THE DELAWARE CONSTITUTION OF 1776

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The revolt of the American colonies against Great Britain brought about certain changes in their governments, the extent and character of which varied according to the different circumstances of each colony. Connecticut and Rhode Island, for example, contented themselves merely with continuing the existing government in the name of the colony (or, after independence, of the "state"), instead of in the name of the King, and they retained their colonial charters as the basis of government until well into the nineteenth century.[1] In New Hampshire, on the other hand, the early departure of the Governor and several of his Council had so disorganized the government that as early as October, 1775, that colony appealed in the emergency to the Continental Congress, and was at length advised, "if they think it necessary, [to] establish such a form of government, as . . will best product the happiness of the people, and most effectually secure peace and good order in the province, during the continuance of the present dispute between G Britain and the colonies."[2] In consequence of this suggestion, New Hampshire promulgated on January 5, 1776, what may be regarded as the first state constitution of the revolutionary period. South Carolina followed in March with a more elaborate frame of government, and in the subsequent years most of the other former colonies set up new governments appropriate to their new status.[3]

By the spring of 1776 the radicals in the Continental Congress were openly urging the entire independence of the embattled colonies, and, as a step tending in this

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[1] Connecticut until 1818, and Rhode Island until 1842.

[2] *Journals of the Continental Congress*, Library of Congress edition, III, 298, 319.

[3] These constitutions may be examined most conveniently in F. N. Thorpe, *Federal and State Constitutions*, 7 vols.

direction, desired the formation of new governments in all the colonies which up to that time had not taken such action. A declaration of complete independence from the mother country was obviously the more difficult of these two objects, and was not achieved until July 2;[4] the other point was gained nearly two months earlier, in a resolution of Congress, passed May 10 and published May 15, recommending "to the respective assemblies and conventions of the colonies, where no government[s] sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of their representatives of the people, most conduce to the happiness and safety of their constituents in particular, and of America in general."[5] This resolution was a stimulus to the establishment of new governments in the colonies where the demand for such action was lacking or not urgent. In the case of Delaware, the resolution of Congress set in motion the train of events which resulted in the formation of the Delaware constitution of 1776—which is the subject of this paper.

The story may begin with the receipt of the news of the May 10-15 resolution by Thomas Rodney of Dover. Thomas was a brother of the more noted Cæsar Rodney, who was then a representative of the "Lower Counties" in the Continental Congress. Both brothers were ardent Whigs, and while Cæsar was in Philadelphia Thomas kept the fires of patriotism burning in Kent County. In the meanwhile they maintained a constant correspondence, and it is due to the preservation of many of their letters that much can now be told of these matters that would otherwise be lost to history.[6] When Thomas Rodney re-

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[4] Lee's resolution of June 7, declaring the "United Colonies" to be "free and independent States," and dissolving "all political connection between them and the State of Great Britain," was adopted July 2. The formal "Declaration of Independence" was agreed to July 4.

[5] *Journals of the Continental Congress*, L. C. ed., IV, 342, 357-358.

[6] These letters are in the Cæsar Rodney correspondence, now being edited for publication under the auspices of the Historical Society of Delaware. All letters to or from Cæsar Rodney, which are referred to in this paper, are from this collection. For permis-

ceived his brother's letter announcing the resolution of May 10-15, he happened to be walking "Down Town" in Dover with John Dickinson, recently arrived from Congress.[7] Thomas "observed to him many advantages that would follow our assuming Government,"[8] to which Dickinson agreed and added "many others." Dickinson believed that "it would not prevent but perhaps promote a more speedy reconciliation, because the longer they let Government exist before they offer Terms the more firm that Government would be, & therefore the more difficult to effect a reconciliation." Rodney took this to mean that Dickinson either had "some glimmering hopes of reconciliation yet, or that he ment thereby, to flatter those who have such hopes, to acquiesce in the resolution." Thomas Rodney was less hopeful—"Peace, and reconciliation," he wrote, "will henceforth be my ardent wish, but never to mix our Government with Britain's any more." Regarding the local reaction to the resolution, news of which had reached Dover only the night before, he continued: "Tor[y]ism is dum[b], and many suspected persons give it there approbation, I believe it will meet with no opposition in this County."[9]

That the two Rodneys, leaders of the Whig faction in Kent County, were agreed as to the wisdom of the suggested action is evident from their correspondence. Just what action to take in giving practical expression to the resolution was the question in their minds during the next few days. May 22 Cæsar wrote to Thomas for his opinion "on the *Mode* best to be adopted for Effecting the Change." He described the procedure proposed in Philadelphia: calling a convention from the various Pennsylvania county committees of inspection, to meet in

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sion to use them in advance of publication I am indebted to Professor George H. Ryden.

[7] Dickinson was a delegate of Pennsylvania to the Congress. For some years he had maintained a residence in Philadelphia, but continued to visit his farm in Kent County.

[8] Thomas had already expressed himself in favor of independence. (Thomas Rodney to Cæsar Rodney, May 12, 1776.)

[9] Thomas Rodney to Cæsar Rodney, May 19, 1776.

Philadelphia to order an election for a special constitutional convention of one hundred members.[10] Cæsar deemed this plan "verry fair," but unwise, because, with a British invasion impending, "by their mode it will be impossible for them to have any Government for three months to come, and during that time much confusion." He continued: "With us below I hardly know what Step will be best—in our County a new Choice could not mend the Ticket, but might make it worse. In the other Counties there is verry little probability of an Alteration for the better. I want to have the opinion of your Set Concerning it, by next Post."[11]

With Cæsar Rodney favoring the submitting of the resolution for action by the Assembly,[12] the Kent County Whigs formulated a method of procedure which met with the approbation of Cæsar in Philadelphia.[13] They drew up instructions to the Kent County members of assembly requiring them to urge the Assembly to comply with the recommendation of Congress. If the Assembly "should refuse or neglect to comply," the Kent members were then to ask the Assembly to "direct the appointment" of a constitutional convention of not less than ninety members. If this were refused also, then the Kent delegation was to withdraw "and dissolve the said Assembly."[14]

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[10] See Charles H. Lincoln, *The Revolutionary Movement in Pennsylvania*, chs. 13 and 14.

[11] Cæsar Rodney to Thomas Rodney, May 22, 1776. Cæsar's concern is not with constitutional or legal niceties, but to keep the Whig faction in control.

[12] Thomas Rodney to Cæsar Rodney, May 26, 1776: "We are all perfectly of your sentiments with respect to leaving the Change to the House of Assembly for the reasons you mention, unless they should refuse &c."

[13] Cæsar Rodney to Thomas Rodney: "I fully approve the methods and hope you will proceed in the business Deliberately, Coolly and persuasively, but diligently. I don't doubt the Assembly will Act prudently, if otherwise it will then be time enough to take the matter up in another way. The Recommendation of Congress was certainly meant to go to the Assemblies, where there were such who had authority to Set: and the people of this province haveing Taken the matter up upon other Grounds have occationed verry great disturbance, such as I would not wish to see in our Government."

[14] Thomas Rodney to Cæsar Rodney, May 26, 1776; John Haslet to Cæsar Rodney, May [c. 26], 1776. The text of the instruc-

These "instructions" were really no more binding, of course, on the assembly members, than any petition would have been.[15] Fortunately for the Whig plans, however, the Kent delegation at that time was strongly Whig, and in fact included the very persons who had formulated the instructions.[16] The Rodneys and John Haslet would cheerfully have carried out such measures without formal instructions, but they realized that popular support was necessary, and sought to obtain it by submitting their plan for formal public approval. The hesitancy with which it was accepted by even the radicals is illustrated by the reaction of the "Militia Light Infantry Company of Dover," whose members, captained by Thomas Rodney, had associated themselves late in April "to adhere, and stand firm, together, at the risque of our lives & fortunes, in the Defence and Protection of American LIBERTY." When Rodney offered the instructions to his company on May 25 for their signatures, twenty-six (the full strength of the company was sixty-eight) signed, and the rest "chose to have it under consideration Till next muster day."[17] On this occasion Vincent Loockerman, one of the Kent members of assembly, appeared on the scene and told his son, who was a member of Rodney's company, not to sign the instructions.[18] A week later, however, all the "officers & principle persons" had signed, and only "a few of the inconsiderable ignorant ones declined it," according to Thomas Rodney, who hoped "we shall obtain

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tions is in Timoleon's *Dionysius*, 12-13, from which it is reprinted in full in William T. Read, *Life and Correspondence of George Read*, 243-244.

[15] Thomas Rodney to Cæsar Rodney, May 26, 1776: "We conclude[d] it was best to present petitions to the Assembly, but as there seems some impropriety in a petition—we have changed the mode into Instructions to the Members for this County."

[16] The Kent members were Cæsar and Thomas Rodney, William Killen, John Baning, John Haslet, and Vincent Loockerman.

