1798, and is buried on the side of Iron Hill in the Welsh Tract Baptist Church cemetery.

Thomas Wattson

Thomas Wattson, a delegate from New Castle County to the convention at Dover to ratify the United States Constitution December 7, 1787, was born in Pencader Hundred, New Castle County, Delaware, in 1737, the son of John Wattson. He and his wife, Susanna, had five children, Lewis, John, Sarah, Mary and Susanna. He lived throughout his life in Pencader Hundred as a farmer. His property was extensively damaged by the British in 1777, at the time of the Battle of Cooch's Bridge.

In 1777, Wattson was named Captain of the First Company of Militia from Iron Hill and was attached to Colonel Samuel Patterson's Second Battalion. He was commissioned Major in the Delaware Militia September 3, 1778. His services also include two terms as Justice of the Peace in 1788 and 1790.

Wattson died at his home near Iron Hill December 16, 1792, and is buried in the churchyard of the Welsh Tract Baptist Church on Iron Hill. ■

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Joseph Barker

Joseph Barker of East Dover and Mispillion Hundred was born on June 10, 1754. He was the eldest of the four children of Samuel and Rachel (Ball) Barker. He served with distinction during the Revolutionary War as the captain of the "General Montgomery," a gunboat with fourteen guns.

At the time of the Ratification Barker was thirty-three years old. He was a successful general merchant, who sold farming equipment and produce at his Little Creek store. In 1791 he became a substantial landowner when he bought 583 acres of land in Mispillion Hundred at a sheriff's sale. The land was once part of the larger tract owned by Caesar Rodney and know as "Byefield".

By a statute enacted January 19, 1791, Barker was appointed along with four other Kent Countians to "judge the fitness" of the first courthouse and prison to be built at Georgetown. The courthouse was to be built of wood, and the prison was to be built of brick or stone. Later that year, he was elected to the House of Representatives. Under the Delaware Constitutions of 1776 and 1792, members of the House of Representatives were chosen annually. Barker served three terms in the House beginning in 1791, 1797, and 1798.

Barker first married Mary Collins, daughter of Thomas Collins, president of Delaware from October 17, 1786 until his death in March 1789. Mary's untimely death in 1795 was occasioned, according to her epitaph, "by taking Peruvian bark, adulterated with litharge, which was purchased of an apothecary in Wilmington."

Barker was married in 1797 to Agnes Sipple. She died that same year. His third marriage—to Margaret Laws in 1799—was celebrated by an elegant wedding in Dover. John Fisher, Esquire afterwards wrote to Caesar Rodney about the wedding and concluded, "I left them happy at Murderkill." This marriage lasted until Margaret's death in 1819.

For the last six years of his life, Barker was a widower. Upon his death at the age of 71 in 1825, Barker—although a Methodist—was buried in the graveyard of Old Swedes in Wilmington. The inventory of his possessions included pictures of George Washington and Thomas Jefferson. Included among the lands he once owned was what is still known in Kent County as "Barkers Landing" on the North Murderkill River.

Daniel Cummins

The news in late November of 1787 that Daniel Cummins, Sr. had been elected by the people of Kent County to be a delegate to the State Convention in Dover came as no surprise to the inhabitants of Duck Creek Hundred. By then the Cummins name was well known throughout Kent and to travelers from New Castle and Sussex Counties. Daniel's father, Timothy, over his lifetime in Dover, had been a hatmaker, a plantation owner, and, in his later years, a successful innkeeper. Timothy was a man of property and prominence.

Daniel, now fifty-one and the only son of Timothy and Agnes Cummins, had, in the forty years since his father's death, carried on the same pursuits as his father—hatmaking, farming, and innkeeping, though in different locales, first on the eastern shore of Maryland and later in Kent County in the region of Duck Creek Cross Roads. Daniel had seen an opportunity there for the same kind of endeavors that his father had successfully pursued in the central part of the County at Dover.

In early December, 1787, as Daniel made the fifteen-mile trip from his inn at Duck Creek Cross Roads to Dover and the Golden Fleece Tavern, he must have realized that in a very real sense he was going home: his destination had once been his father's inn and Daniel's place of birth and childhood home.

Perhaps in his mind's eye, Daniel saw himself once again a little boy living on the Public Square in Dover with his father and mother and his two sisters during a time of happiness, free of care or want. When Daniel was less than three years old his father had made him an owner of property in his own name—nearly an acre of land within the town, adjacent to Church Square and the family place of worship, Christ Church.

But Daniel's and his sisters' prospects for living out their lives in Dover and Daniel's for succeeding to his father's business ventures were abruptly ended on Timothy's death in 1746. Daniel was then not yet ten. And all hope for continuing that serene and comfortable life ended the following year with the death of his mother and his younger sister.

An orphan, Daniel was eventually forced to leave his home in Dover and to start life anew with relatives near Church Hill in Queen Anne's County, Maryland. However, the income from their father's estate enabled the orphans' relatives and the guardians of their considerable property to continue Daniel's formal schooling to completion when he was seventeen. Daniel then chose his father's trade of hatmaker as his initial occupation in Church Hill.

At the age of twenty Daniel married Francis Wells, seventeen, at St. Luke's Church in Church Hill. They later returned briefly to Dover. Daniel had in mind continuing his trade as a hatter in his father's former shop on the Square. But the following year Daniel and his sister sold all their landholdings in and around Dover, including the tavern and

In the photograph accompanying Vice Chancellor Hartnett's article on delegate Richard Bassett, supra, *he appeared with Justice Horsey, Judge Ridgely, and a portrait of their distinguished collateral kinsman, Chancellor Nicholas Ridgely (the Younger). In this photograph they appear again, minus the Chancellor, and joined by Judge Ridgely's father, Henry J. Ridgely, Esquire. They are seen standing beneath a portrait of their ancestress, Mary Ridgely, wife of Nicholas Ridgely (the Elder). Obviously the authors of the adjoining article are very much Kent Countians, by ancestry, residence, and their services to law and government. It would be difficult to find better qualified biographers than these.*
Photography by Albert C. Johns.

Kent County Delegates
(Continued)

home on the Public Square (now known as The Green). He and Francis returned to Queen Anne's County, where Daniel purchased a tract of land of more than a thousand acres near the Chester River for the purpose of growing tobacco. He named it "Cummins-Beginning". For some twelve to fifteen years Daniel and his young family remained there while he pursued his dual occupations of hatter and tobacco grower.

As early as 1771 Daniel, then thirty-five, began to think of selling off his Maryland holdings and of moving back to Delaware because of the "declining profitability of tobacco culture...as lands wôre out." But the move was delayed by the continuing warfare with the British until the threat to the Peninsula was ended by the British evacuation of Philadelphia in 1778. It was not until 1779 that Daniel purchased land for a proposed tavern "near said Cross Roads in Duck Creek Hundred" from Captain Allen McLane* of Dover. Daniel and Francis then moved their family of seven surviving children back to Delaware.

The inn prospered and Daniel acquired other tracts of land in the Duck Creek area, including several farms and properties within the town proper.

In 1784 shortly after his wife gave birth to their eleventh child, both mother and child died of complications from childbirth, leaving Daniel with five of his eight children still minors. The following year Daniel married Mary Barrow of Smyrna.

Daniel, always a religious man, had for many years been a prominent Anglican. A member of the vestry of St. Peter's Church in Duck Creek Cross Roads, he had been one of the original members of the Building Committee. He had, however, grown increasingly uncomfortable with the Church of England, particularly after the Revolution. He had found the Methodist service more to his liking. He ultimately became a member of the Methodist Society, but without severing his connection with St. Peter's.

There is a story that Daniel once "became so concerned about religion during a revival meeting that early one morning he created excitement by bringing all the liquor from the cellar and bar in his Inn and pouring it into the gutter on Methodist Street." While Daniel Cummings was a man of property, he placed things spiritual above things temporal. Thus, he made the following entry in the flyleaf of his Bible:

Daniel Cummins, his book, God give him grace here in to Look, but not to Look but understand for learning is better than House & Lands.

Daniel was also concerned with the plight of blacks born into slavery. Although he owned slaves, he made plans for their eventual freedom. Thus, a notation in his records of ownership of slaves that the thirteen children born to slaves owned by him were to be "free att twenty and three years of age."

In Daniel Cummins, Sr., delegate from Duck Creek Cross Roads to the State Convention in Dover, the people of the Delaware State had chosen an educated and successful man of the times who did not permit his material successes to divert him from his search for a fuller spiritual life.

The principal source of the material in this profile, including all quotations, is an unpublished manuscript, "The Descendants of Timothy Cummins, Sr. of Kent County, Delaware," by Francis D. Cummins, edited by Dr. Harold B. Hancock. Other sources: Ms. Susanne N. Fox, Assistant Professor of History, Wesley College; Mr. James B. Jackson, and his research on the history of the Golden Fleece Tavern (q.u. infra); and Miss Joanne A. Mattern, Deputy State Archivist, Division of Historical and Cultural Affairs.

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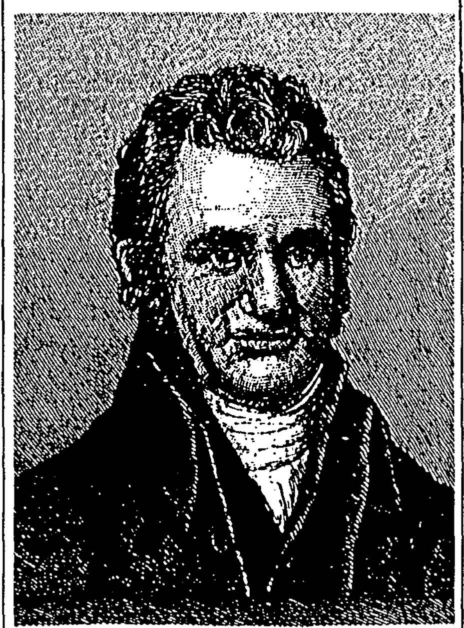
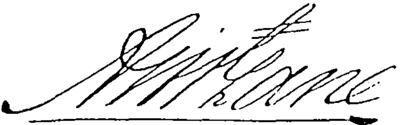
*See immediately following profile.





Allen McLane

Allen McLane was born August 8, 1746 near Philadelphia, the son of a Scottish immigrant from the Island of Coll. In his early years he learned the trade of his father: leather-britches maker and skinner. In 1770 he married Rebecca Wells, the daughter of the Sheriff of Kent County. Of this marriage there were 14 children, of whom 3 survived. In 1772 he bought five acres of land at Duck Creek Cross Roads where he continued to ply his trade.

In September 1775 he was appointed a Lieutenant of the "Battalion of Foot Militia" raised in northern Kent County. His commanding officer was Caesar Rodney. McLane fought in the Battle of Great Bridge outside Norfolk, Virginia, in the Battle of Long Island, at White Plains, Trenton, Princeton, Valley Forge, Stoney Point and Paulus Hook, and Yorktown. There was even a naval interlude when in 1781 he sailed to Haiti as commander of marines on the privateer Congress. It rankled McLane that the opportunity for daring adventures and independent action worked against promotion. He commanded small partisan companies often attached to larger units.

After the war McLane settled in Smyrna. In 1785 he entered politics and was chosen to serve as Justice of the Peace. In that year he was also elected to the House of Assembly. In 1788 he was elected to the Privy Council, where he served for six years. For many years Colonel McLane was a Judge of the Court of Common Pleas, and in 1793 he was elected Chief Justice. In 1797 the Office of the Collector of Customs fell vacant, and former Senator Bassett recommended his fellow Methodist, McLane, for the position, to which President Washington appointed him.

McLane died in 1829. His eighth child, Louis, became minister to Great Britain, U.S. Secretary of State, and U.S. Secretary of the Treasury.

There were few men of his time who had served their state and nation as well as Allen McLane. His spirit and dedication to military affairs and public service had little equal.

George Manlove

George Manlove of Mispillion Hundred was one of four children of Captain Mathew Manlove and his wife, Sarah. Captain Manlove served with Colonel Samuel Patterson's "Flying Camp" Regiment in the Revolutionary War.

George Manlove became a prosperous Kent County farmer. He grew barley, wheat, and Indian corn, and his livestock included an assortment of pigs, goats, sheep, and cows.

On September 5, 1793 the President of Delaware, Joshua Clayton, appointed Manlove a Justice of the Peace for Kent County for a seven-year term. Manlove died in 1799 in the sixth year of his term. Under his will, his holdings passed to his children, and he freed each of his five slaves upon their respective twenty-eighth birthdays.

Nicholas Ridgely (The Younger)

Nicholas Ridgely of Dover was surely the delegate most surprised at his election to debate the merits of the proposed Federal Constitution. Who would have expected the cautious freeholders of Kent to repose such responsibility in an inexperienced young man of twenty-five, only admitted to practice law the same year? Nicholas would have been the first to recognize that he owed his selection to the reputation of his father, Charles, and his grandfather, Nicholas.

The electorate of Kent had voted the name, more than the man, on simple intuition that the well-schooled and serious young lawyer would match the judgment and civic sense of his forebears and of fellow delegates more than twice his age.

What was equally remarkable about the public trust reposed in Nicholas was that the Ridgelys were relative newcomers to the Delaware State. Though Nicholas was of the third Ridgely generation to render public service in Kent over a span of nearly fifty years, he was the first native-born Delawarean Ridgely. His father, Charles, was born in New Jersey and his grandfather, Nicholas, in Maryland.

Nicholas the Elder had come to Dover in a curious and roundabout way via New Castle, southern New Jersey, and then Duck Creek.[1] In 1735, while in New Castle, the elder Nicholas had achieved prominence when, as foreman of a Grand Jury, he signed a petition of protest to George II. It was directed against the King's grant of a charter to Lord Baltimore that would have abrogated the rights of the Penn family in the Three Lower Counties.[2]

Nicholas the Elder was forty-six by the time he and Mary, her children, Mary and John Vining, and their infant, Charles Ridgely (father of delegate Nicholas), settled in Dover. Nicholas was without doubt well-educated, and he took great interest in seeing that the next generation of Ridgelys and their close friends were given the same opportunity. When Caesar Rodney was orphaned at fourteen in 1745, he chose Nicholas Ridgely to be guardian of his property and person and to oversee his education. In 1751, when his son reached thirteen, Nicholas sent Charles off to Philadelphia for seven years to complete his education. There Charles lived with

Kent County Delegates
(Continued)

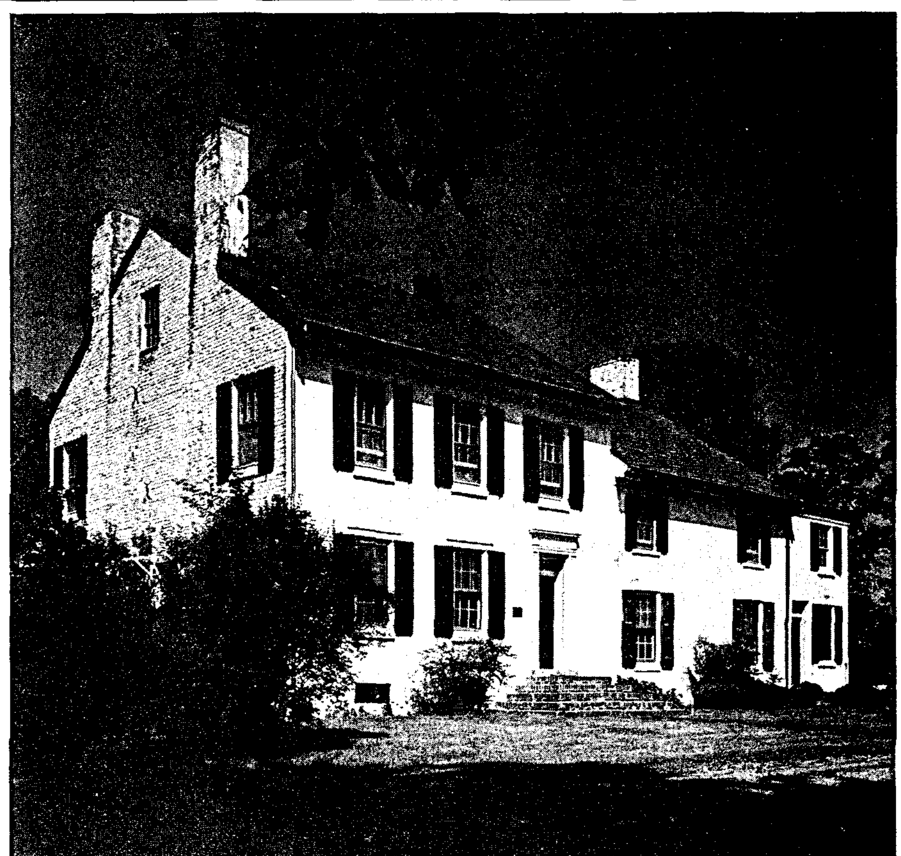
relatives while attending the "Academy in Philadelphia"; and later, medical school. However, Nicholas took care to ensure that his son, while away from home, was in the best of hands.[3] Nicholas also undertook the education of his stepson, John Vining. Thus Nicholas played a role in the education of three outstanding Delaware citizens over the period from colony status to independence. Though not apparently trained in the law, Nicholas the Elder, in addition to holding numerous public offices in the government of Kent County, served as a Judge of the Supreme Court of the Three Lower Counties on the Delaware from 1746 until his death in 1755.

By then Charles was a youth of seventeen studying medicine in Philadelphia. He would not return to Dover to live and practice medicine until 1758. Three years later, in 1761, Charles married Mary Wynkoop, age sixteen, of Sussex County. In the following year, 1762, young Nicholas was born at Eden Hill, the family plantation that his grandparents had purchased in 1748 and where they built a mansion house that remains in the family to this date.

In 1767, when Nicholas was only five, his father and mother left Eden Hill and moved into a house on the north side of the Public Square in Dover. The house was next to French Battell's inn known as "The Sign of the Golden Fleece". It was there that Nicholas, twenty years later, would perform his first major act of public service.

Five years later, in 1772, when Nicholas was only ten, his mother died. The measure of Charles's grief over the loss of his wife, the mother of his five children, is revealed in a description ot Mary penned by Charles shortly after her death. To preserve her image, Charles commissioned Charles Willson Peale in 1773 to paint a posthumous portrait of Mary.[4] By then young Nicholas's classical education was well underway and he was reading Latin at a time when his brothers were reading English.

Two years later Charles remarried, taking as his second wife Ann Moore of Chester County, Pennsylvania. By all accounts a highly educated woman of great intellect and cultivation, Ann Moore saw to it that her stepson, Nicholas, received the same love, affection, and education that she would give the five children of her marriage to Charles.[5]



"Eden Hill", childhood home of Nicholas Ridgely. Photograph courtesy of Delaware State Archives.

In 1765, when Nicholas was barely three, his father was first elected to the colonial General Assembly, and he was periodically reelected until 1776. When Nicholas was twelve his father was appointed a member of the Convention called in 1774 to elect delegates to the First Continental Congress. In the same year he was appointed Presiding Judge of the Court of Common Pleas and Orphans Court in Kent County. In 1776, when Nicholas was fourteen, his father was elected delegate to the first State Constitutional Convention in New Castle.

However, his father Charles's interests extended into fields of learning far beyond medicine and politics. Charles was an active member for many years of the American Philosophical Society of Philadelphia.[6] So, too, it seems that Nicholas inherited his father's desire to become a man of general learning before becoming a skilled professional.

Again, available records do not reveal when he undertook to study law, but presumably it was shortly after his eighteenth birthday.[7] It seems likely that Nicholas's studies began in Kent in the office of a member of the Delaware Bar, but it is established that Nicholas completed them in Cambridge, Maryland in the office of Robert Goldsborough, Esquire. In this manner, Nicholas "read law" for more than four years before going into practice.

Following the convention, Nicholas continued to show interest in government by becoming a candidate and being elected to the Council [Senate] of the General Assembly for the term 1788-1791. In the year 1791, he was appointed Attorney General of the State—an office he held for ten years. During that same year he was elected as a delegate from Kent County to the convention that framed the Delaware Constitution of 1792. Although perhaps the youngest delegate, he was described in the Delaware Register of 1838 as having "decidedly high standing in the deliberations of that body" and as "among its most efficient members."

Nicholas was elected as a Representative from Kent County in 1792. The proceedings of the General Assembly reveal that he was active in drawing laws. He was repeatedly returned to office.

In 1801 Nicholas resigned from the General Assembly and the Attorney Generalship to become the second Chancellor. The Court of Chancery had

come into being under the Constitution of 1792. His predecessor, William Killen, was nearly eighty years old at his retirement, and there were few precedents to guide Nicholas. Chancellor Ridgely established rules of court, forms of practice, and general principles for the Court. He took voluminous notes of the cases argued before him. Five quarto volumes totalling 2,870 pages digest his Chancery cases between 1814 and 1830. They have been published in *Delaware Cases 1792-1830,* edited by Daniel J. Boorstin. William Huffington wrote an article for *The Delaware Register* in 1838, which described Chancellor Ridgely's judicial temperament and style as follows:

He heard, with patient attention, the arguments of counsel; and the youngest member of the bar approached him with confidence; for he well knew that his most imperfect efforts would not be wholly disregarded, but would be viewed with all the favor which could be reasonably expected. Being himself well-versed in a knowledge of his profession, Mr. Ridgely was always unwilling to proceed to the final determination of a cause, until the counsel on both sides had exhausted every argument and produced every allowed precedent which could be brought to bear upon the case, and, when not satisfied that this had been done, he would set down the case for reargument. When he gave his opinion, he never failed to notice all the points made in the cause by the contending solicitors, and their applicability, or the want of it, to the case under consideration; and he often produced well authenticated principles and cases, bearing upon the subject, which had been neglected or overlooked by counsel in the argument,—in support of his decision. It was ever his anxious wish to convince all parties that his opinions and decrees were formed, with reference only to the principles of justice and equity. He was a just judge and an upright man; kind and complacent to all who had a right, and asked his interposition as a judge for redress of injury, or protection of property or personal liberty; but stern and inflexible to all appeals having a tendency toward injustice or oppression.

In 1806, Chancellor Ridgely at age 44 decided to marry Mary Brereton, who had been his housekeeper for a considerable time. He explained in a letter to Ann Moore Ridgely, his stepmother, that he chose Mary because "she is industrious, careful and skillful in every domestic Oeconomy, and is a perfectly good housewife; and because her Habits and Disposition entirely suit my own." The Chancellor's correspondence with Mary while in New Castle or Georgetown on judicial business revealed the closeness of their relationship. On August 26, 1806, he wrote to Mary at ten o'clock at night from New Castle:

I have just left the Court, eaten my Supper, and come into my Room to go to Bed; but the Moment I sat down I took your Letter from my Pocket to give it a third reading. I heartily thank you for it. It is particularly pleasing to me because it assures me of your Health, and of the Health of the Family except your Eyes. Without spectacles you may remove the Inflammation. Sew less, use cold Water, & spare your Eyes, and they will soon get well. I think I can hardly indulge you with Spectacles. What, Spectacles in three Months after Marriage! O my Love, if you

[1]No one knows why Nicholas's grandfather (the first of the Delaware Ridgelys), a member of an affluent Annapolis family, and a widower with five young children, would leave Maryland in 1722 and cross into Delaware to live in New Castle. Religion may have played a role, but matters of heart and hearth may have dominated. In 1723 he married Ann French Gordon of New Castle. After she died in the tenth year of their marriage, Nicholas crossed the Delaware to Salem, New Jersey where in 1736 he married (for the third and last time) Mary Middleton Vining, daughter of Judge Hugh Middleton and recent widow of Captain Benjamin Vining. Young, attractive, and well-to-do, Mary was the mother of two young children, Mary and John Vining. In 1764 John became first Chief Justice of Delaware, that is, the then Three Lower Counties of Pennsylvania on the Delaware. In 1738 Mary gave birth to Charles Greenbury Ridgely from whom the authors of this article are descended.

[2]The Ridgelys may have had strong feelings about the Church of Rome's influence in government. The elder Nicholas's grandfather, Colonel Henry Ridgely (the first Ridgely to settle in Maryland in 1659), had in the late 1690s, while serving as a member of the Maryland General Assembly, signed "an 'Address of Thanks' to their Majesties for sending them a Protestant Governor in 1692."

[3]John Dickinson, then living in Philadelphia, responding to a letter from Nicholas Ridgely informing him that his son Charles would be living in Philadelphia, wrote, in September 1751: "[I am] oblig'd to you for the Confidence you are so good as to Repose in me; Every thing Sir, in my Power to do for Master Charles you may Depend on, any services I can do for you in this Place, shall be perform'd with the Greatest Pleasure." Charles was said to be one of the earliest students of the Academy, recently founded by Dr. Benjamin Franklin and which was later to become the University of Pennsylvania.

[4]Two hundred years later, the Peale portrait, in the same family setting, reflects the serene beauty of young Nicholas's mother, of whom his father in the closing words of his eulogy, wrote "her lovely Countenance [as] unclouded with a Frown in Life, so in Death it fell into a pleasing Smile."

[5]Ann's parents, William and Williamina Moore, were the owners of a 1200 acre estate in Chester County known as "Moore Hall." Ann's father, the son of the Collector of the Port of Philadelphia, was an ardent Tory who had been educated in England at Oxford. "[M]ost vehement in his disapproval of any attempt on the part of the Colonies to separate from the mother country," he nevertheless permitted soldiers of Washington's Army at Valley Forge to be quartered at his home. There is a story that a party of American soldiers discovered in the house "a most beautifully wrought sword, the handle of which was inlaid with gold, silver and precious stones. They were about to make off with it, when Judge Moore asked permission to have a last look at the prized heirloom. No sooner had he taken it in his fingers than he snapped the blade from the handle. Holding the hilt tightly in his right hand, he threw the useless blade at the feet of the leader of the party. 'There,' he cried, with flashing eyes, 'take that if you want to fight, but you shall not rob me of my plate!'" Genealogy, "Records of the Ridgely and Moore Families From Their First Arrival in America—1658..." presented by Mary Tilden Ridgely to Amy E. DuPont, February 26, 1897.

[6]Dr. Whitfield J. Bell, Jr., Director of The Library Company of Philadelphia, in a 1965 essay, "Patriotic Improvers: Early Delaware Members of the American Philosophical Society," described the Society, founded by Benjamin Franklin, as an institution of learning that provided a means of discourse and interchange of thoughts between men of Pennsylvania, New Jersey, Delaware, and Maryland, having widespread interests from agricultural improvements to astronomical calculations and meterological records. The Delawareans active in the Society before the Revolution were: Dr. Charles Ridgely; William Poole (a miller by trade and a philosopher by avocation); The Reverend Matthew Wilson of Lewes; Colonel John Jones of Sussex County; Dr. George Monro of New Castle; and Dr. Nicholas Way of Wilmington. Dr. Bell states, "Curious about nature and eager to discover its secrets, the American philosophers had also a sense of American destiny and were resolved to do all they could to advance the nation's future. Their motives were not narrow, exclusive, or nationalistic.... They were philosophers because they loved knowledge, and patriots because they loved mankind; and they saw no conflict between the objects of their affections." Volume XI, *Delaware History Magazine,* published by Historical Society of Delaware, pp. 195-207.

[7]Stepmother Ann Moore, in one of her letters of advice to her son, Henry Moore, states, "[Y]our brother...studied much longer [than four years] and did *not* begin to practice till he was 23 years old," that is, about the beginning of 1786. *Calendar of Ridgely Family Letters, supra,* page 64.