[17] Thomas Rodney added hopefully, "But many of them say they are now ready to sign."

[18] "Loukerman appear'd & Charged his son not to sign. He's frightened almost out of his wits & seems half at least on the other side of the question. His late conduct is so particularly penurious [sic] that he is abused by almost every body. There was much fun with him last night." (Despite this momentary uncertainty, however, Loockerman apparently remained safely in the Whig ranks.)

suffitient upon which to ground a Complyance with the resolution of Congress."[19]

In addition to hesitancy within their own ranks, the Whigs met with more formidable opposition to their project on the part of the opposing political faction—the "Tories," as the Whigs chose to call them. As the Whigs represented the element which led the way in measures of resistance to British policy, so the Tories embraced those who, for whatever reason, were opposed to the Whigs or their program.[20] In Kent County, if we may believe the energetic and outspoken Colonel Haslet, there was much loyalty to the King.[21] He charged that "the source of corruption & Direction is at Dover, an Hint from thence, pervades the Lower Part of the County in a trice."[22] The opposition circulated a remonstrance against the proposed change in government, as being both unnecessary and dangerous.[23] These papers, handed out

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[19] References for this paragraph are letters of Thomas Rodney to Cæsar Rodney, May 5 and 26, and June 2, 1776, and *Delaware Archives*, III, 1238-1239.

[20] It is important to keep in mind that "Whig" and "Tory" represent primarily two opposing political factions, comparable in many respects to Republicans and Democrats, or to any two groups contesting for political power. It is reasonably clear that in Delaware, as elsewhere, the fundamental principle on which the division was made was on the question of resistence to the measures of the British ministry—the Whigs were radicals, and led the way, even to independence, while the Tories were conservatives, and thought that the opposition had gone too far. A few loyalists sacrificed everything in their opposition to separation from Great Britain, but the majority shaped their courses, even though unwillingly, to conform to the current of events, and maintained their political opposition to the Whigs. The latter therefore could consistently call the constitutional convention of 1776 a "Tory convention," even though all its members took oath to "support and maintain the Independence of" Delaware.

[21] Haslet wrote to Cæsar Rodney, May 13, 1776, protesting against the exchange of a captured British officer: "You, Sir, well know the humanity with which he has been treated at Dover, the General Acquaintance which he has contracted, & the Particular Correspondence he has held with Persons, who have discovered very little Zeal in Defence of American Liberty, he has been heard to express great Satisfaction on finding so many true Subjects to his Majesty in the Circle of his Acquaintance: . . he knows, it is in his power with 150 men well armed to desolate great part of this Seemingly Devoted County."

[22] John Haslet to Cæsar Rodney, June 5, 1776.

[23] This remonstrance is given in Timoleon's *Dionysius*, 13-14, and is reprinted in Read, *op. cit.*, 244-245.

by members of the committee of safety in the lower part of Kent County, caused the "muster" of the militia in Mispillion Hundred to break up in disorder, according to Haslet's account.[24] It is evident that opinion was sharply divided in Kent County.

As for Sussex County, Haslet wrote: "A vast Majority in Sussex are against [the change] . . . [I] fear Congress must either disarm a large Part of Kent & Sussex, or see their Recommendation treated with contempt."[25] With Lord Dunmore sailing up the rivers into Sussex from the Maryland side, and the Delaware coast exposed to the visitations of British men of war, the Whigs of the southernmost county were hard put to hold their own. As the Assembly met in their June session, an armed uprising of Sussex Tories occurred, which required intervention by Congress.[26] In New Castle County the situation seems to have been well in hand. That area was closer to the center of revolutionary activities at Philadelphia, and was less exposed to loyalist influence from without.[27] Under the stimulus of the fiery and inspiring McKean, and the cautious but skillful Read, New Castle had from the first played a leading part in the resistance to the British ministerial policy, and throughout the struggle continued more amenable to revolutionary leadership than either of the other counties.[28]

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[24] John Haslet to Cæsar Rodney, May [c. 26] and June 5, 1776.

[25] *Ibid.*

[26] James Sykes to Cæsar Rodney, June 13, 1776; *Delaware Archives*, III, 1364-1365, 1388; J. Thomas Scharf, *History of Delaware. 1609-1888*, I, 228, 231; *Pennsylvania Magazine of History*, XVI, 130-131.

Scharf, I, and *Delaware Archives*, III, contain much interesting matter relating to the revolutionary disorders in Sussex County.

[27] Haslet bewailed "the Poisonous Example of Maryland" in the lower counties. (John Haslet to Cæsar Rodney, May [c. 26], 1776.)

[28] New Castle was the chief port, and since 1704 had been the seat of government of the Lower Counties, and the public men of that county, more directly in touch with the metropolis to the north, displayed a tendency to lead off in new ventures, expecting the other counties to follow. This was a source of irritation in Kent and Sussex—for an example, see the *Proceedings and Transactions of the Committee of Correspondence for Kent County began July 20, 1774*, letters of July 21, 1774 (MS. in the Library of the Historical Society of Delaware), and Cæsar Rodney to George Read, July 21, 1774.

Whatever the popular feeling may have been in the colony concerning a new government, in the Assembly which met June 11[29] Whig principles were in the ascendancy. Of the three prominent leaders, McKean and Rodney were in accord in favoring the change, and even if Read had been inclined to hold back, he would have found it difficult to swim against the radical current.[30] McKean on June 14 delivered to the Assembly a copy of the resolution of Congress of May 10-15, which was unanimously approved by the Assembly the same day, and on the following day, also without a dissenting vote,

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[29] The colonial assembly minutes after September, 1775, are missing. The action described here is based on an extract from the minutes of June 14 and 15 (Friday and Saturday), printed in the *American Archives, Fourth Series,* VI, 883-884. It appears by an order to pay the Kent representatives for their attendance (MS. in *Legislative Papers, 1776,* in the Public Archives) that this session lasted from June 11 to June 22. The beginning date, June 11, is confirmed by Cæsar Rodney's letter of June 5 to Thomas, mentioning "Tuesday, which is the day of the Assembly's meeting"—Tuesday would be June 11.

[30] Read was opposed to Lee's resolution when adopted July 2 (hence Cæsar Rodney's famous ride, to join McKean in Philadelphia and swing Delaware's vote in favor of the measure), but he did not withhold his signature from the Declaration, as John Dickinson did. Read's grandson and biographer argues at length defending Read's action, claiming that he favored independence, but thought it was premature at that time. W. T. Read wrote fifty years ago, when any person who was not a thoroughgoing radical or Whig, or leaned to the conservative or Tory viewpoint, was still deemed something of a traitor. The historian of 1930, writing with more information and a different viewpoint, is willing to concede the Tories honesty, intelligence, even patriotism, in their attitude. It is not strange that George Read should oppose independence in July as premature, nor should we condemn him if he privately thought that the colonies would be better off to remain under the British flag. The fact of the matter is that we have no evidence of what Read's opinions really were on these matters, aside from his official actions. His private sentiments and motives are not indictated in his letters, and his colleagues in Congress, McKean and Rodney, have recorded no strictures of him in their extant letters. W. T. Read's defence (in *op. cit.,* 162-166) is hypothetical. For a contemporary denunciation of Read, see *The Biographical History of Dionysius, Tyrant of Delaware* (Philadelphia, 1788), by "Timoleon," who is supposed to have been Doctor James Tilton, a Whig who in 1776 resided in Kent County, but later moved to New Castle County. In this pamphlet the writer charged that Read had represented the proprietary interest in Delaware, which was willing enough to oppose the British policy of coercion, but naturally was hostile to any thought of independence. This, according to the bitterly partisan "Timoleon," explains the attitude of Read and the conservatives.

it was resolved that all offices should henceforth be executed by the incumbents "in the name of the government of the counties of New Castle, Kent, and Sussex upon Delaware, as they used to exercise them in the name of the King, until a new government shall be formed, agreeably to the resolution of Congress of the fifteenth of May last."

In addition to taking this preliminary step, the Assembly at this session gave way tacitly to the increasing demand of the radicals for independence, but without actually endorsing it in so many words. Their instructions of March 22, 1776, to their delegates in Congress had required them to "embrace every favourable opportunity to effect a reconciliation with Great Britain." This injunction was omitted from the instructions of June 14, which required the Delaware representatives to concur with the other delegates in "compacts between the United Colonies," foreign treaties, and "such other measures as shall be judged necessary for promoting the liberty, safety, and interests of America." This at the time was taken as a great victory for the proponents of complete independence,[31] and enabled Rodney and McKean to vote for independence less than three weeks later.

As soon as the declaration of independence was adopted by Congress, Cæsar Rodney, as Speaker of the Assembly, summoned that body to meet July 22.[31a] It

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[31] John Adams wrote exultingly: "McKean has returned from the 'Lower Counties' with full powers. Their instructions are in the same words with the new ones to the delegates of Pennsylvania." This quotation, and the text of the two instructions, may be conveniently consulted in *Read, op. cit.*, 149, 164, 225.

[31a] Cæsar Rodney to Thomas Rodney, July 4, 1776: "I have inclosed you a Summons directed to the Sheriff to Sumon the Member[s] for our County to meet in Assembly at Newcastle on the 22d day of this Instant which I hope you will have put into his hands as soon as possible after it Comes to Yours."

This rather informal method of getting the Assembly to meet seems to have been acceptable at the time. Only a few days previously (June 25, 1776), George Reed *et al.* addressed a letter to Rodney and John Evans at Lewes, urging "the apparent Necessity of the house of Assembly's Meeting on some day this Week," and hoping that "the members below will attend you up" to New Castle.

met on that date[32] and, after adopting the declaration of Congress of July 4,[33] took the next step toward a new government. Since the members did not consider themselves "authorized by their Constituents to execute this important work," they resolved on July 27 "that it be recommended to the good People of the several Counties in this Government to chuse a suitable Number of Deputies [ten from each county] to meet in Convention, there to ordain and declare the future Form of Government for this State." These deputies were to be elected August 19 by "the Freemen of said Counties .. according to .. the several Laws of this Government for the regulating Elections of the Members of the Assembly, except as to the Choice of Inspectors, which shall be made on the morning of the Day of Election by the Electors, Inhabitants of the respective Hundreds, in each County."[34] Each elector, "if required by one or more of the Judges of the Election,"[35] had to swear or affirm that he would, to the utmost of his power, "support and maintain the Independence of this Government, as declared by the Honorable Continental Congress." The convention was to meet at New Castle August 27, and "immediately to proceed to form a Government"—implying, although not stating specifically, that they were not to concern themselves with other matters.

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[32] The order for payment of members referred to in a previous note indicates that this session continued from July 22 to July 28.

[33] The Declaration was referred to on July 27 as "lately published and adopted by this Government." The action of the Assembly of this date is taken from a MS "Extract from the Minutes" of July 27, 1776, in the Public Archives. The same extract, undated, is printed in the *Proceedings of the Convention.*

[34] By an act of 7 George II inspectors were chosen, one for each hundred, by the voters thereof, on the morning of each election; but a law of 1766 provided that such choices should be made at a special meeting of the electorate on September 15 of each year, the inspectors so chosen to serve for the full year following. Thus the inspectors chosen in September, 1775, would normally have officiated at this election, but with the provision noted above the Assembly enabled the elections to be conducted by officials who would reflect the public opinion of August, 1776, rather than of September, 1775. (*Laws of the State of Delaware*, I, 146ff., 429ff.)

[35] The sheriff of the county (or in his absence the coroner) and the inspectors were the judges of the election. (*Ibid.*, 501.)

Thus the anti-revolutionary or conservative element in Delaware failed to prevent the Assembly from falling in, step by step, with the general drift toward complete independence. The Tories then, bending in order not to break, accepted the situation as *un fait accompli* and set out to capture the convention in the ensuing election. In Kent County Thomas Rodney reported August 5 that "the Tories here are exerting them selves to git in convention . . . but they seem at a loss how to contrive it for they have put out several Tickets to see I believe how they would be relished." The conservative element in Kent was under the political leadership of Charles Ridgely, a prominent physician of Dover. Prior to 1774 Ridgely and the Rodneys, Cæsar and Thomas, seem to have worked harmoniously in politics, but they fell apart over the question of resistance to Great Britain,[36] and in the election for the convention Doctor Ridgely challenged the Rodney-Whig group to battle for political control of the county. The Whigs included in their slate all their assembly members; their opponents' ticket was most notable in the omission of Cæsar Rodney from the list of candidates they were willing to support,[37] even though he was by all odds the outstanding public figure of the county;[38] the opposition included such men as the conservative Doctor Ridgely, and John Clarke, who had favored the non-com-

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[36] See Appendix A.

[37] Party tickets at this time were more informal and flexible than they are now. There were no "primaries" or nominating elections; instead, individuals or groups posted lists of candidates they would support, and frequently a given name appeared on more than one of such "tickets." Thus, Cæsar Rodney was supported for the Assembly in the election of 1775 by both the Rodney and the Ridgely factions. (Appendix A.)

[38] Rodney was chagrined, but not surprised, at the omission. After the election he was told that "the Tory plan for leaveing me out of the Convention was, first to put me at the head of their Ticket to Show their approbation of me, after which they would put another person in my Stead, and assigned as a Reason for it, That it was now a Critical time, That it was absolutely Necessary We Should keep up our Representation in the Congress, That they wished I might not be laid under the necessity of leaving the Congress at a time so Interesting, Which I must Do if Chose in Convention &c." (Cæsar Rodney to Thomas Rodney, August 14, 1776; John Haslet to Cæsar Rodney, October 5, 1776; Cæsar Rodney to John Haslet, September 12, 1776.)

pliance petition referred to above,[39] but it also contained the names of Thomas Collins and Richard Bassett, who then and afterward were prominent in the militia, and Richard Lockwood, whom, Thomas Rodney thought, they might not keep on the ticket, "as he declares he will not push either Ticket but will vote for part of both." As Rodney viewed the situation, "Doctr: R. declares he will not concern in the Election—I believe he will only act behind the Curtain—Cook & Collins are the Heroes of their Tickets."[40]

To the optimistic Thomas, early prospects were bright for a Whig victory in Kent. August 10 he wrote:[41] "[The Tories sent Lockwood] to us to propose a Junction but it would not take—they seem much Out of Heart at present." Cæsar replied less confidently: "I . . am pleased to find you hope to succeed. But are you not too sanguine in your expectation?"[42] The Dover Whigs at first contemplated having their county Committee of Inspection do some investigating before the election, with the apparent object of checking up on individuals who appeared lukewarm in the support of their cause, but this was opposed by Cæsar Rodney,[43] who strongly advocated carrying on the campaign on the basis of "true Whiggism, true patriotism." He wrote: "Your scheme ought to hold out more of the patriot than the party man. . . I would advise the avoiding of every kind of violence, and, on the other hand, the utmost diligence and persuasion to procure as many friends to liberty on the return [i. e., to

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[39] "Squire Clark with others" was "clamorous for" the petitions at the Mispillion Muster. (*Ante*, p. 11.)

[40] The statements of Thomas Rodney in this paragraph are in his letter to Cæsar of August 5 (10), 1776.

[41] Thomas Rodney to Cæsar Rodney, August 5 (10), 1776.

[42] Cæsar Rodney to Thomas Rodney, August 14, 1776.

[43] "I will again submit whether the inquiry and examination proposed to be had before the committee will not tend so to irritate as to occasion many people, by taking sides in the matter, to lose sight of the cause—their true interest; for if they are led to believe that you and your friends are governed more by a party spirit than by the true interests of America, they will hold you in the light of all other party men, and deal with you accordingly." (Cæsar Rodney to Thomas Rodney, August 3, 1776.)

vote the Whig ticket] as possible. By this means men who have heretofore been unfriendly, if [they are] properly pointed out, cannot prevail."[44] A few days later he sent Thomas a "paper containing a few Queries" for secret distribution, which he thought might "be of use, by drawing the serious attention of the people at this important Crisis."[45] Cæsar Rodney may well have been the inspiration of an address delivered at Dover at the opening of the polls,[46] in which the speaker warned the voters to beware of party spirit and of men who "do assume a patriotic semblance," and to "think for yourselves; judge for yourselves." In regard to the oath of allegiance which the judges were empowered to administer, he said: "If it was only meant as a restraint upon those who may be disaffected to the American cause, it was meant well; but if it should prove a bar to any tender or scrupulous consciences, so that a considerable class of men, otherwise good friends to their country, are withheld from their right, it is a pity;" but he trusted the inspectors to use their power "in a manner delicate and unexceptional." In the latter suggestion the speaker was obviously making a bid for the support of the Quakers, whose religious principles held them aloof from the radical party, and at times got them into difficulties.[47]

It is to be expected that the spirit of the mob, which had showed signs of activity,[48] and the occasional dis-

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[44] Cæsar Rodney to Thomas Rodney, August 3, 1776.

[45] Cæsar Rodney to Thomas Rodney, August 8, 1776.

[46] The address was printed in the *Pennsylvania Packet* (Philadelphia) for October 15, 1776. It is also in *American Archives, Fifth Series*, I, 1057 and is quoted in part in Scharf, *op. cit.*, I, 232-233.

[47] John Cowgill, a Quaker of Little Creek Hundred, Kent, "refused, and, from conscience shall refuse, to take said Continental money." In consequence, the Committee of Inspection January 4, 1776, declared Cowgill an enemy of his country, and that "every friend to American liberty . . ought to have no further dealings with him." (*American Archives, Fourth Series*, IV, 564.) Some information on the Quaker attitude may be found in E. Waterston, *Churches in Delaware during the Revolution*, 43-49.