"Somerville", home of Chancellor Nicholas Ridgely. Delaware State Archives photo.

Kent County Delegates
(Continued)

have got so old, so soon, what will you be in three Years? I kiss you, and bid you adieu for to-night...

Nicholas's devotion to Mary did not wane with time. Twenty-one years later, he wrote to her:

My dearest love, I shall write you a letter short and sweet, for I really have nothing to say to you but to express my oft repeated tale of love and to gratify you and my self by its repetition.

When I write to you, I seem to be talking to you and when I talk to you, no subject can be more pleasing than to review for the first to the present day, those scenes of rapture and delight which have sweetened our days and nights.

I can and do love you as sincerely and with as much affection and constancy as ever. But enough of this matter until I embrace you in my arms.

Chancellor Ridgely died at an inn in Georgetown on April 1, 1830 at the age of 67 after hearing a case in the Orphan's Court until eight o'clock in the evening. The Chancellor was buried at Christ Church in Dover, where a plain marble slab over his grave notes his age and the fact of his death while in the discharge of his official duties.

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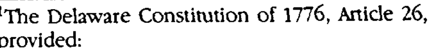
Richard E. Smith

Richard Smith* was a large and influential landowner of Kent County owning in excess of 1,000 acres. He had working farms in three Hundreds: Dover, Murderkill, and West Dover. Smith is reported to have owned a large number of slaves whom he used to till his land.[1] Smith was also a blacksmith and may have owned more than one blacksmith shop in the Dover area.

Smith served as a Justice of the Peace by appointment in 1771, 1774, and 1775. In 1777 he became a Justice of the Court of Common Pleas, and the year following the Ratification Convention he was appointed Chief Justice of the Court of Common Pleas and Orphans Court. Smith continued to serve as a Justice of that Court at least through 1782 and had aspirations for the General Assembly.

Smith died testate in February 1790, a wealthy man. He left to survive him his wife Sara, seven sons, and three daughters. By his Will he granted freedom to some of his slaves, and his Will also takes note of the fact that he was a very generous and kind man to his slaves. His Executors were Nicholas Ridgely and Joshua Fisher, Esquires.



[1]The Delaware Constitution of 1776, Article 26, provided:

Art. 26. No person hereafter imported into this state from Africa ought to be held in slavery under any pretense whatever, and no Negro, Indian or Mulatto slave, ought to be brought into this state for sale from any part of the world.

**The sources for the material in this profile are: Dr. Harold B. Hancock; Division of Historical and Cultural Affairs; Historical Society of Delaware; Calendar of Kent County, Delaware, Probate Records; Public Archives Commission, 1944.*

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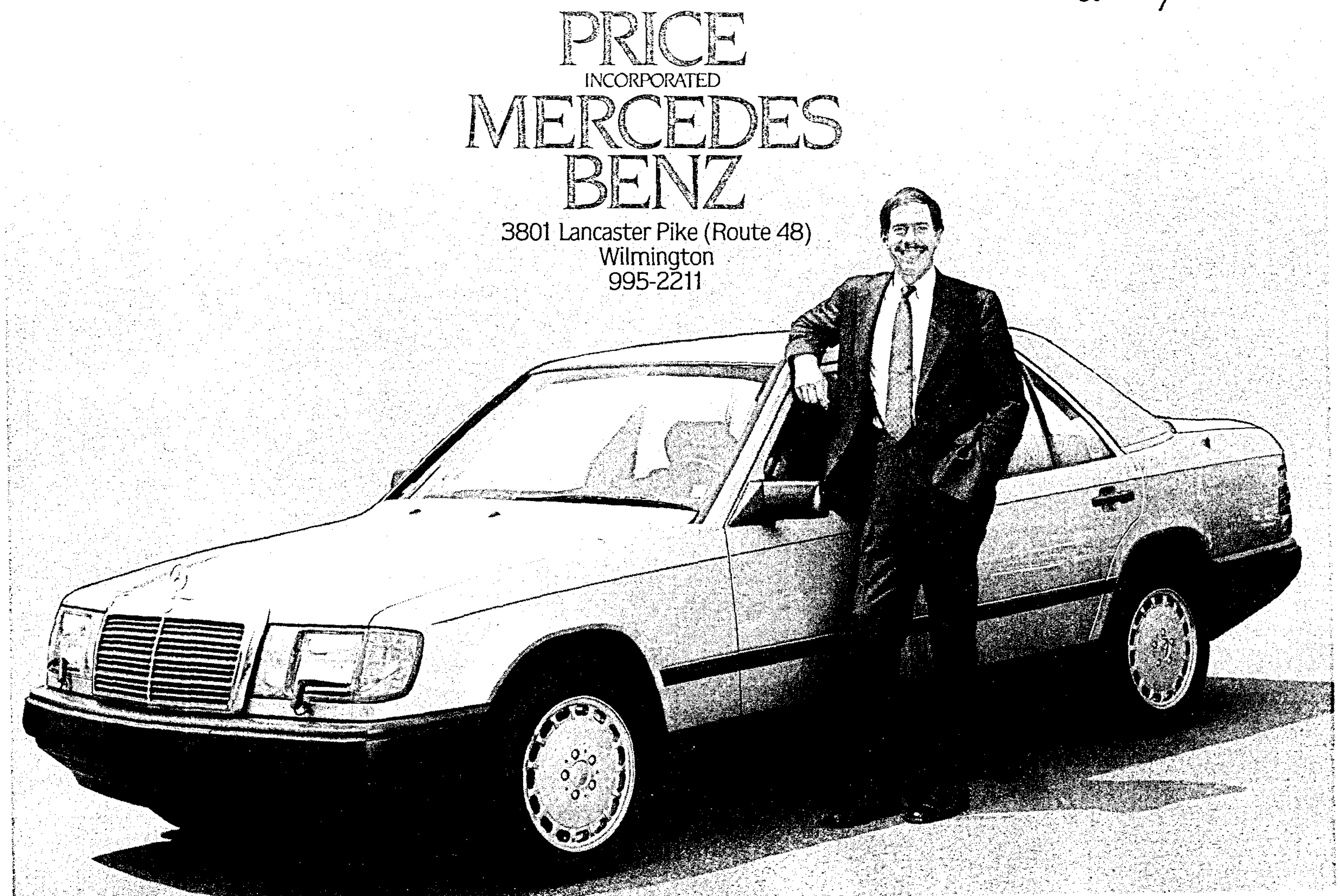

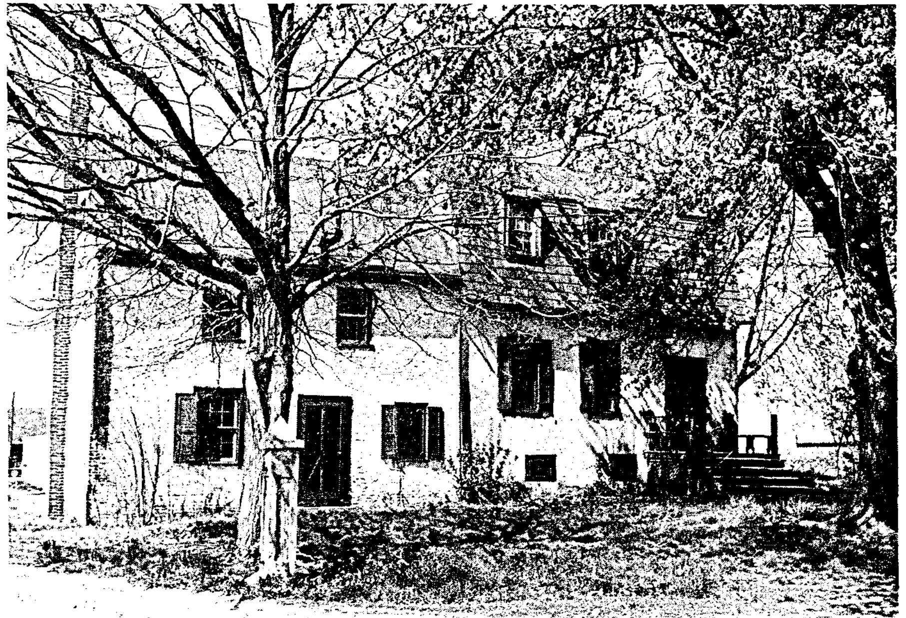

Top, portrait of James Sykes. Bottom, Sykes's home Tinhead Court on the farm of Ernest Zimmerman. Photographs from the Delaware State Archives.

Kent County Delegates
(Continued)

James Sykes

James Sykes was a native of Kent County, who by 1787 had made his mark in Kent as a citizen soldier, lawyer, judge, patriot, and politician. Born in 1725 near Dover, James Sykes bore the name of his father, an influential Anglican minister and politician, formerly of New Castle. James's father had served as a member of the Assembly of the Lower Three Counties upon Delaware as a delegate from New Castle County.

Little is known of Sykes's youth and career before thirty, but one must assume from his varied pursuits as an adult that he was well schooled for the times. By the age of thirty he had been twice widowed. His first marriage to Mary Shannon, the granddaughter of an affluent landowner, Robert French, was short-lived. However, a daughter, Mary, was born of the marriage, and, upon his wife's death, Sykes inherited his wife's one-half undivided interest in a tract of land known as "Tyn Head Court." The land, advantageously situated east of Dover and west of Little Creek Landing, comprised some 570 acres of exceptionally fertile land. Proximity to Little Creek for shipping also gave the land a high value—more than three times that of farmland west of Dover. There still remains on this land a portion of the "two-storey-and-attic house...built by 1740, or possibly earlier" that carries the name "Tyn Head Court."[1] While it has not been verified, it seems likely that Sykes's daughter Mary was born in this house and that it remained his primary country residence following his wife's death. Sykes retained this property throughout his life and upon his death in 1792, title passed to Mary, who was then Mrs. John Wethered.

James's misfortune in marriage had not ended. At the age of twenty-seven he married Elizabeth Carpenter Wright, but she, too, died an untimely death without issue. In 1759 Sykes wedded Agnes Bell. The marriage lasted for the remainder of his life. Six children, four sons and two daughters, were born of that marriage.[2]

Three years earlier, in 1756, Sykes had been commissioned a Lieutenant in the Dover Hundred Militia of Kent County, commanded by Caesar Rodney. In 1764

Sykes received his first judicial appointment as one of four Justices of the Court of Common Pleas for Kent County. (Others appointed were Caesar Rodney and Dr. Charles Ridgely.) Over the following eight years Sykes was periodically reappointed to that position. In 1771 he was appointed Justice of the Peace Court in Kent and was reappointed in 1774.

Growing unrest over Parliament's treatment of the Colonies turned Sykes's attention from the law to matters politic. In 1774 he joined the "Boston Relief Committee," which included Caesar Rodney, Charles Ridgely, Richard Bassett, Thomas Collins, John Haslett, and William Killen (later to become the first Delaware Chancellor). The Committee, much like a similar Committee in New Castle County, was formed to protest Parliament's closing of the Port of Boston in March 1774 in reprisal for the Boston Tea Party. The Committee sought a middle ground of loyalty to the King while expressing outrage at the oppressive response of Parliament.

In 1775 Sykes became a member of the "Committee of Correspondence," protesting the "Suppression of the Press" by the British. In the same year, he was elected a member and Secretary of the "Council of Safety". The Council's purpose was to raise and organize nine battalions of militia through the three counties. In 1776 Sykes was elected a Kent County delegate to the "Convention of the Delaware State" in New Castle. The Convention was called to adopt the State's first constitution and to raise further troops to join the Continental Army in its campaign in New York.

Later in 1776, following the Declaration of Independence and the formation of the Delaware State under the first Delaware Constitution, Sykes was elected to the legislative Council and to the Continental Congress. The Council together with the "House of Assembly" constituted the "General Assembly of Delaware." The Council consisted of nine members, three from each county, elected for a term of three years. The same year Sykes was selected as a Justice of the Supreme Court of Delaware, but he declined appointment. The supposition is that Sykes preferred to be a Justice of the Court of Common Pleas, perhaps because of its jurisdiction over equity matters. Another reason may be Sykes's appointment at that time as a delegate to Congress in place of an elected delegate who declined to serve.

George III. Will he save us from tyrannous Parliament?

He was a member of Congress from 1777 to 1778.

In 1776 Sykes also served on a committee of the legislative Council designated to design the State's "Great Seal". In two days, the members of this committee conceived what became "The Great Seal of the Delaware State" and later, the "Great Seal of the State of Delaware." With some stylistic changes, it has remained our State emblem for over 200 years. The original appears with Governor Castle's remarks at page 6.

[1]The tract received this intriguing name when it was purchased in 1681 by Griffith Jones and John Glover from "Christian, the Indian alias Peticoquewan, 'lord and owner of all the land between St. Jones's and Duck Creeks'." Their patent included all "Ryalltyes fishing, fowling, hawking, hunting" rights in "Tenhead Courtt." Eberlein and Hubbard, *Historic Houses and Buildings of Delaware*, p. 89 (1962).

[2]Their eldest child, also named James, achieved prominence as a physician, surgeon, and politician. In 1790 Dr. Sykes was appointed "project manager" in charge of construction of the State House on The Green. In 1801 Sykes, then President of the Senate, became Delaware's fifteenth governor upon the resignation of Governor Richard Bassett to become a Judge. Sykes's home in Dover was a fine Georgian building situate on the east side of The Green, adjacent to the State House. It was the former mansion of Chief Justice Benjamin Chew, and later, the home of John M. Clayton. The mansion remained a Dover landmark until it was destroyed under a "Hobson's Choice" given preservationists by the Delaware General Assembly at the turn of the century: As a concession to its original intent to destroy both the Old State House and the Chew Mansion, the Legislature decreed that one or the other must go to make room for a modern building. The preservationists, led by Mabel L. Ridgely, were thereby forced to choose the State House: and the Chew Mansion was demolished. The State House Annex building that replaced the Chew Mansion was later, in turn, redesigned and is now the Delaware Supreme Court Building.

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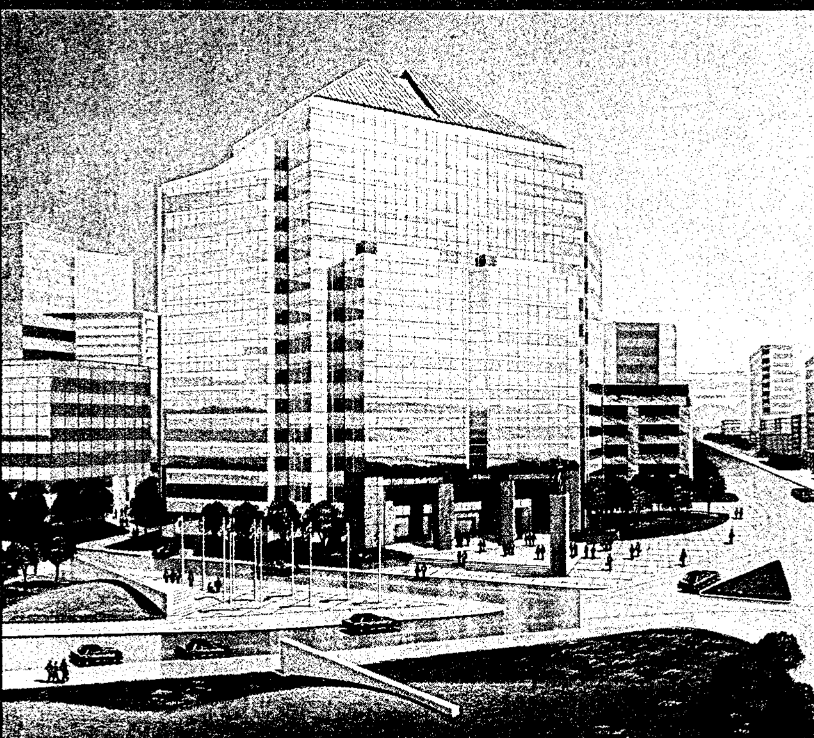

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Kent County Delegates
(Continued)

In 1777 Sykes was appointed Prothonotary and Clerk of the Peace for Kent County, both of which posts he held until he died. In 1780 he was again elected to the legislative Council, which in turn elected him to the Privy Council, thereby requiring him to give up his seat in the Legislature. Under the 1776 Constitution the President of The Delaware State was elected by the joint ballot of both Houses. Authority as chief executive was limited to those powers expressly conferred by the Constitution, and much of his authority was required to be shared with the Privy Council.

Following ratification Sykes continued to be active in matters of State. In 1790 he was elected a delegate to the State Constitutional Convention. In 1792 he was chosen to be one of the Delaware three presidential electors who voted in George Washington as President.

James Sykes died the following year at the age of sixty-eight and was buried in Christ Church graveyard in Dover. He left surviving him his widow, Agnes, and eight children. A grandson, George Sykes, A major General in the Army of the Republic, was the only native Delawarean to command a Union Army corps in the Civil War, and he played a prominent role in the Battle of Gettysburg.

An oil painting of James Sykes hangs in the office of Vice Chancellor Maurice A. Hartnett III in the Sykes Building at 45 The Green, Dover—the home of James's son. This portrait is a copy of an original portrait by Peale, the present location of which is unknown.

The sources for the material in this profile are: Dr. Harold B. Hancock; Division of Historical and Cultural Affairs; Ms. Susanne M. Fox, Assistant Professor of History, Wesley College: Volume I, Laws of Delaware; Calendar of Ridgely Family Letters, Volume I.

George Truitt

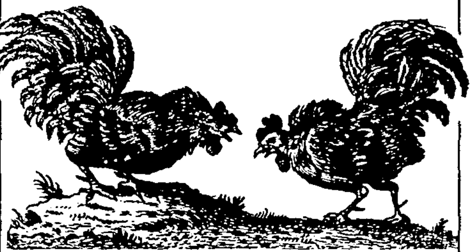
Governor George Truitt was born in 1756 near Felton. Little is known of his childhood or his family. He was a farmer with an active political career that culminated in his service as Governor from 1808 until 1811.

Truitt was thirty-one years old, married and the father of a seven-year-old daughter when he served in the Kent County delegation to the Ratification Convention. He was a member of the House of Representatives from 1788 until 1793. During his first year as a member Truitt and his wife acquired property in what is now Camden. The area was first known as Picadilly and later as Mifflin's Cross Roads. Truitt was the first to describe the area as Camden in a 1788 deed. The Truitts built a brick house in Camden located today at 12 South Main Street. They lived there until they moved in 1796 to their country home, which can be seen on the present Milford-Canterbury road.[1] The late Georgian style brick house has been nominated by the State for inclusion on the National Register of Historic Places.

Truitt reentered political life in 1806 when elected to the State Senate. As one of Delaware's Federalist leaders of the time, he was elected Governor in 1807. His three-year term ended January 5, 1811. As Governor, he foresaw the need to prepare for conflict with the British and he urged the General Assembly to revise the militia law.

The Delaware Constitution of 1792 precluded a Governor's holding office longer than three in any term of six years. Upon the expiration of his term, Truitt returned to private life. He lived on his farm until his death in 1818 at the age of sixty-two. His epitaph describes him:

This distinguished citizen, in the various public stations to which he was called by the voice of his Country, always evinced that probity and fidelity which belong to the soul of the genuine patriot; and his actions, as a public man, will live in the archives of Delaware, to attest to his usefulness, when this perishable marble shall have been mouldered into dust: As a man and citizen he was happy in possessing the esteem and confidence of a wide circle of acquaintances; and while society deplores his loss, as one of the worthiest of men, his family and friends, gratefully mindful of his virtues, mourn his departure, as the keen dispensation of Eternal Goodness.



[1]The area was once called Burberry's Berry, named after Samuel Burberry, who owned the land in 1683. In 1770 Captain Jonathan Caldwell purchased 400 acres of Burberry's Berry. Tradition says that Delaware soldiers received the name "Blue Hen's Chickens" from fighting game chickens brought by Captain Caldwell's men.

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Edward White

White, born February 1, 1731, was one of four children of John and Sarah White, who migrated to Kent County, Maryland, from Devonshire, England. His father acquired land in Dorchester County, Maryland. Upon his father's death in 1750, this land descended to Edward. This land was named "Calf Pasture".

The year after his father's death, White, then 20 years old, married Rachel Baynard. Their sons were William, Baynard, Thomas, Edward, and John.

In 1758 White enlarged his land holdings by acquiring 221 acres from a wealthy land owner named James Anderson. This land was called "Forest of Mispillion Hundred". In addition to growing wheat and corn, he raised cows, sheep, and oxen. He was also known as a tailor and a politician.

In 1778, Francis Asbury, greatest of the evangelists sent to America by John Wesley, refused to take an oath of loyalty to serve in the military if called to duty. This caused Francis Asbury to flee Kent County, Maryland, and remain in partial seclusion. Asbury was admitted to the home of Judge Thomas White, Edward's brother. Both Edward and Thomas became adherents of Methodism. The Judge's house was used as a meeting place.

Edward White served as a representative in the state assembly. Assembly records show that on October 30, 1782, on a motion by Mr. Charles Ridgely and Mr. Edward White, a bill was introduced to exclude members of the assembly from holding "Post of Profits" [two offices at the same time]. On January 22, 1783, White voted for the formation of a committee to prepare a bill to call in paper money of the state of Delaware, issued both before and after the revolution, and legislation to compel those persons who had mortgaged their lands in the General Loan offices either to renew or to discharge their mortgages. White supported legislation for tax collectors in each county. Subsequently he was selected as a delegate from Kent County to ratify the Federal Constitution.

At the time of his death on October 15, 1795, at the age of 64, Edward White was known as a quiet family man, land owner, craftsman, and politician, whose public service contributed to the making of a new America.

The authors gratefully acknowledge the research assistance of the U.S. History I students (1986) of Professor Sue Fox of Wesley College in Kent County, Dover, Delaware.

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The Untold Story Sussex County Delegates To The Ratification Convention

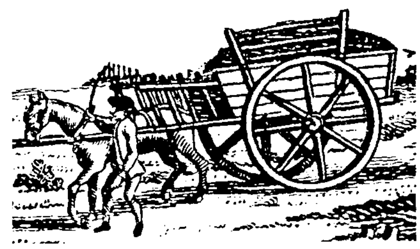
The Honorable Randy J. Holland and
The Honorable William B. Chandler III

The circumstances surrounding the arrival of the Sussex County delegates at the December 3, 1787 convention to ratify the Constitution of the United States can only be understood by putting many preceding events into perspective.

Colonial Sussex

Beginning in 1704, representatives from Sussex County began to meet at New Castle with representatives from Kent and New Castle Counties in separate legislative assembly for governmental purposes, even though William Penn continued to appoint the Governor. Previously, Delaware not only shared the same Governor with Pennsylvania, but was represented in a joint Delaware-Pennsylvania Assembly.

Most inhabitants of Sussex County in the colonial period were members of the middle class of varying degrees. At the top stood a few wealthy persons, and at the bottom there were slaves, free blacks, indentured servants, and tenants. Almost everyone was a farmer. As in the seventeenth century, Sussex County farmers were almost self-sufficient except for such items as coffee, tea, spices, hardware, and rum. Members of their own families and slaves provided most farm labor.



Eighteenth century Lewes, the county seat, was the only town in the County. In 1728 it contained 58 families. By 1780 the population of Lewes had risen to 100 families. Despite growth, all comments about the county seat were not favorable. A Philadelphia cleric, the Rev. Samuel Smith, wrote to the Society for the Propagation of the Gospel in 1786 recommending the transfer of the Rev. John Andrews of Lewes to another place because the swamps and mosquitoes made the location unhealthy. Since Andrews' arrival, he had been continuously ill. Smith believed that only a native "naturalized" to Sussex could survive. He thought the conditions in the Lewes area were similar to those in the swampy fens of Essex County, England.

The settlement of the boundary controversy between the Calverts and Penns prior to the American Revolution more than doubled the size of Sussex County. To the five hundreds in "Old Sussex" named Lewes and Rehoboth, Broadkill, Cedar Creek, Northwest Fork, and Indian River were added five hundreds in "New Sussex:" Baltimore, Dagsborough, Little Creek, Nanticoke, and Broad Creek. Agitation then began to move the county seat from Lewes to a more central location. Citizens complained that from the extreme south western corner of the County it was a journey of forty or fifty miles or two days to the county seat at Lewes.

Political and Commercial Unrest

Delaware welcomed total independence from Pennsylvania in 1776, but divided sharply on the issue of independence from Great Britain. Perhaps four-fifths of New Castle County favored independence, but half of Kent and four-fifths of Sussex were opposed to it. Sussex County continued to be out of step with the rest of the colony. The vote of the Delaware delegates in Congress reflected the split in the colony and forecast future political divisions between Sussex County and the rest of the State.

In May and June of 1778 the Whig-controlled legislature adopted acts denying political rights to those who refused to take oaths of allegiance to the State and confiscating Tory property. The State also suppressed Loyalist rebellions in 1778 and 1780. Despite such measures, the Tories gained strength, especially in Sussex County,

Economic grievances that had contributed to disorders in Sussex County such as the Black Camp insurrection continued after the Revolutionary War. Beginning in 1782, the inhabitants of Sussex County petitioned the General Assembly annually to issue more paper money to make the payment of debts easier. They complained that their families were in great want and that their properties were being sold at one-fourth, one-fifth, and even one-tenth of value to satisfy the claims of debtors. Many of the petition signers had participated in the Black Camp Rebellion.

The unrest in Sussex County was typical of that elsewhere in the nation. The states disagreed with the central government and with one another, just as Sussex disagreed with the other counties and the Delaware legislature. The need for change was apparent at both State and national levels.

The failure of the Articles of Confederation to provide for a strong central government became increasingly apparent in 1786. In June of that year the Delaware legislature answered Virginia's call for an Annapolis convention to deal with commercial problems and elected as delegates: Richard Bassett, Gunning Bedford, Jr., Jacob Broom, John Dickinson, and George Read. Sussex County

representation was conspicuously absent.

The report of the Annapolis Convention was laid before the Delaware House of Assembly on October 25, 1786, and on February 3, 1787, the Delaware legislature elected the *same* five delegates to the Philadelphia convention that it had sent to Annapolis. (Again no delegate from Sussex County.)

The Delaware House of Assembly, the lower House of the General Assembly, was eager to consider the report of the Philadelphia Constitutional Convention as soon as it would be available. On June 8, 1787 it adjourned until August, when it expected to consider the convention's recommendations. However, since the Constitutional Convention was still in session, the House adjourned again on August 29 to meet on September 30. It did not actually meet until October 20, the day set by the Delaware Constitution for the beginning of annual legislative sessions.

Turmoil and Violence Mark 1787 Sussex Elections

Sussex elections, marked by disturbances after the peace treaty ending the Revolutionary War was signed in 1783, were particularly violent in the fall of 1787 when two elections were necessary to satisfy the members of the General Assembly.