[48] For example, in the threatened tarring and feathering of Doctor Ridgely. (See Appendix A.)

ciplinary action of the committees of inspection,[49] should alienate prosperous lovers of law and order. The timid, moreover, would be less inclined toward aggressive policies at a time when some thirty thousand British troops were descending upon New York harbor,[50] and might soon be heading for the Delaware, bringing punishment for those who dared to defy the power of the Crown. In such circumstances it were better to forsake the hotheads who had got the country into such straits—and many fair-weather patriots, no doubt, were impelled by the same prospect to speak out less vociferously against British tyranny. The Whig voting strength was further weakened by the departure from the county of some of the militia,[51] and indiscreet conduct on part of some of the soldiers seems to have been the occasion of unfavorable comment.[52] With all such untoward circumstances, the Whigs were destined to defeat. Thomas Rodney was crushed by a double misfortune when he wrote Cæsar on election day: "I am very Porely with the yellow Jaundice. . . . The Ellection is going against us their lowest man at this time is 150 vote ahead of you who are highest [on] our side."[53] In time Thomas recovered from his physical ailment, but the election proved to be a complete defeat for the Whigs.

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[49] October 16, 1775, Daniel Varnum admitted to the Kent Committee of Inspection that in speaking of the present troubles he had declared "he had as lief be under a tyrannical King as a tyrannical Commonwealth, especially if the d—d Presbyterians had the rule of it." The Committee forced him to apologize in writing. (*American Archives, Fourth Series,* III, 1072.)

[50] See C. H. Van Tyne, *The American Revolution,* 102-106.

[51] June 18 two companies of Colonel Haslet's battalion were ordered to Cape May, New Jersey; and soon after Delaware was called upon to send 600 men to serve in the "flying camp" until December. (Scharf, I, 230-231.) Cæsar rebuked his brother: "You suffered Caldwell's Company to march away just before the election when there was no necessity for it." (Cæsar Rodney to Thomas Rodney, August 21, 1776.)

[52] "Park tells me the conduct of your light infantry heretofore had drawn down the resentment of the people, which put it in the power of that party who were opposed to you to make this use of it." (*Ibid.*)

[53] Thomas Rodney to Cæsar Rodney, August 19, 1776.

When the Kent delegation, wholly anti-Whig in composition, arrived at New Castle for the convention,[54] they found a New Castle County group which included both Thomas McKean, undoubted radical, and George Read, of a less impetuous mold of mind. The upper county, less torn by political factionalism, had put forward its two most prominent sons. Of the two, it seems clear than the moderate Read exerted more real influence on the convention.[55] He was elected unanimously to preside over that body, and no doubt represented fairly its conservative tendencies. In the absence of Rodney, McKean was the spokesman of the radical Whig sentiment.[56] His aggressive ability was recognized, and it is evident from the minutes that he played a prominent role in the business of the convention; but he by no means dominated it when the votes were cast, and he was particularly disgusted by the way the Kent members settled things "out of doors"—in opposition to his wishes, needless to say.[58]

Before they could organize the convention, the members had to decide upon a double set of returns from Sussex County. In addition to the return of members by the regular channel—that is, certified by the Sheriff and the election inspectors of the county—another group,

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[54] The minutes of the convention were printed in 1776 under the title *Proceedings of the Convention of the Delaware State held at New-Castle on Tuesday the Twenty-seventh of August, 1776.* This exceedingly rare pamphlet was reprinted 1927 by the Public Archives Commission, but not without a few slight errors.

[55] "Timoleon" in *Dionysius* indicates emphatically that Read's influence in Delaware political affairs was paramount, even though unfortunate, as Timoleon thought. The violence of his denunciation of Read is merely added evidence of Read's undoubted leadership.

[56] Cæsar Rodney wrote to Thomas, August 28, 1776: "As soon as I Recd the accounts from Kent and Newcastle of the Elections I wrote to Mr. McKean at Amboy [he was at Perth Amboy with a battalion of Pennsylvania troops—see Roberdeau Buchanan, *Life of the Hon. Thomas McKean, LL. D.*, 49] and desired he would give immediate attendance at the Convention. He got my Letter and in Consequence thereof Came to Philadelphia on Sunday Night last, and set out Yesterday morning very Early to Newcastle."

[57] The years and nays were entered on the journal of the convention but once, then being called by McKean. Four voted with McKean, twenty against.

[58] Thomas McKean to Cæsar Rodney, September 19, 1776.

headed by the Chairman of the Committee of Inspection and Observation for Sussex, were returned by that committee as having been duly chosen to represent the county. According to "Timoleon," the Sussex Whigs, "to avoid cabal and violence, chose to meet in their respective hundreds for the purpose of electing" their delegation, while the "Tories" cast their votes "at Lewes, by a general meeting of the county." Although the Whigs got more votes, Read (said "Timoleon") "alledged the tories were elected more conformably to the direction of the legislature: and upon this principle, they were established in their seats."[59] Read's alleged reasoning was entirely sound; the Assembly had ordered the election to be held "according to the Directions of the . . Laws . . for regulating Elections of Members of Assembly," which laws required the casting of votes at the county seat of each county.[60] Thus the Whigs lost out in this decision, the effect of which was to give complete control to the moderate or conservative element.[61]

Although the convention began its session on the 27th of August, it was not until September 2 that it made a definite beginning of the business for which it had been created. On that day a committee of ten (later increased to twelve) was appointed by the convention "to prepare a Declaration of Rights and Fundamental Rules of this State." September 11 the committee made its report, which "being debated and amended was agreed to" the same morning. George Read did not consider the document "an object of much curiosity" and did not dwell upon it in his letter of September 17 to Cæsar Rodney[62] other than to say that it was "made out of ye Pensilvania & Maryland Draughts." The Pennsylvania declaration

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[59] *Dionysius*, 25.

[60] *Laws of the State of Delaware*, I, 147.

[61] Timoleon admits that "from New-Castle there was a respectable delegation; but Dionysius [Read] among the rest, and not without his usual complement of adherents." He says that not long afterwards "several of the Sussex deputies, who had served in convention, took up their residence with the enemy." (*Dionysius*, 25, 26.)

[62] See Appendix C.

was adopted August 16 and printed in the *Pennsylvania Gazette* of August 21, and was therefore readily available to the Delaware committee. The Maryland "draught" mentioned must have been a first draft reported to the Maryland convention August 17 and ordered printed ten days later for the use of the members.[63] A copy of this draft, either written or printed, must have been in the hands of the Delaware members, for eighteen of the twenty-three articles in the Delaware declaration are taken from it—eleven borrowed verbatim, and nine adapted with various simplifications and refinements of phrasing.[64] Of the three remaining Delaware articles, the fourth was taken word for word from the Pennsylvania declaration, and the second and tenth from Pennsylvania verbatim, but cut down.

On September 7, a week after the convention was organized, and the day McKean returned from an absence of several days,[65] a committee of thirteen "for framing a Constitution or System of Government" was chosen.[66] On the 14th the committee reported a first draft, which "after some Debate" was recommitted the following day. Its second report was made on the afternoon of September 17. During the 18th and 19th the convention debated, amended, and approved all but one of the thirty articles, which was not agreed upon until the 20th, when the whole document was approved and entered upon the minutes. Thus the convention evolved its constitution in

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[63] Max Farrand, "The Delaware Bill of Rights of 1776," in the *American Historical Review*, III, 641-649. Farrand's final conclusions must be revised in the light of the additional material now available on the subject. At his time of writing, Farrand could not locate the Maryland first draft, but copies of it may now be seen in the Pennsylvania Historical Society and the Maryland Historical Society at Baltimore. The Maryland declaration as finally agreed upon differs materially from this first draft.

[64] Delaware's articles 1, 9, 12, 13, 15-19, 21, and 23 are lifted word for word from the Maryland first draft.

[65] Due to "the death of a sister and an expectation for a fortnight of the death of an eldest son." (Thomas McKean to Cæsar Rodney, September 19, 1776.)

[66] It is worthy of remark that on both the major committees, New Castle had the largest representation: six, including President Read, out of twelve on the declaration committee, and seven out of thirteen on the constitution committee.

a period of two weeks from the appointment of the committee to the formal approval of the new system—surely not an excessive amount of time for such an important document.[67] Of this two weeks, eight days passed before the committee made its first report, and the constitution was before the convention for discussion only six days, September 14, 15, 17, 18, 19, and 20.

In studying the work of the convention, two fundamental facts should be kept in mind: first, that by revolution and independence, Delaware had been transformed from a partially self-governing colony to a sovereign and independent state; second, that the government set up to meet this new situation was the result of a compromise between two divergent forces, one radical, or tending to change, and the other conservative, or tending to keep things as they were. Under the first point, it is to be noted that under the colonial government, the people had expressed their will through an elected assembly, whose legislation was subject to the veto of a governor-proprietor or his deputy; that this governor had appointed

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[67] Thomas McKean was long credited, by Sanderson and later biographers of the signers of the Declaration of Independence, with having written the Delaware constitution in one night, without book or other assistance, at the request of members of the convention, by which it was unanimously adopted at ten o'clock the next morning. The attribution of this truly herculean feat to McKean seems to rest on a letter he wrote August 22, 1813, to Cæsar A. Rodney (reproduced in facsimile in Brotherhead's *Book of the Signers*), in which McKean said: "I went to Newcastle, joined the Convention for forming a constitution for the future government of the State of Delaware (having been elected a member for Newcastle county) which I wrote in a tavern without a book or assistance." This statement is misleading, to the extent that it infers that the constitution which McKean says he wrote on that memorable night was the constitution which the convention promulgated. There is no reason, however, to doubt McKean's statement that he did draw up a constitution—any interested person might have set down on paper his conception of what the new government should be. It is quite possible also that the first report of the committee, which was recommitted to them, was based on McKean's draft, for in McKean's letter of September 19, 1776, he refers to "my draught, approved of by the committee." But it is obvious from an examination of the minutes that the constitution underwent some amendment before reaching the form finally agreed upon, and therefore cannot be considered the work of any one man, much less of McKean, who was dissatisfied with at least two features of it (see the vote in the *Proceedings* on the exclusion of clergymen, and, *post*, McKean's objection to presidential powers).

most of the other officials of the government; and that the courts had functioned subject to a final appeal to the King.[68] Revolution against the authority of Great Britain made it necessary to assume or provide for some of these powers temporarily, and the Declaration of Independence required this change to be a permanent one.[69] In either event, the constitutional problem was to set up a government which should have not only all the functions of the old government, but in addition those which had formerly been exercised by outside agencies.[70] Second, as to a conflict of radical and conservative tendencies, it has already been shown that the conservative forces (the so-called Tories) were in control of the convention. We may assume that the characteristics and motives which made them oppose independence, and change of the old government, would cause them to set up a new government, when driven to it, as nearly as possible like the old one. This is exactly what happened. Allowing for Delaware's new status of independence, the new government was, with a few exceptions to be pointed out, as much like the old one as it was possible to make it.

Most conspicuous among these exceptions was the new legislature, in the establishment whereof the convention departed from Delaware practice to follow new fashions in government, by providing for a bicameral "General Assembly." Since 1704, when the lower counties set up a legislature independent of that of the Province of Pennsylvania, laws in Delaware had been formulated

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[68] For the Charter of Privileges of 1701 and earlier documents on which the colonial government of Delaware was based, see Thorpe, *op. cit.*, V, 3052-3081.

[69] The Delaware constitution of September 20, 1776, was the first frame of government to be drawn up by any of the former colonies in their new capacity of sovereign and independent states. Pennsylvania was next, her constitution having been completed September 28. Therefore it is correct, in this restricted sense, to say that Delaware was the first state to adopt a state constitution—as well as first to ratify the federal constitution.

[70] Governor John Penn continued to meet with the Delaware House of Assembly some months after the outbreak of hostilities. The last law which he approved under the old regime is dated October 28, 1775. (*Laws*, I, 590.)

by a unicameral body,[71] the "House of Assembly," and approved or rejected by the proprietary governor or his deputy. But of the other colonies, only Pennsylvania and Georgia had had unicameral legislatures, and up to the time of the Delaware convention, four colonies had adopted revolutionary constitutions, all of them specifying bicameral legislatures.[72] Hence it is not strange that Delaware should have conformed to the current tendency. Theories of "checks and balances" were in vogue, and in this case were served by setting up a "House of Assembly" and a "Council" to be a legislative check upon each other. In the final form, there was little differentiation in the legislative powers of the two houses.[73] Yet the convention of 1776 should not be charged with unduly complicating the legislature of a small state merely to follow a popular fad. The justification for the bicameral feature in Delaware and in other states is that the legislatures had greatly increased in power at the expense of the former colonial governors, whose restraining influence was now removed; there was no disposition to set up a state governor with enough authority to hold the legislature in

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[71] This fact has escaped earlier writers on constitutional history, due in part to the inaccessibility of the colonial legislative minutes of Delaware. An examination of any of these (the earliest, for 1739 and 1740-1741, have recently been published by the Public Archives Commisson) makes it clear that legislation was enacted by one house, not two. There is no evidence that a council for the lower counties, apart from the Provincial Council of Pennsylvania, ever existed; but in the earlier years the governors tried to keep members from the lower counties on that council, and frequently called upon it for advice concerning Delaware matters. (See *Minutes of the Provincial Council of Pennsylvania*, II, 117-118, 506; III, 14-15, 17, 253-254, 281-282, 521.)

[72] The four new constitutions were of New Hampshire, South Carolina, Virginia, and New Jersey. See also W. C. Morey, "First State Constitutions," and W. C. Webster, "State Constitutions of the American Revolution," in the first and fifth volumes of the *Annals of the American Academy of Political and Social Science.*

[73] The larger house had exclusive power of initiating revenue bills, but this was virtually nullified by allowing the Council to amend or reject them. (Article 6.) In the power of appointment however, the advantage was distinctly with the House of Assembly, whose twenty-one members outnumbered the nine members of Council in the joint ballots by which the President, the delegates to Congress, judges, and military and naval officers were selected. In addition, the House alone nominated justices of the peace. (Articles 7, 11, 12, 16.)

check; a happy solution of the difficulty was to divide the legislature, and have the two parts curb each other.

A second exception to the old order was the executive. The colonial governor had been scrapped in the revolutionary upheaval, and a substitute had to be provided. Now the colonial governor, from Massachusetts to Georgia, had been the representative and embodiment of the royal or proprietorial prerogative, and as such had continually been in conflict with the colonial assemblies, which were the champions of popular rights. With more feeling than logic, the Americans of 1776 failed to distinguish between governors who were appointed by King or Proprietor, and governors whom they might set up themselves. Instead, they were suspicious of all governors, and were unwilling to entrust much power to any one man. In consequence of this attitude the state governments of this period are characterized by executives who are weak and often ineffective, and legislatures whose powers are correspondingly enlarged. In Delaware, as was to be expected, there was a sharp contest over the powers to be delegated to the executive. The Whigs lost out, for we find McKean writing indignantly: "The President of the new Government, who, by my draught, approved of by the Committee, was a discreet, modest & respectable Magistrate and useful member of Society, is now a very powerful & dangerous Man."[74] McKean's "draught" has not been preserved, and posterity cannot know exactly what kind of an executive McKean had in mind,[75] but as finally constituted, the "President, or Chief Magistrate," was at least a single person and not a committee, as Pennsylvania was at the time setting up as an executive. He was elected by the legislature, but a term of three years, with "an adequate but moderate

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[74] He continued: "You would have sworn he was named, and a prodigious favorite." (Thomas McKean to Cæsar Rodney, September 19, 1776.)

[75] See Appendix B for an early idea on the subject. Choosing "a Governor in the Council—Who shall be president of the same," gives a clue to the reason for using the title "President," rather than "Governor." Etymologically, at least, governors govern—whereas presidents preside.

Salary . . settled on him during his continuance in Office" prevented him from being a mere puppet of that body. He was not given the veto on legislation which the proprietary governors had enjoyed, but this was scarcely to be expected in 1776, even of a Tory convention. As to the former appointing power of the colonial governor—the largest share of it went to the legislature, but the President had a voice in the appointment of justices of the courts, with his Privy Council appointed various minor officers,[76] and was given absolute power to select other officials not otherwise provided for by law.[77] Furthermore, the President was to be "Captain-General and Commander in Chief" of the militia,[78] and the president of the highest court of the state.[79] On the whole, while overshadowed by the legislative power, the executive was by no means a nonentity.

In connection with the executive, the convention set up an advisory "Privy Council," to act as a check on the President. This body, like the bicameral legislature, was a decided innovation in Delaware constitutional development, and in this case an ephemeral one,[80] but it is a distinctive feature of the constitution-making of the period.[81] In Delaware it was apparently an afterthought. There is no mention of a privy council in what appears to be an early outline of the constitution.[82] There is no hint whatever of a privy council in the committee's report submitted to the convention September 17, if we may accept the accuracy of Read's detailed description of the report, written as the members of the committee were transcribing it.[83] It must have been included, therefore,

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[76] Article 12.

[77] Article 16. This provision was of little importance, however, for nearly all officials had already been provided for.

[78] Article 9.

[79] Article 17.

[80] It was not retained in the next constitution (1792).

[81] South Carolina introduced the novelty in her constitution of March, 1776, and Virginia and New Jersey followed. Most of the other states incorporated the idea, with numerous variations.