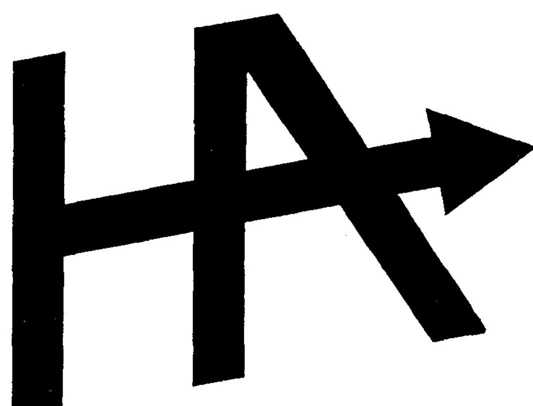
Although some of Sussex County's elected representatives were present when the Delaware legislature convened on October 20, the Sussex representatives were denied their seats because the House Committee on Elections and Privileges had reported that there were no election returns for Sussex and called for an investigation. Meanwhile, there was danger that the House would be unable to act because in 1776 it had adopted a rule that a quorum consisted of two-thirds of the twenty-one members. Thus, if the Sussex delegates were not seated, and if only one delegate from either New Castle or Kent was absent, the House would not have quorum and could not act legally, much less call a state convention to consider ratification of the new United States Constitution.

The House of Assembly received a report from the Committee on Elections and Privileges (Messrs. Porter, Davis, and Clayton) upon the failure of Sussex County to send its members to the House. The Committee reported:

That there is no return of members elected to serve as Representatives in Assembly from the County of Sussex; and as business of the utmost consequence to the Happiness, Prosperity, and Existence of this State, is now depending before the House, they suggest the necessity of conducting the same in such manner, as would be most conducive to unanimity and concord; and therefore conceive it necessary that an enquiry should be made why the returns of the Election, for the said County of Sussex, have not been transmitted to this House; or that measures be adopted to compel the sheriff of that County to make his returns, as speedily as possible, if an Election has been held; that the business of this State may be transacted with utmost strength, harmony, and expedition.

The House having approved the Committee's report, was resolved to summon the sheriff of Sussex County to explain, if an election had been held, why no return had been made to the House.

On Wednesday, October 24, a message of the same date had been received from President Collins in which he referred to several public letters lately



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Untold Story
(Continued)

received from the Federal Government in New York, which he was sending to the House of Assembly. They included a letter from the Secretary of Congress, Charles Thomson, dated September 28, enclosing a copy of the proposed Federal Constitution. President Collins commented on Charles Thomson's letter and enclosure:

With the above-mentioned Letter of the 28th of September, the Federal Constitution as reported by the late Convention of the State, is now transmitted to you conformably to the unanimous resolution of Congress thereon; in order submitted to a Convention of Delegates, to be chosen by the people of the State, for their assent and ratification: And I cannot upon the present occasion, avoid recommending it to your attention, as a subject of the most important consideration, involving in its adoption not only our prosperity and felicity, but perhaps our national existence.

Following the reading of President Collins's message, the House of Assembly adopted a resolution "That the aforesaid new Constitution proposed for the United States, be referred to a Committee of five to report thereon." The five committeemen were John Vining and James Raymond of Kent County, and Joshua Clayton, Alexander Porter, and Henry Latimer, of New Castle County. Again, there was no Sussex County representative.

Since one-third of the House of Assembly was not there, owing to the absence of the Sussex County members, it was necessary to change the quorum in order to legally carry on the business of the House. On Saturday, October 27, Joshua Clayton introduced "a Bill for altering the Quorum," which reduced the quorum to a simple majority. The House passed it promptly and the Legislative Council concurred the same day.

Many petitions were presented to the General Assembly urging speedy ratification of the Federal Constitution and praying the General Assembly to offer Congress a tract of land ten miles square for a national Capital. These petitions were referred to the Committee on the Federal Constitution, to which Committee the printed copy of the Constitution had already been sent.

The House of Assembly conducted an investigation of the Sussex County election that consumed all of its time until Wednesday, November 7. It received eight petitions, signed by many citizens of Sussex County, who protested that the election of members to the House of Assembly had been unfair. Upon demand of the House, Thomas Laws, the Under-sheriff of Sussex County, reported that the following had been elected: William Peery, John Tennant, Nathaniel Waples, George Mitchell, Rhoad Shankland, Charles Polk, and Nathaniel Hayes.

On October 21, 1787, the Delaware House had reported resolutions calling for a state convention, but the House tabled the resolutions and did not take them up again until 7 November. The delay was not caused by opposition to the Constitution, but by the ongoing struggle between the Whigs and Tories for control of the Delaware legislature, which centered around the election of seven representatives and one councillor from Sussex County. Not until after the legislature voided that election and called a new one did it resume consideration of the resolutions providing for a state convention to ratify the proposed United States Constitution.

1787 Sussex Elections Voided

During the investigation, the legislature received petitions from Tories protesting the election in Sussex County, summoned and listened to witnesses, and then voided the October 15 election on November 7, 1787. According to Dr. James Tilton, a Whig member of the Council, the actions of the legislature in voiding the Sussex County elections were dictated by Tory leader George Read in an effort to win unchallenged control of the legislature. Tilton's account of events is partisan, but whenever his statements of fact can be checked, they appear to be correct.

New Sussex County Election Called

Having set aside the preceding election, the Sussex Tories and New Castle Patriots considered how they might secure what was ordered, a valid Sussex County election. It was alleged that if the place of election could be changed from Lewes, where the Whigs abounded, to some of those swamps, "where the Tories had been used to maintain their camps", the Tories might have better success. To prevent a repetition of irregularities in electing members for the General Assembly from Sussex County and delegates from the County to the State Convention for considering the Federal Constitution, the General Assembly heeded petitions to remove the voting place from Lewes to some more central place "for the present year 1787". The place appointed by this law was the house of a noted refugee Tory [Robert Griffith] and in one of the most dreary haunts of the Black Campers, in Nanticoke Hundred. This was far removed from the Town of Lewes. The legislature then called for another election to be held in Sussex County on November 26, the same day ultimately selected for the election of delegates to the State Convention.

Date Set For The Delaware Constitutional Convention

On the afternoon of November 7, having voided the Sussex County elections, the House of Assembly took up the report of the committee on the Constitution, which had been laid on the table on October 25 while the Sussex County elections were being investigated. The report was recommitted, and the committee brought in a new report consisting of seven resolutions. The House accepted it and sent it on to the Legislative Council. On November 9 the Council deferred consideration of the resolutions to listen to the reading of New Castle County petitions recommending "speedy ratification" of the Constitution and a cession of land for the federal capital.

The Council then proposed several amendments to the report of the House committee. The principal changes were: a longer preamble to express the people's support of the Constitution; an increase in the number of Convention delegates from seven to ten for each county; the deletion of the resolution excusing voters from taking the oath of allegiance; and the addition of a resolution recommending a cession of land for the federal capital. The House accepted the amendments on the afternoon of November 9 and ordered the amended resolutions transcribed and sent to the Council for its concurrence.

Both houses then adopted resolutions recommending the election of delegates to the state convention, who should be authorized to assent to and ratify the

(Continued on page 88)

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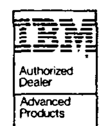


Untold Story
(Continued)

new Federal Constitution; and the holding of elections for that purpose on November 26, 1787. The resolutions provided for the election of delegates on November 26 and for the meeting of the Convention one week later on December 3. The resolutions were ordered published in the *Delaware Gazette,* and one hundred copies were sent to the sheriffs of the three counties to be displayed at the "most public places."

Delaware Whigs and Tories both favored ratification, but according to "Timoleon" the Tories spread "false and scandalous" rumors that the Whigs were opposed to the Constitution, while the Tories were the patrons of it. The only record of an attempt to stir up opposition is that of Richard Henry Lee, a Virginia Antifederalist. Enroute from Congress in New York to Virginia, Lee stopped at Wilmington the second week in November and was reported to have "harangued" the populace, cautioned against hasty adoption, and distributed "inflammatory papers" against the Constitution.

The Convention Elections

The election of Convention delegates turned on local political issues, not on the proposed Constitution. Whigs in New Castle County defeated nine of ten men, including George Read, nominated on a "Read-Tory" ticket. Tories won in Kent County, where, apparently, the Whigs did not vote. But again there were intimidation and threats of violence in the Sussex County election of Convention delegates and of representatives to the legislature.

The Sussex Convention Elections

Although the voting place in Sussex County had been temporarily removed from Lewes to Vaughans Furnace to insure a fair election, the voting on November 26 was by no means peaceful *(See Exhibit A).* The same disturbing elements complained of to the General Assembly as those who prevented a free election in the previous month, were again abroad with firearms, intimidating hundreds of voters, if one is to believe the petitions sent to the State Convention on December 3, 1787 and to the General Assembly the following month.

Before the November election in Sussex County, efforts were made to create a "Union Ticket" as in the election on October 15, but the effort failed. Tories encamped hundreds of armed men a mile from the polls at Vaughan's Furnace, and Whig leaders persuaded their followers not to vote for fear of bloodshed. The threat of violence, the abstention of most Whigs, and the removal of the polling place from Lewes to Nanticoke Hundred in the Tory-dominated western part of the County resulted in Tory victory.

It is clear that in the Sussex election of November 26 the Tories threatened violence just as the Whigs had done in October. The three (and possibly four) Tories elected on October 15 were reelected. The three Whig representatives and one Whig councillor elected in October were not. The political affiliations of the men elected in their places are uncertain, but if Whigs, they were presumably of little consequence.

Fewer than 700 Sussex Countians voted, as contrasted to the usual 1000 to 1100. The records make no distinction between the votes for delegates to the Convention and for representatives to the legislature, but Whigs protested the results of both. Nine petitions, signed by 369 people, were sent to the state Constitutional Convention asking it to call a new election. An additional nine petitions, signed by 405 people, protesting the legislative election were sent to the legislature, which met in January 1788.

Meeting Of The Convention Delegates: Controversy Over Seating The Sussex Delegation

Since the "proceedings" of the Convention have been lost, what little is known about the Convention comes from a few sources. The delegates met at Dover on December 3. They elected James Latimer of New Castle County, President and John White, clerk. The delegates probably listened to the reading of at least some of the nine petitions, signed by 369 inhabitants of Sussex County requesting the Convention to invalidate the election at Vaughan's Furnace and to call for a new one.

At the meeting of the Delaware Ratification Convention the Whigs of Sussex outlined what had happened at the Sussex elections without expressing any desire to impede the Convention in ratifying the Federal Constitution, but merely in preparation of their intent to protest against the election of the Sussex representatives at the next meeting of the legislature. The Convention agreed that they had no power to send for witnesses for a formal inquiry into the legality of the Sussex election, and that, if they had, it would only be wasting time as all were agreed in ratifying the Federal Constitution. Accordingly the members returned from Sussex were seated and permitted to answer for their county.

On the second day of the Convention President Collins submitted a copy of the Constitution and the legislature's resolutions of November 9th and 10th calling the State Convention. Collins called particular attention to the resolution recommending a cession of land for the federal capital.

The Convention ratified the Constitution unanimously, and all thirty delegates signed the Form of Ratification. By "a majority of five to one," the delegates also adopted a resolution recommending a cession of land for the federal capital. The convention resolved that its "proceedings" be turned over to President Collins. President Collins sent the Form of Ratification to James Booth, the Secretary of State, on December 22. Collins instructed Booth to give the Form to Nathaniel Mitchell to deliver to Congress. Mitchell, a delegate to Congress, had been involved in the Sussex election disturbances.

The Forgotten Story of Sussex County

The forgotten story of the Delaware ratification of the United States Constitution really emanates from "Sussex

County". The lack of a valid Sussex election in October of 1787 almost paralyzed the Delaware legislature by depriving it of a quorum necessary to call a Constitutional Convention. The work that was done within the next few weeks was nothing short of miraculous. The quorum requirement was changed. The Sussex County elections were voided, the Sussex County voting location was changed, and new Sussex County candidates were found with impeccable credentials. A Constitutional Convention was called, a new Sussex County election was held on November 26, and by December 3 (one week later) the Sussex Delegates traveled over bad roads to assemble in Dover to consider ratification.

The Constitutional Ratification Convention had received petitions to set aside the Sussex County elections for a *second* time including, specifically, the election of the convention delegates. If this request had not been adroitly deflected, the Convention and the process leading to unanimous ratification could not have gone forward. During the thirty-four days from December 7, 1787, through January 9, 1788, five states approved the Constitution. If the Sussex County election controversy had not been resolved promptly, Delaware might not have been THE FIRST STATE to ratify the Constitution. The credit goes, in no small part, to the ten Sussex delegates.

Much is written in Delaware history about Caesar Rodney's dramatic ride in 1776 but the unsung heroes of the First State in 1787 are the ten from Sussex County who answered the call of county, state, and nation within one short week and insured Delaware's place, albeit not their own, in history forever. This Bicentennial Celebration is a fitting time to remember and give thanks to the Sussex Countians who made Delaware THE FIRST STATE.

The Delegates From Sussex County

On November 26 Sussex Countians elected the following delegates:

(1) John Ingram of Broadkill Hundred. Ingram was a well-to-do farmer and mill owner whose property was assessed at 16 pounds in 1788. An inventory of his possessions on his death in 1798 totalled 855 pounds. He is mentioned in Scharf's *History of Delaware* as having served as a trustee of the poor in 1791.

(2) John Jones of Baltimore Hundred. Jones was a member of the House of Assembly in 1776, and of the Legislative Council in 1777. He was one of ten persons from Sussex County who were rejected for membership in the Constitutional Convention of 1776. Jones served as Lieutenant-Colonel and Colonel in the militia, was President of the Sussex County Council of Safety, and was later a member of the State Council of Safety. As a Lieutenant-Colonel in the Sussex County militia he also served as a member of the staff of General John Dagworthy as well as Commander of a militia company.

Jones later became a member of the Supreme Court and of the Court of Oyer and Terminer. He owned Unity Grove, a plantation of 1,000 acres, as well as several large tracts of land. He was assessed at a rate of 22 pounds in 1786.

A mark of Jones's distinction was his election to membership in the American Philosophical Society of Philadelphia, an achievement attained by only a few Delawareans. That organization, founded by Benjamin Franklin, was composed of the intellectual elite of the American colonies during the last half of the 18th Century and into the 19th Century. An historical description of the organization by Whitfield J. Bell, Jr. in *Delaware History* notes that it was an American equivalent of the British Royal Society and other eminent scientific groups of the day. Acceptance by the society of articles, notices, and manuscripts from amateur inventors, scholars, philosophers, and scientists throughout the colonies submitted for publication was regarded as a considerable achievement. Jones's early experiments with draining of the Sussex County marshes won the notice of the Society. He also pursued the manufacture of wine from wild grapes along the beach and from the swamp. Jones transplanted wild grapevines from seashore and swamp to his own farm, expecting he could make a better wine than was usually imported. In 1771 he also invented a mowing machine, which Bell called "perhaps the earliest of its kind" and followed it several years later with one of the first manure spreaders, on which he reported to the Philosophical Society. But perhaps Jones's most useful invention was a bridge, which he also first described in a letter to the Philosophical Society. Jones believed that the simple design of the bridge and easy assembly would promote the expansion of American society into the west.

Jones had also established a saltworks at Indian River Inlet before the Revolution. Faced with an acute salt shortage caused by the Revolutionary War, Jones offered in 1777 to expand his operation to meet the requirements of the entire state. Resolutions were introduced in the Delaware Council to provide for a loan of 1,000 pounds, without interest, to enable Jones "to erect works for manufacturing salt in this state". Under the terms of the resolutions, Jones was to contract to deliver not less than 3,000 bushels of salt per year, and up to a maximum of 10,000. The House of Assembly concurred with the Council, and the resolution authorizing the loan was adopted. Interestingly, Jones was to erect a saltworks at or near Indian River and was to have an absolute monopoly of the business of making salt in the State of Delaware for the last four of the five years covered by the contract. Beyond the 10,000 bushels specified in the

Untold Story
(Continued)

resolution, Jones was free to sell to private buyers. Although this arrangement embodied principles that must have been highly controversial at the time, it was reached under the press of necessity. Jones drew out the money, with General John Dagworthy and Levin Derrickson serving as sureties on his bond. The importance of this scheme for providing the manufacture of salt for the general welfare of the state is best appreciated when one realizes that the 1,000 pounds authorized by the state in 1777 was exactly ten percent of all the funds granted by that particular legislature for the use of the state.

Unfortunately, Colonel Jones was unable to carry out the plan and he returned the money to the state.

(3) William Moore, the Elder of Little Creek Hundred. Moore was a member of the House of Assembly in 1785, 1786, and 1790. In 1791 he was a member of the convention that framed a New Constitution for the State of Delaware. Comparison of the signature on his will with that on the ratification document of 1787 and that approving the Constitution of 1792 confirms that this is the correct William Moore among several of that name active in Sussex County politics during this period. He died in 1821, bequeathing one plantation to his son, John Wesley Moore, and another to a second son. His property had been assessed at 15 pounds in 1785.

(4) William Hall of Little Creek Hundred. Hall was a farmer and owned several slaves. His property was assessed at 15 pounds in 1785. He died in 1792.

(5) Thomas Laws of North West Fork Hundred. Laws was a large landowner in that Hundred. He held a variety of offices such as tax collector of his Hundred, Justice in the Court of Common Pleas, and member of both houses of the legislature. In 1785, his property was assessed at 7 pounds. He died in 1807.

(6) Isaac Cooper of Little Creek Hundred. Cooper was a member of the House of Assembly in 1788 and 1789 and of the Legislative Council in 1790. He was also a member of the State constitutional convention in 1791 and became a Justice of the Peace in 1791. Cooper served as one of the lottery managers for a construction of the new Sussex County Courthouse. In 1792 he became an Associate Justice of the Court of Common Pleas. He was a presidential elector on the Federalist ticket in 1796. Two years later he was appointed a Justice of the Supreme Court. His son, William B. Cooper, became Governor of Delaware. Isaac Cooper was an extensive landowner and acquired "Nutters Anglum," a tract of 400 acres on Broad Creek in 1776. He died in 1821.

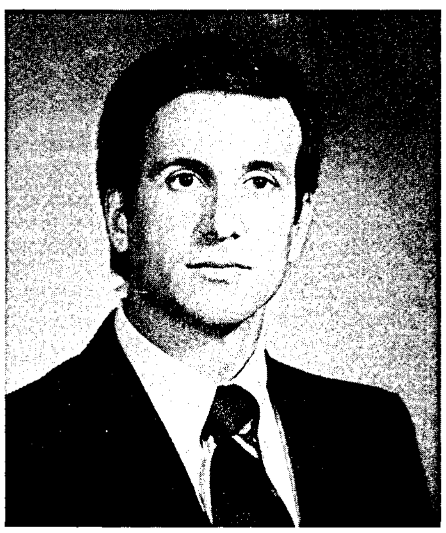
(7) Woodman Stockley of Indian River Hundred. Stockley was a member of the Delaware House of Representatives in 1792 and of the State Senate in 1798. He also served as a trustee of the poor, a Justice of the Peace, and as one of the commissioners appointed to select a site for the new county seat. An extensive landowner, Stockley bequeathed property valued at $5,376 to his brother. He also owned a grist mill on Indian River. In 1789 his assessment rate was 12 pounds. He died in 1799.

(8) John Laws, Jr. of Nanticoke Hundred. Laws was a farmer and miller. In 1785 his property was assessed at 18 pounds. When he died in 1788, he owned more than 1,000 acres of land and several slaves.

(9) Thomas Evans of Cedar Creek Hundred. Evans was an innkeeper and landowner. He was a well-to-do farmer who owned property in 1785 that was assessed at 37 pounds. In 1788 he served as Sheriff of Sussex County. Evans belonged to St. Matthews Anglican Church.

(10) Israel Holland of Baltimore Hundred. Holland was a member of the House of Assembly in 1785 and 1788. In 1782, he served as the tax collector in his Hundred. Holland was a farmer whose property was assessed at 9 pounds in 1789. An inventory of his personal possessions at his death in 1789 totaled 218 pounds.

Nearly all of the ten delegates from Sussex were substantial farmers, some of whom owned over 1,000 acres of land. Several were millers, operating grist mills as well as farms. With the modest technology at their disposal in a relatively poor location in the late 18th Century, these men were obviously Sussex Countians of the very first rank by virtue of professional standing and property. They were almost certainly well educated. Because of their stature in the community, most held important public offices, some holding more than one office at a time. [Several later became judges.] Their participation in such varied and important official functions in the life of the community demonstrates their civic commitment to county, state, and nation. It is remarkable that men of such substance were willing to serve in the turmoil that prevailed in Sussex County, and even more remarkable that they came from different "hundreds" and were truly representative of the County.



Randy J. Holland

William B. Chandler, III

Justice Holland and Judge Chandler are old friends of this magazine. Justice Holland served on the Board of Directors of our sponsor, Delaware Bar Foundation, until his recent appointment to the Supreme Court of Delaware. Judge Chandler was one of the earliest members of the Board of Editors. He was active in the formative years of this magazine. When he joined the bench of the Superior Court the press of judicial business required his withdrawal from our Board, to our considerable loss and disappointment. It is pleasing to have Justice Holland and Judge Chandler back with us.

Exhibit A

The Election in Sussex County

William Peery to Nathaniel Waples
Sussex County, 25 November

I this morning received a line from Charles Polk and Alexander Laws of which the following is a copy.

"Sir, We received your letter dated 22nd instant November and observe the contents. We shall be glad to confer with you on Monday next at your appointed place for the purpose you mentioned in said letter, etc. We remain your friends and wellwishers, etc.

Alexander Laws
Charles Polk"

I have sent copies of this letter to Lewes Town and to the Broadkill requesting the people to go to the election in a peaceable manner. I have not a doubt but the leading men on the opposite side of the question will use their influence to bring about such a union as will secure to us a share in the representation. I have to request of you to bring as many people out as possible and meet us from this quarter at nine o'clock at the place of election, where I hope we shall be able to accommodate matters in such a manner as to be in some measure agreeable to all parties. You will also communicate this to [Simon] Kollock, and request him to dispatch a messenger to Broad Creek immediately.

Votes Cast, Sussex County Election 26 November

Hundred	Number of Voters
Baltimore	7
Broad Creek	51
Broad Kiln	67
Cedar Creek	80
Dagsbury	62
Indian River	50
Lewes and Rehoboth	25
Little Creek	100
Nanticoke	114
Northwest Fork	99
	655

Sussex County Petition to the General Assembly

To the honorable the representatives of the Delaware State in General Assembly met

The petition and remonstrance of sundry inhabitants of Sussex County

Respectfully represent

That your petitioners are very unwilling, at this important period when the safety and the very existence of the Union depends on the preservation of good order and tranquillity in the states, to retard or interrupt the progress of government; but they find themselves called upon by their feelings as men and their duty as citizens to represent to your honors a matter which involves in its consequences the present interests and future peace of the community, and that while they represent to your honors in the humble language of entreaty you will pardon them for discharging their duty with freedom and with firmness.

That soon after the rejection of the first return of representatives for this county, your petitioners were notified by advertisements of a second election to be held at a place commonly called Vaughan's Furnace; and as your petitioners were informed that an appearance of force and a riotous procedure committed on the day at the place of election were the principal grounds on which the former return of representatives was dismissed, they expected to have been permitted to have attended at the time and place advertised without interruption or disturbance.

That those apprehensions were justified by the event, for those of your petitioners who attended the election observed a number of men armed with clubs, swords, and pistols at the place, and some hundreds of men armed with muskets paraded near, a party of whom made prisoners of some of your petitioners by presenting a gun and threatening to fire upon them, and detained them in custody until orders for their dismission were procured from Nathaniel Mitchell, who they said was their commanding officer.

That your petitioners have been informed that this force was collected by a call for the militia to attend and protect the election from expected violence; that this call, if it had been necessary, ought to have been public, but being secret was illegal and unjust. But your petitioners apprehend, even if the call had been general, it would have been so unfounded in the constitution and in law as to invalidate and destroy the election, for certainly if one faction is permitted to be the protectors and guardians of an election by an armed force one year, another may claim the same privilege the next; and thus our elections, instead of being conducted with peace and good order, will be scenes of civil discord, riot, and bloodshed.

if one faction is permitted to be the protectors...of an election by an armed force one year, another may claim the same privilege the next;... it is impolitic and unjust that those should govern a community who would wish to destroy it.

That in addition to the above facts, your petitioners will only remark that Non-jurors, Act of Grace Men, Refugees, and other disqualified persons were permitted to vote at the election, contrary to express law and to the safety of the state; for it is impolitic and unjust that those should govern a community who would wish to destroy it.

That the wish of your petitioners to promote the tranquillity of the government and avoid the horrors attendant on a civil war influences their present address. That there has been a cloud collected over this county for some time threatening effects terrible even in prospect, and your petitioners know of nothing so likely to accelerate the public disturbances and annihilate the government as the sanctioning an election fraught with violence, partiality and injustice.

That your petitioners, sensible of the premises and knowing the importance, particularly in a young and new-formed community, of preserving the laws of election pure and inviolate, would be equally ready to assist the magistrate in the execution of the laws and the subject in defense of his rights. For in vain have we opposed tyranny, in vain have our plans been stained with the blood of our brethren, in vain have we prepared

Untold Story
(Continued)

a happy residence for liberty, and in vain have we established governments; if those governments are to be ruled by persons who opposed their formation in every stage of their progress, who fought against it, who supplied and supported our enemies and by every means in their power retarded the independence of America.

Your petitioners, therefore, relying on the wisdom, justice, and impartiality of your honorable body, humbly pray that you would inquire into the truth of the facts herein before stated, and in order to [further] their candid investigation to hear your petitioners by counsel; and if the above facts are supported, that you would be pleased to grant them that relief in the premises which to your wisdom shall appear equitable and just.

And your petitioners as in duty bound will ever pray, etc.

Petitions From Sussex County To Dover Convention

To the Honourable the Convention for the Delaware State, to be held at the Town of Dover on the third day of December next

The Petition and Remonstrance of divers Inhabitants of Sussex County most humbly sheweth.

That your Petitioners were notified by Resolves of the two Houses of the General Assembly, and published by their Order that the Election for Choosing Persons to represent this County in said Convention, was to be held on the twenty sixth day of this Instant at the old Furnace usually called Vaughans Furnace, that in pursuance of the Resolves of the General Assembly your Petitioners intended to repair to the place of Election, for the purpose of choosing persons to represent this County in said Convention: but they were alarmed on being informed that Rhoads Shankland one of the persons chosen at said Election to represent this County in the House of Assembly the ensuing year had declared "that there were Cannon at the place" and that John Woolf the Coroner of the County had said "they were determined to carry the Election or loose their lives" and these two Gentlemen being seen on the Sunday evening preceeding the day going towards the place at the head of a party of men armed with Muskets, and further Information of other bodies of armed Men going to the place appointed for holding the Election, your Petitioners were apprehensive they could have no share in the said Election without resquing the Effusion of Blood rather than do which the greater part declined going. These apprehensions it appears were well founded, for some hundreds of men armed with muskets were paraded near the place of Election on the day and made prisoners of some of your Petitioners, by cocking a musket and threatening to fire upon them and then detaining them in custody untill Orders were procured from Nathaniel Mitchell, who they said was their Commanding Officer, for their dismission. Thus by an armed and unlawful force have some hundreds of the Freemen of this County been deprived of the right of free Suffrage which by a Law of this State, and by the Fundamental Principles of all Republican Governments, is declared to be the Basis of the Liberties of the Peoples and that the one cannot exist when the other is destroyed.