[82] See Appendix B.

[83] See Appendix C.

during the final debate near the close of the convention.[84] The obvious disadvantage of the privy council was that it made the new government still more intricate. Otherwise its effect was beneficial, particularly during the existing state of war, when, if ever, a strong executive was necessary. The President, with his Privy Council, was enabled to embody the militia, call the legislature in special session, lay temporary embargoes, and make certain appointments.[85] Such of these functions as are noted in Read's description of the committee's final report[86] were assigned to the President and "Council"—that is, the Legislative Council.[87] So if the committee's report had not been amended, the President would have had to operate with a cumbersome body of nine Councillors; instead, there was substituted a smaller group of four Privy-councillors, whom the President might convene "at any Time when the Public Exigencies may require, and at such Place as he shall think most convenient."[88] This addition of a peripatetic committee of censors therefore gave the President about as much freedom of action as could be expected from any American state in 1776.

The only important innovation in the judicial system was a "Court of Appeals," over which the President of the state was to preside, and which was to have "all the Authority and Powers heretofore given by Law in the last Resort to the King in Council under the old Government."[89] The other courts remained substantially as they had existed previously, and the justices were still not

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[84] It was the last provision to be adopted (Article 8). W. T. Read (*op. cit.*, 186-187) refers to George Read's "Original Draught" of the constitution of 1776, with four amendments in a different handwriting. An examination of this manuscript, which I have failed to find, might shed light on this and perhaps other last-minute changes in the constitution.

[85] Articles 7, 9, 10, 12, 15.

[86] See Appendix C.

[87] Except for slight changes in methods of appointment of justices of common pleas, sheriffs, and coroners.

[88] Article 8.

[89] Article 17. Ignatius C. Grubb, *The Colonial and State Judiciary of Delaware* (*Papers of the Historical Society of Delaware, No. 17*), is an excellent summary of the subject.

required to be "learned in the law." Existing law, including acts of the colonial assemblies, the common law of England, and as much of the English statute law as was then in force, and not repugnant to the new Constitution and Declaration of Rights, was continued until altered by subsequent legislation.[90] In general, both the law and the courts were altered as little as possible under the new conditions.

The Delaware constitution of 1776 was the first of the revolutionary constitutions to declare against the slave trade. Article 26 reads: "No person hereafter imported into this State from Africa ought to be held in Slavery under any Pretence whatever, and no Negro, Indian or Mulatto Slave, ought to be brought into this State from any port of the World." The fact that a similar clause was included in the first draft of the Maryland declaration of rights,[91] which the Delaware framers had at hand, must have been a factor in influencing them to make a stand against the traffic, even though it amounted merely to a declaration of sentiment;[92] but the action was perfectly in harmony with current sentiment in Delaware. As early as 1767, a proposal "totally prohibiting the Importation of Slaves" was lost in the Assembly by the close vote of 7 to 9.[93] In 1775, a bill to prohibit importation passed the House of Assembly under the guidance of Doctor Ridgely, but was refused

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[90] Article 25. See the act of 1777 on this subject, in *Laws of Delaware*, II, 595-598.

[91] "41. That no person hereafter imported into this state from Africa, or any part of the Britsh dominions, ought to be held in slavery under any pretence whatever and that no negro or mulatto slave ought to be brought into this state for sale from any part of the world." But this article was not included in the final form of the Maryland declaration or constitution, as agreed to November 11, 1776.

[92] Cæsar Rodney, Doctor Ridgely, and the other three members from Kent (exclusive of the Speaker, who did not vote) supported the bill, which failed through opposition from the other two counties. (*Votes and Proceedings of the House of Representatives of the Government of the Counties of New-Castle, Kent and Sussex, upon Delaware* 1765-1770, 95, 104-106, 108-109, 122.)

[93] The attitude of the conventon was further emphasized by their including this article among those which "ought [never] to be violated on any Pretence whatever." (Article 29.)

by Governor John Penn.[94] It is apparent, therefore, that the article in the constitution was but a conservative statement of existing sentiment in Delaware, which subsequently found more definite expression in the acts of 1787, 1789, 1793, etc., forbidding both importation and exportation of slaves.[95]

One finds less liberalism in the Delaware provisions concerning religion. There never had been an established religion under the Penn regime. The Declaration of Rights[96] prohibited governmental support of any religious establishment, and assured freedom of conscience, but guaranteed "equal Rights and Privileges" only to those "professing the Christian Religion," and the Constitution itself[97] required "every Person, who shall be chosen a Member of either House, or appointed to any Office or Place of Trust," to "profess Faith in God the Father, and in Jesus Christ his only Son, and in the Holy Ghost, one God blessed for evermore," and to "acknowledge the Holy Scriptures of the Old and New Testament to be given by divine Inspiration."[98] The constitutional fathers of 1776 thus closed the door of political preferment to atheists and deists of the school then prominent in England and France—to say nothing of the Jews. On the other hand, clergymen "of any Denomination" were debarred from membership in the legislature and from holding "any Civil Office."[99]

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[94] *Votes and Proceedings*, September, 1775.

[95] *Laws of Delaware*, II, 884-888, 941-944, 1094, 1323.

[96] Article 2.

[97] Article 22.

[98] This qualification replaced the old anti-Catholic declaration which had been required of members of assembly for more than forty years (*Laws of Delaware*, I, 155, act of 7 George II). The other colonial laws do not indicate that any religious qualification was imposed upon justices, sheriffs, coroners, and minor officials.

[99] Article 29. The fact that Thomas McKean opposed this provision suggests that it was directed against the Presbyterian clergy, who were active on the radical side in Delaware as elsewhere, and were more numerous than any other sect, if one may judge from the list of Delaware churches in 1776, given in E. Waterston, *op. cit.*, 86-90—out of a total of 61 churches, 31 are Presbyterian. This disqualification of clergymen was continued in the Delaware constitutions of 1792 and 1831, and was not finally eliminated until 1897.

Property qualifications for voting were universal in the colonies in 1776.[100] The revolution gave the poorer masses an opportunity to demand an extension of the suffrage, which "levelling" tendency was resisted by the well-to-do. It had slight influence on the earlier constitutions, and none in the Delaware convention of 1776, in which the *status quo* in this regard was strictly preserved. The Declaration of Rights maintained[101] "That the Right in the People to participate in the Legislature, is the Foundation of Liberty and of all free Government," but conceded "a Right of Suffrage" only to those "having sufficient Evidence of a permanent common Interest with, and Attachment to the Community." This "Right of Suffrage" was to "remain as exercised by Law at present,"[102] and by the existing act of 7 George II only those having "fifty acres of land or more well settled, and twelve acres thereof cleared and improved, or . . otherwise worth Forty Pounds lawful money of this government clear estate," were entitled to vote for assemblymen and county officers—but those who could, and neglected to exercise the privilege, were liable to a fine of twenty shillings.[103] The constitutional provision made it impossible to change the property qualification except by constitutional amendment,[104] which was not resorted to, and there was no change until 1792.[105]

The sovereignty of the new Delaware State, then, was assumed *in toto* by the same portion of its population which had exercised the limited rights of the colonial

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[100] A. E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America*, 478-480.

[101] Article 6.

[102] Constitution, Article 5.

[103] *Laws*, I, 148. There were additional qualifications of age, residence, etc. For a good summary of this subject, see McKinley, *op. cit.*, ch. 9.

[104] Requiring a five sevenths vote of each house (Article 30).

[105] By the act of 7 George II cited above, members of assembly had had the same qualification as electors. Under the new constitution, they had to be freeholders, no acreage being specified, but were no longer eligible through the possession simply of 40 pounds estate. This, of course, was slightly to the advantage of the landed interests.

Assembly—namely, those adult male inhabitants, citizens by birth or naturalization, who owned the minimum of property described above. Already in control, they retained as a matter of course the vast additional powers which came as a result of the separation from England, with little, if any, thought of sharing it with the rest of the people. Constitutionally, this acquisition of new powers was the great fact of the revolution. In other respects, as this paper has attempted to indicate, the dominating tendency was to keep things as they were, to make the new government as nearly like the old one as might be. It is significant of this attitude that no more officers were elected by the voters under the new constitution than under the proprietary government—only members of the legislature (ten from each county now, instead of six, as before), sheriffs, and coroners chosen in the county elections, just as had been the custom since William Penn granted his Charter of Privileges in 1701.[106] Neither Delaware nor the other new states formed in the midst of war cared to dabble too much in governmental innovations; to be sure, they had indulged in theorizing, the results of which are set forth in the declaration of rights prefixed to their constitutions; but they had been impelled to do so more as a justification of resistance, a manifesto against British oppression, than from a necessity to safeguard their own rights from encroachments by themselves. In other respects, most of the states eschewed experimentation. In Delaware, a new court had to be set up, and was; a governor was endowed with as much power as the convention dared give him; all other powers were bequeathed to a trusted legislature; and further changes were left to a later generation.