Your Petitioners impressed with a proper sense of the critical and important situation of public affairs, at this time when the sense of all Classes of Citizens ought to be had on the Federal Constitution proposed by the Convention of the United States lately held at Philadelphia, and knowing that it cannot be considered as binding on them without the assent expressed either by themselves or by their Representatives freely chosen Do hereby solemnly remonstrate against the Legallity of the Election of those persons returned by the Sheriff of this County to represent the same in said State Convention.

Your Petitions therefore firmly relying on the wisdom and impartiallity of your Honorable Body humbly pray, that you would be pleased to enquire into the truth of the Facts, stated in this Petition, and if they appear to be true, that you would also be pleased to reject the Sheriffs Return and Order a new Election to be holden for the purpose of choosing persons to represent this County in your Honorable Body, that your Petitioners may have an opportunity of exercising their right to free Suffrage, on so important an occasion as the present, freely without interruption. And your Petitioners as in duty bound will ever Pray & ca. ■

Bibliography

Carter, Dick, *History of Sussex County,* page 58, 1976.

Documentary History of the Ratification of the Constitution, (Volume III) (1978 by the State Historical Society of Wisconsin).

Gibson, George H. (Editor), *The Collected Essays of Richard S. Rodney on Early Delaware.*

Hancock, Harold B., *History of Sussex County.*

Layton, Daniel J., Chief Justice of the Delaware Supreme Court, *Delaware and the Federal Constitution.*

Ryden, George H. *Delaware - The First State in the Union,* Delaware Tercentenary Commission, Wilmington, Delaware 1938.

Scharf, J. Thomas *History of Delaware,* Volumes I and II.

Tunnell, James M., United States Senator from Delaware, *Ratification of the Federal Constitution by the State of Delaware,* Public Archives Commission, Dover, Delaware, 1944.

Tunnell, James M. Jr. The Salt Business in Early Sussex County, Volume IV, *Delaware History,* page 48 (March 1950).

Whitfield, J. Bell Jr. Patriot - Improvers: Some Early Delaware Members of the American Philosophical Society, Volume XI, *Delaware History,* page 195 (April 1965).

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Richard D. Carter of the Sussex County Historical Preservation Office furnished valuable insights in to the historical perspective of Sussex County.

Hazel Brittingham provided important insights and leads on Colonel John Jones.

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The Golden Fleece
Delaware's Tavern Capitol from 1777 to 1791

James B. Jackson

This article is condensed from a longer work to be separately published in book form. We are grateful to Mr. Jackson to be able to share with our readers the results of the extensive and scrupulous research that has preserved endangered history.

The Editors

The Golden Fleece Tavern in Dover is a classical illustration of "out of sight, out of mind" as applied to a very significant historic place that disappeared from view shortly after its heyday. Its substantial role in some of the most important and interesting events in Delaware history has been virtually ignored in the published annals of the period.

The fact that it was the site of the Ratification Convention is but one of many distinctions that included its establishment as the *de facto* seat of state government from 1777 to 1791. Since none of this seems to have been chronicled either contemporaneously or subsequently, all of the relevant evidence has been buried for two centuries in the minutiae of widely scattered obscure sources, none of which provides more than a hint of the whole story. It may well have remained so for another century or two had it not been for the interest generated by the approaching Bicentennial of the Ratification.

In 1731 Timothy Cummins, a New Castle "hatter", moved to Dover and purchased the large lot on the east side of King (State) Street extending from North Street to The Court House Square, adjoining the west line of the Thomas Parke (present Ridgely-Horsey) property. He built a substantial home on this lot and subsequently converted it to an inn sometime before 1742.

Cummins died in 1746 and his estate inventory indicates that his establishment was a sizeable, well-furnished country tavern. Following his wife's death a year later the inn was leased, first to William Dockery until 1749, then to John Clary who operated it until he died in 1753. His tenure was noteworthy in two respects. First, the tavern becomes the meeting place for the Kent County sessions of the Provincial Supreme Court; and, secondly, a preserved record identifies the establishment as the "Golden Fleece" Tavern.

Following Clary's death his wife Jane continued to operate the inn and subsequently married merchant James Byrne who eventually purchased the property from the Cummins heirs. In 1760 he sold it to John Clayton, Esq., but continued to operate it for two more years.

In 1762 the inn was leased to the Dover merchant-saddler French Battell who announced in a Philadelphia newspaper that he had taken over the "commodious tavern at the Sign of the Golden Fleece in the town of Dover."

Before coming to Dover French Battell had been an Ensign in one of the New Castle County Regiments of Militia. He resumed his military service in Dover and by 1758 had risen to the rank of Captain in "Ye Lower County Provincials." Shortly thereafter he participated in a campaign of the French and Indian War after which he was commended for "his superior knowledge of Military Discipline, [and] his courageous and manly behavior."

It can be said that there are many interesting indications that, by the time he decided to become an innkeeper, French Battell was a responsible, respected and convivial member of the Dover establishment—and thereby well-equipped for his new business undertaking. His wife Elizabeth was the daughter of Cornelius Empson, a Dover merchant who lived on the northwest side of the Court House Square, and she too was to play an important role in the future of The Golden Fleece Tavern.

There are scattered references to Battell's inn in the preserved writings of some well-known men of that time. From these it seems apparent that the well-run Golden Fleece was, indeed, the Dover tavern of choice for "Gentlemen Travellers". A case in point was the Philadelphia merchant Benjamin Mifflin who made frequent business trips through the Lower Counties and was a regular patron of the inn, where he ap-

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parently never suffered the vexations that he did in a lower New Castle County tavern one summer night in 1764.

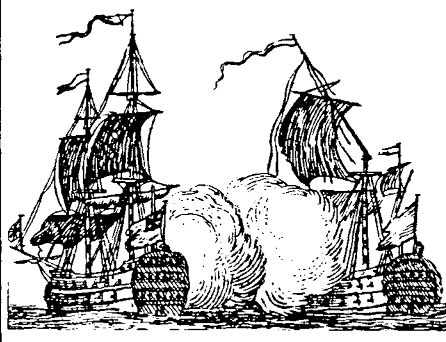
Lodged at Hemming's & shar'd the Fate of the Egyptian Monarch being persecuted in at Least Ten Plagues.
as
1. A Male Bedfellow.
2. A very restless one.
3d. The Stink of the Candle-snuff which he blew out on coming to bed.
4th. Buggs.
5th. Musquittoes.
6. The grunting & groaning of a Person asleep in the next room ...
7. The Mewing of a Cat in my room which obliged me to get up twice to turn her out.
8. The rumaging of a Negro Wench about the room for the candle with a cole of fire in her hand.
9th. The noise she made at a Bugg or other insect getting into her ear.
10th & Lastly with myself being so often disturb'd could not compose myself to rest for a Long time.
June 23. Breakfasted at the X roads. Took a Forenoon nuncheon of Bacon & eggs with Some Tea to Wash it down at my Uncle Lockerman's & dined at Battles in Dover.

He continued on to Sussex and returned to Dover on the 26th and "Started Early from French Battles where I lodged", making no mention of "persecutions" or annoyances while there.

In truth, similar experiences in varying degrees were quite common in even the better Colonial country taverns. Single beds were virtually non-existent and the single traveler could always expect a stranger—bedfellow. It would be highly unusual if the lodger at the Golden Fleece did not occasionally have to put up with similar problems. Even the best establishments were very earthy places. The plumbing was "early chamberpot and washbowl" and window screens were unknown.

After leasing for twelve years French Battell's venture had prospered to the point where he decided to purchase the Golden Fleece. On March 10, 1774 he paid his landlord-friend Vincent Loockerman £480 and became the owner of his tavern. This appears to have been a bargain since Loockerman had paid £500 for it nine years earlier. It might be explained by the deduction of a credit for a portion of the recent rental payments—a not uncommon practice in purchase transactions between landlords and tenants who enjoyed a good relationship.

In retrospect the Battells' decision was a fortuitous one since they and their Golden Fleece were soon to occupy center stage for almost two decades during one of the most important and dramatic periods in Delaware history. The friction between the colonies and England was increasing steadily as a result of the blockade of Boston harbor following the tea episode. This act aroused great sympathy for the beleaguered Bostonians in all of the colonies and prompted many acts of support and relief.



July 20, 1774 was probably the busiest day ever at Battell's tavern as 700 freeholders and others gathered in Dover to adopt a resolution urging that an American Congress obtain redress of grievances; that the Assembly appoint deputies to that Congress; that a Committee of Correspondence be appointed to "set on foot a Subscription for the Relief of the Poor Inhabitants of the town of Boston; and that Kent Countians have "no Trade commerce or dealings" with any agents of England until the "Intolerable Acts" are repealed.

The Committee was chaired by Battell's neighbor Charles Ridgely and the other original members were William Killen, Caesar Rodney, John Hazlet, John Clarke, Thomas Collins, Jacob Stout, James Wells, Thomas Rodney, Richard Bassett, James Sykes, Richard Lockwood and Zadoc Crapper. They met several times during the summer and fall and ultimately raised a relief fund of £200.

In the fall of 1774, prompted by a suggestion from Congress to which Caesar Rodney was a delegate, a county Committee of Inspection and Observation was organized and the former committee was relegated to sub-committee status. Its purpose was to investigate acts of disloyalty to the patriot cause, hold hearings thereon and extract "concessions" or admissions of error. It was, of necessity, controlled by the patriot faction and was chaired by Thomas Rodney.

The "house of French Battell" was the designated meeting place, and so far as is known, all of the committee's frequent meetings and "trials" were held there during the long life of that body. In August a new and larger committee was elected and chose Caesar Rodney as chairman.

In 1775 and 1776 the Golden Fleece hosted the sub-committee inquisitions of such well-known Kent Countians as former chairman Charles Ridgely, Robert Holliday, Daniel Varnum, the Reverend Sydenham Thorn, and the Quaker John

The Sign of the Golden Fleece

An inventory reference states that the sign of the golden Fleece had "iron about it". It may well have been similar to this sketch of a design that was typical of Eighteenth Century iron-bound tavern and trade signs.

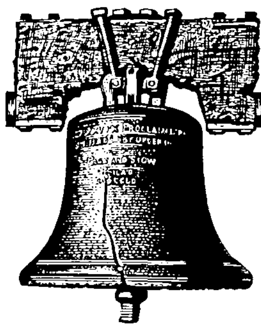
The original "Golden Fleece" was the prize sought by Jason and the Argonauts in the ancient Greek myth. The figure of the ram suspended by a belt around its middle became the symbol of the wool trade in the Middle Ages, and has long had heraldic associations. It became the badge of the Knightly Order of the Golden Fleece when it was founded in 1430, and has subsequently come to be used as a traditional symbol of excellence.

So far as is presently known, the Golden Fleece Tavern in Dover appears to have been the only Eighteenth Century American inn to have had this name.

Battell's Tavern
(Continued)

Cowgill. All of these were charged with various acts considered to be inimical to the patriot cause. The case of next-door-neighbor Ridgely must have been particularly traumatic for the Battells. On September 12, 1775 he was summoned to appear "this afternoon at French Battell's to answer the premises" that "you have expressed sentiments unfavorable, and tending to discourage the present opposition to the slavish designs" of the British government.

Fortunately for him he was acquitted, thanks to a persuasive defense by Thomas Rodney who cited "the Doctrs. Virtues and Talents and public Services." Fortunate indeed, because the "Clamour out doors was very great and Tar and Feathers prepaired for him expecting his condemnation."



The shots fired at Lexington and Concord were quickly heard in the counties on the Delaware and prompted the convening of two very important meetings in Dover in 1775. In May the officers of the twenty companies of Kent militia met to divide the county units into two regiments and set out their officers' duties and committments. In September the Lower County's Committee of Safety met for six days to perfect the overall military organization of the colony. Mention of the sites has not been found, but the evidence is convincing that both of these sessions were held at the Golden Fleece.

French Battell's personal contribution to the patriot cause during this turbulent period was his dedicated leadership in local military activities. This was recognized and rewarded at the May meeting when he was appointed Major and third in command of Colonel Caesar Rodney's new Regiment of Kent Militia.

Battell's undoubted loyalty and dependability brought yet another vital assignment to him and his inn. As British naval activity in the area of the cape increased, a carefully organized secret network of relay stations was set up to pass along intelligence from Lewes to the various authorities in Dover, New Castle, and Wilmington. The Golden Fleece became a vital mid-point station in the chain and Battell was charged with dispatching the messages to the next relay point. The system appears to have functioned well throughout the entire war. Battell was also called on for yet another service in 1776 when the Dover area experienced a serious shortage of salt. He was one of three appointed to a committee to obtain a supply and "deliver out in equal portions the said salt among the inhabitants."

In May of 1776 Congress recomended that the states establish independent governments. This issue immediately polarized the Whig and Tory factions in Kent County. On June 8 The Committee of Inspection met at The Golden Fleece to discuss the issue. A large crowd had gathered outside and presumably listened to the heated debate through the open windows of the tavern. Committee member John Clark's opposition so angered the crowd that, when the long meeting ended, he was seized, placed in the nearby pillory and egged. This action, in turn, so aroused the Torys in the Dover area that they "plotted revenge in the form of an attack on Dover to capture the Whig leaders and burn the town." The Tory leader Richard Bassett was taken into custody, negotiations ensued, cooler heads prevailed, and the famed "Black Monday Insurrection" was aborted.

The year 1777 brought the harsh reality of the war to Delawareans when General Howe's forces landed at the head of the Chesapeake—an event that caused French Battell to be called to active duty and leave the tavern in the capable hands of Elizabeth. He was promoted to Lieutenant Colonel and commanding officer of the first of two Kent battalions placed under the command of Brigadier General Caesar Rodney. In early September these units encamped at Noxontown in New Castle County under orders from Washington to gather intelligence on the enemy's movements and harass them wherever possible. Fortunately for Delaware, but unfortunately for the war effort, the enemy troops moved north to a victorious engagement at the Battle of the Brandywine. Before leaving this episode it must be noted that one of Battell's enlisted men was a lowly 44 year old private named John Dickinson who had answered the call to duty in spite of his objection to the war. The two men were destined to come together at the Golden Fleece many times in the future for further service to the young state and nation.

When the emergency passed French Battell returned to Dover. He did, however, continue in the military service and was subsequently advanced to Colonel and command of the reorganized 2nd Kent Regiment, which was used locally to police and control the troublesome Tory element during the remainder of the war.

French Battell's fortuitous return to his tavern was a timely one considering the ensuing sequence of events. The same crisis that took him away from The Golden Fleece was to soon bring something to it—something that was to have a considerable impact on the life of the Battells, their inn, and the town of Dover.

Before leaving northern Delaware to occupy Philadelphia the British occupied Wilmington and the adjacent coastal area and captured State President John McKinley. They also confiscated all of the available public funds and a large quantity of state papers, and completely disrupted all public activity in the area. The resultant chaos made it impossible to hold a scheduled September session of the General Assembly. Although the occupation did not last long, the continuing threat of the large enemy force in Philadelphia made it inadvisable for the Delaware government to continue at so vulnerable a location as New Castle. Seeking a more remote and safer haven the shaken state leaders transferred the essential state functions to Dover, where the next session of the General Assembly was called for October 20.

When it came to choosing a location for the legislative sessions the decision was an easy one. The small county court house had been long-overtaxed to accommodate the local court sessions and the expanding "row office" functions. The only option, therefore, was one of the two largest taverns.

The "Lodge Room" of John Bell's tavern, now prudently renamed the General Washington Tavern, was chosen for the lower, 21-man, "House of Assembly", and the "Court Room" of the Golden Fleece became the chamber of

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Mr. Jackson is a native Dover businessman and banker. He retired in 1983, at which time he was the Executive Vice President of the Delaware Bankers Association.

He has had a long-standing interest in Delaware history, and is the author of several published works, the most recent of which is The Early Settlement and Founding of Kent County, Delaware, 1671-1683. *He has recently completed researching the history of the Golden Fleece Tavern in Dover, which was the site of Delaware's Constitutional Ratification Convention in 1787. The results of this research will be published later this year. (We are fortunate to be able to publish a part of that work.)*

In 1967 he served as President of Dover's 250th Anniversary Committee, and was Chairman of the Kent County Tricentennial Committee in 1983. He is a past President of the Dover Public Library Commission, and has served as Treasurer and Board member of the Friends of the John Dickinson Mansion. He has also served on the Delaware State Review Board for Historic Preservation. He is presently a member of the Board of Trustees of the Historical Society of Delaware.

Battell's Tavern

(Continued)

the upper 9-man Legislative Council. This room was apparently the larger of the two because most of the joint sessions of the two bodys were subsequently held in "the Council Room". This room was also still being used for the infrequent Kent sessions of the state courts and occasional sessions of the Levy Court and Court of Appeals. The preserved resolutions of the legislature and the Treasurer's and Auditor's entries provide the major evidence for all the continued use of these facilities by noting the authorized payments to the innkeepers "for the room, firewood and candles".

The year 1778 was a very busy one for the Battells. The Legislative Council was in session almost continuously from mid-February through June, recessed for the summer, and held numerous sessions from mid-October to December 20. A record volume of legislation passed, most of it dealing with war-related problems, taxation and funds for the Continental Congress. However, the most significant act passed was one authorizing the Delaware delegates to ratify the Articles of Confederation. A notable joint session was held on March 31 to elect a new President of the State to replace the still captive John McKinley. Caesar Rodney defeated the other candidates, John Dickinson and Samuel Patterson, by a wide margin—and the Whigs had another reason for a celebration that night at the Golden Fleece. Another important joint session was held in June in the Council Room to elect judges for the Supreme Court and Kent County courts. Again the Whigs were victorious.

An examination of the preserved legislative and financial records of payments authorized to French Battell in 1778 for the "use of the room firewood and candles" and "for the expense of the members of Council and their Clerk at his house" totaled over £1,600.

In 1779 the Legislative Council met at Battell's in January, and early February, mid-May through early June and in October. Problems caused by war-profiteering, and the increasing inflation received considerable attention. One noteworthy act was passed over the objections of the Kent Countians to empower the General Assembly "to adjourn to, and sit at, any Town or Place in the [State]." For the 1779 sessions French Battell was appropriated £1,858, which included the services of the inn's barber. It is interesting to note that the New Castle County legislators and the non-resident Kent Countians customarily lodged at the Golden Fleece, while the Sussex Countians stayed at the Bell's General Washington Tavern.

It seems apparent that "a deal was cut" between the north and south legislators because the next session, in December, was held in Wilmington and the first 1780 session was held at Lewes in March. We must note that the minutes reveal that December 25, 1779 was just another work day to the legislative Scrooges in Wilmington. It might also be noted that on occasion legislative sessions were even held on Sunday.

The year 1782 opened tragically for the Battell family. French Battell died sometime before January 9. He died intestate, which suggests that it might have happened suddenly, but nothing whatever is known of the circumstances of his death. He was fifty-six and left, besides Elizabeth, four sons: John French, James, French, and Cornelius. John was of age at the time of his father's death, Cornelius was still a child, and the other two somewhere in between. Elizabeth was appointed administrator. The £2,000 bond securing the estate suggests a close relationship with a political adversary. Beside the signatures of son John and the widow was that of arch-conservative Richard Bassett. Elizabeth Battell, already an experienced innkeeper, immediately took over the management of the Golden Fleece.

The three-page inventory of French Battell's considerable goods and chattels shows clearly that his Golden Fleece was an extremely well-stocked and furnished late 18th Century country tavern. It is truly a treasure of interesting detail—one that would delight a set designer who had to recreate a Revolutionary War period inn. Although it is not broken down room by room, the groupings are such that a fair estimate of these is possible.

There appear to have been about seven bed chambers with a total of seventeen beds. Adjusting for the Battell family's own beds, the inn could probably lodge from 25 to 30 people. Three of the chambers had three beds each. The best of these had a "Mahogany Buro Table" a "Tea table" and several mahogany chairs. The other rooms had

walnut or pine stands and walnut chairs. The bed clothes included an ample supply of pillow cases and "homespun sheets". Each room had "Lining window curtins". All but one of the bed chambers appears to have been on the second floor.

This inventory and other evidence suggest the first floor had at least an entry hall, "parlour", combination bar-dining room, the "Council Room", a bedroom, and the kitchen. These rooms were all well and comfortably furnished. There was "a couch", 23 "Windsor chairs" and 22 "Rush bottom chairs". The walnut and pine table inventory totaling fifteen included "an Ovel Dining Table", several other walnut "breakfast" and dining tables, a large "server", a Buffett" with "Tea Ware", a tea table, and miscellaneous others of various sizes. There were also 2 "walnut desks", another "writing desk", several pine chests, a "Leather trunk" and a "Pine Cubbard". At least five fireplaces heated the inn.

The walls of the Golden Fleece were far from bare. There were large and small "looking glasses", "4 gilt picters", "8 Picters with Gilded fraims", and 19 other "plain picters". Also a "Map of Europe", a "Map of Pennsylvania and New Jersey", "Church Hill's Mapp" and two "other maps".

As to the all-important Council Room—combining items in this inventory with a later description of the room yields a well-founded list of probable furnishings. They include "a large square leaf Walnut table", three "other tables" including a "breakfast table", about 10 Windsor chairs, 4 pictures and a map, brass candle sticks, fireplace tools, and andirons. Additional chairs were brought in as required for the joint sessions and other meetings. It was undoubtedly the largest room in the tavern.

The kitchen equipment was on a par with the rest of the house. The large fireplace had a "bake oven", a large and a small "pott with hooks", a "crain griddle with hooks", a "Jack and spits", and two "iron stands". There was a "Large Copper Kettle", two others of brass and iron, and a "Bell Mettle skillet". Also a "coffy mill", four "large brass candlesticks", "4 dozen of Basketts", "four small servers and bread baskets", a "Jack and weights", canisters, jugs, kegs, tubs, earthen and woodenware, "2 pair flatirons" and the inevitable "Sundry Kitchen Trumpry". The kitchen, furnished with "a Kitchen Table" and "3 Rush bottom Chairs", was undoubtedly the domain of the "Negro Woman Sarah".

The tableware inventory was a large and varied one. There were thirty-eight "Queens plates", and more than seventy pieces of other "Chany" (china), including various sizes of plates, dishes, bowls, cups, saucers, salts, sugar dishes, cream pots, and "tea ware". The glassware included tumblers, wine glasses, and "jelly glasses", which were the common drinking glasses. The presence of a good supply of tablecloths and napkins is yet another indication of a level of gentility considerably above the norm for country inns of that era.

Among the other essential items of supplies and equipment were such items as 25 pounds of candles, various sizes of candlesticks, a dye tub, cases of bottles, decanters, a pair of "Stillyards" (beam-scales), and a cord of wood.

French Battell's inventory also included a group of silverware items that are particularly interesting: "a doz. Table Spoons", "a doz. & eight Tea d[itt]o", "two large Soop Spoons", and "two 1/2 pint Silver Cans". These latter are graceful mug-like drinking vessels. These items do not appear in Elizabeth Battell's inventory, but the 1794 inventory of the eldest son John does list a substantial collection of silver among which there are tea spoons, table spoons, and two "1/2 pint Canns". A clue to the possible origin of at least some of this Battell silver is suggested by an entry recording a £50 cash assignment by Elizabeth Battell in 1787 to the Wilmington silversmith Bancroft Woodcock.

The larder of The Golden Fleece was well-stocked at the time of French Battell's death. There were 1,130 pounds of "beaf", 2,620 pounds of pork, 11 turkeys, 24 "Fowls", 8 ducks, and ample quantities of cheese, butter, "Hogs Lard", "Loaf Sugar", "French Sugar", "Brown Sugar", "Reasons", and currants. Also, "coffy", "Bohea Tea" and "Susong Tea". The bar stock included "7 galls Gin", 10 of "Spirits", 25 of wine, 5 of "French Brandy", a barrel and a cask of beer, and a hogshead of "Cyder"—not an outstanding list, but adequate, considering that imports were still virtually non-existent.

Battell's livestock in the tavern yard consisted of "2 Bay Horces, 2 Cows, 1 Heifer, 1 yearling". There were 15 bushels of oats and 2500 pounds of clover hay. There were, of course, "a Horse Cart, harness and bridle, a pair of saddle bags", but no saddle was listed.

Colonel Battell's personal effects included a substantial amount of "Wearing Apparrell", a "Silver Watch," a "stock buckle" and a "pr. Silver Shoe Buckels". The total estate inventory was valued at £790. There were other current assets of £382 and debts of £663. His estate's net worth was therefore £509 plus the value of his real estate against which there was no apparent obligation. He was, while not wealthy, clearly one of Dover's more affluent citizens.

It is regrettable that there is no description of the exterior of the Golden Fleece Tavern of 1782 beyond the knowledge that it was a two-story brick building fronting on The Court House Square. In the light of what is known of the interior it was obviously a sizeable building, undoubtedly one of the largest in Dover at that time. Since all of the preserved Eighteenth Century buildings in Dover

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Battell's Tavern
(Continue)

have certain basic architectural features in common, it is probable that the tavern building was generally similar in type.

There were two memorable events in 1783 that directly involved Mrs. Battell's tavern. In May the trial of the notorious Loyalist insurgent Cheney Clow was held in the Court House. He had, in 1778, built a fort near Kenton, assembled a force of several hundred sympathizers, and planned to march against the General Assembly in Dover. The plan was foiled by a detachment of militia, which seized the fort but failed to capture Clow, who escaped and remained free for four years. In 1782 during a visit to his farm he was captured by a sheriff's posse during an armed assault in which one of the lawmen was fatally shot. He was jailed in Dover, indicted by a Grand Jury that either met or was lodged at the Golden Fleece, and was finally brought to trial for murder in May of 1783. It is not known whether the trial jury stayed at the inn, which obviously must have done a land-office business, feeding and refreshing the throng of people attracted by the big event. The unfortunate Clow was found guilty on doubtful evidence and after four years of cruel delay was finally hanged. Elizabeth Battell also had to wait several years before she was completely reimbursed for "the expense of the Grand Jury on the trial of Cheney Clow."

The year 1786 brought to the Council Chamber of the Golden Fleece a series of actions forging the first link in a chain of events that would reach a dramatic climax in that same chamber a year and a half later.

On June 16, at a joint session in the Council Chamber, five delegates were elected to a convention to be held in Annapolis, Maryland in September "for the purpose of framing...a system of commercial regulations for the adoption of all the States." Those elected were George Read, Jacob Broom, John Dickinson, Richard Bassett, and Gunning Bedford, Jr.

Thomas Collins, the new President of Delaware, received the report of the convention from chairman Dickinson in September, but did not present it to the General Assembly until the next January. The main thrust of the report was that a convention be called by Congress to revise the Articles of Confederation. After considerable delay a joint session was held on February 3 in the Council Room, and Read, Broom, Dickinson, Bassett, and Bedford were elected as Delaware's delegates to the proposed convention—to be held in Philadelphia in May.

Oddly, the Council minutes do not mention this meeting, other than noting that it was to be held. However, it is very explicitly recorded in the House minutes that it *was* held in its entirety in the Council Chamber. Thus was the second link in the historic chain forged at the Golden Fleece.

The convention met from May 25 through September 17. Read and Dickinson, as is well-known, played key roles in drafting the proposed Constitution, which, on the 28th was forwarded to the states for ratification. The great document first reached the Golden Fleece on October 25, the first full day of the fall session, when George Read brought a printed copy to the Council Chamber. Later that day, the official Delaware copy arrived with President Collins's message and interested citizens, having had ample time to learn of it also sent the General Assembly several petitions urging ratification.