The convention adjourned promptly after finishing the work for which it had been elected, remaining in session only one day after it adopted the new constitution. It did not, however, confine its activities solely to

[106] Even the old practice of electing a double number of sheriffs and coroners, from which the governor appointed one for each office, was retained, the choice being made by the new President with his Privy Council.

constitution-making. The Assembly's resolution of July 27 had called the convention "to ordain and declare the future Form of Government for this State," and to proceed with that work "immediately"—but it was not expressly prohibited from doing anything else.

Before the convention met, Cæsar Rodney suggested to McKean that he get the convention to authorize one delegate to act for Delaware in Congress, instead of two.[107] McKean "liked much to have the power in one, But was so aversed to and determined against the Convention takeing upon them, or Concerning with, the least Iota Except the barely frameing a plan of Government that he was of the opinion he should never Consent to their appointing delegates, or even altering their power, least they should afterward be inclined to hold it out as a president for their takeing upon them some other matters which he thinks they would willingly be at. . ."[108]

Rodney wrote September 11:[109] "From what I can learn of the Convention at Newcastle—They will attempt nothing but Barely the framing a plan of Government Except what may be necessary for the dispatching the flying Camp Battalion." But McKean reported to Rodney, near the close of the convention, after a motion had been made by a Kent member to change the place of meeting of the Assembly from New Castle to Dover, "What will be done next, I can't say, but am ready for anything. Your Kent members had determined to choose new Delegates, Council of Safety, and in short to do anything & everything, as I have been informed; Doctor Ridgely was to be in your place [in Congress], this is a fact; but I think it will not do, and I suppose the stealing an election in

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[107] Of Delaware's three delegates, McKean and Read were members of the convention, leaving only Rodney in Philadelphia.

[108] Cæsar Rodney to Thomas Rodney, August 28, 1776. The letter continues: "He say[s] that for his part he is tired of attending the Congress, but he is determined *they* [that is, the Tory majority in the convention] shall turn him nor no one Else out—That if they are determined to do these things by the Strength of their Majority. He will Try the Strength of the County [perhaps "country" is meant] with *them* Even at the risk of the Court House." Cf. also Cæsar Rodney to John Haslet, September 12, 1776.

[109] Cæsar Rodney to Thomas Rodney, September 11, 1776.

October may postpone any alterations until then." Against the proposal of the Kent delegates to move the Assembly to Dover, McKean had argued "that we were not vested with the legislative power, being expressly chosen for the purpose of 'ordaining and declaring the future form of government for this State,' which being a special purpose excluded an Idea of any other power being delegated, as no other was mentioned—that the Sovereign power of the state resided in the people collectively, and they had delegated a certain portion of it to us, which if we exceeded we were usurpers & tyrants." McKean considered this argument unanswerable, although the Kent Countians did not—instead, they called for the question.[110]

The Kent County group failed to railroad through any of their threatened changes in membership in Congress or in the Council of Safety, but the real reason for their forbearance seems to have been, as McKean suggested, the fact that they had contrived to have the date of the first election for the Assembly and Council under the constitution fixed at October 21.[111] The Delaware troops in New Jersey were in service until December, and could thus take no part in the first election. But, as McKean said,[112] "All the arguments drawn from Colonel Hazlet & Patterson, with their two Battalions, being absent, and thereby, tho' exposing their lives for their country, loosing the chance of any compliments or distinction from it, or opportunity to serve it, for seven years to come, in the civil department, had no effect. . . The matter had been settled out of doors, and the new elections, and the loaves and fishes, were to be secured at all events." The conservatives, especially those of Kent, saw their opportunity in calling for an early election, to which they were willing to defer the changes they wished to make.[113]

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[110] Thomas McKean to Cæsar Rodney, September 19, 1776.

[111] Article 27.

[112] Thomas McKean to Cæsar Rodney, September 19, 1776.

[113] The men of Kent, it may be added, were not disappointed. Their ticket was victorious in the elections to the new legislature. (*Pennsylvania Gazette*, October 30, 1776.)

The Tories, then, were content to wait until October to make their alterations, and for this reason the other business of the convention was confined entirely to emergency measures connected with the carrying on of the war. McKean's constitutional scruples seem not to have extended to this kind of business, in which he took an active part. In this respect the convention exercised, apparently without objection, full legislative powers. They handled various military matters, appointed officers, formulated rules for the forces, gave advice to the Council of Safety and to committees of inspection, borrowed money for military purposes, authorized a gun-lock manufactory, and even ordered the signing of £4500 of Kent County Loan Office bills left unsigned by an absconding Tory officeholder.

APPENDIX A

Kent County Politics 1770-1776

The shift in the political lineup in Kent County in the early stages of the Revolution may be traced with some detail in the Rodney correspondence. The Rodneys were active in local politics for at least a decade before the Revolution. It appears that in 1770 they were affiliated politically with Dr. Charles Ridgely, who was later to become their bitterest opponent. Some idea of the personnel of the two opposing "parties" preceding 1774 may be obtained from a tentative list of candidates for assembly, proposed for the fall election of that year:

"Court" party	"Country" party
Cæsar Rodney	William Killen
Charles Ridgely	John Haslet
Thomas Collins	Vincent Loockerman
Jacob Stout	John Baning
John Clarke	Thomas Hanson
John Baning	Powell Cox
(For sheriff and coroner, "Cook & Barrett")	(For sheriff and coroner, "Cook & Gray")

On the eve of the 1774 election, however, Thomas Rodney and his friends (Cæsar was in attendance in Congress at the time) upset the existing political equilibrium by announcing a third party or "Middle Ticket," with candidates drawn from both of the existing parties, as follows:

Cæsar Rodney
John Haslet
Thomas Collins
William Killen
John Baning
Vincent Loockerman
(For sheriff and coroner, "Cook & Barrot—some [for] Gray")

It is clear from Thomas Rodney's letters that this political shakeup was occasioned, or at least justified, by a wide divergence of opinion in the county on the policy to be pursued in the contest with the British government. As early as September 11, 1774, Thomas wrote: "Our vicars (as the doctr. calls them) [presumably the Anglican clergy and their adherents are meant] seem put to silence by the above mentd. account of the hostile invasion of Boston, perhaps judging it impolitic longer to oppose the popular opinion against such unhear'd of oppression—However before this, their junto of domestic police, had formed the Attempt to exclude

you from their political favour & ticket, but were defeated in this by your warm friends in their council . . . together with the popular warmth for you out of doors—However your good friend Doctr. R[idgely] has layed a trap with his Old Machine L————mn [Loockerman] which he no doubt thinks may gain his purpose of throwinge you off the assembly—but your friends ar apprized of this and will not omit to lower his Turban at this election."

It is significant that the demand for the ousting of Cæsar Rodney seems to have come from the opponents of colonial resistance. Rodney had long been a prominent member of the Assembly, had been a Delaware representative in the Stamp Act Congress and in both the First and Second Continental Congresses. As Kent County's most prominent son, it must have been distasteful to the conservatives to have him in the van of opposition to the mother country. Thomas Rodney and his friends countered this demand by leaving Doctor Ridgely off their ticket, an omission which aroused strong criticism, but which Rodney stoutly defended. He explained to Sheriff John Cook "that the Doctors. conduct in publick measures had deprived him of my assistance." September 22 he wrote Cæsar: "I have not hinted anything private against the Doctr. his publick conduct I have disapproved—but he will certainly be agt. you privately if not publickly." "Publickly," at least, however, Doctor Ridgely supported Cæsar Rodney's candidacy. September 28 Thomas wrote: "My sentiments to the Sherr. [Cook] mentioned in my last occationed great rage and fury in the Doctr. . . He determined to send to you . . to know if you were not concerned in my conduct, tho I had fully assured the Sherr. & sundry persons sent by him to me, that you were not. However . . he dropt the scheme of sending & it seems [is] determined to carry you and also dropt Baning & put in Robert Holliday—Baning told me, that Lockerman informed him about three weeks ago that the Doctr. offer'd to carry him (Lockerman) if he would strike at you and we had this further evidence that Lockerman had begun the business—However this is a secret known to few therefore let it go no further. . . The middle ticket has gained greatly and made much noise—Cook Barret & Collins in the midst of the Doctrs. rage declared they wou'd carry you through thick & thin. . . P. S. This Maenuverer in politics is looked on with pleasure by the other party who expect it will occation a seperation between you and the doctr. which [I by] no means intend—But to convince him that the good of his country, & real friendship should never be subservient to the gross passions of pride & envie which was probably the rule of his conduct on this occation."*

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* The three preceding paragraphs are based on letters from Thomas Rodney to Cæsar Rodney, October 21, 1765, June 16, 1770, and September 11, 20, 22, and 28, 1774.