The House, beset with problems related to the recent election of its Sussex members, finally, on November 9, prepared the resolution setting up the procedure for "deliberating and determining on the Constitution," and sent it over to the Council. The Councilmen added seven amendments, which the House promptly accepted. Its major provisions called for popular elections to be held on Monday, November 26 to elect ten delegates from each county to a convention to be held on the following Monday, December 3, in Dover.

It seems likely that Elizabeth Battell was told on the 28th that the convention would be held at her tavern. Since the site was not mentioned elsewhere, how were the elected delegates told where to meet? If it was done by a letter or further notice, no evidence of either has survived. Posterity, too, has been denied any contemporary mention of it — and has learned of it only from an insignificant pay voucher issued after the convention was over. *(See illustration at page 102.)*

The General Assembly adjourned on the 10th so Mrs. Battell had ample time to prepare her inn for a gathering that obviously was to make more demands on her establishment than the usual General Assembly sessions. The joint sessions of twenty to thirty men usually lasted only an hour or two at most. The convention would bring thirty men to the inn for day-long meetings for an indefinite number of days. The demands on her kitchen and bar would be continuous and she would undoubtedly have to hire additional help.

Election day, as always, was a busy day at the Golden Fleece when Kent residents came to town to vote. Apparently the election was orderly.

Most, if not all, of the non-resident delegates must have come to Dover by Sunday so as to be on hand for the opening session the next morning. If they followed the pattern of their legislator friends, the New Castle and Kent men stayed at the Golden Fleece and the Sussex Countians at the General Washington Tavern across the Square.

As is well known, the minutes of the convention have never been found. This great loss is somewhat diminished by the knowledge from other sources that there was no apparent dissension on the central issue — even among the two contesting groups at the Sussex election. Monday is said to have been devoted to organizing procedures and electing James Latimer, President of the Convention, John White, Secretary, and Benjamin Crooks, messenger and doorkeeper. Since there were apparently no serious differences of opinion there was probably little need for pompous and boring oratory, and since not so much as a comma could be changed, the decision offered no options. In the light of this it is probable that Tuesday, Wednesday, and Thursday were spent in low-key discussions to make certain that they each understood the provisions of the great document — all the while easing the task with an occasional tea, rum, or brandy. On Thursday each of the thirty Delegates cast his vote to "fully, freely, and entirely approve of, assent to, ratify and confirm the said Constitution." John White then set about preparing the ratification document for the delegates to sign the next day — Friday, December 7, 1787.

Of all the many occasions that prompted celebratory toasts at the Golden Fleece this one had to rank with the best. Perhaps it even surpassed another similar occasion that Thomas Rodney described. After relating in flowery detail each of fifteen toasts he then said — "the rest I don't remember".

A significant moment in Delaware's history: delegates consider the Constitution in the Council Room of Battell's Tavern as depicted by artist Robert E. Goodier. Reproduced with kind permission of Bank of Delaware.

Delaware historians will be eternally grateful to the anonymous scribe who subsequently wrote the aforementioned voucher for making it a little more explicit than the usual one. It read:

The Delaware State
To Elizabeth Battell, Dr.
Dec. 7 1787
To the use of a room, firewood and candles for 5 days for the Convention = 10/-
£2:10 -.

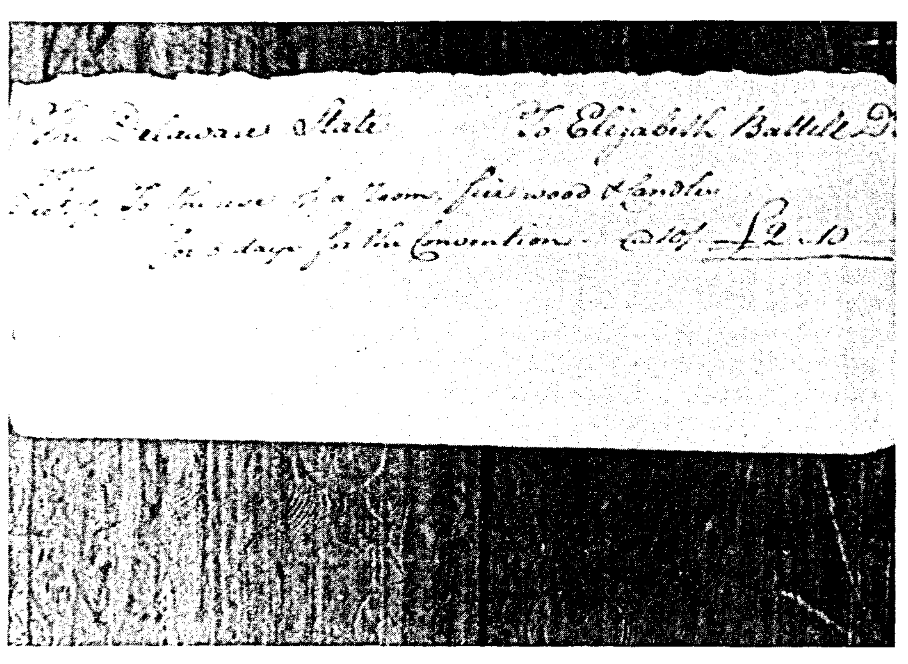
On October 25, 1788 a noteworthy joint session of the General Assembly was held in the Council Chamber of the Golden Fleece to elect the first United States Senators to represent Delaware in the historic first Congress. Attorneys George Read of New Castle, and Richard Bassett of Dover, were elected, apparently without opposition since no vote was recorded.

The construction of the new Court-State House had begun in early 1788. Since it was to be built on the site of the existing small Court House, this building had to be demolished. As a consequence the various regular County courts had to move their sessions into the busy taverns. The preserved County records indicate that these sessions and the related feeding and lodging of the judges and jurymen were about evenly divided between the two taverns.

January of 1790 brought to the General Assembly in Dover the second act in the drama of Constitutional ratification. The 1789 session of the new Congress, after considerable debate and controversy, approved the long-promised package of amendments to the new Constitution. These, twelve in number, were transmitted by President Washington to the states in early October, and Delaware President Joshua Clayton laid them before the General Assembly on October 24, the last day of its Fall session.

Action was deferred, undoubtedly to allow study, until the Legislature reconvened, as scheduled, in January. The first recorded consideration of the amendments took place in the Council Chamber of the Golden Fleece on the 16th, and all except the first article which was "postponed", were unanimously approved. On the 22nd, the House followed suit with similar action. A resolution of ratification was drafted in the Council Chamber by a committee of Councilmen Gunning Bedford, Nicholas Ridgely, and Alexander Porter. On Thursday, January 28, 1790 both houses officially adopted the resolution, and Delaware became the fifth state to ratify the historic "Bill of Rights". Although Delaware ratified eleven of the twelve amendments proposed, only ten of them were eventually ratified by the required ten states to become a part of the Constitution of the United States on December 15, 1791.

Although the legislative session had left the taverns, the legislators and other officials continued their patronage as government-related activity increased in Dover. Among the leading political figures who were known to be regular patrons of the Golden Fleece were Gunning Bedford, Jr. and John Dickinson. Among Dickinson's many preserved tavern receipts is an itemized bill listing his daily charges for the entire month of December, 1791, when he lodged there



A glimpse of the clerk's receipt for expenses charged at the Golden Fleece Tavern.
Delaware State Archives photo.

Battell's Tavern
(Continued)

while serving as the President of the first session of the State Constitutional Convention.

As the year 1791 marked the end of fourteen years of unique service to county and state by Elizabeth Battell's tavern, so did the next year mark the end of Elizabeth Battell herself. She died in November of 1792, probably in her mid or late sixties. That was a fairly advanced age for the time, and the last decade of her life was certainly not an easy one.

It may be said of her tenure as mistress of the Golden Fleece that she seems to have continued to maintain the same tradition of gentility and respectability that her husband established. No hint of anything to the contrary has been found, and the continued patronage of men like John Dickinson and others of similar stature strongly suggests that it was still Dover's best tavern.

Following Elizabeth Battell's death her sons continued the operation of the inn until it was leased in early 1793 to Dr. Samuel H. Round, who was the innkeeper for the next two years. In 1795 it was leased to Kendall Smack, the former innkeeper of John Freeman's Eagle Tavern. He continued to operate the Golden Fleece Tavern until it was advertised for sale in 1797. It was not sold, and was subsequently taken over by the youngest Battell son, Cornelius, who operated it until 1800.

From 1800 to 1829 it was successively leased to Daniel Cook, Amelia Cook,

Joseph Buckmaster, and Jacob Biddle.

In 1829 the entire tavern property was purchased by John Reed, a Dover merchant, who enlarged it into what subsequently became the Capitol Hotel. This building was almost completely destroyed by a disastrous fire in 1881. It was promptly rebuilt and considerably enlarged. It flourished as the favored hostelry of Delaware legislators and politicians for the next four decades until it finally closed in the early 1920's.

The building was purchased in 1926 by the adjoining property owner, Henry Ridgely, who subsequently demolished all but a section of the south-west corner, which was converted into a small office building that is still standing on a part of the site of the original tavern.

The similarity between the functional histories of the Capitol Hotel and the Golden Fleece Tavern is striking. Both housed and fed the legislators, both were the scene of many noteworthy functions, and the smoke-filled rooms of each were the actual birthplaces of most of the legislative action of their times. It was often said, during the life of the Capitol Hotel, that the State House chambers were only used to make the record vote official. The old Golden Fleece even went this one better — its legislators could remain in their comfortable chamber and do the whole job. ■

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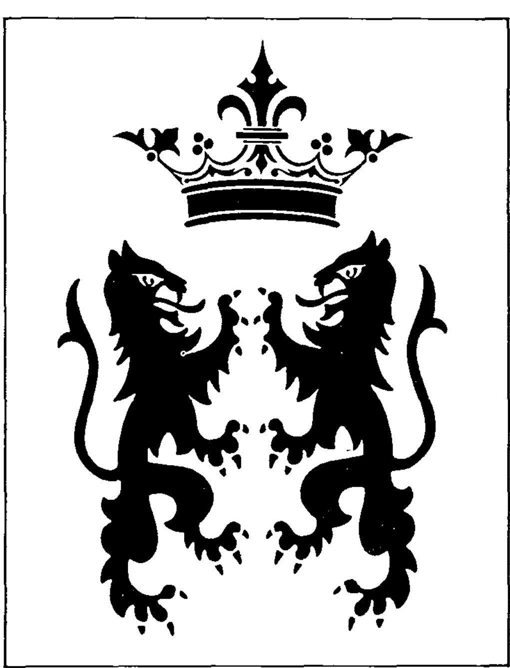


IV. A Heritage of Law

In England **Magna Carta** *is largely forgotten. By contrast, it is still very much an* **American** *legal document: It was precedent for the Petition to George III in 1774 and subsequently for the United States Constitution, into which some of its provisions found their way.*

THE GREAT CHARTER OF LIBERTIES

Magna Carta Regis Johannis

Geoffrey Gamble and James Dinnage

To look at Magna Carta may be something of a disappointment. If any of us is looking for the roots of the U.S. Constitution or of western democratic institutions, the Great Charter isn't going to give up its secrets without a struggle. To begin with, it's in Latin. Those of us who have had a smattering from high school or college may recognize the odd word—in which case we'd be lucky. Most of the words were abbreviated to little more than a code decipherable even in 1215 only by the literate few, because most people (including the king) could neither read nor write, even in their own language (Middle English or Norman French).

With a translation we discover a whole new problem: namely, what does it mean in English? What's all this about amercements, estovers, demesne cartes, socage, burgage, eschetes, and advowsons? The fact of the matter is, most people have long since forgotten what is contained in Magna Carta. They just know it's important. Obligatory references to it are regularly found in legal texts, including the Delaware Code. The words "Magna Carta" lend legitimacy to constitutional treatises much the way the name Toqueville does for books about American democracy. What is Magna Carta really about? Clearly, it requires a little explanation after seven centuries.

Except for the climate, England was not a very pleasant place in which to live in the early 1200s. The weather was, by the way, noticeably more bearable than today. The forests had not been hacked into submission and wild beasts had not yet been shot to extinction. However, under John, England's worst king, the grinding weight of royal authority became intolerably oppressive to most classes and conditions of people. The Western Church at this time was led by what many would regard as the greatest of medieval popes, Innocent III. It is a characteristic of Magna Carta that religion and state craft are inextricably intertwined. In our age of church-state separation this union is an uncomfortable fact, which we tend to ignore in holding Magna Carta as the precursor to our Constitution.

The constitutional struggle that gave birth to the Great Charter began in the summer of 1205 with the death of Hubert Walter, Archbishop of Canterbury. The monks of Canterbury claimed their customary right to exercise the powers of the cathedral chapter and to elect a successor. The bishops of the Province of Canterbury, while conceding the right of capitular election, claimed that they should at least concur with the monks in the choice of the new Archbishop. The king, for his part, claimed that a valid election could be made by neither the monks nor the bishops without his royal license.

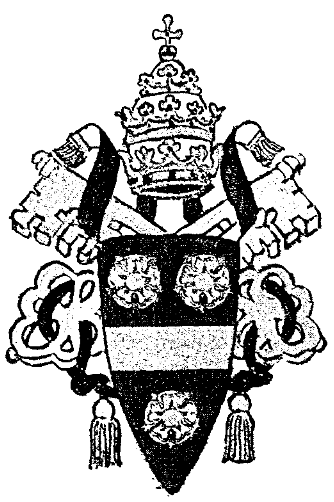
Now things get complicated. Before Hubert was cold, the younger monks secretly and at night elected one Reginald, their sub-prior, to the archepiscopal office. Thereafter, the older and wiser part of the monastic community decided to ignore what had been done and, at the king's direction, they elected John de Gray, Bishop of Norwich, who was immediately put into possession of the archbishopric. A delegation of the monks was then dispatched to Rome to obtain the pallium.[1]

After mulling it over for a year, Pope Innocent first decided that the monks of Canterbury had the exclusive right to elect the new Archbishop and not the suffragan bishops. This being resolved, the pope then proceeded to nullify both of the elections, which the monks themselves had made. The election of Prior Reginald was annulled upon the ground that it was uncanonical, while that of Bishop Gray was annulled because it was improperly held while the validity of Reginald's election was a pending question! Innocent then commanded that the delegation of monks elect, in his presence, Stephen Cardinal Langton, an eminent English scholar, who then happened to be residing at the papal court. Without conceding to King John even the right to confirm the election, Innocent consecrated the Archbishop-elect at Viterbo, Italy in June 1207.

The arms of England. King John used these, which combined two lions for Normandy and a single lion for his mother's duchy of Acquitaine.

John at once declared that Langton would never set foot in England. Innocent made several attempts to appease the king, who refused such proposals. The quarrel predictably escalated. When John refused to listen, Innocent threatened to lay the whole English kingdom under interdict. John responded with a counterthreat that, in the event of interdict, he would banish the clergy and mutilate every Italian he could find in Britain. Innocent then proceeded to compel obedience by imposing the interdict in 1208. All English churches were closed, church bells were silenced, the administration of the sacraments, save to the newborn and the dying, were suspended. The dead could no longer be buried in consecreated ground. John vented his wrath on the clergy, thus ending a long alliance between king and clerics, which dated back to the

time of William the Conqueror. The Church, which had long been steadfast in its support of royal authority against the barons, was now changed from a faithful ally into a dangerous enemy.



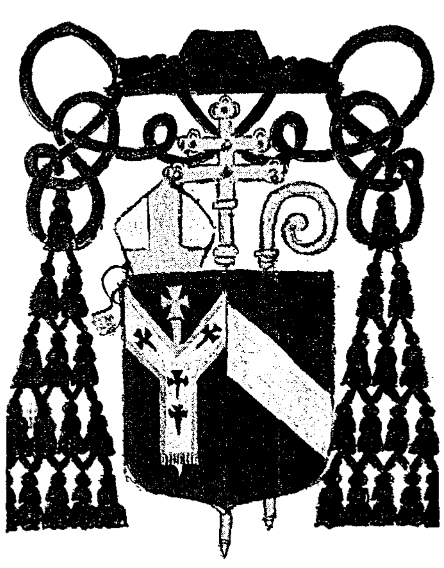
The arms of the Counts of Segni, the family of which Pope Innocent III was a member.

King John was nothing if not obdurate, and in 1209 Innocent proceeded to excommunicate him. Finally, in 1212 the pope resorted to the supreme and final exercise of his secular authority. A bull of deposition was issued against John, absolving his subjects from their allegiance to him and exhorting all Christian princes to unite in dethroning him. The recently subjugated Welsh, who needed little incentive, immediately rose in rebellion. Philip II, King of France, gathered an army for the purpose of invading England. Many of the barons, led by Robert Fitz Walter, conspired to go over to Philip upon his landing on English soil.

The arms of Robert Fitz Walter.

With virtually everyone against him, King John craftily pulled off a stunning coup. In May, 1213, he knelt before the papal legate Pandulf, surrendered his kingdom to Innocent, and took an oath of fealty to the pope in the form used between lord and vassal. John agreed that Langton should be received as Archbishop of Canterbury and that the clergy and others should be restored to their rights and privileges. For his part, as a man of the pope, John was now entitled to his protection. Because of this the incipient rebellion and invasion evaporated.[2]

King John's submission failed to put to rest the tension with one group, the baronage, whose grievances arose from John's abuses of the feudal structure. Not only was he finding ways to increase taxes, but was doing so without the consent of the barons and in violation of custom and practice. Under Fitz Walter, they assembled an army in the north



The arms of Stephen Langton (right) impaling those of the Archbishopric of Canterbury (left).

and marched southwards. In Stamford they were met by the king's representatives, William the Marshal and Cardinal Langton. The Cardinal was walking a tightrope because he was also in fact a key player in getting the barons to act in the first place. He saw in this an opportunity to strengthen the Church's position. The Marshal and Langton reported back to John that the barons and virtually everyone else were ready for a fight this time. Finding himself thus outnumbered by about 2 million to one John decided on a tactical retreat. In June, 1215, the barons "persuaded" John to come to them at Runnymede on the banks of the River Thames and agreed on a few ground rules.

The arms of William the Marshal, Earl of Pembroke, with a marshal's baton behind it.

The document that emerged largely has to do with the ground, in fact, at least in the sense that taxes were based on where one stood in the feudal hierarchy. Twenty-one of the 63 clauses deal specifically with property rights. At the top was the king, who could tax the barons in exchange for a few counties each. The taxes were originally in the form of products of the land and military service. The barons had to produce the men to fight, which in turn reduced the labor available to work their estates. A significant element of the barons taxed their tenants in the same way. The higher up a person was, the more land he controlled. The more land he had, the more people he had available to provide services and extract taxes from, and so on, down to rock bottom, the villeinage. Since villeins (serfs) had no land entitlements, but merely the bare duty to work and to provide labor in exchange for somewhere to squat, they weren't entitled to any rights.

When the taxes didn't get paid, the king had a whole satchel of nasty little tricks besides the "5000 henchmen at the castle gate" approach. This arose from the fact that all the land was ultimately his. (Actually, by then it belonged to the Pope—see above—a minor detail.) For example, the king could claim that land reverted (escheted) to him when a baron died without a will rather than going to the baron's next of kin. This consequence could be avoided by the payment of a sum to the king or other overlord. Consequently, John hit upon the idea of making this payment somewhat more than just a token (see Clause 2).[3] Similarly, if there was a widow, she might be forced to pay an

Magna Carta
(Continued)

extortionate sum to remain in her husband's estate until "dower" had been assigned to her (Clause 7). The estate was however redeemable on payment of a very large sum. And when a baron committed a felony (or the king alleged he had, which amounted to the same thing), the king would declare his whole estate forfeit. (Clause 32). One can imagine, in a society where everyone was dependent on the landowner above him, that the chaos that resulted from the seizing, vacating or ransoming of estates was even more unsettling than a corporate management reorganization.

Abuses of other aspects of the feudal structure were also occurring. The king had the right to control the marriages of his tenants' daughters. With his eye once again on the till, he would threaten an unsuitable marriage (known as disparagement) on a tenant who wouldn't come up with the goods. The King required certain feudal services due him, such as castle duty, raising the portcullis, for example, to be rendered in cash (Clause 29). And he was always trying to enlarge the Royal Forests where most of the tastier meat wandered around (See Clause 47).

Moreover, the barons were not the only class capable of presenting their grievances by this time. The merchants of London were increasingly influential (they could pay plenty of taxes), so there are many provisions in the Charter aimed at resolving their concerns, including the freedom to navigate on the Thames and Medway rivers (See Clause 33) and the freedom to travel (Clause 42).

On what authority did the barons make their stand? The answer lies of course in what had gone on before—the assembly of the barons at Runnymede was not by then a novel event in English history. Even by the 13th century the English (or Norman English) had taken hold of the idea that custom and practice could be a very useful insurance against suggestions that they might be doing something new and untried (a cardinal sin in England, then as now). The precedent of assembling went back to pre-Norman days in England, when the Anglo-Saxon kings were in the habit of consulting the leading figures of society, usually older men, hence "aldermen", in councils known as "witans". It had been adopted by the Normans and to some extent institutionalized by Henry II.

That the Charter, which now seems in many ways so anachronistic, has had such a lasting impact down to the present day is attributable to the fact that, buried among all the medieval paraphernalia, there are provisions that have to do with universal principles of justice and good government. Clauses 39 and 40 originally designed to rectify the grievances of Robert Fitz Walter, have become the most famous:

[39] *No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land.*

[40] *We will sell to no man, we will not deny or defer to any man either Justice or Right.*

Even for the average accused of 1215 this was good news because it ensured that he wouldn't be subjected to trial by ordeal, such as being thrown in boiling water or trussed up and tossed into the river.

Of equal significance is Clause 12:

no scutage or aid shall be imposed in our kingdom, unless by the common council of our kingdom....

Although the clause was dropped from subsequent issues of the Charter, the principle that there should be no taxation without representation survived. When Charles I sought to ignore it in the 17th century, his attitude eventually cost him his life. A century and a half later, similar arrogance on the part of George III and his ministers was to cost him his American colonies.

Clause 17 could be regarded as the origin of regular courts in the common law system, since it requires the Court of Common Pleas to sit in one place rather than following the king around.

Clause 60 extends these benefits to all levels of society, but probably not villeins. So the barons were not to be a privileged minority.

It's probably fair to say that any constitution or system of government in which the above principles are observed will be basically just and democratic. No government however tyrannical can survive for long without money; and the guarantee of a fair trial is the only sound means of preventing arbitrary and discriminatory application of the law, and of ensuring that the government's conduct remains within bounds.

The clauses mentioned above became increasingly a fundamental element in the emerging English constitution. Thus it was that by the mid 14th Century, the "common council" principle had started to become institutionalized in in the form of a parliament. Strictly speaking, this parliament was, and still is, a meeting between the nobility, the clergy, the commons and the king in which the king "acted" once he had secured consent from a comfortable number of those present. This evolution allowed the king to get on with the really important business of fighting off would-be usurpers and ensuring the succession. Over the centuries, a working relationship between Parliament and the king, based on mutual respect, slowly developed.

The seventeenth century probably saw the apogee of the Great Charter's potential role as a form of written constitution for England. It was frequently invoked both in the courts and by parliamentarians and in particular by the great Chief Justice, Sir Edward Coke, in his opposition to the Prerogatives claimed by James I:

[T]he king cannot change any part of the common law nor create any offence by his proclamation, which was not an offence before, without Parliament....the king has no prerogative but that which the law of the land allows him (The Case of Proclamations, 1611)

By the time William of Orange mounted the throne, Parliament had become the dominant political force in the land. It marked the event with the adoption of a Bill of Rights, which in many respects superseded Magna Carta. But, neither the Charter nor this Bill of Rights succeeded in crystallizing into a written constitution that could limit the exercise of sovereign power in England. Why?

The explanation for the failure lies in the very fact that through Parliament's power the people (at least potentially in 1688) had become the true sovereign, (bearing in mind that the monarch has always remained a constituent of that body). It really didn't make sense for the lawmakers to have limitations imposed on them, and besides, who would enforce them? With no one in sight capable of changing the new course, Parlia-

ment and political thinkers gradually articulated a theory of sovereignty that would permit it to do anything it pleased. One of the things that pleased it was to repeal Magna Carta bit by bit. By 1970, only four of the sixty-four clauses had been left untouched. This is not to say that Parliament was maliciously motivated. The repeals were largely a long overdue tidying up exercise in which thousands of statutory provisions of even greater irrelevance than most of the Great Charter were swept away. While Clause 39 is still there, it is not of any great English constitutional importance, since the all-embracing doctrine of parliamentary sovereignty means that it can be ignored if convenient. In both World Wars Clause 39 was expressly excluded in statutes adopted for the defense of the realm.

What then is the importance of Magna Carta as a legal document in England today? In truth, the Great Charter is largely forgotten. Constitutional law cases barely mention it except as an historical milestone. Even the courts, which in the days of Charles I were prepared to attribute the force of fundamental law to it, now use more subtle techniques for dealing with legislation they don't like. Certainly the Great Charter could never be invoked today in order to "strike down" legislation along U.S. lines. Instead British courts have developed certain presumptions of statutory interpretation and will if necessary construe a law against its apparent intent and meaning if it is thought to pose a threat to civil liberty. Cases of severe injustice are now dealt with by the European Commission and the Court of Human Rights, set up in 1954 by a Treaty to which the United Kingdom was a founder signatory. The spirit of the Great Charter is still bred into every Englishman, but the document itself is of no legal significance.

By contrast, it's arguable that Magna Carta today is still very much an American legal document. Its precedent for the Petition to George III in 1774 and subsequently for the U.S. Constitution is well-known. Even some of its less exciting provisions, such as the one dealing with weights and measures (Clause 35) found their way into the Constitution (U.S. Const. art. I, §7). But the colonists had brought the Great Charter's principles with them long before 1774. When royal charters were granted to the colonists they frequently contained references to Magna Carta. The proprietary colony of Maryland in 1638 passed a legislative bill expressly recognizing Magna Carta as one of the bases of its law. (When we recall that the Stuarts sat on the throne at the time, we won't be surprised that it didn't get the royal assent.) In 1687, William Penn Published an edition of the Charter. In 1712 and 1715 respectively, South and North Carolina adopted the Charter as an enactment deemed essential. In 1756, Virginia forbade lawyers or anyone else from charging fees for appearing in judicial proceedings. The government agreed to approve the measure if nothing prohibiting it could be found in Magna Carta. (The legislation was adopted but does not appear to have survived.) Some states have incorporated Magna Carta into their codes: Massachusetts, Michigan, Montana—and Delaware.

The essential difference between the Great Charter and the United States Constitution is that the former was not a political experiment. The provisions of Magna Carta contain no abstract theory of government; they rather sum up the traditional liberties of the English nation seven hundred years ago. The Magna Carta, although it was issued in the form of a royal grant, was in substance a treaty or compact entered into between the royal authority on the one hand and the nation in the form of the three estates, clergy, baronage, and freemen, on the other.

There is, however, a similarity between the Charter and the Constitution. Although the Constitution is written, in form, as a grant from a sovereign people to those by whom they permit themselves to be governed, it may also be seen as the compact between those who *actually* held the reins of power (thirteen separate governments in 1787) and those who *should* hold the power (a sovereign and united people). This perspective may lead us down an interesting road. Treaties are often interpreted not by the intent of the framers but by the intent of the ratifiers. In construing the Constitution, should we look to the minds and attitudes of the members of the various state assemblies that ratified the documents rather than to the framers of it? Before strict constructionists rush into print, we shall leave this issue.