However, Thomas Rodney's political innovation failed in the election of October, 1774, as the returns of Kent assemblymen indicate:

Cæsar Rodney
Charles Ridgely
Thomas Collins
John Clarke
Jacob Stout
Robert Holliday

With the substitution of Holliday for Baning, as Thomas Rodney had reported, this was the exact lineup of the "Court" faction. No candidate on the new "Middle Ticket" was elected, who was not also on the old "Court" ticket. Killen and Haslet, of the old "Country" ticket, lost out in this election, although they had been members of the Assembly of 1773.

The passage of another year, however, brought the actual beginning of the revolution on the field of battle, and with it success to Thomas Rodney's new political alignment. In a letter to Cæsar of September 17, 1775, Thomas discussed the pre-election situation. Doctor Ridgely, Stout, and Holliday, of the previous assembly, had declined to be candidates to succeed themselves. The time was unpropitious for Ridgely and Holliday, both of whom had got into difficulties with the county Committee of Inspection. Holliday had written a letter, published in a Philadelphia newspaper, in which he expressed the opinion that, "if the King's Standard were now erected, nine out of ten would repair to it." He was compelled by the Committee on May 9, 1775, to confess himself the author, with "sorrow and contrition" for his "weakness and folly," and to "beg forgiveness." On the eve of the election (September 12) Doctor Ridgely had been haled before the same committee, charged with having uttered, in the preceding July, sentiments derogatory to the revolutionary cause. Through the efforts of Thomas Rodney (according to Rodney's later account), the Doctor was acquitted, but Killen, Tilton, and others demurred, considering him to be "the Ringleader" of "all the Toryism of this State." During the trial the "Clamour out doors was very great & Tar & feathers prepared for him expecting his condemnation."* It is evident that in the fall of 1775, therefore, the advantage was with the radicals. Hostilities had begun, and Washington was drilling a Continental Army, but

* For the Holliday affair, see *American Archives, Fourth Series*, II, 466ff., and the *Pennsylvania Ledger* (Philadelphia) for February 11, 1775, which contains Holliday's letter, unsigned, and marked "from Kent County on Delaware." For the Ridgely trial, see MS. *Proceedings and Transactions of the Committee of Correpondence for Kent County began July 20th 1774* (in the Historical Society of Delaware), especially the attached note, which is in the handwriting of Thomas Rodney.

the perils and hardships of war with the mother country had not as yet been brought home to the people of Delaware. By this time, Thomas Rodney spoke no longer of "Court" and "Country" factions; instead, he referred to his group as "Whigs," and to the opposition as "Tories"; but though the "Middle" ticket no longer existed by name, its members still held together, in the list of candidates for assembly which Thomas announced in his letter of September 17:

Cæsar Rodney
Thomas Collins
John Haslet
William Killen
John Baning
Thomas Rodney

The only difference between this list and that of 1774 is the substitution of Thomas Rodney for Loockerman. Thomas was included, he wrote, "much against my own Interests and inclynation," but because a sixth name could not be agreed upon. It is possible that before the election Collins was dropped, and Loockerman restored, for he was elected, along with the other five, and in the election to the convention in August, 1776, we find Loockerman still included in the Whig lineup, while Collins had gone over to the opposition.

Thus in 1775 the Whigs, as we must now call them, triumphed in Kent County. This was fortunate for the revolutionary cause, for it was this Whig Assembly, elected in October, 1775, which severed the colony from imperial authority, accepted Congress's declaration of independence, and finally called the constitutional convention of 1776. It only remains to note that the fall of 1776 again brought reaction. The Whigs had gone too far, and were rebuked in Kent County by the victory of Doctor Ridgely's conservatives, not only in the election to the convention in August (as described in the foregoing pages) but also in the first election, in October, under the new frame of government.*

APPENDIX B

THOMAS RODNEY'S NOTES

[These notes are on the back of a letter dated July 17, 1776, from "Alex^{r} M'Donald" of Cantwell's Bridge to Thomas Rodney,†

* Election returns are taken from the assembly proceedings of each year, incomplete files of which may be consulted in the Public Archives at Dover and the Pennsylvania Historical Society at Philadelphia. The proceedings from October, 1775, to the beginning of the new government are missing, but the returns of the 1775 election are printed in the *Pennsylvania Journal* (Philadelphia) for October 11, 1775.

† MS. in the Public Archives, *Miscellaneous File*, No. 159.

and are in Rodney's handwriting. Thomas Rodney was not a member of the convention of 1776, and there is nothing in his letters to Cæsar which would throw light on the exact character of these notes. However, from the document itself, it is not unreasonable to infer that it represents a brief outline of the constitution in its preliminary form, probably as first reported by the committee on September 14.]

Three Councilers to be Chose 1 Octr: 1776 in each County forever after on 1 Octr: 1 Counciler in each County and one for each County to be voted out anually and the new elected ones to take their Seats

8 Representatives to be Chosen annually on the 20 of Octr:— each County to be Divided into 8 districks, each to Chose one Member as afsd.

The Council & Assembly to form distinct Houses of Legislation—also Bills to originate in the assembly

The Assembly & Council by joint Ballot to Chose a Governor in the Council—Who shall be president of the same—who shall Continue three years & no longer, but May be reelected for three years more, after which shall not be Capable of being elected for three (four) years

Council & Assembly to appoint Judges of the Common Please & supr. Courts—& the Clerks of the Publick Offices during good behaviour

[Below this, but upside down, is:]

Octr: 1 Counciler 1 Sherf. 1 Corr: anually

APPENDIX C

LETTER OF GEORGE READ TO CAESAR RODNEY, DATED AT NEW CASTLE, SEPTEMBER 17, 1776

Dear Sir/

I admit your censure for not keeping up that correspondence which you were justly intitled to from me but it really proceeded from a desire I had to give you some satisfactory accot. of the business we have been more particularly engaged in to wit ye Declaration of Rights and the plan of Governmt.—as to the first it has been completed some days past but there being nothing particular in it I did not think it an object of much curiosity, it is made out of ye Pensilvania & Maryland Draughts—A Committee appointed for preparing ye Plan of Govt., had drawn up one, but it has undergone such daily amendmts. yt. it cou'd have been little satisfactory to have known ye 1st. State of it—The Genl heads of it at present are that ye Legislature is to consist of 2 branches—A

Council & Assembly, The 1st. of 9 members 3 for each County—ye lowest in Vote to go out after ye 1st. Year & so of ye rest—but may be rechosen—ye 2d. branch of 7 members chosen annually—A President to be chosen by joint ballot of both houses for 3 yrs. and ineligible for ye 3 next years to have ye Executive powers of Govt. & in case of death &c. ye speaker of ye Council to act in his stead—to Embody ye militia with ye Consent of ye Council & then have ye Sole Command—Delegates to Congress to be chosen by joint ballot of both Houses—3 Judges of ye Supr. Cot. to be chosen by President. & 2 Houses by joint ballot during good behaviour & hold no other office—Judge of admiralty to be chosen by the same—4 or 5 Justices of ye Comon Pleas & Orphs. Cot. to be chosen by Presidt. & Council during good behaviour & excluded from other office—Secretary Attny. Genl. Register for Probates of Wills ye Register in Chancery—Clks of Comon Pleas, Orphs. Cots. & of ye Peace by ye Presidt. & Council for 7 years if of good behaviour—House of Assembly to nominate 24 persons for Justices of ye Peace whereof Presidt. & Council to appoint 12 during pleasure—ye members of Council to be Justices of ye Peace thro' ye whole state—Just. of Common Pleas Conservators thereof in their Counties—Cot. of Chancery as heretofore 'till future Provision of ye Legislature—Shffs & Coroners as formerly—President to appoint one of ye 2 candidates—Cot. of Appeal to Consist of President for time being & 6 others during good behaviour 3 of which to be named by each house—Clk of Supe. Cot. to be Appointed by Ch: Justice & recorder of Deeds by Justices of Comon Pleas for 7 years good behaviour—Persons *ineligible* to either House of Genl. Assembly, Justices of Supreme & Comon Pleas Cots. Secretary, Trustees of Loan Offices & Prothonotaries, officers of Army & Navy of ye united States—officers of Army & Navy of this State & all officers before mentd. accepting such offices to Vacate their Seats & new Election ordered—Genl. Assembly to appoint officers of Army & Navy—Members of ye Legislature or person if office [sic] to Swear or Affirm Allegiance to ye State & a submission to its Constitution & its Laws—No Importation of Slaves from Affrica & none to be brot. into ye State from Elsewhere for Sale—General Elections at time & place as heretofore except as to ye first one not fixed as to time as yet—these are ye principal heads of which the Members who are now all around me are transcribing for report & discussion—there is as yet great appearance of harmony I hope it will continue—I do not discover any thing that ought or probably will interrupt it except ye common one of hurrying to get home . . .

[Original in the Historical Society of Delaware.]