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EPILOGUES

Stephen Langton. Cardinal Langton died in 1228 and was buried in Canterbury Cathedral where his tomb may still be seen. If not the father of Magna Carta, he is certainly its midwife. We remain indebted to him in surprising ways, as it was he who first divided the Old Testament into chapter and verse while a professor at the Sorbonne.

Innocent III. The former Lothar, Count of Segni, died in 1216. This greatest of medieval popes will disappoint those

(Continued on page 108)

Magna Carta
(continued)

who thrill to the scandal of papal disportment; he was a scholarly and moral man who left no illegitimati. Perhaps his greatest fault, in the clarity of hindsight, was succeeding too-well in creating a church more powerful than his earthly vassals could tolerate or his less able spiritual successors sustain.

Robert Fitz Walter. The leader of the barons opposing King John was one of the 25 nobles appointed to enforce the promises of the Charter. His brashness caused the civil war to continue until John's death. In 1219 he went off on a crusade to Egypt. Returning to England, he died peacefully in 1235 and lies buried before the high-altar of Dunmow Priory.

William Marshal. The Earl of Pembroke, who died in 1219, was to the end of his life a master of self-restraint and compromise. He was succeeded in the earldom in turn by each of his five sons, who all died childless. He was buried in the Knights' New Temple, London. It is now called the Temple Church and his tomb is still there.

King John. The King of England, Lord of Ireland, Duke of Normandy and Aquitaine and Count of Anjou, to string out his titles, died in 1216 and presently reposes in Worcester Cathedral. After a life of murder, debauchery, and ineptness, he chose to have himself interred between two Anglo Saxon saints. Although this pious act may not have prevented his soul from being well-grilled before the bar of divine justice, he may yet have the last laugh. From his donation to the pope, and papal regrant back to him, sprang English claims to Ireland for many centuries, issues which are with us to this day. We should not be too quick to regard him as a total failure; he was an extraordinary genetic success. Every English king or queen since his time has been one of his descendants, as well as some three to four hundred thousand English men and women, and perhaps as many as a million Americans. Among these is his seventeen times great grandson, George Washington, President of the U.S. Constitutional Convention! ■

[1]An archbishop, notwithstanding election by a cathedral chapter and reception of the temporalities from his king as feudal lord, did not consider himself fully inducted into office until his right had been confirmed by the pope who would invest him with the "pallium", an emblem of metropolitan power. The pallium, which can be seen in the coat of arms of the see of Canterbury to this day, is a strip of wool worn around the neck embroidered with crosses.

[2]The idea that the English nation shuddered with a sense of shame and degradation when John became the vassal of Innocent seems to have been the assessment of historians at a later time. It was certainly not without precedent. John's own father, Henry II, had previously become the feudatory of Pope Alexander III.

[3]The specific references to the clauses of the Charter in this article are found in the Delaware Code. Although the translation provided there is not very precise when compared to the Latin original, it does hold a place of honor in the Code and is readily available.

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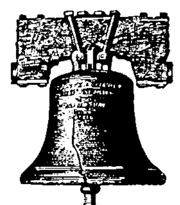

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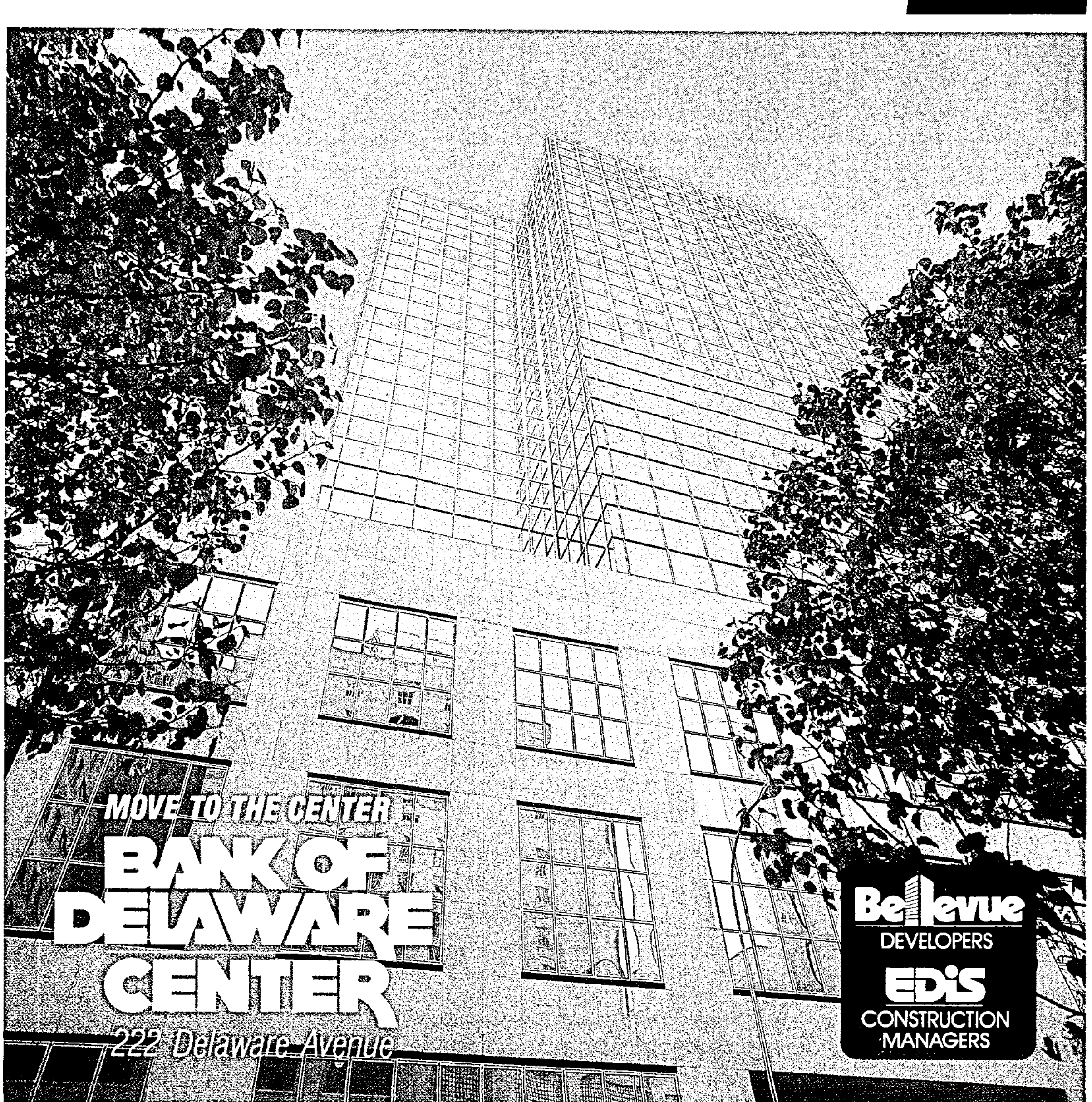

The Continuing Importance of the English Common Law

Richard C. Kiger

Much is made of the innovations in government found in the United States Constitution, and justly so. The framers of the Constitution, however, were nothing if not even-handed, and in a sense the Constitution is as much as act of preservation as an experiment. This will appear from an examination of the English legal system (the Common Law), as it existed at the Time of Separation from England, and its impact on the United States Constitution, and particularly the development of law in Delaware.

The ratification of the United States Constitution may be viewed as an attempt to deprive the new government of opportunities for the repetition of abuses by earlier governments. By setting forth the specific attributes and powers of the new government, the Constitution presumably left undisturbed those matters it did not address. That the Constitution was intended to create a government of limited powers was later emphasized in the Ninth and Tenth Amendments.

One of the matters presumably left undisturbed was the English Common Law as it has been applied in the former colonies. The Common Law is not mentioned in *The Federalist*, no doubt because its value and currency were assumed as a matter of course. The continued presence of the Common Law as a part of legal life was acknowledged, albeit indirectly, in the Seventh Amendment, affirming the right to trial by jury "In suits at common law, where the value in controversy shall exceed twenty dollars..." The vigor of the Common Law may have been something that could be assumed by statesmen in resolving issues of national importance, but local leaders were less disposed to leave to chance such matters as the status of the laws under which they lived, laws that governed their relationships with one another and with their government. The Delaware experience is a case in point.

The Common Law of England became the law of Delaware on September 20, 1776 when the State's first Constitution was adopted.[1] Because of savings clauses in succeeding constitutions, the Common Law as it existed in 1776 has been a significant part of the law of Delaware ever since, except as modified by subsequent enactments.[2] The reason for adoption of the existing body of law as the law of the new State, of course, was to maintain the status quo without piecemeal reenactment of laws that had served well. The consequence, however, was more profound than may have been foreseen.

The Common Law was a body of case law that had evolved over centuries, and which, when raised to constitutional stature, took on the force of legislative enactment.[3] Thus, a principle established in a case decided after 1776 could be overruled by later judges, but a similar principle from a pre-1776 case could not unless it was found to conflict with the Constitution or a post-1776 act of the legislature. This aspect of the Delaware Constitution can be seen influencing the legal relationships of people to their government and to one another. Herewith a few examples to suggest the pervasiveness of the Common Law heritage.

One of the most obvious functions of government is to provide a means of adjudicating disputes. The court systems that were established in the former colonies were generally modeled on the English system, typically the creation of separate law and equity courts. Delaware, unlike virtually all other states, maintains the distinction between law and equity in a separate equity court, the Court of Chancery.[4] Other jurisdictions merged equity and law during the 19th Century, and even in England the distinction has eroded. But not in Delaware. More English than the English, we adhere to old ways. The late Professor Morgan of Harvard Law School is said to have described Delaware as a "museum of the Common Law" and the preservation of a separate court of equity has more than antiquarian charm or curiosity value. Chancery, exercising a highly flexible jurisdiction, has evolved into the premier court of corporate law in the country. (See *DELAWARE LAWYER*, Vol. 2, No. 3, spring 1984 at page 34.)

The English heritage gives us more than the structure of our court system: it confers an ancient body of substantive law, which our courts must examine as it existed in 1776 in order to enunciate the law today. A fascinating example of this is *Cahill v. State*[5], which involved issues of child support and paternity. The putative father contended that because of the constitutional aspects of the Common Law, he had a right to a jury trial to determine paternity.

The first Delaware court to rule on this issue was Superior Court.[6] Its opinion is a scrupulously detailed analysis of the interplay between the Common Law as it existed before 1776 and the statutory enactments after that date. It discusses bastardy proceedings in the reign of Henry VIII and Elizabeth I, and draws upon enactments under earlier rulers. Although the Supreme Court disagreed with the Superior Court's conclusion, the relevance of the Common Law to the outcome of the case is undeniable.

The Elizabethan Poor Laws are only a few of the components of the Common Law that may be brought into play in a modern courtroom. In real estate law, too, the past is very much with us. The *Phillips* case, a dispute over title to beach lands, is the most important such case of recent years.[7]

Title to thirteen acres of ocean front property near Rehoboth was at issue in *Phillips*. Whether title belonged to private persons or the State turned on an analysis of the title granted to William Penn and events since the American

Revolution. Because title to land belonging to the British Crown passed to the new states following the Treaty of Paris in 1783, the issue became whether Penn held title (under a grant from the Duke of York) as a proprietor for (and therefore an agent of) the Crown or as a private citizen.[8] If he held title as a proprietor, his holdings passed to the new State in 1783 as one sovereign succeeded to the rights of another. After a careful examination of the history of the title, the trial court held that the Penn grant was such a mix of individual and governmental rights and duties as not to allow a separation of the two.[9] Hence, Penn was deemed an agent of the Crown and his interests passed to the new State.

The *Philips* case is pertinent to this discussion for two reasons. First, it emphasizes the importance of the Common Law in defining legal principles. Much may depend on the Treaty of Paris and subsequent events in reaching a decision, but critical to the resolution of the case is an understanding of English property law in the 1680s when the Penn grant was made, and that means understanding the Common Law. Second, *Phillips,* shows that the Common Law as it has come down to us has a critical bearing on the very nature of title to real estate. The statutory law of Delaware with respect to title is meager. The parts of the Delaware Code dealing with these subjects suggest that they were enacted in response to specific problems rather than as broad changes in the law as it existed before the Revolution. As a consequence, one must constantly refer to the Common Law to determine the meaning of terms commonly used but not defined by the statutes in which they appear. For example, the term "special warranty" is used in a law involving the legal effect of the words "grant and convey" in a deed, but no definition is given. Only by tracing the statute to its roots in the reign of George II, can one apprehend the clear meaning of the term.[10]

It is apparent that someone unfamiliar with the Common Law could easily make serious mistakes in handling legal matters. A statute may refer to the Rule against Perpetuities, but it does not explain it.[11] Similarly, the Rule in Shelley's Case is the law of Delaware[12], and so presumably is the doctrine of Worthier Title[13], but one would seek in vain for these laws in the Delaware Code. By the same token, the statutes are not helpful in understanding why property held as entireties property or as a joint tenancy is not part of a probate estate.

A knowledge of law as it existed before the constitution is not only helpful but, in Delaware, vital. The high regard in which the Common Law was held before the Revolution is undiminished. it persists today in the principle that any statute in derogation of the Common Law shall be strictly construed.[14]

The Bicentennial celebration has prompted a national inquiry as to how we as a people became what we are. The richness and the utility of the occasion lie in this collective act of self discovery. It is thus fitting that in celebrating the Bicentennial of the United States Constitution we both acknowledge and comprehend the traditions from which it derived and which it enshrines. ■

Photo by Williard Stewart

Richard Kiger, a member of the Delaware Bar and of the Board of Editors of this magazine, serves as a Master of the Court of Chancery. During his increasingly limited spare time Mr. Kiger studies legal history and pens occasional book reviews for DELAWARE LAWYER.

[1] Constitution of 1776, Art. 25

[2] *Id.;* Constitution of 1792, Art. VIII, §10; Constitution of 1831, Art. VII, §9; Constitution of 1897, Art. XVII, Schedule, §18; *Quillen v. State,* Del. Supr., 110 A.2d 445 (1955), *pet. for rearg. den.,* 112 A.2d 848 (1955); *Associated Transp., Inc. v. Pusey,* Del. Super., 118 A.2d 362 (1955); *Shellhorn & Hill, Inc. v. State,* Del. Supr., 187 A.2d 71 (1962); *Makin v. Mack,* Del. Ch., 336 A.2d 230 (1975).

[3] *Shellhorn & Hill, Inc. v. State, Supra.*

[4] Constitution of 1776, Art. 13; Constitution of 1792, Art. VI, §1; Constitution of 1831, Art. VI, §1, 5; Constitution of 1897, Art. IV, §1, 10.

[5] *Cahill v. State,* Del. Super., 411 A.2d 317 (1980), rev., Del. Supr., 443 A.2d 497 (1982).

[6] *Id.,* 443 A.2d at 498.

[7] *Phillips v. State,* Del. Ch., 305 A.2d 645 (1973), *aff'd,* Del. Supr., 330 A.2d 136 (1974); *State v. Phillip,* Del. Ch., 400 A.2d 299 (1979).

[8] *Id.,* 305 A.2d at 646.

[9] *Id.*

[10] 1 Del. Laws Ch. 58, §5

[11] 25 *Del. C.* §5501. The Rule Against Perpetuities is intended to limit the time in which an interest in real estate may come into being. "That Rule, as finally developed, may be stated as follows: a future interest which, by any possibility, may not vest within twenty-one years after a life or lives in being at the time of its creation is void at its inception." Moynihan, *Law of Real Property* (1962), at 204. The rule originated in The Duke of Norfolk's Case, 3 Ch. Cas.1 (1681), *Id.,* at fn. 14, and therefore is part of the Common Law of Delaware.

[12] *Farrell v. Faries,* Del. Supr., 22 A.2d 380 (1941). "Chancellor Kent has stated the rule accurately and comprehensively as follows: When a person takes an estate of freehold, legally or equitably, under a deed, will or other writing, and in the same instrument there is a limitation by way of remainder, either with or without the interposition of another estate, of an interest of the same legal or equitable character, to his heirs or heirs of his body, as a class of persons to take in succession from generation to generation, the limitation entitles the ancestor to the whole estate.'" *Id.,* quoted at 383.

[13] The Doctrine of Worthier Title holds that if one may acquire title to property in more than one way, a perference will be given to one form over another, presumably because it is worthier. Thus, if real estate is willed to someone who would have received it if there had been no will, the heir takes by descent rather than by will. With respect to conveyances other than by will, a conveyor who limits a remainder to those who would take anyway is deemed to have kept an indefeasible reversion for himself instead. For a fuller discussion of this topic, *see Moynihan, op.cit.,* at 149-162.

[14] *Gibson v. Keith,* Del. Supr., 492 A.2d 241 (1985). Note that "it is an accepted principle of statutory construction that a legislature is presumed to know the common law before a statute is enacted and that consequently the repeal of a statute, even though declaratory of it, revives the common law as it was before the statute." *Makin v. Mack, supra,* at 234.

V. Glorious Incompletion: The Living Instrument

Looking back with the superior knowledge of the year of 2087 our descendents may commiserate our cheated curiosity, as we ask across the century, how fare our liberties? Is the Constitution hale? We cannot know, but we can draw uncomplacent reassurance from the instrument that has kept us free amidst convulsions of change. The Constitution prevails because its business is unfinished.

Introduction

William T. Quillen

This issue of *DELAWARE LAWYER* celebrates the Delaware role in one of the great events of history, the "Miracle at Philadelphia," the Constitution of the United States of America. The majesty of the achievement, as viewed in full perspective, is overpowering. There is danger, however, in viewing the Constitution *itself* as the miracle, the product of a superhuman agency. Much should and will be said of the singular grandeur of the monument, out of many—one. Less, and not enough, will be said about the necessary humanity, the faithful human mortar that bound the initial structure and continually repoints it. Much too little will be said of the required foundation—selfless tolerance and democratic civility. And practically nothing will be said about the divine contribution—the frontiers that give a restless humanity a participatory stake in American civilization.

This American Republic is a peculiar coincidence of many forces, that must be understood if our freedom is to survive and even more sophisticatedly understood if we are to be evangels to the world. The history of Delaware, the microcosm of America, gives us a laboratory for insight. Let us use our history and make our Bicentennial celebration a working experience.

Colonial survival was difficult, but we were given life's greatest commodity—time. The neglect of Delaware was doubly benign, neglect by a king reinforced by the neglect of William Penn. Penn's arrival in New Castle in 1682 was one of a series of transitions that featured no lesser personages than Peter Minuet, Peter Stuyvesant, and James II. Less than twenty years after his arrival, Penn, under the compulsion of raw political forces, granted the lower three counties legislative autonomy. By the time of the shots at Lexington and Concord, Penn's southern territories had for seventy years been *de facto* as politically free as any of their fellow New World experimenters. There was no interference from the Crown and, for the most part, only the welcome assertions of the Penns to a proprietary title to Delaware land, also unwelcomely claimed by a succession of Lords Baltimore.

Even while joining the Second Continental Congress in 1775 and 1776 in support of a colonial army to fight the mother country, the Assembly of the Three Lower Counties on the Delaware River, as late as March 22, 1776, instructed its three delegates to "embrace every favorable opportunity to effect a reconciliation with Great Britain...." It was not until June 14, 1776 that the Assembly amended its direction, substituting a permissive charter that its delegates "concur in forming... compacts and concluding treaties... and adopting... measures as shall be judged necessary for promoting the liberty, safety, and interest of America..."

The next day, on Saturday, June 15, 1776, the Assembly, consistent with the view of the Congress that it was "utterly irreconcilable with reason and good conscience [to] support ...any government under the Crown of Great Britain," established free of the Crown a temporary government for the counties of New Castle, Kent, and Sussex upon Delaware.

The individual man theory of history is exemplified by the July 2, 1776 two-to-one vote of the Delaware delegates on the Lee Resolution. The all night rider, Caesar Rodney, who, along with his fellow affirmative voter Thomas McKean, had represented Delaware at the Stamp Act Conference over a decade before, was temporarily ascendent on the Delaware political scene. The third delegate, George Read, thought the Lee measure premature, voted against the resolution, but joined "with a rope about his neck" in signing the Declaration of Independence.

When Delaware held its first Constitutional Convention in August 1776, the Constitutional deputies, the first in America elected by their constituents, chose George Read as President of the Convention. Caesar Rodney failed to win election as a deputy to the Convention. While Rodney's service to his State was hardly concluded, Delaware would become Federalist Delaware and Read, the dissenter on the Lee Resolution, the dominant political figure of the early Federal period. He would serve as a delegate to the Philadelphia Convention in 1787, one of four lawyers in a five member delegation.

It is perhaps appropriate that George Read died in 1798 on the eve of the Jeffersonian Revolution and the election

William T. Quillen is CoChair with Henry N. Herndon, Jr. of the Delaware State Bar Association Committee on the Bicentennial of the Constitution. To introduce a former Justice of the Supreme Court of Delaware and to acquaint our readers with his many accomplishments would be an impertinent redundancy. What our readers do not know of his many achievements, however, is his design of this issue of DELAWARE LAWYER and the impetus he has provided for commissioning articles, inspiring enthusiasm for the project, and even propelling laggard authors into print. Bill's previous contributions to this journal are already well and favorably known.

of a Democrat as Governor of Delaware. He had the luxury of living in his era. In rating priorities, it is interesting to note that Read chose as his final public service the office of Chief Justice of Delaware. While one's grandson is perhaps not an impartial observer, William Thompson Read expressed a clearly defensible view in a tribute that is a capsule for judicial demeanor. "Applause at the bar did not in him generate vanity, success in political life ambition, nor the dignity of the bench dogmatism. As a lawyer, a patriot, a statesman, and a judge, he was alike unpretending, consistent, dignified, and impartial."

The Constitutional miracle that we celebrate is not a single supernatural instance of divine grace. There is indeed a God-given opportunity. But it is no disservice to God to recall the story of the preacher, who, on viewing a vast beauty of cultivated fertile acreage, said to the farmer that God and the farmer had a magnificent farm. "Yes," the farmer replied, "but you should have seen it when God had it alone."

It is labor that makes the Constitution live. The miracle lies in our hands. ■

Constitutional Interpretation: A Review Of The Interpretivist/Noninterpretivist Debate

Thomas S. Neuberger

A classic defense of judicial power has been Alexander Hamilton's work in *The Federalist,* Nos. 78-83, in which he argued that courts are essential under a limited Constitution to protect against "the encroachments and oppressions of the representative body." "An independent judiciary under the Constitution," he continued, "would prove to be the citadel of public justice and the public security."[1] Thus, the judiciary, and the Supreme Court in particular, was countenanced as a check on the powers of the legislative majority.

This power was heightened by Chief Justice John Marshall in *Marbury v. Madison* (1803),[2] in which he claimed for the judiciary the sole power to decide that an act or statute is repugnant to the Constitution.

With the power to strike down congressional and State legislation, Supreme Court justices exercise, in effect, a "veto over the politics of the nation, forbidding the people to reach decisions which they, a tiny number of appointees, think wrong."[3] In the light of this tremendous power, it is clear that there must be some limitation on the judiciary. The Court, by using its own value choices, can, as easily as a legislature, encroach upon individual rights. Thus, the role of the written Constitution, as a limitation on the capricious exercise of judicial power, becomes critical.

Legislative action can only be invalidated by the court when the action is "repugnant to the Constitution."[4] The problem today is that neither the Supreme Court justices nor anyone else can agree on what the Constitution specifically forbids. As Alexander Bickel observed, "a statute's repugnancy to the Constitution is in most instances not self-evident."[5] The problem is intensified when challenged legislation is politically controversial. Thus, in expounding the Constitution, the judiciary has employed a variety of theories and developed a number of arguments to justify its reasoning.

In today's debate, the competing theories have been categorized as "interpretive" or "noninterpretive". According to Professor John Hart Ely, interpretivism means "that judges deciding constitutional issues should confine themselves to enforcing values or norms that are stated or very clearly implicit in the written constitution." Noninterpretivism means that "courts should go beyond that set of references and enforce values or norms that cannot be discovered within the four corners of the document."[6]

Within the construct of interpretivism and noninterpretivism, two primary approaches to constitutional adjudication have emerged. They are the historical approach, championed by Attorney General Edwin Meese III in an address to the American Bar Association in 1985,[7] and the "Living Constitution" approach espoused by Justice William J. Brennan, Jr. in an address given at Georgetown University in 1986.[8]

The Historical Approach

For a judge to interpret the federal Constitution using the historical approach, he must look to the sense in which it was accepted and ratified by the nation.[9] Historical arguments are based either on a determination of the intentions of the legislators who drafted and enacted a constitutional provision or on the original meaning "attached by the framers to the words they employed in the Constitution and its Amendments."[10] This approach is compelling for several reasons.

First, by construing the Constitution by frequent reference to the intent of the framers, governmental power is restrained and constitutional checks and balances are preserved. James Madison argued that if "the sense in which the Constitution was accepted and ratified by the Nation...be not the guide in expounding it, there can be no security for a consistent and stable government, more than for a faithful exercise of its powers."[11]

Without this check, the Court by interpretation can reduce the Constitution to "whatever the judge says it is."[12] Thomas Jefferson was keenly aware of this tendency when he wrote, "Our peculiar security is in the possession of a written constitution. Let us not make it a blank paper by construction."[13] Mr. Justice Story similarly warned that a Constitution not bound to its original meaning but subject to the interpretation of subsequent judges, could be re-written without limit:

> *Nor should it ever be lost sight of that the government of the United States is one of limited and enumerated powers, and that a departure from the true import and sense of its powers is* pro tanto *the establishment of a new constitution. It is doing for the people what they have not chosen to do for themselves. It is usurping the functions of a legislature* ...[14]

A second argument put forth by proponents of the historical approach is that the decision to draft a written Constitution presupposed the idea that constitutional interpretation requires an observance of the original document and its intended meaning. The framers of the Constitution expected that the document be construed in a "sense most obvious to the common understanding at the time of its adoption."[15] Thomas Jefferson argued that the Constitution be interpreted in accordance with the "meaning contemplated by the plain understanding of the people at the time of its adoption—a meaning to be found in the explanation of those who advocated it."[16]

A third argument for the historical approach is that the "[e]ffectuation of the draftsman's intention is a longstanding rule of interpretation in the construction of all documents", i.e., wills, contracts, and statutes. Rules of interpretation were extremely important to the framers.[17] Alexander Hamilton stated, "to avoid arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them."[18]

James Wilson, an early American jurist and influential member of the Constitutional convention, wrote: "The first and governing maxim in the interpretation of a statute, is to discover the meaning of those who made it."[19] Furthermore, fidelity to the Framer's intentions has been encouraged by the Supreme Court on numerous occasions. Mr. Justice Goldberg, for example, declared: "Our sworn duty to construe the constitution requires, however, that we read it to effectuate the intent and purpose of the framers."[20]

To keep the Constitution from becoming obsolete, the framers included an amendment provision, Article V. Advocates of the historical approach argue that only by amendment can the Constitution be changed. Amendment through judicial fiat would breed disrespect for the law and undermine the basic notion that America was a nation governed by laws and not by men. [21]

Finally, advocates of the historical approach argue that if the intentions of the framers are rejected in construing the Constitution, whose intentions and interpretations should replace them? It is argued that Constitutional law not anchored in the original intention of the framers becomes merely what the judges say it is. If this is the case, our government is one of men, not of law. The citizens of the United States are, in the final analysis, governed by an unelected judiciary.

There are many who criticize the use of history in modern Constitutional adjudication. Opponents of the historical approach are skeptical of the accuracy with which a judge or legal historian can divine the framers' original intentions.[22]

One reason given for the difficulty in ascertaining the intent of the framers is that the members of the Constitutional Convention were not united on the meaning and purpose of specific provisions. Arguably, each delegate had his own motives for voting for a particular text, and his own values he sought to have expressed in it. As Judge Thomas Cooley commented, "Every member of such a convention acts upon motives and reasons as influence him personally, and the motions and debates do not necessarily indicate the purpose of a majority of a convention in adopting a particular clause."[23] Thus, it is impossible for an historian to say with conviction that a provision was intended to serve a specific purpose.

A second reason for the difficulty in ascertaining the framers' intent is that many of the records surrounding the adoption of the Constitution and the Bill of Rights are incomplete. The records fail to explain why a delegate, a state delegation, or a coalition of states voted to include or reject certain language in the documents they drafted. The records that do exist reflect the biases of the recorder and emphasize the expression of the more influential and vocal participants of the Constitutional Convention and First Congress.[24] One constitutional scholar has noted: "the full-bore historicist in Constitutional law... wants what none of the historical arguments...can give, and that is the authoritative reading in a particular context."[25]

A further problem with the historical approach is that of whose intentions should modern legal scholarship seek to determine in interpreting the Constitution. Delegates at the Constitutional Convention of 1787, members of the thirteen state conventions who ratified the Constitution, the people who elected the ratifying conventions, and members of the First Congress are all actors in the political process. The separate intents of each group, in some measure, colored the final document and its amendments as ratified and enacted.[26]

Still another problem with the historical approach is the difficulty of translating the original intentions into modern legal principles. The founding fathers could not forsee the many institutional and technological developments that have taken place since the drafting of the Constitution. Any conclusions a modern judge might reach concerning the framers' intent would be speculative. One example of this is the application of the Non-Establishment Clause to the public schools.[27] Speculation as to how the founding fathers would have dealt with these cases is hypothetical:

In the accompanying article Thomas Neuberger, Esquire discusses a central and enduring controversy over the proper mode of construing a 200 year old document in the vastly changed society that lives under it. Mr. Neuberger, a thoughtful student of the Constitution, practices law in Wilmington, Delaware.

free public education was not introduced in the United States until the mid-nineteenth century.

A final argument against the historical approach is that it fails to protect against legislative tyranny. It requires that courts hold legislation valid unless a specific constitutional provision is violated. Great deference is given to the majority, while the minority is left with little protection. Thus, the historical approach seems to restrain the judiciary at the cost of leaving the legislature with very few constraints.[28] As Mr. Justice Brennan argued in his Georgetown speech, "A position that upholds Constitutional claims only if they were within the specific contemplation of the framers in effect establishes a presumption of resolving textual ambiguities against the claim of constitutional right, ...it expresses antipathy to claims of the minority to rights against the majority."[29]

The Living Constitution Approach

An alternative to the historical method of interpretation is the living Constitution approach. Supporters of this method argue that the Constitution is simply a framework within which society and government could advance into an uncertain future. The document, it is argued, was designed for an expanding and changing society, which would develop in ways unanticipated by the draftsmen.

Constitutional Interpretation
(Continued)

Mr. Justice Brennan declared, "For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs." [30]

According to this theory, the judiciary is the branch of government, charged with the responsibility of developing the Constitution over time. The Court must consider cases in the light of experience and not merely what was said two hundred years ago.

Proponents of the Living Constitution approach advocate a noninterpretivist methodology that goes beyond the parameters of the written document. Sociological, economic, and political data have been employed to supplement the Constitution in order to make the document more useful to present day society. Criticisms of the living Constitution approach are implicit in the argument for the historical approach.

One vocal critic of the "living Constitution" approach is Chief Justice Rehnquist. He has summarized three inherent dangers. First, he suggests that it misconceives the basic design of the Constitution, which was constructed "to enable the popularly elected branches of government, not the judicial branch, to keep the country abreast of the times." Second, it disregards the unfortunate experiences in the past when the Court has sought to legislate public policy as well as the potential room for abuse in the future when the judiciary embraces "contemporary, fashionable notions of what a living Constitution should contain." Third, it gives too much power to the judiciary; for however socially desirable the goals sought to be advanced by the advocates of a living and expanding Constitution, "advancing them through a free-wheeling, nonelected judiciary is quite unacceptable in a democratic society."[31]

Illustrative of the conflict between the historical and the living Constitution approaches is the case of *Wallace v. Jaffree* in which the Court applied the Non-Establishment Clause to the issue of School prayer.[32] In *Jaffree,* the Supreme Court struck down an Alabama statute that authorized a period of silence in public school for the purpose of "meditation or voluntary prayer."[33] The appellee Ishmael Jaffree filed a complaint in the Southern District Court of Alabama challenging the constitutionality of three Alabama statutes.[34]

The District Court examined the Non-Establishment Clause to determine whether the First Amendment imposed a barrier to state establishment of an official religion. After reviewing historical evidence, Judge Hand concluded that the Non-Establishment Clause does not prohibit any state from establishing a religion. The appellee's challenge to the three statutes was, therefore, dismissed for failure to state a claim for which relief could be granted.[35]

The Court of Appeals reversed this decision. It found that the Alabama statutes encouraged religious activity and were, therefore, repugnant to the Non-Establishment Clause.[36] The Supreme Court noted probable jurisdiction over the limited question of whether Section 16-1-20.1 is "a law respecting the establishment of religion within the meaning of the First Amendment."

Justice Stevens, writing for the majority, applied the three pronged *Lemon* test and held the Alabama statute unconstitutional.[37] He reasoned that the endorsement of school prayer by the state was "not consistent with the established principle that the government must pursue a course of complete neutrality toward religion."[38] In strong dissent, Justice Rehnquist took exception to the view that the Non-Establishment Clause required complete neutrality toward religion. He said:

As its history abundantly shows, however, nothing in the Establishment Clause requires government to be strictly neutral between religion and irreligion, nor does the Clause prohibit Congress or the states from pursuing legitimate secular ends through non-discriminatory sectarian means.[39]

The opinion of Justice Stevens and the dissenting opinion of Justice Rehnquist illustrate the collision of the "Living Constitution" and the historical approaches. Justice Stevens relied upon the Non-Establishment Clause as developed by the Court in recent years. He concluded that the Clause requires a state to "pursue a course of complete neutrality towards religion." By adopting the Living Constitution approach in interpreting the meaning of the Non-Establishment Clause, Justice Stevens struck down the state statute. Justice Rehnquist, on the other hand, adopted the historical approach and opined that the Non-Establishment Clause, historically interpreted, would allow a state to establish a religion. Thus, in Justice Rehnquist's view, the Alabama statute should have been upheld.[40]

The *Jaffree* case instigated the Meese-Brennan debate on constitutional interpretation. In advocating the historical approach, Attorney General Meese declared, "An activist jurisprudence, one which anchors the Constitution only in the consciences of jurists, is a chameleon jurisprudence, changing color and form in each era."[41] In advocating the living Constitution approach, Justice Brennan pronounced,

Interpretation must account for the transformative purpose of the text. Our Constitution was not intended to preserve pre-existing society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.[42]

The Meese-Brennan debate will not conclusively resolve the controversy over constitutional interpretation. But in the Bicentennial year, it is indeed fitting to reflect on the proper means of interpreting that document. ■

The numerous footnotes which accompany this article reflect the thoroughness of the author. Because of space limitations they are not included in this article, but interested readers may obtain a complete list of the authorities cited from the Editors.

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The Delaware Declaration of Rights

Parents, Siblings, Vicissitudes

Carroll Poole and Max S. Bell, Jr.

"Novus Ordo Seclorum", a new order of the ages, proclaims the Great Seal of the United States, a proud assertion. Taken in its entirety, there is ample justification for this claim. Toqueville, William Gladstone, and Lord Bryce all agree and many others concede the precedential novelty of the American experiment.

Daring though it may have been when viewed as a complete structure, many of the constituent parts have ancient antecedents. Nowhere was this more true than in the fashioning of the various bills of rights, both state and federal. The idea of the limitation of the power of a sovereign or of an entire government is ancient indeed.

St. Thomas Aquinas, whose working life spanned the middle of the 13th Century, argued that the ruler holds an office or a trust for the whole community. He is justified only to the extent that what he does contributes to the common good.[1] Although St. Thomas approaches the relationship of the governor to the governed from a theological point of view, the thoughts upon which he builds his argument can be traced to Aristotle, who wrote in the Fourth century, B.C.

Not only does St. Thomas present a theory of limitations, he also holds that resistance to tyranny is a justifiable act of a whole people so long as those who resist do so in a way less injurious to the general good than the abuse they would remove.

The thoughts of St. Thomas were neither complete nor original. He set them in a clerical mold. The English *Magna Carta* (1215) had been executed and then re-issued at least three times before St. Thomas wrote.[2] Nothing in the writings of St. Thomas appears to deal with the problem of applying his principles to individual subjects of the sovereign. Nowhere does he present a theory of enforcement of limitations by means other than mass revolt. What St. Thomas did do was to present in well-organized and closely argued form a cluster of ideas, which became the common property of the modern Western world, an inheritance from the Middle Ages.

Important as was the climate of thought of which St. Thomas Aquinas was an exemplar, a more direct link with the thoughts of the 18th Century politicians[3] is to be found in England. Mention has already been made of *Magna Carta*. Its famous Clause 39 is well-known to every student of public law:

> *"No free man shall be taken or imprisoned or dispossessed or outlawed, or banished or in any way destroyed . . . except by the legal judgment of his peers or by the law of the land."*

It is possible to refer to only a few of the many who contributed to the controversial literature from the early twelve hundreds to the late seventeen hundreds. William of Occam, writing in the middle of the 14th Century, wrote essentially in the clerical vein of St. Thomas. He, too, reflected continuing prevailing sentiments. "The basis of his political ideas was the rooted and almost universal dislike of arbitrary power, or of force exercised outside the framework of what was felt to be the law." Richard Hooker, writing in the late 16th Century, was in the same tradition as St. Thomas and William. However, in his major work, *The Laws of Ecclesiastical Polity*, he refers to a "... composition and agreement amongst themselves ..." that is, amongst the people of the "Polity". This, of course, reinforces the notion of a higher law with the idea of a compact which, if breached by one party (the sovereign), no longer binds the other (the subject).

Only at the very end of the 16th century does a clear distinction between the clerical and the secular appear. Sir Thomas More might be described as the last medievalist and, similarly, Sir Edward Coke one of the early secular thinkers.

There is much doubt whether Coke's dictum in *Dr. Bonham's Case*[4] represented contemporary majority opinion. What is certain is that Charles I recognized it as dangerous to his pretentions (Coke was dismissed as Chief Justice of Common Pleas) and that the dictum was constantly referred to later with powerful effect.

It is impossible to leave the early Stuart and the Commonwealth period without a brief reference to the Levellers. This group—it certainly was not a "party" in any accepted usage of the word—consisted of a number of the private soldiers in the army led by Oliver Cromwell. Sabine, *Op. Cit.* p 489, asserts that they "...tried to secure what in the United States would be a constitutional convention, a special representative body 'not to exercise any legislative powers but only to draw up the foundation for just government.' " Moreover, foreshadowing a later and more famous document, it appears that they argued, "For by natural birth all men are equally and alike born to like propriety, liberty and freedom:..."

John Locke (1632-1704), universally acknowledged as a prime source by the constitutionalists of the later 18th Century, wrote in the *Second Treatise on Civil Government:*

> *The end of government is the good of mankind and which is best for mankind, that all the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their*

Declaration of Rights
(Continued)

power, and employ it for the destruction and not the preservation of the properties of the people?

Thomas Jefferson may have had this passage in mind when he wrote that "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

The works of the writers briefly mentioned and those of a legion of others omitted for lack of space were not sterile academic exercises, although the seed was often much delayed in the germination. The Petition of Right, enacted in 1628, reasserted the fundamental importance of the Writ of Habeas Corpus. It dealt also with other popular grievances: taxation without the consent of Parliament, the quartering of troops in private homes in peacetime, the application of martial law to civilians when the common law courts were open. The observance by Charles I of this one statute, to which he had given the Royal assent would probably have saved both his reign and his head.

This statute was the first of many enacted between 1628 and 1690 dealing with diverse subjects: the abolition of the Courts of Star Chamber and High Commission (1641), the Habeas Corpus Act (1679), the Bill of Rights (1689), and others. Throughout, however, there was a common theme — the limitation of prerogative and the liberties of the subject — in modern parlance — civil rights.

Another common theme is discoverable. The practical men of affairs — the leaders of the communities in which they lived — were responding to particular grievances. They were not the captives of abstract doctrine. They molded and used doctrine and, no doubt, were themselves molded by the theories they assimilated. They quoted Hooker and Locke in their speeches; with more immediate effectiveness they insisted that the settlement of grievances must precede parliamentary action upon the demands of the Crown for supply, i.e. money.

In one respect, the colonists in the New World were exceptionally fortunate. Their settlements stabilized and grew during a period of civil convulsions in the land from which they sprang. Civil war, regicide, and restoration so occupied the attention of the Crown and the influential members of the community that little or no attention was paid to those far-away communities, whose very survival was in any case believed to be uncertain. Of necessity they devised ways of regulating their own internal order. The Congregationalist might well have reflected that "Needs must when the Devil drives."

Following the Glorious Revolution, there was no significant change in the attention paid by leaders in the Mother Country. Continental wars absorbed available energies. Louis XIV had ambitions, which were only barely frustrated by the combined efforts of the Dutch and the English (led by William of Orange at home and John Churchill, Duke of Marlborough, at the head of the field forces). There followed a series of continental European dynastic wars — the wars of the Spanish Succession, of the Austrian Succession, and others. The final armed outbreak of the adherents of the Stuart pretenders occurred in 1745. During this time the home government looked to the colonies for help. It was a contingent from the Massachusetts Bay Colony and from the Province of Maine that first captured the French Fortress of Louisbourg in 1745.

Thus, from 1630 to 1763 the colonies were left alone and became more or less self-governing. What then could be less surprising than that self-governing communities, left to their own resources for almost one hundred fifty years, and rather successfully at that, should object to the sudden revival of interest and the efforts of the Mother Country to resume detailed control after the Peace of Paris? Only one thing would be less surprising.

The colonists, or at least their more educated members, knew their history. They had read Milton and Harrington, Hooker and Locke. The true surprise would have been the failure of these leaders to contest the arrogations and intrusions of English government with those very tracts, arguments, and Acts of Parliament that had been so effective in the limitation of Royal Prerogative and the ultimate overthrow of the Stuarts.

To the extent that there are available records, the evidence is clear that from Massachusetts Bay Colony to Georgia constitutions limiting the power of the several local governments were adopted no later than the end of 1777. The Stamp Act Congress had passed its Resolutions as early as 1765. The First Continental Congress had met and had protested a long series of grievances in a Declaration and Resolves dated October 14, 1774. All of these documents dealt with matters of complaint and, like the Declaration of Independence, were in the nature of protests and so were not strictly bills of rights. What they did do was to establish those points to which the colonial assemblies and conventions objected in a remarkable consensus.

That same consensus became even more apparent with the drafting and adoption of bills of rights in the separate states by separate assemblies or conventions reflecting the similar views of separate constituencies. In 1776 and 1777 eleven of the thirteen colonies adopted constitutions. A twelfth, Connecticut, added a short declaration of rights, which was to be read as a part of the existing charter. Every colony except Rhode Island included in its basic instrument of government new and express limitations. In Rhode Island, the Charter of 1663 had already incorporated the language of Clause 39 from *Magna Carta,* as well as one of the earliest colonial guarantees of a measure of religious toleration.

Not only did the colonies act in a very short time; they adopted documents more significant for their similarities than for the differences of detailed provisions. On both counts the public figures in Delaware were in the main stream or in the lead.

We know very little of the inmost thoughts of the delegates to the Convention that met in New Castle in August of 1776. The evidence is both scanty and unindexed. But we do know what they did. On September 11, 1776 the Delaware convention adopted a Declaration of Rights. The first Constitution followed that Declaration nine days later.

The Delaware Declaration of Rights was adopted after the Virginia Bill of Rights, which forms the first part of the Constitution of that Commonwealth, approved on June 12, 1776. Pennsylvania enacted a Constitution and Declaration of Rights on August 16 of that year, also before the Delaware Declaration was adopted. The Maryland and North Carolina Variances appeared in November and December of the same year.

The available evidence suggests that the Delaware Declaration was derived in large measure from the drafts already enacted in Virginia and Pennsylvania, and under consideration in Maryland.

The delegates to the Delaware convention approved a document, which in its general tenor paralleled the various colonial Declarations enacted during those years. In spite of differences in detail[5] it is the similarity, not the variation, that is striking.

In this context the debates and the controversialist writings produced during the struggle for ratification are enlightening.

Much of the opposition to the new Federal Constitution arose from the absence of express guarantees of rights. A Massachusetts anti-Federalist seized on this in a tract published in the *Boston American Herald* on October 27, 1787.[6]

So also did Patrick Henry on June 5 and June 7, 1788 when he opposed ratification in the Virginia Convention. Thomas Jefferson, a supporter of the main principals of the new Constitution, wrote from Paris on December 20, 1787 to James Madison that he disliked the omission of a Bill of Rights. He was particularly emphatic about this. "Let me add," he wrote, "that a Bill of Rights is what the people are entitled to against every government on earth, general or particular; and that no just government should refuse or rest on inferences."

Although no documentary evidence of the subjective beliefs of the members of the 1776 Delaware Constitutional Convention is available—indeed it may be nonexistent—those beliefs may be fairly inferred from the actions of the delegates in making a statement of reserved rights the first order of their business. That it preceded the adoption of a new fundamental instrument of government by nine days is decisive evidence of the harmony of their thought with that of the leaders of all the other Colonies.[7]

However, the harmony of 18th century thought was incomplete in one particular that excites our curiosity today, and which has caused much litigation: were the 18th Century declarations of rights (U.S., Delaware, *et al.*) intended to be immutable? Even as we celebrate our Constitutional beginnings, we are embroiled in a debate as to whether construction of the rights should be a search for the framers' intentions or a 20th Century meaning for their words. On the one side we have the view that "black ink" is more enduring than brass or stone, a Shakespearean view[8]; and on the other[9], that the wording of the U.S. Bill of Rights was intentionally generalized to accommodate civilizing change as litigants and judges develop a better understanding of the world in which we live.

The Delaware Bill of Rights has not yet been subjected to the same scrutiny as the U.S.; but, when it is, some interesting differences from the federal experience will be apparent.

The Delaware Constitution, dated just nine days after the Declaration of Rights, expressly provided (Art. 30) that "no Article of the Declaration of Rights and Fundamental Rules of this State ... [nor certain provisions in the Constitution] ought ever to be violated on any pretense whatever." The second sentence of Article 30 provided the one means for amending the other provisions of the Constitution (5/7 vote in both branches of the General Assembly), clearly suggesting that the Declaration of Rights and certain provisions in the Constitution were not subject to amendment. However, within less than 16 years, Delaware had a new Constitution and rewritten Rights, and there were significant changes. Two of them merit discussion.

Section 3 of the Declaration provided "That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society." To confirm the primacy of Christianity, Art. 22 of the Constitution (1776) also provided that everyone elected to the General Assembly or "appointed to any office or place of trust" would have to make and subscribe the following declaration:

I A.B. do profess faith in God, the Father, and in Jesus Christ, His only Son, and in the Holy Ghost, one God, blessed forevermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

Notwithstanding the obvious expectation that good Christian men would be running the government and enjoying equal rights and privileges, there were numerous provisions against establishment of any *particular* religion. Freedom of worship was guaranteed, and compulsory attendance or maintenance of any ministry was barred (Declaration, Sect. 2). Art. 29 of the Constitution also forbade "establishment of any one reli-

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gious sect" and provided that no clergyman or "Preacher of the Gospel" could hold "any civil office in this state" or be a legislator "while they [sic] continue in the exercise of the pastoral function." Art. 29 was one of the provisions never "to be violated on any pretense whatever."

In addition, the Declaration (Art. 26) provided that:

No person hereafter imported into this state from Africa ought to be held in slavery under any pretense whatever, and no Negro, Indian or Mulatto slave, ought to be brought into this state for sale from any part of the world.

This too was never "to be violated on any pretense whatever."

In 1792 another Constitutional convention was called, principally because the position of President of Delaware had little authority apart from the General Assembly and a basic revision of the form of state government was needed to strengthen the executive branch. However, the convention also eliminated the specific "rights" quoted above, despite their earlier "[n]ever to be violated" status. Although the 1776 Constitution did not provide for calling another convention this did not prevent its happening. Addressing this conceptual problem, the framers gave the new Constitution a preamble stating that governmental authority was derived from the people, with their consent and to advance their happiness, and concluding with this assertion: "and they may for this end, as circumstances require, from time-to-time alter their constitution of government." So saying, 24 elected delegates (out of a population of 37,000) made substantial changes, and there apparently was no litigation challenging their authority to do so.

Much of the explanation for change lay in accommodation to the new federal government. Between the two Delaware Constitutional conventions, the U.S. Constitution had come into being and the first ten amendments had also been ratified by December 15, 1791. Article VI of the U.S. Constitution provided that no religious test could ever be required as a qualification to office or public trust "under the United States", and Art. IV, Sect. 2 provided that no person held to "Service or Labour" in one state could be discharged from such "Service or Labour" by the law of another state. These Federal declarations ratified, the Delaware framers (1792) were persuaded to delete the contrary provisions from the Delaware Constitution.

Cognizant that two significant provisions had been deleted from the rights previously proclaimed as "[n]ever to be violated", the 1792 framers made a new attempt at perpetuating the rights they declared. The rights were set forth in the Constitution, but as a separate Article, which was followed by this statement:

We declare that every thing in this article is reserved out of the general powers of government here-in-after mentioned.

In addition, provisions were included (Art. X) to make amendment of the Constitution quite difficult. One General Assembly could propose an amendment by a 2/3 vote in each House, the proposal would have to be published before a general election, and the next General Assembly could adopt the amendment by three-fourths vote in each House. As for a constitutional convention, none could be called "but by authority of the people", that is, a vote by ballot for or against a convention. These provisions were carried forward into the Constitution of 1831 (declaration following Art. I, and Art. IX). The 1897 Constitution retained the same "reserve clause" regarding the Bill of Rights, but watered down the amendment process somewhat[10], and gave the General Assembly the right to call a constitutional convention (Art. XVI, §2).

Since the provisions of the 1792 Bill of Rights were unchanged in the 1831 and 1897 constitutions, the question of their susceptibility of amendment was not squarely presented until 1972, when a 1933 amendment to Art. I, §4 ("Trial by jury shall be as heretofore") was challenged on the ground that the Bill of Rights could not be amended, because of the "reserve clause" quoted above. The Court held in *State v. Bender*, Del. Supr. 293 A2d 551 (1972) that the reserve clause did not preclude amendment by the two-step procedure provided for in Art. 16, §1, which applied equally to all parts of the Constitution. Although the Court did not say so, its ruling appears to leave the reserve clause with no meaning at all, surely not what the framers had in mind. Perhaps the decision can better be justified on the grounds that the effect of the amendment "was merely to change the mechanics of the drawing of the Grand Jury" and that to decide otherwise might have invalidated 40 years of indictments.

Should the question arise again, we may still hope that the reserve clause and the "black ink" of our Bill of Rights, with the reserve clause, will be found to have a greater endurance. It could be a serious issue, if other amendments to our Bill of Rights can be adopted as easily as the "right to keep and bear arms" amendment[11] is being added thereto, with so little attention at the 1986 general election. ■

[1]George H. Sabine, *A History of Political Theory*, Henry Holt and Company, New York, 1937, 1946 ed. p. 249.

[2]Richard L. Perry, Ed. *Sources of Our Liberties*, American Bar Foundation, Chicago, Ill., 1959 p.4.

[3]The word "politicians" is used advisedly. The delegates to the Federal Convention in Philadelphia, to the ratification conventions and to the various bodies that drafted the state constitutions were practical men of affairs, fully conversant with the dominant opinions of their constituents. All the documents show that these men had a constant concern with what they thought would be acceptible in their differing communities. See Madison's *Notes on the Federal Convention* and Elliot's *Debates in the Several State Conventions*, passim.

[4]8 Coke's Reports 107, 118 (1610) "...in many cases, the common law will controul acts of parliament and sometimes adjudge them to be utterly void; ..." Quoted in Perry, Ed. *Op. Cit.* p. 27.

[5]The Delaware Declaration of Rights appears in Volume 1 of the *Delaware Code*. The Delaware Declaration restricts the guarantees of toleration to "Christians". Section 3. It is also the first of the Colonial documents to prohibit retroactive legislation relating to criminal law. See Section 11.

[6]Reprinted in Ketcham, Ralph D., the *Anti-Federalist Papers and the Constitutional Convention Debates, New American Library, New York 1986, Page 189 at pages 195-196.*

[7]Anyone searching for a fuller treatment of the ideas barely touched upon here will do well to consult E. S. Corwin, *The "Higher Law" Background of American Constitutional Law*, Harv. L. Review 42 (Dec. 1928 and Jan. 1929) 149-185, 365-409.

[8]U.S. Solicitor General Charles Fried, *"Sonnet LXV and the Black Ink of the Framers' Intention"*, 100 Harv. L. R. 751 (Feb. 1987).

[9]Justice William J. Brennan, Jr., *"Constitutional Adjudication and the Death Penalty: A View from the Court"*, 100 Harv. L. R. 313 (Dec. 1986).

[10]The second leg of a legislative amendment required only two-thirds vote. Art. XVI, §1.

[11]65 Del. Laws, Chap. 332 (June 25, 1986).

Delaware Controversies That Have Shaped the Constitution

Harvey Bernard Rubenstein

In three significant civil rights cases, Delaware has left its mark on the Federal Constitution. Within a ten-year period, issues of public education, public accommodations, and reapportionment were brought to the highest court in the land, and, on each occasion, the application of Delaware law was found constitutionally wanting.

The first case arrived some 165 years after Delaware became the First State to ratify our Constitution. It was April 1, 1952, when Chancellor Collins J. Seitz wrote, in *Belton v. Gebhart* and *Bulah v. Gebhart,* Del.Ch., 87 A.2d 862 (1952), that in education, the "separate but equal" doctrine, first announced in *Plessy v. Ferguson,* 163 U.S. 537 (1896), and still in force, deserved to be rejected but that the rejection must come from the place of that doctrine's origin—the United States Supreme Court. However, Chancellor Seitz did find that facilities at Howard High School (for black children) and Carver Vocational School (for black children) were unequal to those at Claymont High School (for white children) and that facilities at Hockessin School No. 107 (for black children) were unequal to facilities at Hockessin School No. 29 (for white children).

The schools appealed to the Delaware Supreme Court; the school children cross-appealed. The schools wanted a reversal of the Chancellor's ruling on inequality; the school children wanted a reversal of the "separate but equal" doctrine. Neither got either. Instead, the Court affirmed but would not say whether other blacks "similarly situated" would receive the benefit of the decision as a matter of *res judicata. Gebhart v. Belton* and *Gebhart v. Bulah,* Del. Supr., 91 A.2d 137 (1952).

On the "separate but equal" question, the Court would express no opinion but left the decision to the legislature as to "what that policy shall be." The Chancellor's opinion that segregation in the schools is inherently unequal was considered immaterial and therefore not reviewable.

But it was 1952, and the national civil rights movement was stirring. The Delaware Constitution, Article X, and statutory scheme (1935 Rev. Code ¶2631, §9) of segregated schools stood in the midst of the controversy.

In Kansas, in South Carolina, and in Virginia, suits by black children had made their way through the federal lower courts and entered the United States Supreme Court on direct appeal. In each case, the "separate but equal doctrine" had been upheld—understandably, since the United States Supreme Court had approved it in *Plessy v. Ferguson*—and federal relief had been denied. In South Carolina and Virginia the state constitutions and statutes required segregated schools. In Kansas, in cities of more than 15,000 population, segregated schools were permitted but not required.

The United States Supreme Court joined those cases with the Delaware case, since the schools in that case had petitioned for a writ of *certiorari* to prevent the immediate admission of black children to white schools, and the writ was granted. The focus of the country's attention now had turned to the United States Supreme Court. Of the four cases, the Delaware case was the only one that came from a state court and had actually required the admission of black children to white schools, at least until equalization had been accomplished.

In an historic decision, *Brown v. Board of Education,* 347 U.S. 483 (1954), taking its name from the Kansas case, the United States Supreme Court declared, in a unanimous opinion by Chief Justice Warren, that in public education separate facilities were inherently unequal and that segregated schools violated the equal protection of the laws guaranteed by the Fourteenth Amendment. Over thirty years later, the impact of that decision is still being felt in American society.

Delaware's next civil rights appearance on the constitutional scene was in the law of public accommodations. The Delaware legislature had enacted a statute creating a Wilmington Parking Authority. The Authority proceeded to construct a building in order to provide off-street parking. The building also leased space to tenants, including a bookstore, a retail jeweler, a food store, and a restaurant, the Eagle Coffee Shoppe.

William H. Burton, a black, who was a member of the Wilmington City Council, parked his car in the parking area of the building and proceeded to the restaurant, where he was denied service solely because of his race. He brought a class action in the Court of Chancery against the Authority and the restaurant to enjoin the restaurant from refusing to serve him. Vice Chancellor Marvel held that since the Authority was a tax exempt state agency engaged in furnishing public parking service in a facility financed largely by rentals from tenants occupying other parts of the building, the Authority should have required leases prohibiting denial of equal protection of the laws. *Burton v. Wilmington Parking Authority,* Del.Ch., 150 A.2d 197 (1959).

The Authority and the restaurant appealed to the Delaware Supreme Court, which took a different view. Justice Wolcott, speaking for the Court, observed that the restaurant had no entrance leading from the parking area. (Entrance was from the street.) The major portion of the furnishings and all of the fixtures were supplied by the restaurant. In addition, the following ratios were found to apply: Space—61 percent for parking, 39 percent for leasing; acquisition and construction cost—38.4 percent for parking, 61.6 percent for leasing; revenue—30.5 percent for parking, 69.5 percent for leasing. The public money advanced for the project was about 15 percent of the total cost.

Justice Wolcott said the issue was whether there was "state action" falling within the protective scope of the Fourteenth Amendment of the Federal Constitution and specifically whether the State was financing and controlling the enterprise charged with racial discrimination. Justice Wolcott added: "We neither condemn nor approve such private discriminatory practices, for the courts are not the keepers of the morals of the public. We apply the law, whether or not that law follows the current fashion of social philosophy."

Justice Wolcott noted that the United States Supreme Court had already made rules that "resulted in the discard of a large portion of our local law dealing with the emotional subject of racial relations." He concluded that when federal decisions "erode our local law", the state court should not "extend them to a point beyond which they have not as yet gone." Justice Wolcott went on to hold that the discriminatory act of the restaurant was not the act of the State of Delaware, that the restaurant was acting in a "purely private capacity", and that in accordance with the common law and the law of Delaware, the restaurant had a right not to serve everyone entering its place of business. *Wilmington Parking Authority v. Burton,* Del.Supr., 157 A.2d 894 (1960).

In a 6 to 3 decision, the United States Supreme Court reversed. *Burton v. Wilmington Parking Authority,* 365 U.S. 714 (1961). Mr. Justice Clark, speaking for the Court, looked at the same facts and, agreeing with Vice Chancellor Marvel, concluded that Delaware had "so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment."

While the Court clearly held that a constitutional violation had occurred, it announced no guidelines. "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." Different circumstances, cautioned the Court, may produce appropriate differences in law. What was being held was that when a State leases public property under the facts and circumstances shown, "the proscriptions of the Fourteenth Amendment must be complied with by the lessee as certainly as though they were binding covenants written into the agreement itself."

Four of the nine Justices were more than a little troubled by Justice Wolcott's reference to 24 *Del. C.* §1501, a Delaware statute that permits the proprietor of a restaurant to refuse to serve those persons offensive to the majority of customers. If Justice Wolcott meant to conclude that the Delaware statute authorized discriminatory classifications based exclusively on color, presumably a unanimous Court, including the dissenting Justices, would have found it offensive to the Fourteenth Amendment. One concurring Justice, Mr. Justice Stewart, thought that Justice Wolcott took that position and would have reversed for that alone, without all the "sifting and weighing". One dissenter, Mr. Justice Frankfurter, would have reached that result if he thought Justice Wolcott took that position, but believed that the Wolcott language "lends itself to three views" and, like two other dissenting Justices, Harlan and Whitaker, who also could not figure out what position Justice Wolcott took, wanted to remand or at least hold the case pending clarification by the Delaware Supreme Court.

The response of the legal community to the "sifting and weighing" approach to determining state action has been varied. Most of it has been critical because of the lack of guidelines. Nelkin, "Cy Pres And The Fourteenth Amendment," 56 *Geo. L.J.* 272, 287-291 (1967); Wilkinson and Rolapp, "The Private College And Student Discipline," 56 *A.B.A.J.* 121, 122 (1970); Bittker and Kaufman, "Taxes And Civil Rights," 82 *Yale L.J.* 51,61 (1972); Brest, "State Action And Liberal Theory," 130 *U.Pa.L.R.* 1296, 1324-1325 (1982). As explained in Lewis, "Burton v. Wilmington Parking Authority —A Case Without Precedent," 61 *Colum. L.R.* 1458, 1466 (1961):

The objection to Burton *here registered goes not to the failure of the Court to announce broad principles that would consolidate the decisions on state action; rather, it goes merely to the failure of the Court to work with the facts at hand until at least a minimum tentative rule could be molded to decide a case.*

However, the President of the American Bar Association saw *Burton* as giving little cause for concern. Satterfield, "Law And Lawyers In A Changing World," 48 *A.B.A.J.* 922, 930 (1962). Recently, however, one legal commentator saw *Burton* in the context of overall constitutional doctrine—that the statement of a rule is not as powerful as the persuasiveness of the interpretation. He viewed the refusal to formalize reasoning into principles as the "extraordinary aspect" of *Burton* for it depends not upon rules but upon argument from the facts of the case. Thus, the absence of formal, encapsulated statements may be criticized by others as a failure of objectivity or as a refusal to constrain future decisions but not so by the author in Nagel, "The Formulaic Constitution," 84 *Mich. L.R.* 165,199 (1985):

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Harvey Bernard Rubenstein, a Director of Delaware Bar Foundation and Editor of the Bar Association Newsletter, has a long and enviable record of public service. A member of the Delaware bar for thirty years, Harvey has served as Vice Chairman of the Delaware Constitutional Revision Commission and many other Commissions and Boards. He is today a member of the Delaware Heritage Commission, whose principal business in 1987 is the celebration of the Bicentennial. Services as a lawyer to the House of Representatives and the former Levy Court of New Castle County and his membership since 1982 on the Supreme Court Rules Advisory Committee give him a more than theoretical knowledge of the workings of government. In Harvey's case the immediacy of useful work in the arena of government is balanced by the reflection of an intellectual. He is a founding member of the Jewish Historical Society of Delaware and a published author.

Delaware Controversies
Continued

The failure to formalize a rule in Burton, *however, did not fatally undermine the capacity of the decision to constrain judges in future cases. To the extent that the Court's arguments persuasively related the facts of the case to the "state action" requirement,* Burton *was, as later cases demonstrate, pregnant with possibilities for influencing the Justices in subsequent decisions. After all, the* Burton *Court did not merely list facts; it used facts to argue about constitutional meaning. It argued that the state ought not benefit financially or programmatically from discriminatory policies; it suggested that the purposes of the fourteenth amendment were implicated when private actions were perceived by the public as state action; it claimed a practical policy against permitting easy evasion by the state of its constitutional obligations. To the extent that* Burton *was persuasive in these respects, its attention to particularized facts was rich and emphatic, certainly more so than a mechanically stated rule. In short, in* Burton *objectivity (or the capacity to constrain) did not depend on the precision or verbal formulations but on the continuing persuasive power of the complex marshaling of facts.*

Archibald Cox, then Solicitor General of the United States, took a broader, public policy view when he commented upon the significance of *Brown* and *Burton* in Cox, "Current Constitutional Issues," 48 *A.B.A.J.* 711, 714 (1962):

The ultimate test in the field of apportionment also faces hundreds of communities in the field of civil rights. Eight years ago in Brown V. Board of Education *the Supreme Court unanimously held that the maintenance of a public school system is state action and that a segregated school system denies equal protection of the laws in violation of the Fourteenth Amendment even if the schools have equal facilities and equally skilled instructors. In later cases the Court has made it plain that this decision cannot be nullified "through evasive schemes for segregation whether attempted 'ingeniously or ingenuously'". Last Term, the Supreme Court held in* Burton V. Wilmington Parking Authority *that the Fourteenth Amendment was violated by a state's permitting rental space in a municipal parking facility to be used by a private restaurant which refused to serve Negroes. A fortiori municipal golf courses, swimming pools, beaches, and parks must be operated without segregation.*

These were controversial decisions that raised intense feeling—inevitably so, for they grew out of the conflict between the ideal of liberty and equality expressed in the Declaration of Independence, on the one hand, and, on the other, a way of life rooted in the customs of many of our people, North as well as South, since before the signing of the Declaration. But the law is now clear. The problem today is the long hard work of converting the constitutional principles into practical realities.

For years, the United States Supreme Court refused to consider questions dealing with the apportionment of state legislatures. Mr. Justice Frankfurter called it a "political thicket". *Colegrove v. Green,* 328 U.S. 549, 556 (1949). In 1962, however, the Court entered the thicket. The reapportionment era began with *Baker v. Carr,* 369 U.S. 186 (1962), and, on one day, June 15, 1964 the Court decided a total of six state reapportionment cases from Alabama, Colorado, New York, Maryland, Virginia, and Delaware. The Delaware case was known as *Roman v. Sincock,* 377 U.S. 695 (1964).

After reviewing the legislative apportionment provisions of both the 1897 Delaware Constitution and the 1963 constitutional amendment, the United States Supreme Court agreed with the Delaware federal district court that the apportionment was constitutionally invalid under the Equal Protection Clause and, in refusing to apply the federal analogy, required both houses of the Delaware legislature to be apportioned by population. The Court also held that apportionment does not lend itself to a uniform formula, for "it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause." In apportioning the legislative body, there must be "a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

The reaction to the United States Supreme Court reapportionment decisions—including *Roman v. Sincock*—was immediate and diverse. See Kennedy, "The Reapportionment Decisions: A Constitutional Amendment Is Needed," 51 *A.B.A.J.* 123 (1965); McKay, "The Reapportionment Decisions: Retrospect and Prospect," 51 *A.B.A.J.* 128 (1965); Dixon, "Reapportionment Perspectives: What Is Fair Representation," 51 *A.B.A.J.* 319 (1965); Chu, "Political Efficacy: The Problems of Money, Race, and Control In The Schools," 1977 *Wisc. L. R.* 989, 993 (1977). Some legal writers criticized the refusal to adopt a numerical approach. See Brilmayer and Kornhauser, "Review: Quantitative Methods and Legal Decisions," 46 *U.Chi.L.R.* 116, 128-129 (1978). Once again, as in *Brown* and *Burton*, these decisions, and their progeny, have had a pervasive effect upon all segments of American society.

Within that decade between 1954 and 1964, the United States Supreme Court altered the direction of constitutional law and, in the process, changed the social fabric of American life. In each critical instance — education, public accommodations, and reapportionment, —a Delaware case materialized in the Supreme Court. While the Delaware experience may have reflected what was happening elsewhere, few other states were involved as intimately in testing the old system and seeking the new. ■

Bicentennial Thoughts on the Continuing Evolution of the American Ideal of Liberty

William Prickett

"A Great Democracy Has Got to be Progressive or It Will Cease to Be Great or a Democracy"

— Theodore Roosevelt

1987 marks the Bicentennial of the adoption of the United States Constitution. It is almost presumptuous to comment on so austere a document as our Constitution. These reflections make no claim to lofty views on the Constitution, its true meaning or what the future holds. They are just that—some reflections on the changes over the years to our glorious Constitution, particularly in the important matter of personal liberty. From these historic examples, an effort will be made to draw a few recurrent lessons as we go forward into our third century of Constitutional government. As we grope forward into dim uncertainties of the future, which slowly unfolds, some constitutional examples from the past may serve to shed some light to guide us toward correct objectives in terms of liberty. This piece, however, will end essentially with questions and a challenge rather than pat answers, comforting platitudes and patriotic rhetoric.

This year, we pause and look up from our humdrum round of day-to-day affairs and our own petty struggles with current problems to do reverence to this historic document, which our ancestors drew up and adopted that we might enjoy personal freedom and successful self-government. We marvel at our ancestors' prescience. In the words of President Lincoln in another context, it is altogether fitting and proper that we should do so. But the United States Constitution cannot and should not be admired and venerated simply as a sacred antiquity. It is not like a piece of art to be admired or the relic of a saint enshrined for the edification and worship of the faithful. While the document itself is historic and majestic, it is not like the Statue of Liberty, the restoration of which quite properly provided a joyful occasion for a national celebration and fireworks in 1986. The U.S. Constitution is not merely a venerable document dating from the Federalist period. Indeed, the Constitution transcends the very words that constitute the document. As Professor Philip Kurland recently said:*

The very few thousand words that the fundamental document contains are not adequate to resolve the myriad of legal issues calling for a resolution by judicial action. Constitutional law consists not only of the text but of fundamental principles inherent in that document. It includes as well its aspirations for a representative government assuring majority rule while protecting minority rights.

None of the most fundamental precepts of the Constitution is more important than that of the personal freedom of the individual. Some have said (and continue to say) that the Constitution is sacred, divine, and immutable. History, however, contradicts such a static view of the Constitution, particularly with respect to personal liberty. Thus, when our revered Constitution was adopted, even with the addition of the Bill of Rights, it did not apply to slaves. The catalog of basic fundamental rights applied, not to all persons, but only to certain white persons. The Constitution recognized, legitimized, and indeed established slavery, the very antithesis of personal liberty. It is hard to believe today that the document that we now pause to revere did in fact embody such a hateful concept. Some of the people of the United States came to recognize the incredible incongruity and injustice of slavery in a country professing to be governed by a Constitution, one of whose basic precepts was that every man's liberty was a fundamental starting point. However, it took years of work, culminating in a fraternal four-year war generated in part at least by this enlarged view of personal liberty to accomplish this new obvious reform. The requisite change was made in the Constitution, at least in part, as one outcome of the bloody Civil War. Freedom was enlarged and redefined to encompass all men in the United States. However, while the adoption of the Thirteenth Amendment legally abolished the institution of slavery, it did not affirmatively create liberty in the sense of equality. On the contrary, the insidious judicial doctrine of "separate but equal" took its place. It took more than a century of unremitting struggle to get the courts to repudiate their own false doctrine. And although the pernicious doctrine of separate but equal was outlawed in 1954, the full implications of personal freedom, reassessed so as to include equality, remain the object of continuing efforts.

A second example further illustrates the evolution of personal freedom under the Constitution. Our predecessors, recovering from the scars of the Civil War, might well have been tempted to assert with considerable self-satisfaction that, while our conception of liberty was imperfect at the time of the adoption of the Constitution, the abolition of slavery and the subsequent advances in equality resulted in the attainment of the ideal of personal freedom. However, quite apart from the continuing struggle on racial equality, the Constitution itself countenanced a second great inequality: female

*Speech at the American Law Institute, May 14, 1986.

Ideal of Liberty
(Continued)

persons were not accorded equal status with males. Thus, the adoption of the Twentieth Amendment represented another belated Constitutional recognition that personal freedom mandates equality between the sexes. Just as in the case of the abolition of slavery, the full attainment of feminine equality has required and will continue to require an ongoing effort in the foreseeable future.

With the prospect on the Constitutional horizon of total elimination of racial and sexual equality, will ours be the generation that has arrived at the Constitutional millenium of personal freedom? As we consider this rosy and self-satisfying prospect in this Bicentennial year, we should remember that each succeeding generation has historically assumed a certain smugness as it looks back on what it regards as the imperfections of its predecessors. We can be fairly sure that we have not begun to achieve all that can be done in realizing the ever expanding ideal of personal freedom. Personal freedom has no end: there is never anything but a beginning, particularly as the ideal shifts and enlarges with each succeeding generation. What remains to be done? It is difficult, blinded as we are by self-centered ideas of our Constitutional perfection, to see clearly in what direction the elusive ideal of liberty may or should move. There are those who stridently assert that no change is needed or that even some steps backward or sideways are required. There are others equally assertive who self-confidently predict the necessity of radical steps. But, it does seem clear that there are whole classes of persons whose liberty remains unclear and far from complete. What are the new enlarged limitations to deviation from usual conduct this society can and will tolerate and protect?

For example, is there anyone who really believes that our present criminal system will not be viewed in retrospect as anything but totally archaic? Progress has been made since the adoption of the Constitution: the corporeal punishments that were unquestionably accepted and regularly inflicted in 1787 have now been totally abolished. But there is the basic question as to whether our meticulous and almost Byzantine mosiac of criminal procedural rights that lawyers and the Courts have evolved does not totally disregard the more important rights of the individual defendant, the victim, and society as a whole. Further, by according a person found to deviate from acceptable behavior the full procedural rights of an Eighteenth Century criminal, do we give full recognition of his rights? Are not his more fundamental rights disregarded when, at the end of procedural due process, he is brutally relegated (not to rehabilitation) but to incarceration for a fixed retributive period all too often reduced solely by the administrative necessity of creating places for others? Does not our society suffer as a whole as a result of this manifest failure of the criminal justice system (except perhaps in the refined niceties of criminal procedure)? Further, will future generations be appalled at the reoccurrence of the imposition of the death sentence? Will the death penalty be regarded as a step backward in the evolution of personal liberty? On the other hand, will society's collective necessity to protect itself and the personal

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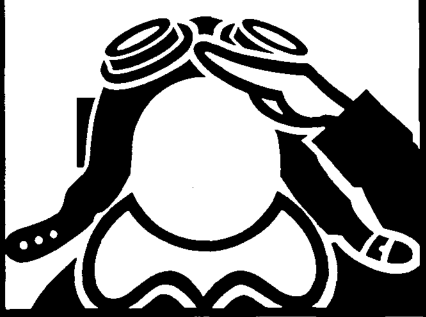

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freedom of the majority outweigh the ultimate loss of freedom (i.e., death) of one whose criminal or unacceptable behavior destroys not only the liberty of others but erodes the very constitutional system itself? Will liberty come to encompass the right of the individual (or society) to withdraw the harsh penalty of life when life itself has become nothing more than a medical feat?

Further, it is an inescapable fact that Americans are one very tiny group of most fortunate people in an ever shrinking world. Apart from the medical scourges that now threaten not merely our personal liberty but mankind as a whole as well as the nuclear sword of Damocles that hangs over the entire world, is our concept of personal liberty evolving as it is capable of surviving in the fiery outside world, which not only does not accept our ideal of personal liberty but violently rejects it? A large part of mankind today has become so poor and hungry that personal freedom is irrelevant. Others are committed to religious or political systems in which personal liberty is anathema. Does our objective of personal liberty necessarily have to reach beyond our own shores to extend our perception of the benefits of personal freedom to others? "Ask not for whom the bell tolls." On the other hand, by what mandate do we export our history and legacy of personal liberty to those whose histories and cultures are totally alien to ours?

As we pause to marvel at what the framers of the Constitution achieved, we can look back with admiration on what has been made possible for each of us under the benign strictures of the Constitution. However, as noted at the outset, we cannot simply stop there and enshrine the Constitution, hoping that in its present form it is ideal, immutable and indestructible. Rather, we are compelled to recognize and accept that, like our progenitors, we must continue to reforge what liberty means to us in the evolving context of today. What liberty really means is not static; rather, liberty is a dynamic ideal that every generation must redefine anew in terms of its own needs and aspirations. We must recognize that the privilege of liberty carries with it responsibility, not only to fight and defend liberty but to understand it, to share it, and to refine it.

Again, the words of President Lincoln are prophetic. As in his historic challenge to his generation at Gettysburg, we must rededicate ourselves to the never ending task of fighting to defend the personal liberty ensured to us by the Constitution. We must continue to work separately and at the same time together in the constant and never ending evolution of personal liberty. Unless we are willing constantly to work at this national task, this generation will surely go down in history as those who forever lost the Constitutional legacy of personal liberty for ourselves, our posterity, and mankind in general. If, however, we mark this historic occasion wisely, we will enter the third century of constitutional self-government with a renewed determination to pass on to our posterity not only a strengthened sense of liberty but a further refined and expanded ideal.■

William Prickett is a member of the Board of Directors of Delaware Bar Foundation and a frequent contributor to this magazine.

Delaware Calendar of Bicentennial Events

September through December, 1987

September: Special Constitutional Bicentennial Convocation, Delaware Law School of Widener University

September to November, 1987: Delaware State Bar Association Speakers' Bureau presentations on Bicentennial subjects to State schools and civil groups; Bar sponsored radio spots celebrating the Bicentennial

September 1: Milford bicentennial celebrations begin, call 422-5026. September 12, 13, 18-20: Milford Sound and Light Show, Parson Thorne Mansion, 5 p.m.; Sept. 27: Tour of Historic Homes

September 3: 210th Anniversary of the Battle of Cooch's Bridge, Newark, call 652-3641

September 12: (Raindate Sept. 13) Town Festival, including a farm wagon ratification debate by Whig and Federalist partisans in costume, bonfire, ox roast, fife and drum music, tradesmen of the period in colonial dress, Odessa

September 17: Constitution signed, Philadelphia, 1787

September 24: Constitutional Lecture, Historical Society of Delaware, 5:30 p.m., Wilmington

September 28 to October 2: Performances of a play specially commissioned by the Delaware Bar Foundation in honor of the Constitutional Bicentennial, to be presented to secondary school students in New Castle County at 10:00 a.m. and 12:30 p.m. at the Delaware Theatre Company

October 1: Annual legislative elections prevented by riots, Sussex County, 1787

October 1: Constitutional Lecture, Historical Society of Delaware, 5:30 p.m., Wilmington

October 2-4: Dagsboro Bicentennial Celebration includes issuance of newly written Dagsboro town history, crafts, pictures and document display, call 934-7976

October 5-9: Performances of a play specially commissioned by the Delaware Bar Foundation in honor of the Constitutional Bicentennial, to be presented to secondary school students in Kent and Sussex Counties at 10:00 a.m. and 12:30 p.m.

October 8: Constitutional Lecture, Historical Society of Delaware, 5:30 p.m., Wilmington

October 10: 18th Century Fair and reenactment of Sussex County Election Riots by the Possum Point Players and Delaware Technical and Community College, Georgetown

October 11 to November 30: "Great Concepts of the U. S. Constitution," a competitive collegiate art exhibition. Clayton Hall, University of Delaware, free, call 451-8841

October 15: Election for legislature, Sussex County, 1787

October 15 to February 15: "Creature of Their Own Will: The Formative Years of the Constitution," exhibition at 1988 Morris Library, University of Delaware, special collections, call 451-2965

October 24: U. S. Constitution read to Delaware House of Assembly, 1787

November 6-7: "Philadelphia as Cultural Capital: 1750-1800," a conference at Winterthur, call 656-8991, ext. 249

November 7: Sussex County election voided, 1787

November 26: Delegates elected to state ratifying convention. Election riots in Sussex County, 1787

November 30: Bicentennial Celebration Luncheon sponsored by Delaware State Bar Association, Hotel Du Pont, 1:00 p.m. Benno Schmidt, President of Yale University, Guest Speaker

December 2; Send-off of 30 delegates from their local towns to the ratification convention in Dover.

December 3: Ceremonial arrival of delegates in Dover. Reenactment of the ratification drama.

December 3: Delaware ratification convention meets in Dover, 1787

December 4: Delaware Symphony Orchestra Bicentennial Concert, Sussex County, 8 p.m.

December 6: Delaware Symphony Orchestra Bicentennial Concert, Kent County, 8 p.m.

December 7: Delaware Day, Celebrations in Dover.

- 10:00 a.m. Dedication of a plaque on the site of Battell's Tavern followed by dedication of the major artwork on Constitution Place
- 11:00 a.m. A parade
- 12 noon Church bells rung all over the state. A public program with color guard, choir and band
- 8:00 p.m. Dinner and Ratification Ball

December 7: Delaware Convention ratifies U.S. Constitution, 30-1, 1787, as The First State

December 12: Pennsylvania ratifies U.S. Constitution, 1787, The Second State

December 18: New Jersey ratifies U.S. Constitution, 1787, The Third State

Ongoing Exhibitions

"Miracle at Philadelphia": Constitutional Convention exhibition at the Second Bank of the United States, 420 Chestnut Street, Independence National Park, Philadelphia, now through December 31, 1987, 9-5 daily.

"Delaware's Constitutional Heritage": An exhibition of ratification documents, Visitors' Center, The Green, Dover, call 736-5314

"The First Signal": travelling documents exhibition, sponsored by the Delaware Division of Historical and Cultural Affairs, 736-5313. Opening dates at the following locations:

- August 3 Clayton Hall, University of Delaware
- August 24 ICI Americas, Wilmington
- September 28 Milford Museum
- October 12 Delaware Trust, 900 Market St., Wilmington
- November 2 Wilmington Trust, N. Rodney Square
- November 30 Old State House

For more information on **Bicentennial Activity in Delaware** write or call:

Delaware Heritage Commission
Carvel Building, 3rd Floor
820 N. French Street
Wilmington, DE 19801
(302) 652-6662

For information on **Delaware** write or call:

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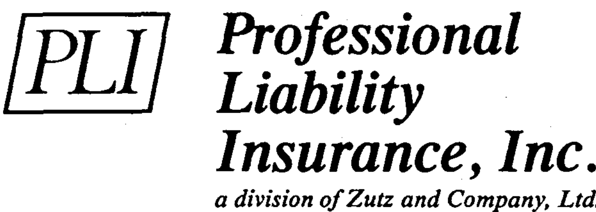

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